

1 **SANGER SWYSEN & DUNKLE**

Attorneys at Law  
2 Robert M. Sanger, SBN 058214  
Frank J. Ochoa, SBN 067011  
3 Stephen K. Dunkle, SBN 227136  
125 E. De La Guerra St., Ste. 102  
4 Santa Barbara, California 93101  
Telephone: (805) 962-4887  
5 Facsimile: (805) 963-7311  
[rmsteam@sangerswysen.com](mailto:rmsteam@sangerswysen.com)

6 **LAW OFFICES OF JULIANA DROUS**

7 Juliana Drous, SBN 092156  
214 Duboce Avenue  
8 San Francisco, CA 94103  
Telephone: 415-863-3580  
9 [jdrous@msn.com](mailto:jdrous@msn.com)

10 Attorneys for Plaintiff,  
JOEL ALCOX

11  
12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
14

15 JOEL ALCOX,

16 Plaintiff,

17 vs.

18 THE CITY OF LOMPOC; THE  
19 COUNTY OF SANTA BARBARA;  
20 HARRY HEIDT; KENNETH AST  
and DOES 1 through 10 inclusive,

21 Defendants.)

) Case No. \_\_\_\_\_

) **COMPLAINT FOR DAMAGES FOR:**

) **1. VIOLATION OF CIVIL RIGHTS**  
) **[42 U.S.C. § 1983, DEPRIVATION OF**  
) **LIBERTY];**

) **2. VIOLATION OF CIVIL RIGHTS**  
) **[42 U.S.C. § 1983, MALICIOUS**  
) **PROSECUTION]**

) **3. VIOLATION OF CIVIL RIGHTS**  
) **[42 U.S.C. § 1983, CONSPIRACY]**

) **4. VIOLATION OF CIVIL RIGHTS**  
) **[42 U.S.C. §§ 1983, 1988, *MONELL***  
) **CLAIM]**

) **5. VIOLATION OF CIVIL RIGHTS**  
) **[42 U.S.C. § 1983, DEPRIVATION OF**  
) **RIGHT TO COUNSEL**

) **DEMAND FOR JURY TRIAL**

1 Plaintiff, JOEL ALCOX, hereby alleges as follows:  
2

3 **I.**

4 **JURISDICTION AND VENUE**

- 5 1. This is an action for monetary damages brought under 42 U.S.C. §1983 and §1988  
6 and California tort law principles against the City of Lompoc, the County of Santa  
7 Barbara, Sgt. Harry Heidt and District Attorney Investigator Kenneth Ast.
- 8 2. Federal jurisdiction is invoked upon the existence of a federal question pursuant  
9 to 28 U.S.C. §1331 and the District Court’s original jurisdiction over matters  
10 alleging violation of civil rights pursuant to 28 U.S.C. §1343(a)(3). Supplemental  
11 jurisdiction over the state law claims is invoked pursuant to 28 U.S.C. §1367.
- 12 3. Venue in this district and division is proper under 28 U.S.C. § 1391 (b) and 29  
13 U.S.C. § 1132 (e), because a substantial portion of the events giving rise to the  
14 claims asserted herein occurred in the County of Santa Barbara, within the Central  
15 District of California.

16 **II.**

17 **PARTIES**

- 18 4. Plaintiff, JOEL ALCOX, is an individual and, at all times relevant to the causes  
19 of action herein, was a resident of the County of Santa Barbara, California.
- 20 5. Defendant, CITY OF LOMPOC, was and is a public entity and city duly organized  
21 and existing as such under the laws of and within the State of California. The  
22 Lompoc Police Department is a subordinate agency of the CITY OF LOMPOC.
- 23 6. Defendant, COUNTY OF SANTA BARBARA, was and is a public entity and  
24 county duly organized and existing as such under the laws of and within the State  
25 of California. The Santa Barbara County District Attorney’s Office is a  
26 subordinate agency of the COUNTY OF SANTA BARBARA.
- 27 7. Defendant HARRY HEIDT (“HEIDT”), is an individual and at all times material  
28 to this Complaint, was a duly appointed officer of the Lompoc Police Department.

1 8. Defendant KENNETH AST (“AST”), is an individual and at all times material to  
2 this Complaint, was a duly appointed investigator of the Santa Barbara County  
3 District Attorney’s Office.

4 9. At all times material, Defendant HEIDT acted under color of and by virtue of the  
5 statutes, customs, ordinances and usages of the State of California, the CITY OF  
6 LOMPOC and the Lompoc Police Department.

7 10. Defendant HEIDT at all times material to this Complaint, was the servant, agent,  
8 appointee, and employee of Defendant CITY OF LOMPOC acting in furtherance  
9 of and within the scope of said relationships and Defendant CITY OF LOMPOC  
10 is answerable at law for the acts of the deputies of the Lompoc Police Department  
11 under the federal and California case law and statutes.

12 11. At all times material, Defendant AST acted under color of and by virtue of the  
13 statutes, customs, ordinances and usages of the State of California, COUNTY OF  
14 SANTA BARBARA and the Santa Barbara County District Attorney’s Office.

15 12. Defendant AST at all times material to this Complaint, was the servant, agent,  
16 appointee, and employee of Defendant COUNTY OF SANTA BARBARA acting  
17 in furtherance and within the scope of said relationships and Defendant COUNTY  
18 OF SANTA BARBARA is answerable at law for the acts of the investigator of the  
19 Santa Barbara County District Attorneys’ Office under the federal and California  
20 case law and statutes.

21 13. The acts of Defendant HEIDT herein alleged were committed either on the  
22 instruction of the CITY OF LOMPOC via the Lompoc Police Department, or with  
23 the knowledge and consent of said Defendant, or were thereafter approved and  
24 ratified by said Defendant.

25 14. The acts of Defendant AST herein alleged were committed either on the  
26 instruction of the COUNTY OF SANTA BARBARA via the Santa Barbara  
27 County District Attorney’s Office, or with the knowledge and consent of said  
28 Defendant, or were thereafter approved and ratified by said Defendant.

1 15. Mr. Alcox is ignorant of the true names and capacities of the Defendants sued  
2 herein as Does 1 through 10, inclusive, and therefore sues these Defendants by  
3 such fictitious names and will amend his Complaint to allege their true names and  
4 capacities as they are ascertained.

5 **III.**

6 **FACTUAL ALLEGATIONS**

7 **INTRODUCTION**

8 16. Joel Alcox spent 26 years incarcerated in prison and four years on parole for a  
9 crime he did not commit, the murder of the proprietor of the Lompoc Motel.

10 17. Mr. Alcox was nowhere near the Lompoc Motel when the murder occurred.  
11 Multiple witnesses recall that he was at a party at a house on the Vandenburg Air  
12 Force Base.

13 18. Despite the fact that another man confessed to the murder and that the witnesses  
14 who last saw the victim before he died recall that his statements pointed to the  
15 other man being culpable, the Defendants nevertheless pursued the prosecution of  
16 Mr. Alcox.

17 19. Mr. Alcox's wrongful conviction was the result of intentional misconduct by a  
18 Lompoc Police Department Sergeant and Santa Barbara County District Attorney's  
19 Office Investigator who investigated the crime and the Deputy District Attorney  
20 who prosecuted the case. The Defendants' desire to ensure a conviction at all  
21 costs resulted in Mr. Alcox's wrongful conviction and the actual murderer going  
22 free. The Defendants used unconstitutional means to obtain a false confession  
23 from Mr. Alcox even though he had no involvement whatsoever in the murder.  
24 The Defendants used unconstitutional means to coerce a false statement from a  
25 witness, Carolina Gonzales, that she overheard Mr. Alcox had made an admission  
26 regarding involvement in the murder, even though substantial evidence  
27 demonstrates that he was not present. All of this despite overwhelming evidence  
28 that Mr. Alcox was not there at all, that he had no connection with the murder and

1 that another person committed it.

2 20. The Defendants obtained Mr. Alcox's conviction by suppressing evidence of his  
3 innocence from his court-appointed defense attorney. This was compounded by  
4 the court-appointed attorney's failure to conduct any meaningful investigation and  
5 to challenge the prosecution's case at trial. The Deputy District Attorney and the  
6 Defendants were aware that the defense attorney was incompetent and exploited  
7 the fact that he did not obtain discovery or know the case, thereby allowing them  
8 to suppress evidence and make misrepresentations without fear of being  
9 discovered or contradicted.

10 21. If not for the remarkable efforts and perseverance of his post-conviction counsel,  
11 Mr. Alcox would still stand convicted today. In November of 2015, a United  
12 States Magistrate Judge, the Honorable Judge Andrew J. Wistrich, filed a Report  
13 and Recommendation recommending that the habeas petition be granted. After  
14 decades of fighting for his freedom, a United States District Court Judge, the  
15 Honorable Judge James V. Selna, adopted the recommendation of the Magistrate  
16 Judge and granted Mr. Alcox's petition for writ of habeas corpus and vacated his  
17 conviction in 2016.

18 **THE MURDER OF THAKORBHAI PATEL**

19 22. Thakorbhai Patel (hereinafter "T. Patel") owned the Lompoc Motel. At the motel,  
20 on February 16, 1986, at about six in the evening, T. Patel was shot, and died after  
21 being transported to the hospital from a gunshot wound to his chest.

22 23. After being shot, T. Patel managed to leave his living quarters, which were  
23 connected to the office of the motel. One of the motel guests, shortly after hearing  
24 shots fired, heard T. Patel knocking on his door. Another guest found T. Patel  
25 collapsed in front of the door of his room. This guest called the police. After  
26 calling the police, T. Patel was no longer at his door. T. Patel was eventually  
27 found in his living quarters lying on the floor with the phone in his hand.

28 24. The lift-up portion of the counter in the office was up when T. Patel's body was

1 discovered. The drawer behind the counter, where the money was kept, was open.  
2 It could not be determined whether any money had been taken. One of the  
3 paramedics found a five dollar bill on the floor of the living room three or four  
4 feet away from the door leading to the motel office.

5 25. The motel guest who first saw T. Patel when he collapsed outside the door of  
6 another guest, reported T. Patel as saying something that sounded like "Sanjo,  
7 Sanjo, Sanjo."

8 26. Sanjay "Jay" Patel<sup>1</sup> was a close family friend of the victim, and sometimes referred  
9 to T. Patel as an "uncle." Sanjay was also a friend of Mr. Alcox's co-defendant  
10 Rick Lothery, who was eventually convicted for his role in the homicide.

11 27. As is explained below, Sanjay was the person involved in the confrontation with  
12 T. Patel at the Motel and was the person who actually shot T. Patel.

13 28. The evidence adduced by the prosecution at Mr. Alcox's trial essentially consisted  
14 of three items: (1) Mr. Alcox's false confession to Lompoc Police Sgt. Harry Heidt  
15 and District Attorney Investigator Kenneth Ast; (2) fourteen year old Carolina  
16 Gonzales' testimony that she overheard a person she at one time claimed was Mr.  
17 Alcox make admissions in an ally concerning the shooting at the Lompoc Motel;  
18 and (3) a Santa Barbara County Sheriff's Department employee's testimony  
19 concerning conversations she overheard between Mr. Alcox and co-defendant  
20 Rick Lothery while both were housed in the county jail following their arrest on  
21 murder charges.

22 **IT WAS SANJAY WHO SHOT AND KILLED T. PATEL AT THE LOMPOC**  
23 **MOTEL**

24 29. After T. Patel was shot, but before he died, he had contact with a number of  
25 people. All of these people who communicated with him, including Lompoc

---

26

27 1  
28 Because they share a last name, Thakorbahe Patel will be referred to as "T. Patel" and Sanjay  
Patel, who was also known as "Jay," will be referred to as "Sanjay" hereinafter to avoid  
confusion.

1 Motel guest John Hermans, Lompoc Fire Department Captain Roy Belluz,  
2 Lompoc Ambulance paramedic Ken Kelly, Lompoc Ambulance emergency  
3 medical technician Cathy Kelly Ginez, and Traci Maniscalco have stated that it  
4 was clear from the victim's responses to their questions that the victim knew the  
5 person who had shot him, and that he consistently told them that it was "Sanjay"  
6 or "Sanjo" who shot him.

7 30. Sanjay also made admissions to other witnesses concerning his involvement in the  
8 shooting.

9 31. On April 11, 1987, Sanjay called 911 from his father's home. His statement,  
10 pursuant to normal procedures, was tape recorded. The tape was played at Mr.  
11 Alcox's trial:

12 Police: 911 Emergency.

13 Caller: Jay Patel

14 Police: Pardon me.

15 Caller: Jay Patel. I'm ready to go in for the murder.

16 Police: You what?

17 Caller: I'm ready to go in for the murder.

18 Police: I can't understand what you're saying.

19 Caller: I'm ready to confess to murder, Lompoc Motel.

20 Police: I understand Lompoc Motel, what is it you're telling me?

21 Caller: I'm ready to admit to the murder.

22 Police: You're ready to admit to a murder?

23 Caller: Yeah.

24 Police: What's your name?

25 Caller: Patel.

26 Police: Patel?

27 Caller: [unintelligible] Patel.

28 Police: What, how do you spell your first name?

1 Caller: J-U-N-I-Y, 504 E. Barton, okay, bye.

2 32. The automatic call trace function on the 911 dispatch system registered the  
3 telephone call as having originated from Prabhu Patel's, Sanjay's father, home in  
4 Lompoc. Police dispatch sent an officer to investigate. Sanjay was taken to the  
5 station for questioning. The officer who interviewed Sanjay testified that Sanjay  
6 smelled of alcohol and appeared to be under the influence.

7 33. Junia Fritz testified at Mr. Alcox's trial that she knew Sanjay. She remembered  
8 hearing sirens on the night of the murder at the Lompoc Motel. On the evening  
9 of the murder, Sanjay came to her apartment at about 6:45 p.m. Sanjay took a gun  
10 from his waistband and asked her to hold it for him and to clean off the  
11 fingerprints. The gun was wrapped in a cloth. Junia put the gun behind the bar  
12 in her apartment. A day or two later, Sanjay came back to retrieve the gun.

13 34. In addition to the 911 call made by Sanjay and Junia Fritz's testimony, there  
14 existed a vast array of evidence implicating Sanjay as the killer of T. Patel which  
15 was not presented by defense counsel at Mr. Alcox's trial due in part to the  
16 incompetence of his lawyer but also due to the manipulations, misrepresentations  
17 and suppression of evidence by Defendants and the Deputy District Attorney  
18 handling the case.

19 35. Mike Coleman was an acquaintance of Sanjay and the boyfriend of Junia Fritz's  
20 sister, Stephanie Fritz. On April 14, 1986, he was interviewed, at Stephanie Fritz's  
21 house, by AST. Coleman told AST that "Jay did it. Jay is the one." Coleman  
22 went on to described how he had three conversations with Sanjay wherein Sanjay  
23 implicated himself in the shooting of his "uncle" at the Lompoc Motel. During the  
24 first conversation, Sanjay told Coleman about how he shot the victim in the hand,  
25 then the bullet fragmented and struck T. Patel in the face. In subsequent  
26 conversations Sanjay claimed that it was Rick Lothery who had actually shot T.  
27 Patel. Sanjay also informed Coleman that after the shooting he stashed the gun  
28 with Junia Fritz.

1 36. The statement by Sanjay to Michael Coleman was also significant in that only  
2 someone there would have known about the specific nature of the injury in which  
3 T. Patel was hit in the hand and that the bullet then hit him in the face. On  
4 information and belief, this fact had not been disseminated in the press at the time  
5 Sanjay made the statement to Coleman.

6 37. Neither of the appointed lawyers for Mr. Alcox, William Gamble, who ceased  
7 representing him after the first trial ended in mistrial, or Kenneth Biely, who  
8 handled the case through trial, employed an investigator or did anything  
9 significant to obtain discovery or develop the facts of the case.

10 38. That appointment system at the time involved the COUNTY OF SANTA  
11 BARBARA contracting for a lump sum to do indigent defense work. William K.  
12 Gamble was the administrator of the program and would decide what, if any,  
13 investigative and expert services to obtain. Such services would be subtracted  
14 from the lump sum compensation. The Defendants were aware of the fact that Mr.  
15 Gamble and Mr. Biely did not generally investigate cases and exploited this to  
16 their benefit in obtaining the conviction of Mr. Alcox.

17 39. In this particular case, Defendants were aware that Mr. Lothery was being  
18 vigorously represented by the Public Defender, who employed an investigator,  
19 Kalli Bolanis, and that the Public Defender and their investigator were attempting  
20 to obtain discovery of items that Mr. Alcox's lawyers had neither requested or  
21 received. Despite being aware of the fact that the co-defendant was making  
22 demands for *Brady* material and other relevant discovery, and that they were  
23 providing certain discovery to the co-defendant's lawyer, they exploited the fact  
24 that neither Mr. Biely nor Mr. Gamble requested or obtained these materials.  
25 These materials included critical tape recordings.

26 40. On October 14, 1986, after Michael Coleman's name had surfaced as a possible  
27 witness in Lothery's trial, Coleman was interviewed by Public Defender  
28 Investigator Kalli Bolanis. Coleman told Kalli Bolanis that the night before

1 (October 13, 1986) he had confronted Sanjay about Sanjay telling the police that  
2 Coleman was lying about the gun. According to Coleman, Sanjay responded by  
3 offering Coleman \$10,000.

4 41. A few days before the evidentiary hearing on the state habeas petition commenced  
5 in 2004, Mr. Coleman was interviewed (and tape recorded) by District Attorney  
6 investigator Jeffrey Ellis. During this interview with Mr. Ellis, Coleman reiterated  
7 the same facts he had related to investigators AST and HEIDT in 1986.  
8 According to Coleman, late at night on the day of the shooting at the Lompoc  
9 Motel, Sanjay came to Junia Fritz's house on "E Street" in Lompoc (Fritz was  
10 Coleman's girlfriend at the time). Coleman spoke with Sanjay, and Sanjay  
11 acknowledged to Coleman that he had shot someone that night. Sanjay also  
12 showed Coleman a paper bag containing a gun, and asked Coleman to dispose of  
13 the bag. When Investigator Ellis asked Coleman if he knew whether Joel Alcox  
14 was "guilty" or not, Coleman said, "Not guilty."

15 42. AST testified at the state habeas evidentiary hearing that during his interview of  
16 Coleman in 1986, Coleman told him about three conversations with Sanjay in  
17 which Sanjay "bragged" about the shooting at the Lompoc Motel. Coleman  
18 further told AST that during one of these conversations, Sanjay told Coleman  
19 details about the shooting, including the accurate information that the victim had  
20 been shot through his hand, and the bullet fragmented and pieces struck the victim  
21 on the jaw area.

22 43. Sanjay was called as a defense witness at Mr. Alcox's trial, as well as the trial of  
23 Rick Lothery. However, he asserted his Fifth Amendment privilege at both  
24 proceedings and the defense was thereafter prohibited from questioning Sanjay  
25 about his possible involvement in the murder and his whereabouts on the night of  
26 the shooting at the Lompoc Motel.

27  
28 ///

1 **EVIDENCE THAT JOEL ALCOX WAS AT A PARTY AT KELLY HUGHES'**  
2 **HOUSE ON THE NIGHT OF THE SHOOTING**

3 44. During his post-arrest interrogation, Mr. Alcox had repeatedly told HEIDT and  
4 AST that he believed that on the night of the shooting he had attended a party at  
5 Kelly Hughes' house on Vandenburg Air Force Base. Mr. Alcox further informed  
6 his interrogators that some of the other people at the party were Kelly Hughes,  
7 "Skip" Santos, "Chuck" Garcia, "Chuck" Robb, and Craig Hamel and "Sean."

8 45. During the course of the 1986 investigation, the police interviewed a number of  
9 witnesses who placed Mr. Alcox at Kelly Hughes' apartment on the evening of  
10 February 16, 1986. These witnesses included Roberta Cornelison, Carlos "Chuck"  
11 Garcia, Kathleen Webb, Charles "Chuck" Robb, Birgitte Lee Barker and Sean  
12 Daugherty. Each of these witnesses corroborated one another, and corroborated  
13 the portions of Mr. Alcox's interrogation responses leading to the coerced false  
14 confession wherein he told the police that he believed he was at a party at Kelly  
15 Hughes' house on Vandenburg Air Force Base on the night of the shooting at the  
16 Lompoc Motel.

17 46. The alibi witnesses' statements concerning Mr. Alcox's whereabouts on the night  
18 of the shooting correspond exactly with Mr. Alcox's statements to Rick Lothery  
19 while both were housed in the Lompoc Jail. On the jailhouse recordings, Mr.  
20 Alcox, when asked by Lothery why he told the police he was at the Lompoc  
21 Motel, said,

22 [The police] were saying that fucking, saying like, they start saying that you did  
23 ... they told me that you, told me, that, uh, you said that I was doing the shooting and  
24 fucking all this shit. I fucking, I was just freaking, man, because I couldn't remember  
25 what I did, you know, actually that weekend. I thought I was at Kelly's house because  
26 I remember having a barbeque on the President's, on President's birthday, and shit like  
27 that, you know. I remember spending the night.

28 47. The defense lawyer for Mr. Alcox never obtained this tape. The Defendants knew

1 that because they had resisted giving the tape to the Public Defender in the then  
2 severed Lothery case and, before doing so, claimed it was lost. Nevertheless,  
3 knowing that neither Gamble or Biely has requested the tape, the Deputy District  
4 Attorney, in the presence of the Defendants, misrepresented to Mr. Alcox's jury  
5 that the jail house comments implicated Mr. Alcox rather than exonerating him.

6 **SGT. HEIDT AND INVESTIGATOR AST OBTAINED A FALSE**  
7 **CONFESSION FROM JOEL ALCOX**

8 48. HEIDT was the lead investigating officer. On or before March 25, 1986, HEIDT  
9 had received anonymous information, through the Secret Witness Program of the  
10 Lompoc Record newspaper, that Richard Lothery had admitted being involved in  
11 the murder at the Lompoc Motel. It was claimed that Lothery had said to the  
12 anonymous source that he and a John Wilcox were involved. The police were  
13 unsuccessful in locating John Wilcox. While looking for John Wilcox, HEIDT  
14 reviewed booking sheets when he noticed that a Joel Alcox had been arrested on  
15 March 24<sup>th</sup> for being drunk in public.

16 49. While patrolling the streets, on March 25, 1986, at about 9:45 a.m., HEIDT passed  
17 the Lompoc Shopping Center and saw a group of people standing with Kenny  
18 Miller, whom HEIDT knew to be a friend of Lothery. HEIDT stopped his car and  
19 approached the group. He took Miller aside and asked if any of the group was  
20 John Wilcox. Miller answered, "No." HEIDT then approached the others,  
21 identified himself as a police officer, and asked each one for identification. The  
22 other people with Miller turned out to be Manuel Santos, Richard Hume, and Mr.  
23 Alcox. While holding their licenses, HEIDT announced he was investigating the  
24 murder at the Lompoc Motel, and asked if they had any information.

25 50. Because of his particular interest in Mr. Alcox, HEIDT asked Mr. Alcox if he  
26 would come to the station. Mr. Alcox agreed to go. As Mr. Alcox got into  
27 HEIDT'S car, he asked "What's this for?" HEIDT answered, "I'll tell you when we  
28 get down to the station." They arrived at the police station at about 10:00 a.m.

1 After HEIDT and Mr. Alcox sat in the office for about ten minutes, AST from the  
2 District Attorney's office arrived and the interrogation began.

3 51. HEIDT and AST interrogated Mr. Alcox over the span of then next six and a half  
4 hours. They used a technique that was not designed to get to the truth but was  
5 specifically designed to obtain statements from the person being interrogated that  
6 will implicate him in the commission of a crime either by admissions or a  
7 confession. That technique was know to lead to wrongful confessional and  
8 wrongful convictions. That technique was also used despite ample evidence that  
9 Mr. Alcox was not at the crime scene and, after coerced "admissions" were  
10 obtained, that those statements did not comport with the facts of the case.

11 52. During the interrogation, HEIDT repeatedly brought up Lothery's name and asked  
12 Mr. Alcox to tell them what he knew regarding the shooting at the Lompoc Motel.  
13 Mr. Alcox repeatedly answered that he knew nothing regarding the shooting.  
14 HEIDT asked Mr. Alcox if he would submit to a polygraph exam. Mr. Alcox  
15 agreed to submit to the exam.

16 53. At about 11:00 a.m., Mr. Alcox was taken downstairs for the polygraph exam.  
17 Prior to taking the exam, the officer advised Mr. Alcox of his rights.

18 54. The test itself took fifteen or twenty minutes. The rest of the time was spent  
19 asking questions. According to the officer conducting the examination, Mr. Alcox  
20 answered all questions and never indicated he wanted to stop. This interview took  
21 about two hours. At 1 p.m., Mr. Alcox was taken back upstairs to HEIDT'S  
22 office. After another advisement of rights, the afternoon interview began.

23 55. At this point, Mr. Alcox was physically exhausted and did not want to continue  
24 the interrogation. He had been arrested for being drunk in public on March 23<sup>rd</sup>  
25 and had been kept in jail until 3 or 4 a.m. on March 24, 1986. The following day,  
26 he stayed up all night "partying," during which he drank a good deal of alcohol  
27 and took LSD. According to witnesses who saw Mr. Alcox on the morning of  
28 March 25th, including a bank employee, he looked tired and disheveled.

1 56. In the afternoon, the interrogation focused on the alibi Mr. Alcox had proffered  
2 during the morning interrogation. HEIDT and AST falsely told Mr. Alcox his  
3 morning version of his alibi was inconsistent with his afternoon version. Mr.  
4 Alcox repeated, again and again, he knew nothing about the killing. HEIDT told  
5 Mr. Alcox the police had been talking to several people, including Manuel Santos,  
6 whom Mr. Alcox had said was also at Kelly Hughes' house on February 16<sup>th</sup>.  
7 HEIDT told Mr. Alcox that Santos said he himself was there but that Mr. Alcox  
8 was not. This was in fact false; Santos had not made any such statement. AST  
9 also accused Mr. Alcox of lying, but Mr. Alcox continued to insist he did not  
10 know anything about the shooting.

11 57. AST told Mr. Alcox, "There's a difference between intentionally wantin' to go in  
12 there or just killin' him during the course of a robbery."

13 58. Despite evidence to the contrary, HEIDT and AST continued to lie to Mr. Alcox  
14 about evidence showing he was present at the motel. HEIDT and AST told Mr.  
15 Alcox that his fingerprints had been found in the motel office. This was also not  
16 true. Mr. Alcox insisted he had never been in the motel. Mr. Alcox persisted in  
17 insisting he did not know anything about the killing. The officers kept insisting  
18 that in fact he knew what had happened at the motel:

19 Ast: You got to remember, you couldn't forget somethin' like that.

20 Mr. Alcox: Yeah I know - -

21 Ast: Especially when you're the inside man.

22 Mr. Alcox: I don't know where you guys are comin' from.

23 Ast: We're comin' from what we already know. We want to hear it from you. We  
24 want to hear if you planned - - What I'd like to know did you plan to go in there and  
25 blow this guy away or did it just happen?

26 59. HEIDT and AST continued in this vein, suggesting details for Mr. Alcox to affirm  
27 or deny. They suggested he might have been drunk at the time. To all  
28 suggestions, Mr. Alcox insisted he did not remember. The officers kept enjoining

1 him to remember, pointing out to him that a claimed lack of memory was  
2 equivalent to abandoning the alibi:

3 Ast: Did you intend to kill him before you went through the door?

4 Mr. Alcox: I didn't intend to kill nobody.

5 Ast: Did you intend to kill him before you went through the door? (Silence.) Are  
6 you a hit man or did you just go in there to take his money, that's what we're askin' ya.

7 Mr. Alcox: I didn't do it.

8 Ast: Joel, you don't want to live with this thing any more, do ya? You want to get  
9 it out, right? You want to get it off your chest. You want us to know what was in  
10 your mind at the time this thing went down. Don't leave it up to these other jerks to  
11 fill this in. Okay? You know. Do it yourself.

12 Mr. Alcox: I'm tellin' ya I don't know. (Unintelligible.)

13 Heidt: You know Joel, if ya didn't know it wouldn't show that you were deceptive.  
14 You know in your own mind what took place. It's a simple question - -

15 Mr. Alcox: I don't know, I wish I did - -

16 Heidt: - - it's a simple question. Did you guys plan this it from the get; did it just  
17 go to pieces on you, or what? What took place?

18 Mr. Alcox: (Silence.) I didn't kill nobody. I don't know what I did that night.  
19 (Unintelligible.)

20 Ast: So you're already throwin' out this alibi, right?

21 Mr. Alcox: That's what I thought I did that night. Oh Jees. I wish I knew. I'm  
22 tellin' the honest-to-God truth.

23 Ast: No you're not, Joel.

24 Heidt: No you're not.

25 Ast: You're shakin' like a leaf - -

26 Mr. Alcox: I know.

27 Ast: You want to get it out. You want to get it over with. You're ready. You're  
28 ready.

1 Heidt: If you didn't know what happened, when you took that polygraph test,  
2 wouldn't have shown that you was lyin' because you wouldn't know in your own mind.  
3 You know.

4 Ast: That polygraph test tells us the truth. What we're tryin' - - We just want to  
5 know what was in your mind. We know you did it. We just want to know what was  
6 in your mind. What did you intend to do? Did you intend to blow that man away  
7 when you went into the motel?

8 Mr. Alcox: I didn't shoot nobody.

9 Ast: What? Are you gonna lay it off on Lothery?

10 Mr. Alcox: I don't even know if he did it. I don't know what happened. I'm tellin'  
11 ya.

12 Heidt: You know.

13 Mr. Alcox: I wish.

14 Heidt: You know, Joel.

15 Ast: What happened, Joel? What happened? What went wrong?

16 Mr. Alcox: I don't know what happened.

17 Ast: What went wrong over there? (Silence.) Tell me what went wrong. I want  
18 to hear it from you. I've heard it from everybody else.

19 Mr. Alcox: (Unintelligible.)

20 Ast: They're what?

21 Mr. Alcox: They're definitely dumping something on me.

22 60. After the above interchange, AST and HEIDT suggested to Mr. Alcox that he  
23 must have been drinking or on drugs when he committed the crime. Again, Mr.  
24 Alcox insisted he could not remember. The interrogation continued in this vein  
25 for quite some time.

26 61. The officers continued to lie to Mr. Alcox, implying that others, including  
27 Lothery, had made statements implicating him in the killing. This also was a  
28 fabrication by the interrogators, as Lothery had not made any statements

1       implicating Mr. Alcox:

2       ... Do you think Lothery's gonna turn everything around for you? Do you think  
3 everybody else who has knowledge of it, because somebody's been blabbin' their  
4 mouth off all over town, is gonna change their story for you? Are you gonna be  
5 standin' alone? That's exactly what you're tellin' me you're gonna do. (Silence.) I  
6 don't know that you really intended to kill that guy. That's the mystery. I think there  
7 might be a little bit more to it - -

8       Mr. Alcox: No way - -

9       Ast: - - I think there might be a little bit more to it.

10      Mr. Alcox: There's no way I could have killed somebody.

11      Ast: Oh yeah, it happens all the time. (Silence.) We're waitin'. (Silence.) We're  
12 waitin'. (Silence.) It's time. (Silence.) We got all night. I know you're gonna  
13 remember. Because you remembered - - it's in your mind right now, or did you forget  
14 how to talk?

15      Mr. Alcox: I'm tired. (Unintelligible.)

16      Ast: Okay, I know you're going to. You're not going to leave this thing up to  
17 everybody else.

18      Mr. Alcox: I tell you I don't remember nothin'

19      Ast: Those things are unique - - these things right here . . .

20      At this point, AST grabbed Mr. Alcox's hands, in reference to (nonexistent)  
21 fingerprints allegedly found at the scene:

22      They only come with your body. You heard about that, haven't ya? There's no  
23 way you'll be able to get around that. (Silence.) The only thing that is the mystery is  
24 why. Why exactly it had to be done that way.

25      Mr. Alcox: I don't know what was done, I'm tellin' ya.

26      Ast: Joel, you didn't come into this thing just because you were walkin' down the  
27 street today. We've been workin' on this thing for over a month. You were the last  
28 guy to be contacted because you're the main man. You understand? You're where it's

1 at. God, I don't want to stick with people like Lothery's story, you know? I want  
2 somethin' more than that. (Silence.) You were not stoned enough to not to remember  
3 what happened. That just doesn't happen. You have a recall of what happened and  
4 I want to know right now. What happened? Why did ya go in there and why did it go  
5 down? Those are the things that are really unanswered. What was in your mind? Not  
6 what from what somebody else is tellin' us what you went in there for. (Silence.) Now  
7 I think you probably needed some money. It was an easy take. Am I correct?

8 (Silence.)

9 Mr. Alcox: There's no way I did that.

10 Ast: You gonna go with the flow on this thing?

11 Mr. Alcox: There's no way I could have done that.

12 Ast: Oh yeah. There's a lot of ways you could have done it. (Silence.) What  
13 happened, Joel? (Silence.) What happened when you got in there?

14 Mr. Alcox: I'm trying to remember.

15 Ast: Okay. Take your time, take your time.

16 Mr. Alcox: I have been, I've been fuckin' trying to remember (unintelligible) this  
17 all one big surprise. That's all!

18 62. The interrogators further intimated that if Mr. Alcox admitted his involvement, his  
19 explanation would somehow mitigate his role in the killing. The interview  
20 continued in this vein. Mr. Alcox, when he answered at all, answered in the same  
21 refrain. Then:

22 Ast: You're not at all convincing.

23 Mr. Alcox: I know, I wish I could be.

24 Ast: You're not a good liar. (Silence.) You just think about it.

25 Mr. Alcox: I'm tellin' ya. Couldn't ya put me under hypnotism or somethin'?

26 Ast: Oh, no, we couldn't do that. It's got to be free. It's gotta come out.

27 Mr. Alcox: Wish it would.

28 Ast: Oh, it will. (Silence.) It's there right now.

1 Mr. Alcox: Where?

2 Ast: It's there right now. You're mullin' over it right now. I can see it right now.  
3 Every time your hands start shakin' I know you're keyin' on that particular moment.

4 63. After this, a slight change in the direction of the interview is apparent. Mr. Alcox  
5 began to suggest if he had been involved, he had to have been extremely "wasted."  
6 The following ensued.

7 Mr. Alcox: I tell ya, I don't know. If I would have done it, there's no way I could  
8 have done it straight. If I would have done it, it's definitely not premeditated.

9 Ast: Those are the kind of things we - -

10 Mr. Alcox: Yeah, I know.

11 64. The first hour of the afternoon interview ended on a similar note, with HEIDT  
12 saying such things as, "'I don't know' is not going to make it go away," and with  
13 AST saying such things as "That's a big load you're carryin'. It's about time to  
14 relieve it, isn't it?" The second hour of afternoon interrogation was not  
15 substantially different. In the second hour, the fiction that there was no doubt as  
16 to Mr. Alcox's involvement and that all that was needed was an explanation of  
17 motive was pressed more and more.

18 65. AST then suggested that the crime was planned by Mr. Alcox and Lothery.  
19 Achieving no concession, AST threatened Mr. Alcox concerning the conviction  
20 he would face:

21 Ast: C'mon, c'mon. You're gonna sit here and huff and puff all day? You gonna  
22 finally come out with the truth so we can close this thing out? (Silence.) Rick said  
23 what? (Silence.) Rick said what?

24 Mr. Alcox: I don't know, man. I don't remember doin' anything like that.

25 Ast: Rick said what? (Silence.) And you said what? (Silence.) It ain't gonna be  
26 easy; it hasn't been easy up to this point.

27 Mr. Alcox: No it hasn't. (Silence.)

28 Ast: We just go ahead with first degree? Would you take your chances with it?

1 (Silence.) Is that what you want?

2 Mr. Alcox: I wish I could remember.

3 Ast: You just wanna go down on first degree? (Silence.)

4 66. About midway into the second hour of the afternoon, HEIDT gave Mr. Alcox  
5 coffee. Going into the third hour, Mr. Alcox began to speculate even more:

6 Mr. Alcox: If I was involved in this somebody'd - -

7 Ast: Yeah.

8 Mr. Alcox: I sure the hell wouldn't have planned it.

9 Ast: Okay, then who would have?

10 Mr. Alcox: It would have been Rick.

11 Ast: And how would Rick have planned it?

12 Mr. Alcox: (Unintelligible) he would have got a gun (unintelligible.)

13 Heidt: Okay, let's drop the what would have happened. Let's talk about what did  
14 happen.

15 Ast: I'm ready for that too. I think we've been patient enough and we really beat  
16 around the bush long enough about this whole thing, and, you know, I agree, it's time  
17 for the true story. Everything else has been fallen apart and you're aware of where  
18 you're at, you're right on top of this thing, and, uh, Sergeant Heidt has a good point.  
19 It's time to say what happened out there. Okay? And you know, be specific about  
20 your part and Rick's part. Let's start right now. Let's got on a roll here and, y'know,  
21 let's not drag things along any more than we have already. All right? (Silence.)

22 67. It is soon after this that Mr. Alcox wavered between a hypothetical mode of  
23 speech and a factual one. He stated that on Sunday afternoon he had been  
24 drinking in the park with Lothery but that everything after that "went blank." Mr.  
25 Alcox then returned to the hypothetical mode. His ambivalence of speech that ran  
26 throughout became encapsulated in the statement: "No I didn't intend it to happen,  
27 but I don't know what happened." Ast replied:

28 Ast: No. I would say that if you just wanted to kill somebody outright you would

1 have just shot somebody in the street. But there was a reason that this guy died. Now  
2 we're tryin' to give you - - we've certainly given you enough time. We're tryin' to give  
3 you the opportunity to tell us what happened. (Silence.) Y'know, it's really time. This  
4 thing's runnin' on a little lengthy here for a guy that was right there, and a guy that saw  
5 the whole thing, and a guy that was involved in it. Um, y'know, there's no doubt about  
6 that. Um, what was going through your head and what happened? Y'know, that's  
7 where we're at. That's all we're tryin' to get to.

8 Mr. Alcox: I know, I wish I could tell ya.

9 Ast: Oh, you could tell us, and you started to tell us. You certainly started - -

10 Mr. Alcox: I'm saying what would have happened - -

11 Ast: Oh no, no, we got off of that, we got off that a long time ago, we got off that  
12 fifteen minutes ago. This is what happened according to you so far. Not according  
13 to the other persons necessarily, but according to you. Now where do we go from  
14 here? You want us just to leave it with you goin' through the door? (Silence.) With  
15 that much adrenalin goin', do you expect us to believe that everything just blanked out  
16 at the point you went through the door. I mean it that even realistic? Uh, do you  
17 expect anybody to believe that? Y'know, like I say, I got my own opinion of what  
18 happened inside there after you went in, but I want you to clarify some things. I want  
19 to know exactly what was runnin' through your head. That's important. Really  
20 important. Other people tell us things, y'know, and the pieces don't fit and so on  
21 maybe, and your account of what happened is extremely important at this point.  
22 (Silence.) So there we are again. (Silence.) And you went through the door and  
23 what? (Silence.) You went through the door and what? (Silence.) Where did the gun  
24 come out? (Silence.) Did you just want the money? Is that it?

25 Mr. Alcox: I didn't want to rob nobody, I don't want to shoot nobody.

26 Ast: Okay. You didn't want to shoot nobody, but why did you?

27 Mr. Alcox: I didn't. I didn't shoot nobody.

28 68. From then on, AST was able to elicit statements from Mr. Alcox by the pressure

1 of repeating a question and suggesting answers to the questions. For example,  
2 AST suggested that Mr. Alcox must have heard some shots. He then asked, "How  
3 many?" When Mr. Alcox did not answer, AST repeated, "How many?" in stronger  
4 tones, whereupon Mr. Alcox immediately answered, "Two." When AST followed  
5 this up with, "That's all you heard was two?", he was met with silence.

6 69. The first half of the third hour of the afternoon interrogation culminated in the first  
7 exchange in which Mr. Alcox tried to assert himself most forcefully, but to no  
8 avail:

9 Ast: - - You're sayin' Rick did the shooting. (Silence.) Is that correct?

10 Mr. Alcox: I don't know.

11 Ast: It isn't funny. It's not, "ha, ha," funny. This thing has gone past funny a long  
12 time ago. (Silence.) I don't know why you just don't tell the truth. You've beat  
13 around the bush fifteen thousand ways. You've lied for the last four hours. We know  
14 you were there and you admit you were there. Now we want to know your part. Your  
15 part in it, exactly what your part was. (Silence.) Rick had the gun?

16 Mr. Alcox: I didn't have it.

17 Unable to make any headway, Ast continued:

18 Ast: You want to leave this bullshit at that? (Silence.) You want to let it lie right  
19 there? (Silence.) I hope you're able to show some mental blocks in the past  
20 somewhere. I hope you can authenticate them with a lot of witnesses that you've  
21 completely phased out after drinking some wine, that you went into "la la land" during  
22 all the shooting. (Silence.) Can you do that? Got a psychologist who can help ya out  
23 on that? A psychiatrist?

24 Mr. Alcox: It's not that.

25 Ast: It's not anything but that you're just holding it back. That's the only possible  
26 logical explanation. You're certainly not a mental case. You may have a drinking  
27 problem, granted. (Silence.) Want to go back to the drawing? (Silence.) The  
28 drawing's right there. Take a look at it. (Silence.) Seems like this afternoon when

1 you hesitate a long time, you come back and you immediately remember. Let's see if  
2 we can do it again. Let's see if we can go beyond the door this time. (Silence.) Okay?  
3 (Silence.) Who went in first? Or, who went in alone and who stayed outside?  
4 (Silence.) Obviously the fact that your prints are inside could make it difficult to  
5 understand how you stayed outside, but you go ahead and give us any explanation you  
6 want to. Okay? (Silence.) But for God sakes just give us an explanation. (Silence.)  
7 And if it's not true, we'll just tear it apart right here. But we're hopin' you'll finally  
8 realize that's the only way to go right now. (Silence.) Your side of the story, please?  
9 (Silence.) I said, "please."

10 Mr. Alcox: I know.

11 Ast: I've been pretty nice today. I think it's about time you just start cooperating.  
12 (Silence.) Don't you? (Silence.) Don't you? See when I talk for ten minutes at a time  
13 and I don't get a response - -

14 Mr. Alcox: Well - -

15 Ast: - - I get this guy goin' into a trance, goin' back into his shell - -

16 Mr. Alcox: - - Tryin' to remember back - -

17 Ast: - - Every time he comes out of the shell - - well it's not that hard.

18 Mr. Alcox: Yes it is - - I don't even remember being in there.

19 Heidt: You do remember going in there, though.

20 Mr. Alcox: No, I don't.

21 Ast: Now, you forgot about that?

22 Mr. Alcox: It's not that, it's just so you guys get off my back. - - I mean, now I'm  
23 tryin' to remember, and there's no way.

24 Ast: We've been on your back?

25 Mr. Alcox: Heh, well askin' me questions - -

26 Ast: What do you expect us to do? Let this thing just disappear?

27 Mr. Alcox: No.

28 Ast: - - And we just go home and go fishin' or somethin'? Just go, "Oh, Joel's a

1 good guy. We'll let him get away with murder." Okay? "Nah, we'll give him another  
2 break. Let him do it to somebody else. Let him do it to somebody else. We'll get him  
3 the next time." You don't do that with this kind of case. It doesn't go away. Sergeant  
4 Heidt has told you this is not going to go away. There is no statute of limitations on  
5 murder. There's no one that ever gives up investigating murders. There are a lot of  
6 people involved in this particular case. We've talked to a lot of different people and  
7 we have some explanations. We are waiting for you. Okay! We are waiting for you.  
8 Old Joel there. And I think we've been pretty damn patient, don't you? I mean I  
9 haven't yelled at you. Sergeant Heidt hasn't yelled at you. We've been pretty patient.  
10 And you've beat around the bush, you've been in the place, you've heard shots, you  
11 know the other guy had a gun, you've told us all kinds of different stories, y'know?  
12 You've played with our minds, y'know, there's just no way to wiggle out of this thing,  
13 my man. The only thing left is to tell the truth. Okay! Put your head up and tell the  
14 truth. (Silence.) It ain't gonna go away, I'll guarantee you that. It's not going to  
15 disappear. This is not a nightmare. You haven't just consumed two or three quarts of  
16 Thunderbird and it's gonna disappear. (Silence.) I got another twelve years to sit here  
17 and wait for your explanation. (Silence.) If you want to wait that long. (Silence.) I  
18 sure hate to accept a story from other people and not have the person who's been  
19 fingered give me no explanation at all. (Silence.)

20 Heidt: You know what's next Joel? You know what's comin' up? You know the  
21 information we have. You know why we're here. You know the results of the  
22 polygraph test. You know what we have and what we're lookin' at. Joel, it's not going  
23 away....

24 70. At this point Mr. Alcox began to capitulate to the interrogators' demands and  
25 adopt their suggestions:

26 Heidt: I mean, we've been over it. and over it.

27 Alcox: I'm tellin you man, it's blacked out, I'm tellin yea.

28 Ast: No. no.

1 Alcox: I've blacked out when I ...

2 Ast: I don't want to hear that again.

3 Heidt: Is that how you want to leave it? Blacked out.

4 Alcox: No. I wish I could remember, I know I didn't do it.

5 71. Sensing that Mr. Alcox wanted to provide them with an explanation, AST and  
6 HEIDT volunteered to give Mr. Alcox all the facts he needed to confess to the  
7 shooting:

8 Alcox: I'm listening, I'm just ...

9 Ast: I can see things are just beginning to get clearer to you, and I can see that  
10 your not going to be bullshittin us anymore, you know we're going to give  
11 you the opportunity to sit here and *we'll draw maps and we'll do everything*  
12 *necessary for you to give us your explanation of what happened at the*  
13 *Lompoc Motel ...*

14 72. Mr. Alcox then began to describe how he may have been "drinking in the  
15 afternoon" with Lothery and "Eric". After being prompted by HEIDT, Mr. Alcox  
16 said, "I know, started walking around. He showed me the gun in the alley ..."

17 73. AST and HEIDT moved on to discuss guns that they believed Lothery might have  
18 used. As they suggested to Mr. Alcox that Lothery might have used a certain type  
19 of firearm, officer HEIDT pulled out his own gun and showed it to him. At this  
20 point in the interview, Mr. Alcox began to recite details concerning the shooting  
21 that would later become the cornerstone of the prosecution's case. But almost all  
22 of the factual details recited by Mr. Alcox were incorrect and controverted by  
23 other evidence.

24 74. Mr. Alcox began by describing the type of clothes worn by Lothery on the night  
25 of the shooting:

26 Ast: Was he wearing a jacket?

27 Alcox: Yea.

28 Ast: What color?

1 Alcox: It's a blue type, I know its one he always wears.

2 Ast: Windbreaker type?

3 Alcox: No. It's more of a winter type jacket, but it ...

4 Ast: A liner in it?

5 Alcox: Well it had, just a normal winter jacket, blue and red.

6 75. Mr. Alcox's description of Lothery's clothing is flatly contradicted by several  
7 bystanders who saw Lothery at the Lompoc Motel immediately after the shooting.  
8 Two witnesses, Jeffrey Tays and Matt Snyder, stated they saw Lothery standing in  
9 the crowd that had gathered around the Lompoc Motel after the shooting. Both  
10 Tays and Snyder described Lothery as wearing a plaid flannel shirt over a black  
11 T-shirt bearing the insignia "KROKUS" in yellow block lettering. Snyder and  
12 Tays's description of Lothery's clothing on the night of the shooting was  
13 confirmed by Susan Legans, Lothery's roommate. Though she did not testify,  
14 Legans told AST that she recalled Lothery wearing a black t-shirt with a yellow  
15 "KROKUS" insignia on the night of the murder. Lothery himself testified the he  
16 was wearing a "Pendleton" shirt over a "KROKUS" T-shirt.

17 76. Mr. Alcox went on to describe how he and Lothery entered the office of the  
18 Lompoc Motel:

19 Heidt: You say Rick went in first?

20 Alcox: Yea.

21 Heidt: And then he went behind the counter?

22 Alcox: No, I went behind the counter.

23 Heidt: Okay, where was he at?

24 Alcox: He was right here, standing on the floor, right behind the counter.

25 Heidt: In front of the counter?

26 Alcox: Right there [pointing at a diagram drawn by the interrogators] ...

27 Heidt: And you went, did you go through the gate?

28 Alcox: Well I went through the gate.

1 Heidt: You lifted it up ...

2 Alcox: Yea ...

3 Heidt: Okay, then what happened?

4 Alcox: Then the guy came out.

5 Heidt: Okay, he comes ...

6 Alcox: And I ran out from behind the counter.

7 Heidt: He came out this door right here [pointing to office door on diagram]?

8 Alcox: Yea ...

9 Alcox: He came out I ran ...

10 Heidt: Then what happened?

11 Alcox: Then I heard shots ...

12 77. AST and HEIDT also again pressed Mr. Alcox on the subject of how many shots  
13 he heard:

14 Ast: How many times did you hear it [the gun] go off? How many times did you  
15 hear it go off? How many loud bangs did it make? How many? How many?

16 Alcox: Two.

17 Ast: That's all you heard was two? ...

18 Later, when the interrogators again questioned Mr. Alcox about the number of  
19 shots that were fired, Mr. Alcox said, "I heard two." The forensic evidence and  
20 percipient witness reports all indicated there were three shots fired, and that the  
21 shooting occurred inside the apartment next door to the Motel office.

22 78. AST and HEIDT also asked Mr. Alcox to give a physical description of the man

23 Lothery had shot:

24 Ast: Describe the man who came through the living quarters.

25 Alcox: Oh shit.

26 Ast: As best you can remember. Had you ever seen him before.

27 Alcox: No. I guess. Kind of old and Philippino [sic] like.

28 Heidt: What do you mean Philippino?

1 Alcox: Well he had a dark complexion.

2 Heidt: And what do you mean by old?

3 Alcox: Well, just like 50's, I guess.

4 Heidt: I mean, does that mean wrinkled face or ...

5 Alcox: Yeah, he has short hair.

6 Heidt: Ah, gray hair, black hair?

7 Ast: Do you remember how tall he was? And how tall was he?

8 Alcox: About a little shorter than me.

9 Ast: And you're how tall.

10 Alcox: 5'11".

11 Ast: Was he heavily built or slightly built, or average built?

12 Alcox: Just average.

13 79. The autopsy report on T. Patel indicated he was 5'4" tall and weighed 140 pounds.

14 The report described his hair as being "gray-black, bald over frontal areas, wavy  
15 and of medium length."

16 80. After describing the victim, Mr. Alcox went on to describe, for a second time, how  
17 he exited the area of behind the counter when T. Patel came out:

18 Alcox: I just, he came out of there and said what are you doing back there, and  
19 I hopped over the counter.

20 Ast: But you had already opened the cash drawer?

21 Alcox: Yea.

22 Ast: How many drawers did you have to open before you got to the cash drawer?

23 Alcox: I don't, just the top of, I didn't really actually get into the cash see.

24 81. Earlier in the interview Mr. Alcox stated "the cash register was open" when he  
25 went behind the counter and gave a different version of how he entered the area  
26 behind the counter:

27 Heidt: ... And you went, did you go over or through the gate?

28 Alcox: Well I went through the gate.

1 Heidt: You lifted it up? And then you were standing right there?

2 Alcox: Yes ...

3 Heidt: Okay, he comes?

4 Alcox: And I run out from behind the counter.

5 In fact, there was no cash register in the Lompoc Motel office.

6 82. In March of 1986, Rick Lothery was arrested and brought to the police station.

7 At the station he was interviewed by investigators AST and HEIDT. During this  
8 interview the investigators informed Lothery that Joel Alcox had given a statement  
9 implicating him in the killing at the Lompoc Motel. Lothery responded by stating,  
10 "How would Joel know? He wasn't even around." When the investigators told  
11 Lothery a short version of Joel Alcox's statement, Lothery reacted by calling Mr.  
12 Alcox's statement "bullshit" and stating "Joel is lying on his own self ... Joel  
13 wasn't even around."

14 83. Mr. Alcox is actually innocent of the crimes for which he was convicted. Mr.  
15 Alcox was convicted largely on the basis of his "confession" which was false, and  
16 was obtained as the result of coercive and suggestive interrogation tactics.

17 84. Mr. Alcox made this "confession" after more than six hours of nearly continuous  
18 interrogation. During the course of the interrogation, Mr. Alcox repeatedly told  
19 the police he did not have any knowledge regarding the shooting at a motel which  
20 resulted in the death of Thakorbbhai Patel, the owner of the motel. The police  
21 obtained a "confession" only after they repeatedly and falsely informed Mr. Alcox  
22 that they had discovered physical evidence and witnesses placing him at the scene  
23 of the crime. The interrogators also physically touched Mr. Alcox and displayed  
24 their guns to him. Mr. Alcox was repeatedly told that if he did not give a  
25 statement, he would be left in a position where others, including Lothery, provided  
26 the only version of Mr. Alcox's involvement in the crime. This, according to the  
27 interrogators, would leave Mr. Alcox in a position where the investigators would  
28 "go ahead with first degree."

1 85. All of the above interrogation tactics are now widely recognized by experts as  
2 methods likely to induce false confessions.

3 86. Comparison of the objective evidence and witness statements to the "confession"  
4 by Mr. Alcox reveals that many of the details of the "confession" were  
5 demonstrably false. In his "confession," Mr. Alcox stated the victim was shot in  
6 the office area of the Lompoc Motel. The forensic evidence from the crime scene  
7 indicates the shooting took place in an apartment area behind the office. Mr.  
8 Alcox told the police that Lothery fired two shots. The forensic evidence and  
9 percipient witnesses all indicated at least three shots were fired. Mr. Alcox told  
10 his interrogators that he touched the front door of the office, the counter and cash  
11 drawer inside the office. However, Mr. Alcox's fingerprints were not recovered  
12 at the scene. During his "confession," Mr. Alcox described the victim as being  
13 just under 5'11" tall with short hair, while, according to the autopsy report, T.  
14 Patel was actually 5'4" tall and bald in the front of his head, with wavy, medium  
15 length hair elsewhere.

16 87. Finally, Mr. Alcox told the police that Lothery was wearing a blue and red "winter  
17 jacket", with a distinctive pattern, at the scene of the crime. Several percipient  
18 witnesses who spoke with Lothery in the parking lot of the motel just after the  
19 murder indicated Lothery was wearing a plaid flannel shirt, with a black T-shirt  
20 bearing a popular rock band insignia underneath.

21 **CAROLINA GONZALES' TESTIMONY AND STATEMENTS**

22 88. Fourteen year old Carolina Gonzales<sup>2</sup> testified at the trial that she met Mr. Alcox

23  
24 \_\_\_\_\_  
2

25 Though Gonzales did not testify about it, her mother, Frances Gonzales, was  
26 the "secret witness" who called in several tips to the Lompoc Record  
27 newspaper's "secret witness program." On March 24, 1986, Frances Gonzales  
28 left a recorded message on the tip line in which she indicated she had  
information that Lothery had admitted that he and "John Wilcox" killed T. Patel.  
On March 28, 1986, Frances Gonzales left a second message on the tip line, this  
time indicating it had been her daughter (Carolina) who met with Lothery.

1 once, two weeks after the shooting. According to Ms. Gonzales' testimony, she,  
2 George Taylor, Scott Kirchoff and Robert Garcia met with Mr. Alcox behind the  
3 Alcox family home in Lompoc. Ms. Gonzales claimed that she overheard Mr.  
4 Alcox and Robert Garcia talking about the Lompoc Motel killing. According to  
5 Ms. Gonzales, Mr. Alcox stated that he and Rick Lothery were there. She also  
6 testified that Mr. Alcox said that "they" had his fingerprints, but "they" would  
7 never catch him or Lothery.

8 89. Mr. Alcox's trial counsel chose not to cross-examine Gonzales at all. A  
9 handwritten note by trial counsel, located in his file when it was turned over to  
10 Mr. Alcox's habeas counsel, states, "Carolyn Gonzales is simple minded and  
11 should be disregarded."

12 90. Prior to her appearance at the trial, Gonzales gave several statements that  
13 conflicted with her eventual trial testimony. Each of the other witnesses to this  
14 supposed event (Kirchoff, Garcia and Taylor), when interviewed by the  
15 investigator for the public defender who was representing Lothery, contradicted  
16 Gonzales' version of what had transpired that afternoon in the alley behind the  
17 Alcox residence. Mr. Alcox's trial counsel never interviewed any of these  
18 witnesses, and did not obtain the public defender investigator reports documenting  
19 her interviews with these witnesses. A review of Mr. Alcox's defense attorney  
20 files on this case indicates that no investigation whatsoever was done to prepare  
21 to defend Mr. Alcox on these charges. Defense counsel did not call any of these  
22 witnesses to testify at Mr. Alcox's trial.

23 91. Other than Mr. Alcox's false confession, the primary evidence against Mr. Alcox  
24 at trial was the testimony of Carolina Gonzales. Ms. Gonzales has subsequently  
25 told both prosecution and defense investigators that her testimony should never  
26 have been credited as she was seriously using drugs at the time she "supposedly"  
27 heard Mr. Alcox talk about his involvement in the murder and perhaps even when  
28 she testified at his trial. Ms. Gonzales stated that she now believes her testimony

1 may have been a "figment of her imagination" as a result of her use of LSD at the  
2 time of the shooting.

3 92. Ms. Gonzales provided a written statement to Mr. Alcox's habeas counsel  
4 indicating the man whom she met in the alley behind the Alcox home in 1986 was  
5 named "John." Each of the other witnesses who were present that night had also  
6 indicated that John Alcox, Mr. Alcox's brother, was present that night, but that  
7 Joel Alcox was not. Ms. Gonzales further indicates she was provided the name  
8 "Joel Alcox" by the police when they later interviewed her. Ms. Gonzales also  
9 states that she identified Joel Alcox at his trial as the man she met in the alley only  
10 because she knew he was the person who the prosecutor wanted her to identify.

11 93. Robert Garcia, whom Ms. Gonzales previously named as the individual Mr. Alcox  
12 was talking to in the alley, testified at the state court evidentiary hearing that there  
13 was never any such conversation. Also, at the evidentiary hearing, Sergeant  
14 HEIDT acknowledged that Garcia, and all of the other individuals named by  
15 Gonzales as being present in the alley when the "supposed" statement was made,  
16 told him that the conversation never happened when he interviewed them back in  
17 1986 and 1987.

18 **AT TRIAL, DEFENDANTS' SUPPRESSION OF EXCULPATORY EVIDENCE**  
19 **AND MR. ALCOX'S TRIAL ATTORNEY'S FAILURE TO DEFEND HIM**  
20 **RESULTED IN HIS CONVICTION**

21 94. The Santa Barbara County District Attorney filed a felony information in the Santa  
22 Barbara County Superior Court charging Joel Alcox and Richard Lothery with the  
23 crimes of murder (Cal. Pen. Code § 187), robbery (Cal. Pen. Code § 211), and  
24 burglary (Cal. Pen. Code § 459). For each count, as to Lothery, it was alleged that  
25 he personally used a firearm, and, as to both Defendants, it was alleged that a  
26 firearm was used in the commission of the offenses (Cal. Pen. Code § 12022.2).

27 95. On January 5, 1987, Lothery's motion to sever his case from that of Mr. Alcox  
28 was granted. Lothery was found guilty of each of the charged offenses and an

1 allegation that a firearm was used during the commission of the offenses was  
2 found to be true.

3 96. Mr. Alcox's first trial began on March 3, 1987. He was represented by court-  
4 appointed attorney William K. Gamble, who was also the administrator of the  
5 panel of defense attorneys which contracted with the COUNTY OF SANTA  
6 BARBARA to provide representation for Defendants in cases in which the Office  
7 of the Public Defender declared a conflict of interest. A mistrial was granted due  
8 to prosecutorial misconduct during the opening statement.

9 97. A second trial began on April 28, 1987. Prior to the commencement of the second  
10 trial, Kenneth Biely replaced Gamble as Mr. Alcox's trial counsel.

11 98. Kenneth Biely, performed no investigation whatsoever. Biely did not employ an  
12 investigator to conduct interviews of witnesses or otherwise investigate the case.  
13 He did not interview witnesses himself.

14 99. Biely was told by Mr. Alcox and was aware from the police reports that there were  
15 alibi witnesses who could place him at the party at Kelly Hughes' house during  
16 the time the murder occurred. Biely not only did not interview those witnesses,  
17 he also failed to call them at trial.

18 100. Biely's decision not to call the alibi witnesses at trial was based on the false  
19 statements by the Deputy District Attorney that the prosecution had other  
20 witnesses who were present at the party who could impeach the alibi witnesses  
21 by testifying that Mr. Alcox was not present. Biely informed the court on the  
22 record that, "I was also made aware that the District Attorney's office had  
23 witnesses who were at the same party who would testify that Mr. Alcox was  
24 not in fact present at the party." The statement by the District Attorney was  
25 false. On information and belief, HEIDT and AST were aware the statement  
26 was false, but failed to correct the false statement.

27 101. At HEIDT'S request, an employee of the jail recorded conversations between  
28 Mr. Alcox and Rick Lothery. The recordings contained statements by Lothery

1 and Mr. Alcox which were exculpatory to Mr. Alcox. Biely failed to request  
2 a copy of the recordings and Defendants failed to provide him with the  
3 recordings.

4 102. Biely failed to conduct any investigation with respect to the jailhouse  
5 conversations between Mr. Alcox and Lothery. In particular, he failed to  
6 review the recorded conversations, which would have placed the portions of  
7 the conversation about which the prosecution presented evidence in a light  
8 more favorable to Mr. Alcox and corroborated Mr. Alcox's claim that his  
9 confession was false. For example, Mr. Alcox repeatedly told Lothery that his  
10 confession was not true, and that he was scared and pressured into making  
11 inaccurate statements during his interrogation.

12 103. The Deputy District Attorney exploited the suppression of the jailhouse  
13 recordings and Biely's failure to investigate by arguing, in closing, that  
14 Lothery's failure to confront Mr. Alcox with his false confession during the  
15 jailhouse conversation proved it was true. She told the jury that if Mr. Alcox's  
16 confession was false, Lothery would have said, "You absolute idiot. You crazy  
17 liar. What are you doing telling these people...." Lothery's failure to make such  
18 a statement, the prosecutor argued, proved that Mr. Alcox's confession was  
19 true. In reality, the recordings show that Lothery did repeatedly discuss Mr.  
20 Alcox's false confession.

21 104. The Deputy District Attorney further argued in closing that, if Sanjay was  
22 responsible for the murder, Lothery would have brought up that fact in his  
23 conversations with Mr. Alcox. This was allowed to occur because Defendants  
24 failed to disclose the recordings to Biely and because Biely failed to investigate  
25 the recordings. In reality, Lothery had told Mr. Alcox on a recording that  
26 Sanjay was "the real guy" who had committed the murder. The prosecution did  
27 not play that portion of the recording at trial.

28 105. HEIDT suppressed statements made by Sanjay following the 911 call which

1 were exculpatory as to Mr. Alcox. On April 11, 1987, HEIDT met with Sanjay  
2 and conducted a recorded interview. In the interview, Sanjay at first denies  
3 making the call to the 911 dispatcher. HEIDT then played a recording of the  
4 911 call for Sanjay, after which Sanjay immediately asserted his right to  
5 counsel.

6 106. Sanjay continued to talk and said, "Well sir, it's not my voice and I have not  
7 done anything wrong, but, I hope I was drunk enough even if I did commit a  
8 murder. I should be the stupidest motherfucker to ever call you like that if I'm  
9 right. That's a murder. Whatever, Mr. Heidt, whatever you have to do you do  
10 it, you do your job. I'm tired." HEIDT then terminated the interview and  
11 released Sanjay.

12 107. Defendants failed to provide this recorded interview to Biely and to Lothery's  
13 counsel. Mr. Alcox's habeas counsel located the recording in the prosecution's  
14 file in 2005.

15 108. Had Biely been provided with the recorded statements, he would have been in  
16 a position to bolster Mr. Alcox's claim that the confession was false and that  
17 Sanjay committed the murder.

18 109. Despite the existence of evidence undercutting the reliability of each piece of  
19 evidence relied on by the prosecution, Biely allowed the prosecution's  
20 evidence to stand uncontested. Rather than challenge the prosecution's case or  
21 present exculpatory evidence, trial counsel's strategy was to "go with the  
22 confession."

23 110. Due to his utter failure to investigate, Biely opted for a trial "strategy" which  
24 was doomed to failure. Biely argued to the jury that Mr. Alcox's confession  
25 was reliable, and that even though Mr. Alcox admittedly entered the motel with  
26 the intent to commit burglary, he was not guilty of murder because he ran out  
27 when Thakorbbhai appeared.

28 111. On May 8, 1987, Mr. Alcox was found guilty of first degree murder, robbery,

1 and first degree burglary. The jury also found true the allegation that a firearm  
2 was used in the commission of the offenses.

3 112. On June 5, 1987, after Mr. Alcox's motion for a new trial was denied, he was  
4 sentenced to a term of 25 years to life, enhanced by one year for the arming  
5 allegation. The court imposed concurrent sentences of three years for robbery  
6 and four years for burglary.

7 **MR. ALCOX'S EXONERATION IN FEDERAL DISTRICT COURT**

8 113. After exhausting his appellate and post-conviction remedies in state court, Mr.  
9 Alcox filed a petition for writ of habeas corpus in the Central District of  
10 California on March 7, 2008.

11 114. On November 3, 2015, the Honorable Magistrate Judge Andrew J. Wistrich  
12 filed his Report and Recommendation recommending that the habeas petition  
13 be granted.

14 115. On February 2, 2016, the Honorable Judge James V. Selna adopted Magistrate  
15 Judge Wistrich's recommendation and granted the petition. Judge Selna  
16 ordered that Mr. Alcox shall be released from custody and all collateral  
17 consequences resulting from his conviction unless the State of California  
18 provided him with a new trial within sixty days. The District Attorney did not  
19 refile the case and Mr. Alcox was released from parole.

20 **THE FAILURE OF THE DEFENDANT CITY OF LOMPOC AND THE**  
21 **COUNTY OF SANTA BARBARA TO PROPERLY TRAIN, SUPERVISE, AND**  
22 **DISCIPLINE**

23 116. The unconstitutional and tortious acts of the Defendant Officers were not  
24 isolated incidents. Upon information and belief, there was a custom, policy,  
25 pattern and practice in the CITY OF LOMPOC and COUNTY OF SANTA  
26 BARBARA beginning years before the unjust conviction of Mr. Alcox and  
27 continuing throughout his incarceration, of condoning, encouraging, ratifying,  
28 and acquiescing in the practice of failing to conduct reasonable criminal

1 investigations, conducting unconstitutional interrogations, failing to investigate  
2 alibi evidence, failing to disclose exculpatory evidence, and covering up this  
3 unconstitutional misconduct. Upon information and belief, CITY OF  
4 LOMPOC and Santa Barbara County policymakers were on notice of, but  
5 deliberately indifferent to these unconstitutional customs, policies and  
6 practices.

7 117. In particular, upon information and belief, the Lompoc Police Department and  
8 the Santa Barbara County District Attorney's Office, and its policymakers, as  
9 well as the individual supervisors in this case, trained officers and investigators  
10 to obtain confessions from suspects using coercive interrogation techniques,  
11 such as the techniques cited above, without regard to adverse consequences  
12 including false confessions. These techniques included lying to suspects about  
13 critical facts of the investigation including nonexistent forensic evidence,  
14 pressuring suspects to make admissions, continuing to coerce suspects into  
15 making admissions even after repeated denials, feeding suspects important  
16 facts of the crime which then are incorporated into the confession and failing  
17 to conduct follow-up investigation to reconcile unexplained contradictions in  
18 the purported confessions.

19 118. The Lompoc Police Department and the Santa Barbara County District  
20 Attorney's Office, and its policymakers, as well as the individual supervisors  
21 in this case, failed to maintain a system of booking, cataloging and disclosing  
22 evidence, including *Brady* material, to prosecutors and defense counsel. In this  
23 particular case, the failure to maintain such a system resulted in Mr. Alcox's  
24 trial counsel never receiving exculpatory evidence including the jailhouse  
25 recordings and the recordings of Sanjay's statement to the police.

26 119. This unconstitutional failure to train and supervise is manifest in this case in  
27 the practices of HEIDT and AST, who coerced Mr. Alcox's false confession  
28 and failed to disclose exculpatory evidence.

1 120. These unconstitutional policies and practices directly and proximately caused  
2 Mr. Alcox's wrongful arrest, conviction, and incarceration.

3 121. The misconduct of Defendants, all of whom are current or former employees  
4 of the Lompoc Police Department or Santa Barbara County District Attorney's  
5 Office, involved acts and/or omissions occurring within the scope of their  
6 employment with the Lompoc Police Department or Santa Barbara County  
7 District Attorney's Office. Accordingly, the CITY OF LOMPOC and the  
8 COUNTY OF SANTA BARBARA are responsible for paying any judgment,  
9 compromise, or settlement reached in this action.

10 **THE POLICIES EMPLOYED BY THE COUNTY OF SANTA BARBARA IN**  
11 **ADMINISTERING ITS OBLIGATION TO PROVIDE DEFENSE ATTORNEYS**  
12 **TO INDIGENT DEFENDANTS RESULTED IN THE APPOINTED-**  
13 **ATTORNEY'S INEFFECTIVE REPRESENTATION OF MR. ALCOX WHICH**  
14 **LED TO HIS CONVICTION**

15 122. The Sixth and Fourteenth Amendments to the United States Constitution  
16 guarantee indigent persons charged with crimes the right to effective assistance  
17 of counsel. This right is fundamental and is essential to a fair trial.

18 123. The COUNTY OF SANTA BARBARA has a constitutional duty to operate a  
19 public defense system that provides effective assistance of counsel to indigent  
20 persons charged with crimes.

21 124. The COUNTY OF SANTA BARBARA, through its Board of Supervisors  
22 contracted with William K. Gamble to provide defense attorneys to indigent  
23 criminal defendants with whom the Office of the Public Defender has a conflict  
24 of interest.

25 125. The COUNTY OF SANTA BARBARA, through its Board of Supervisors,  
26 breached its constitutional duties by operating a public defense system that  
27 regularly and systematically deprived indigent persons of the right to assistance  
28 of counsel.

1 126. The COUNTY of SANTA BARBARA knew or reasonably should have known  
2 that the indigent defense panel routinely, and for years, provided substandard  
3 services which failed to meet the standard set forth by the United States  
4 Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335, (1963).

5 127. Among other things, the COUNTY OF SANTA BARBARA has failed to  
6 monitor and oversee the public defense system, has failed to provide adequate  
7 funds for public defense, and has failed to provide representation at all critical  
8 stages of criminal prosecution.

9 128. As a result of these systemic and structural deficiencies, the COUNTY OF  
10 SANTA BARBARA has constructively denied indigent defendants, including  
11 Mr. Alcox, of the right to counsel that is guaranteed under the Sixth and  
12 Fourteenth Amendments to the United States Constitution.

13 129. On information and belief, the COUNTY OF SANTA BARBARA, through its  
14 officers, representatives and employees, had known of the structural  
15 deficiencies of their public defense system for years at the time of Mr. Alcox's  
16 trial. The COUNTY OF SANTA BARBARA was aware that the indigent  
17 defense panel administered by Mr. Gamble failed to provide adequate  
18 consultation and communication with its attorneys, failed to conduct adequate  
19 factual and legal investigation, failed to obtain the services of investigators and  
20 experts and failed to properly prepare for trial.

21 130. On information and belief, the indigent defense panel administered by Mr.  
22 Gamble maintained a policy of not allocating resources for investigators and  
23 experts in cases in which their client had confessed to the crime.

24 131. Despite knowing of the deficiencies in their public defense system, the  
25 COUNTY OF SANTA BARBARA did not take reasonable steps to protect the  
26 constitutional rights of indigent persons.

27 **DAMAGES**

28 132. Defendants' actions deprived Mr. Alcox of his civil rights under the Fourth,

1 Sixth, and Fourteenth Amendments to the United States Constitution, and the  
2 constitution and laws of the State of California.

3 133. This action seeks damages for the period from Mr. Alcox's arrest on March 25,  
4 1986, through the present. Mr. Alcox remained incarcerated for 26 years and  
5 then served four years of parole before his exoneration in Federal District  
6 Court.

7 134. Defendants' unlawful, intentional, willful, deliberately indifferent, reckless,  
8 and/or bad-faith acts and omissions caused Mr. Alcox to be falsely arrested,  
9 tried, wrongfully convicted, and incarcerated for 26 years for a crime he did  
10 not commit.

11 135. Defendants' unlawful, intentional, willful, deliberately indifferent, reckless,  
12 and/or bad-faith acts and omissions caused Mr. Alcox the following injuries  
13 and damages, which continue to date and will continue into the future: personal  
14 injuries; pain and suffering; severe mental anguish; emotional distress; loss of  
15 family relationships; severe psychological damage; damage to business and  
16 property; legal expenses; loss of income; infliction of physical illness;  
17 inadequate medical care; humiliation, indignities and embarrassment;  
18 degradation; permanent loss of natural psychological development; and  
19 restrictions on all forms of personal freedom including but not limited to diet,  
20 sleep, personal contact, educational opportunity, vocational opportunity,  
21 athletic opportunity, personal fulfillment, sexual activity, family relations,  
22 reading, television, movies, travel, enjoyment, and expression, for which he is  
23 entitled monetary relief.

24 136. These injuries and damages to Mr. Alcox were foreseeable to Defendants at the  
25 time of their acts and omissions.

26 137. All of the acts and omissions committed by Defendants were done  
27 intentionally, unlawfully, maliciously, wantonly, recklessly, negligently and/or  
28 with bad faith, and said acts meet all of the standards for imposition of punitive

1 damages.

2 **IV.**

3 **CLAIMS**

4 **FIRST CLAIM FOR DEPRIVATION OF LIBERTY WITHOUT DUE**  
5 **PROCESS OF LAW AND VIOLATION OF RIGHT TO FAIR TRIAL,**  
6 **UNDER THE FOURTEENTH AMENDMENT**

7 **(42 U.S.C. § 1983)**

8 138. Mr. Alcox incorporates by this reference, as if fully set forth herein, the  
9 allegations set forth in the preceding paragraphs of this Complaint.

10 139. Defendants suppressed exculpatory and material evidence of Mr. Alcox's  
11 innocence, thereby violating Mr. Alcox's right to a fair trial and causing him to  
12 be deprived of his liberty without due process of law.

13 140. Rather than conduct an adequate investigation, Defendants, individually and in  
14 concert, acted in a manner that shocks the conscience and followed through  
15 with the unlawful prosecution of Mr. Alcox, thereby depriving Mr. Alcox of his  
16 right not to be deprived of liberty without due process of law.

17 141. Defendants, individually and in concert, continued their investigation of Mr.  
18 Alcox despite the fact that they knew or should have known that he was  
19 innocent. In particular, in addition to ignoring the lack of significant physical  
20 evidence tying Mr. Alcox to the crime and ignoring Mr. Alcox's alibi,  
21 Defendants also ignored and suppressed the exculpatory statements of Lothery,  
22 Mr. Alcox and Sanjay.

23 142. Defendants, individually and in concert, used investigative techniques that were  
24 so coercive and abusive that they knew or should have known that those  
25 techniques would yield false information.

26 143. In addition, in an effort to secure Mr. Alcox's conviction without regard to his  
27 actual innocence, Defendants, individually and in concert, suppressed material,  
28 exculpatory information from Mr. Alcox and the prosecution in violation of the  
Constitution and *Brady v. Maryland*.

1 144. Defendants, individually and in concert, failed to memorialize, intentionally  
2 suppressed, and/or recklessly failed to disclose exculpatory statements by  
3 Lothery, Mr. Alcox and Sanjay.

4 145. Defendants' actions, individually and cumulatively, played a direct and decisive  
5 role in the jury's guilty verdict and were highly prejudicial to Mr. Alcox's  
6 defense. Had Defendants' misconduct been disclosed, the evidence would have  
7 tended to prove Mr. Alcox's innocence, cast doubt on the entire police  
8 investigation and prosecution, and very likely created a different result at trial.

9 146. Without knowing this exculpatory information, Mr. Alcox was convicted of a  
10 crime that he did not commit.

11 147. The foregoing acts and omissions were deliberate, reckless, wanton, cruel,  
12 motivated by evil motive or intent, done in bad faith, and/or involved callous  
13 indifference to Mr. Alcox's federally protected rights. These acts were  
14 perpetrated while Defendants were acting in their official capacities and under  
15 color of state law.

16 148. As a direct and proximate result of Defendants' actions, Mr. Alcox was wrongly  
17 arrested, detained, charged with murder, prosecuted, convicted, sentenced, and  
18 incarcerated for 26 years, supervised on parole for four years, and suffered the  
19 other grievous injuries and damages set forth above.

20 **SECOND CLAIM FOR MALICIOUS PROSECUTION AND VIOLATION**  
21 **OF THE FOURTH AND FOURTEENTH AMENDMENTS**

22 **(42 U.S.C. § 1983 )**

23 149. Mr. Alcox incorporates by this reference, as if fully set forth herein, the  
24 allegations set forth in the preceding paragraphs of this Complaint.

25 150. The criminal proceedings initiated against Mr. Alcox in 1986 have been  
26 pursued to a legal termination favorable to Mr. Alcox. In particular, in February  
27 of 2016, the Federal District Court for the Central District of California granted  
28 Mr. Alcox's petition for habeas corpus. The charges against Mr. Alcox were

1 subsequently dismissed by the Santa Barbara District Attorney's Office.

2 151. The criminal proceedings initiated against Mr. Alcox in 1986 were brought  
3 without probable cause and without any reasonable belief in guilt.

4 152. The false and tainted evidence failed to provide probable cause to initiate  
5 charges against Mr. Alcox. Defendants were aware of this fact but nonetheless  
6 caused Mr. Alcox to be charged, and subsequently, Defendants intentionally  
7 continued the prosecution against Mr. Alcox on the basis of fabricated  
8 inculpatory evidence and suppressed material exculpatory evidence, thereby  
9 affecting a continuing seizure of Mr. Alcox in violation of his Fourth and  
10 Fourteenth Amendment rights.

11 153. The criminal proceedings against Mr. Alcox were initiated on the basis of  
12 Defendants' intentional and knowingly false accusations, fabrication of  
13 evidence, suppression of exculpatory evidence, and other malicious conduct.

14 154. In falsely arresting Mr. Alcox, despite the absence of probable cause to believe  
15 he had committed a crime, Defendants deprived Mr. Alcox of his liberty, and  
16 in maliciously prosecuting despite the absence of probable cause or existence  
17 of other evidence linking Mr. Alcox to the crimes, Defendants caused Mr.  
18 Alcox to suffer the indignity of public trial, the most severe continuing  
19 deprivation of liberty, over 30 years of emotional distress while serving prison  
20 time and parole supervision time for a crime he did not commit, and the other  
21 injuries and damages set forth above.

22 155. The criminal proceedings against Mr. Alcox were initiated with malice in that  
23 Defendants caused the charges against Mr. Alcox to be filed by knowingly  
24 providing the prosecution misinformation, concealing exculpatory evidence,  
25 and otherwise engaging in wrongful and bad faith conduct that was actively  
26 instrumental in causing the initiation of the legal proceedings against Mr.  
27 Alcox.

28 156. Defendants' wrongful prosecution of Mr. Alcox was initiated with malice and

1 without probable cause and was brought for the purpose of denying Mr. Alcox's  
2 constitutional rights, including his right to be free from unreasonable searches  
3 and seizures and his right to not be deprived of liberty without due process of  
4 law.

5 157. As a direct and proximate result of Defendants' actions, Mr. Alcox was wrongly  
6 prosecuted, detained, and incarcerated for 26 years, on parole for four years, and  
7 suffered the other grievous injuries and damages set forth above.

8 **THIRD CLAIM FOR CIVIL RIGHTS CONSPIRACY CLAIM**  
9 **(42 U.S.C. §1983)**

10 158. Mr. Alcox incorporates by this reference, as if fully set forth herein, the  
11 allegations set forth in the preceding paragraphs of this Complaint.

12 159. Defendants and others yet unknown agreed among themselves and others to act  
13 in concert to deprive Mr. Alcox of his clearly established constitutional rights  
14 as protected by the Fourth and Fourteenth Amendments, including his right not  
15 to be deprived of liberty without due process of law and be free from illegal  
16 seizure.

17 160. In furtherance of the conspiracy, Defendants engaged in and facilitated  
18 numerous overt acts in furtherance of the conspiracy, including but not limited  
19 to the following: (a) acting in concert to coerce Mr. Alcox's false confession;  
20 (b) acting in concert to suppress evidence demonstrating Mr. Alcox's  
21 innocence; (c) prior and subsequent to Mr. Alcox's arrest and charging,  
22 deliberately ignoring and/or recklessly failing to investigate leads pointing to  
23 other suspects; and (d) prior and subsequent to Mr. Alcox's arrest and charging,  
24 deliberately ignoring and/or recklessly failing to investigate evidence of Mr.  
25 Alcox's innocence.

26 161. As a direct and proximate result of Defendants' overt acts, Mr. Alcox was  
27 deprived of his constitutional rights; wrongly prosecuted, detained, and  
28 incarcerated for 26 years, placed on parole for four years; and subjected to other

1 grievous injuries and damages as set forth above.

2 **FOURTH CAUSE OF ACTION FOR *MONELL* CLAIM AGAINST THE**  
3 **CITY OF LOMPOC AND COUNTY OF SANTA BARBARA FOR FAILURE**  
4 **TO TRAIN, SUPERVISE, AND/OR DISCIPLINE IN CONSTITUTIONALLY**  
5 **ADEQUATE INVESTIGATION TECHNIQUES, INTERROGATION**  
6 **PROCEDURES AND/OR DUTIES**

7 **(42 U.S.C. § 1983)**

8 162. Mr. Alcox incorporates by this reference, the allegations contained in the  
9 preceding paragraphs inclusive, as though fully set forth therein.

10 163. The CITY OF LOMPOC and COUNTY OF SANTA BARBARA, by and  
11 through their policymakers, created and maintained a custom, policy and/or  
12 practice of failing to train, supervise, and/or discipline its employees and agents,  
13 including Defendants, regarding constitutionally adequate investigation  
14 techniques.

15 164. The CITY OF LOMPOC and COUNTY OF SANTA BARBARA, by and  
16 through their policymakers, created and maintained a custom, policy and/or  
17 practice of failing to train, supervise, and/or discipline its employees and agents,  
18 including Defendants, regarding constitutionally proper interrogation  
19 procedures and to ensure that unreliable, discredited, and improper interrogation  
20 techniques were not utilized.

21 165. The CITY OF LOMPOC and COUNTY OF SANTA BARBARA, by and  
22 through their policymakers, created and maintained a custom, policy and/or  
23 practice of failing to train, supervise, and/or discipline its employees and agents,  
24 including Defendants, regarding their obligations to document and disclose  
25 exculpatory evidence pursuant to their *Brady* obligations.

26 166. Defendants' failure to document exculpatory evidence, which directly  
27 facilitated the suppression of exculpatory evidence in this case, was done  
28 pursuant to Lompoc Police Department training, custom, policy, and practice.

167. These unconstitutional customs, policies, and practices of the CITY OF  
LOMPOC and COUNTY OF SANTA BARBARA proximately and directly

1 caused Mr. Alcox injuries, including his false arrest, illegal confinement, unfair  
2 trial, wrongful conviction, and other damages described above.

3 **FIFTH CAUSE OF ACTION FOR DEPRIVATION OF THE RIGHT TO**  
4 **COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO**  
5 **THE UNITED STATES CONSTITUTION**

6 **(42 U.S.C. § 1983)**

7 168. Mr. Alcox incorporates by this reference, the allegations contained in the  
8 preceding paragraphs inclusive, as though fully set forth therein.

9 169. Acting under color of state law, the COUNTY OF SANTA BARBARA violated  
10 and caused violations of the Mr. Alcox’s right to the assistance of counsel  
11 pursuant to the Sixth and Fourteenth Amendments to the United States  
12 Constitution.

13 170. As a direct and proximate result of the COUNTY OF SANTA BARBARA’S  
14 actions, Mr. Alcox was wrongly prosecuted, detained, and incarcerated and  
15 suffered the other grievous injuries and damages set forth above.

16 **V.**

17 **PRAYERS FOR RELIEF**

18  
19 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of  
20 them, for the following:

- 21 1. A trial by jury on each of the Plaintiff’s claims;
- 22 2. That the Court award compensatory damages to Plaintiff and against  
23 Defendants, jointly and severally, in an amount to be determined at trial;
- 24 3. That the Court award punitive damages to Plaintiff, and against  
25 Defendants, in an amount to be determined at trial, in order to deter such conduct by  
26 Defendants in the future;
- 27 4. For pre-judgment and post-judgment interest and recovery of costs,  
28 including reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988 for all 42 U.S.C. §

1 1983 claims; and

2 5. For such other and further relief as the court may deem just and  
3 appropriate.

4 Dated: March 17, 2017

SANGER SWYSEN & DUNKLE

5 Robert M. Sanger  
6 Frank J. Ochoa  
7 Stephen K. Dunkle

8 LAW OFFICES OF JULIANA DROUS  
9 Juliana Drous

10 By: /s/ Robert M. Sanger  
11 Robert M. Sanger  
12 Attorneys for Plaintiff  
13 Joel Alcox

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: March 17, 2017

SANGER SWYSEN & DUNKLE

Robert M. Sanger  
Frank J. Ochoa  
Stephen K. Dunkle

LAW OFFICES OF JULIANA DROUS  
Juliana Drous

By: /s/ Robert M. Sanger  
Robert M. Sanger  
Attorneys for Plaintiff  
Joel Alcox