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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ORANGE, CIVIL COMPLEX CENTER  
15

16 PEOPLE FOR THE ETHICAL OPERATION  
OF PROSECUTORS AND LAW  
17 ENFORCEMENT (P.E.O.P.L.E.), BETHANY  
WEBB, THERESA SMITH, and TINA  
18 JACKSON,  
19 Plaintiffs/Petitioners,  
20  
21 vs.  
22 ANTHONY J. RACKAUCKAS, in his official  
capacity as Orange County District Attorney,  
23 and SANDRA HUTCHENS, in her official  
capacity as Orange County Sheriff,  
24 Defendants/Respondents.  
25

Case No.  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND  
PETITION FOR WRIT OF MANDATE

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1 **INTRODUCTION**

2 1. The Orange County criminal justice system is in disrepair and disrepute. Public  
3 faith in the integrity of the Orange County District Attorney’s Office (“OCDA”) and the Orange  
4 County Sheriff’s Department (“OCSD”), and in their ability to seek justice, has been eviscerated  
5 by continuous revelations of systemic misconduct.

6 2. For well over thirty years, the OCSD—currently led by Defendant/Respondent  
7 Sandra Hutchens—has operated and continues to operate a secret jailhouse informant program  
8 with the full knowledge and participation of the OCDA—currently led by Defendant/Respondent  
9 Tony Rackauckas. Large numbers of “professional” informants, working at the behest of both  
10 agencies, have interrogated criminal defendants in violation of those defendants’ right to an  
11 attorney.

12 3. Informants also violated criminal defendants’ due process rights by threatening  
13 violence to obtain the information they wanted. Some went as far as telling defendants they had  
14 been “greenlit”—meaning that the prisoner was on a hit list to be assaulted or even executed on  
15 sight, a fate they could only avoid by confessing to their involvement in the crime. In some  
16 cases, the choice was clear: confess or die.

17 4. Informants were paid handsomely—hundreds of thousands of dollars, in some  
18 cases—and often given time off their own sentences in exchange for unlawfully collecting this  
19 information.

20 5. To conceal the arrangement, OCSD sheriffs have repeatedly lied under oath about  
21 the program’s existence and participants. The OCDA also has routinely suppressed or failed to  
22 request evidence that could expose the constitutional violations. Such evidence, including at  
23 least three separate informant-related databases that have come to light via discovery in recent  
24 Orange County criminal cases, plainly is favorable to criminal defendants who have interacted  
25 with these informants, and the OCDA’s refusal to produce it violates the United States and  
26 California Constitutions. The OCDA’s policy, practice, and custom of withholding such  
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1 officers situated in Orange County, and all of the acts and omissions raised in this  
2 Complaint/Petition occurred in Orange County.

3 **PARTIES**

4 **A. Plaintiffs/Petitioners**

5 13. Plaintiff/Petitioner the People for the Ethical Operation of Prosecutors and Law  
6 Enforcement (“P.E.O.P.L.E.”) is an association of residents of Orange County that includes at  
7 least one member who pays property taxes to Orange County. P.E.O.P.L.E. has engaged in  
8 efforts to educate the community about the shortcomings in the Orange County criminal justice  
9 system, including within the OCSD and OCDA. Amongst other things, P.E.O.P.L.E. launched a  
10 successful court watch program, bringing community members into pre-trial hearings to look for  
11 potential *Brady* violations and to pressure actors in the criminal justice system to comply with  
12 the law.

13 14. P.E.O.P.L.E. has an interest in preventing the illegal expenditure of county funds,  
14 including Defendants’/Respondents’ expenditure of county funds on administering,  
15 implementing, concealing, and defending the numerous illegal policies and practices addressed  
16 in this Complaint/Petition. In addition to its interests as taxpayers in Orange County,  
17 P.E.O.P.L.E., as an association of California and United States residents, is interested in having  
18 Defendants’/Respondents’ statutory and constitutional duties enforced. There is a substantial  
19 public interest in the enforcement of Defendants’/Respondents’ duties to comply with the U.S.  
20 and California Constitutions, as well as California law, to ensure the integrity of the Orange  
21 County criminal justice system.

22 15. Plaintiff/Petitioner Bethany Webb is a resident of Orange County and pays  
23 property taxes to Orange County. Ms. Webb’s sister was murdered and her mother was critically  
24 injured by Scott Dekraai, whose case was tainted by the informant program. The exposure of the  
25 OCDA and OCSD misconduct resulted in the extended delay of an otherwise open and shut case,  
26 denying her the closure she deserved.

1           16.     Ms. Webb has an interest in preventing the illegal expenditure of county funds,  
2 including Defendants'/Respondents' expenditure of county funds on administering,  
3 implementing, concealing, and defending the numerous illegal policies and practices addressed  
4 in this complaint.

5           17.     As a California and United States resident, Ms. Webb also is interested in having  
6 Defendants'/Respondents' statutory and constitutional duties enforced. There is a substantial  
7 public interest in the enforcement of Defendants'/Respondents' duties to comply with the U.S.  
8 and California Constitutions, as well as California law, in order to ensure the integrity of the  
9 Orange County criminal justice system.

10          18.     Petitioner Theresa Smith is a resident of Orange County and pays taxes in Orange  
11 County. Ms. Smith founded an organization called the Law Enforcement Accountability  
12 Network ("LEAN") after her son was killed by Anaheim police. The OCDA found that the  
13 shooting was justified, a decision that Ms. Smith believes was incorrect and unjustified.

14          19.     As a California and United States resident, Ms. Smith has a substantial public  
15 interest in the enforcement of Defendants'/Respondents' duties to comply with the U.S. and  
16 California Constitutions, as well as California law, in order to ensure the integrity of the Orange  
17 County criminal justice system.

18          20.     Petitioner Tina Jackson is a resident of Orange County and pays taxes in Orange  
19 County. Ms. Jackson founded an organization called Angels for Justice, which provides and  
20 connects prisoners and their families with a wide array of services.

21          21.     As a California and United States resident, Ms. Jackson has a substantial public  
22 interest in the enforcement of Defendants'/Respondents' duties to comply with the U.S. and  
23 California Constitutions, as well as California law, in order to ensure the integrity of the Orange  
24 County criminal justice system.

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1 **B. Defendants**

2 22. Defendant Anthony J. “Tony” Rackauckas, Jr., is the District Attorney of Orange  
3 County, California. He is the chief policymaker for the OCDA. He is sued in his official  
4 capacity.

5 23. Defendant Sandra Hutchens is the Sheriff of Orange County, California. She is  
6 the chief policymaker for the OCSD. She is sued in her official capacity.

7 **ALLEGATIONS**

8 **A. The OCDA and OCSD Operate an Extensive, Systematic, and Illegal Jailhouse**  
9 **Informant Program that Violates Inmates’ Constitutional and Statutory Rights.**

10 24. For over thirty years, the OCSD and OCDA have operated and continue to  
11 operate a confidential, illegal jailhouse informant program (“Informant Program”) that violates  
12 the constitutional and statutory rights of people accused of crimes in numerous ways. Long  
13 concealed from defense attorneys, their clients, the courts, and the public at large, the Informant  
14 Program was uncovered in two of the highest profile murder cases the County of Orange has  
15 ever seen—*People v. Scott Dekraai* and *People v. Daniel Wozniak*. It has since resulted in  
16 dismissed or severely reduced charges in at least eighteen cases, and cast doubt on many more of  
17 which Plaintiffs/Petitioners are aware.

18 25. The key components of the Informant Program are:

19 a. OCSD cultivates confidential informants to secretly gather information from  
20 targeted criminal defendants;

21 b. OCSD strategically places the informants in close proximity to the target criminal  
22 defendants in order to facilitate interrogations, despite the fact that these criminal defendants are  
23 represented by counsel, and therefore such interrogations are illegal;

24 c. OCSD keeps detailed logs and databases of the informants’ movements and  
25 interactions with criminal defendants, employing special sheriffs’ deputies to maintain the  
26 records;

1 d. OCSD then rewards confidential informants who elicit information, including  
2 confessions, with jailhouse perks, money, and, most importantly, “consideration”—such as time  
3 off their sentences;

4 e. OCDA, fully aware of the Informant Program and its constitutional infirmities,  
5 then takes this information from OCSD for use in its prosecutions; and, finally,

6 f. OCDA does not disclose anything about the Informant Program to the criminal  
7 defendants or their defense attorneys, in further violation of the U.S. Constitution, California  
8 Constitution, and California law.

9 26. Although Defendant Hutchens has repeatedly told the Orange County community  
10 that no Informant Program exists, the OCSD until recently had a dedicated unit, the Special  
11 Handling Unit (“SHU”),<sup>1</sup> which worked with informants and developed plans by which those  
12 informants would elicit illegal confessions.

13 27. SHU deputies have been specifically trained in the cultivation and deployment of  
14 jailhouse informants. Details of SHU’s work with informants are maintained by SHU deputies  
15 or their predecessors in the databases described below.

16 28. Other members of the OCSD, including deputies throughout the Orange County  
17 jail system, also engage in informant-related activities, such as cultivation of informants and  
18 intelligence gathering.

19 29. OCSD deputies have been taught that their notes and other records concerning  
20 informants must be kept secret, even from the courts. Indeed, as discussed below, OCSD  
21 officers have testified, falsely and under oath, that there is no Informant Program in the Orange  
22 County jails and that there are no records of informant movements or other documentation  
23 relating to informant activity.

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25 \_\_\_\_\_  
26 <sup>1</sup> On information and belief, the Special Handling Unit (hereinafter referred to as the “SHU”) has been rebranded as  
27 the Custody Intelligence Unit, or CIU. Without discovery, Plaintiffs/Petitioners cannot be certain whether the CIU  
28 has inherited some or all of the SHU’s (or former SHU’s) work with respect to informants. Accordingly,  
Plaintiffs/Petitioners herein refer to any unit, past or present, which conducts informant-related work as the SHU.



1           30.     Many of OCSD's and OCDA's attempts to shield the informant program arise  
2 from this basic fact: the program, at its core, is designed and orchestrated in order to violate  
3 inmates' constitutional rights and to cover up these violations.

4           31.     OCDA knows and has at all relevant times known that OCSD's operation of the  
5 Informant Program is illegal, but it has continued to use information produced by the Program in  
6 criminal trials. As the Court of Appeal stated in *People v. Dekraai*: "Not only did the OCDA  
7 intentionally or negligently ignore the OCSD's violation of targeted defendants' constitutional  
8 rights, but the OCDA on its own violated targeted defendants' constitutional rights through its  
9 participation in the CI program."

10                   ***1.     Informant Operations in Detail***

11           32.     Informant operations follow a basic pattern. The OCSD identifies a "target  
12 inmate" from whom OCSD, OCDA, or another law enforcement agency wishes to extract  
13 information. OCSD then moves the target inmate and/or the informant so that the informant is in  
14 close proximity to the target, often in the same or an adjoining cell.

15           33.     Often, OCSD places multiple informants and targets in the same housing module  
16 in order to create a target-rich atmosphere for obtaining statements; these modules are commonly  
17 referred to as an "informant tank."

18           34.     OCSD also routinely arranges for "coincidental" contact between the target and  
19 informant in other locations, including while inmates are being transferred to and from jail.  
20 OCSD has a practice of directing such operations against inmates whom OCSD and OCDA  
21 know are represented by counsel.

22           35.     OCSD and OCDA have developed a core group of professional informants who  
23 are used in scheme after scheme. The informants almost always face their own serious criminal  
24 charges, and are often members of criminal street gangs, such as the Mexican Mafia. OCSD and  
25 OCDA reward the informants with lenient sentences, vast sums of money, and numerous other  
26 benefits.

1 a) *Informant Tanks*

2 36. As noted above, informant tanks are modules within the jails in which OCSD  
3 strategically places informants so that the informants can interact frequently with target criminal  
4 defendants.

5 37. In 2015, a former Special Handling deputy named Jonathan Larson testified that  
6 OCSD used informant tanks. The following exchange occurred between Larson and Dekraai's  
7 attorney Scott Sanders during a February 2015 hearing:

8 Q. And is there -- there is kind of -- there is a tank in the jail in particular  
9 where there is -- you tend to put some of your informants from time to time  
10 to collect information. Is that fair to say?

11 A. Yes.

12 Q. And is that J? Has that been J in the past?

13 A. Yes.

14 Q. So you put kind of high value inmates and you put some of the  
15 informants in there; is that right?

16 A. Yes.

17 38. In 2016, Dekraai's attorney uncovered a database called the Special Handling  
18 Log (described below). It revealed numerous entries about the use of informant tanks, including,  
19 most notably, Module L, Sector 20 ("L-20"), located in the Intake Release Center.

20 39. Other documents uncovered during the *Dekraai* litigation corroborated OCSD's  
21 use of informant tanks. One such document, entitled "L-20 Thoughts/Requests," included the  
22 following bullet points:

- 23 • "Run the Module like any other NORMAL Module....No Special treatment."  
24 • "There are several current investigations being conducted, so PLEASE don't get  
25 into anything (exchanging any information with inmates). PLEASE contact S/H."  
26 • "Module Deputies are NOT the Inmate's handlers.... Special Handling are the  
27 handlers."

1           40.     Several members of the OCSD admitted during cross examination in *Dekraai* that  
2 both Module L-20 and tanks within Mod J were used as informant tanks.

3           41.     Cases from the 1980s confirm that the OCSD’s use of informant tanks stretches  
4 back decades. Beginning no later than the early 1980s, the OCSD used Module A, Sector 4  
5 (“Mod A-4”) as an informant tank.

6           42.     For instance, in *People v. William Charles Payton* in 1980, Alejandro Garcia  
7 obtained statements from capital murder defendant William Charles Payton while both were  
8 housed in Mod A-4. The next year, veteran informant Daniel Escalera also obtained statements  
9 from Payton while both were housed in the same module. Escalera was released, and then was  
10 returned to Mod A-4, and reported obtaining still more statements from Payton. During a taped  
11 interview with OCDA in 1981, Escalera said “I got put in custody so they put me back up there  
12 with him so I . . . can . . . .” Unsurprisingly, the interviewing ADAs did not ask any follow-up  
13 questions.

14                                   *b) The Databases*

15           43.     OCSD and OCDA keep detailed records regarding their use of informants,  
16 showing, among other things, when and why informants were moved, including when they were  
17 moved to be closer to a target defendant; the tactics the informants used in eliciting information;  
18 benefits received for their participation in information gathering; inculpatory information that  
19 they elicited; and, sometimes, exculpatory statements made by the target inmate that OCSD and  
20 OCDA never provided to defense counsel.

21           44.     *The OCII.* Since at least 1980, the OCDA has maintained the Orange County  
22 Informant Index (“OCII”). The OCII contains significant material information regarding  
23 informants used by OCSD and OCDA, including, for example, information relating to those  
24 informants’ reliability and credibility and whether they have received benefits for their work.

25           45.     On information and belief, OCDA had and currently has a policy, practice, and  
26 custom of not producing information from the OCII to defense counsel, in violation of OCDA’s  
27 obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and Penal Code section 1054.1 et seq.

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1           46.     In *People v. Henry Rodriguez*, for example, Rodriguez's counsel specifically  
 2 requested from OCDA information about benefits received by Michael Garrity, to whom  
 3 Rodriguez purportedly made incriminating statements while the two were housed together in  
 4 protective custody. The defense suspected that Garrity was a career informant who was working  
 5 at the behest of law enforcement, in violation of *Massiah v. United States*, 377 U.S. 201 (1964),  
 6 and that Garrity had received benefits for his work, including on Rodriguez's case.

7           47.     Both OCDA and OCSD vigorously denied that Garrity expected consideration for  
 8 his statements against Rodriguez, and painted him, based on the record then before the court, as a  
 9 concerned individual acting solely out of altruistic motives. However, among the items  
 10 suppressed in both Rodriguez's first and second trials was an entry from the OCII indicating that  
 11 Garrity had received consideration in past cases in Orange County, which was important  
 12 evidence regarding his reasonable expectations about possible compensation for his statements  
 13 against Rodriguez. This should have been produced to Rodriguez.

14           48.     The same OCII entry contained explicit instructions not to produce this evidence  
 15 to the defense, stating, "BJ [as the trial court concluded, likely Senior DDA Bob Jones]  
 16 instructed [the then prosecuting attorney] [Dennis] Conway to refrain from providing copies to  
 17 [the] defense unless ordered by the court. Per E. Hatcher [the OCII coordinator at the time]."

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ORANGE COUNTY DISTRICT ATTORNEY'S DEFENDANT/INFORMANT INDEX HISTORY CARD	
DATE	RESUME
2-5-05	inquiry by DDA D. Conway wants to use him as wit in homicide trial and needs to know if anything to discover. Checked LA clear - no hit. per E. Hatcher
2-10-05	I called Riverside DA's office and spoke to Ron Lillard. Asked him to check to see if CI had worked for them. He got back to me and said there was no record to indicate that he had received any consideration on any cases there. Bob Jones provided me with Court Docs from our county which indicated CI did receive consideration on cases here in our county. BS provided copy of Docs to DDA Conway copy of Docs in in CI OCII file also. BT instructed Conway to refrain from providing copies to defense unless ordered by the court. per E. Hatcher

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1           49.     *The TRED Records.* OCSD also maintains an internal database, TRED, which  
2 tracks inmate placements throughout the jail. TRED records are created for each inmate and  
3 often document important information including the reasons for particular housing movements,  
4 observations about the inmate, and communications between the inmate and deputies. TREDs  
5 also contain details about informant operations, classification adjustments designed to make  
6 informants more effective, efforts to incentivize performance, and descriptions of the reliability  
7 of particular informants.

	BKG-NO	DATE	TIME	TYPE	OFFICER
INFORMATION:		041299	1340	GNCO	VERDERAME-KJ
^ROLLED HIMSELF OUT OF MOD N DUE TO BEING FOUND OUT THAT HE WAS A CI.HE HAS ALRE ADY BEEN TOLD THAT HIS NEXT STEP WOULD BE PC.WILL PROGRAM W/OTHER PCS.TOLD IF HE HAS PRBMS HE WOULD PROBABLY GO TOTAL SEP AS A PC.					

11           50.     Although the OCDA, including Tony Rackauckas himself, denied knowledge of  
12 the TRED database, Sheriff Hutchens later told ABC7 Eyewitness News that “certainly the  
13 District Attorney’s Office has known about it for years.”<sup>2</sup>

14           51.     *The Special Handling Log.* Until revelations of its existence caused the  
15 Department to cease its use, OCSD also maintained another database called the Special Handling  
16 Log (“Log”). The Log showed that OCSD personnel often coordinated the movement and  
17 placement of informants at the behest of, or in cooperation with, local law enforcement. The  
18 1,127 page Log detailed informant operations that were carried out against inmates represented  
19 by counsel, in clear violation of *Massiah*.

20           52.     In the excerpt below, obtained by Scott Sanders during the *People v. Wozniak*  
21 case, Special Handling Deputy Padilla describes a “rouse” [sic] involving “O.M.” (on  
22 information and belief, informant Oscar Moriel).

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26 <sup>2</sup> Brown, *Did Orange County law enforcement break law by using jailhouse informants?*, available at:  
27 <http://abc7.com/news/did-oc-law-enforcement-break-law-by-using-jailhouse-informants/1047095/>.

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Special Handling Log	12-23-09	Shift II	Deputy Padilla
<ul style="list-style-type: none"> <li>Adjusted Shift from (1100- 2230) Stayed 3 hours to complete some S/H'tasks.</li> <li>Read and returned all e-mails/ phone calls.</li> <li>Caught up on the Blog.</li> <li>Briefed w/ GROVER on the recent events in the work place.</li> <li>Attended a meeting w/ Tunstel, Garcia, and Grover. All took place in the DPI room. WOW! This O.M. caper is huge. It is really cool that we seem to ALLII be working together. I feel good about this, I hope everybody else does as well. We later had O.M. brought into the D.P.I room for a little debriefing with all of us. Seth laid it pretty much all out for O.M. We are now going to jockey some players around from here, MJ and TL. Vanessa brought in 7 grams of heroin, 2 syringes and dropped it to GONZO. This was supposed to be dope brought to O.M. It is now playing as though O.M. was caught with it. O.M. will be doing 10 volunteer days in the hole as part of the rouse. Blueslips have been given to visiting and housing guard allowing O.M. commissary and phone use only. No yard or visits. Friday we will be moving BRONSON into D.I. to live next to O.M. Mike I will get you up to speed on this on Saturday.</li> </ul>			

53. Padilla’s and others’ systematic control over inmate movements, and over the scheme as a whole, is clear:

- “We . . . had O.M. brought into the D.P.I. room for a little debriefing with all of us.”
- “We are now going to jockey some players around from here.”
- “O.M. will be doing 10 volunteer days in the hole as part of the rouse.”
- “Vanessa brought in 7 grams of heroin, 2 syringes and dropped it to GONZO. This was supposed to be dope brought to O.M. It is now playing as through O.M. was caught with it.”
- “Friday we will be moving BRONSON into D.I. [on information and belief, “disciplinary isolation”] to live next to O.M.”

54. An entry from Padilla two weeks later, on January 8, 2010, reads: “We are suggesting that we call for O.M. [Oscar Moriel] to get his rec. time so if anything needs to be passed we can get it ourselves!!! Before he goes into Iso with Vega. I’m concerned about this

1 info getting into non coop hands. We are on the precipice of this case and it is getting a little  
2 scary how much info. [sic] we are extracting.”

3 55. The Log also makes clear that deputies engaged in document shredding sessions,  
4 despite being under an order from the U.S. Department of Justice not to destroy jail records. For  
5 example, on February 5, 2009, Deputy Grover wrote: “Sort through numerous boxes of ‘Old  
6 Special Handling documents’ . . . Then Shred same @ HQ Warehouse.”

7  
8 **Special Handling Log**                      **02-05-09**                      **Deputy Grover**  
9 O.T. 0500-1530  
10 Brief Sgt. Johnson regarding DPI [REDACTED] and DEA removal of [REDACTED] and other current  
11 events.  
12 Sort through numerous boxes of “Old Special Handling documents”.. then Shred same @ HQ  
13 Warehouse..

14 56. There also are significant gaps in the Log, including those related to the *Dekraai*  
15 case. These gaps raise questions about what other evidence of the unconstitutional program  
16 deputies may have withheld and/or destroyed.

17 57. The Log and certain OCII and TRED records were produced only after protracted  
18 litigation in which OCDA and OCSD repeatedly denied that they were in possession of such  
19 records. They also repeatedly defied a court order to produce all such documents.

20 58. On information and belief, there are more records and databases that contain  
21 information about the Informant Program, its constitutional violations, and OCDA’s and  
22 OCSD’s attempts to shield the program from public and judicial scrutiny. On information and  
23 belief, such records include, but are not limited to: logs maintained by the SHU deputies located  
24 at the Theo Lacy Facility; notes maintained by module deputies in their own logs or elsewhere;  
25 Sergeant Activity Logs; Briefing Logs; Administrative Segregation Logs; and tens of thousands  
26 of pages obtained by the U.S. Department of Justice (in a federal investigation of a defendant  
27 who had a state attempted murder charge dismissed because his case was tainted by the  
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1 Informant Program) and the California Attorney General (which initiated an investigation of the  
2 Program itself).

3 59. Such records also include documents and information held by OCSD's Custody  
4 Intelligence Unit ("CIU"). CIU currently superintends 68 boxes of information chronicling 30  
5 years of informant operations. At a recent hearing in the *Dekraai* matter in May 2017, the head  
6 of the CIU, Lieutenant Andrew Stephens, testified that the CIU was still in the process of  
7 scanning these documents, and had not actually reviewed any of them, despite being in their  
8 possession since 2016.

9 **2. *The Informant Program Routinely Violates Inmates'***  
10 ***Constitutional Right to Counsel Under Massiah***

11 60. The Informant Program described above allows for the implementation of  
12 Defendants'/Respondents' policy, practice, and custom of using informants to elicit information  
13 from inmates after those inmates have been charged and are represented by counsel, in violation  
14 of *Massiah*. This has been documented in numerous cases and, on information and belief, has  
15 occurred in countless more.

16 61. *Defendants' illegal use of Oscar Moriel in People v. Leonel Vega.* Professional  
17 informant Oscar Moriel was a member of the Delhi street gang. Moriel was facing a life  
18 sentence for attempted, premeditated murder after he repeatedly shot his victim in the back. In  
19 later court testimony, he also admitted to having killed five or six people while "hunting" rival  
20 gang members.

21 62. In 2009, Moriel told SAPD investigators, in recorded conversations withheld from  
22 criminal defendants in cases in which Moriel testified, that he would supply information about  
23 unsolved cases if he was given "more options." He told the investigators that his ability to "think  
24 more clearly" would improve if he received sufficient sentencing consideration in return. Moriel  
25 was promised that he would "get consideration for the level that [he] perform[ed]."

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1           63.     In the long-concealed recordings, Moriel told SAPD detectives that his memory  
2 of his conversations with Vega would be aided significantly by “options” in his case, and that,  
3 given sufficient rewards, he could “make it seem like it was yesterday.”

4           64.     Detective Charles Flynn, in turn, informed Moriel: “[Y]ou’ll get maximum  
5 consideration for everything you do.” He assured Moriel that their conversations would “never,  
6 ever come[] out.”

7           65.     Moriel subsequently illegally elicited incriminating information from a murder  
8 defendant named Leonel Vega. OCSD recorded the conversation, and Moriel took notes. The  
9 recording captured Vega denying involvement in the crime, but Moriel’s notes stated that Vega  
10 admitted to the murder. OCDA did not disclose the favorable recorded conversations between  
11 Moriel and Vega to the defense. Instead, OCDA turned over only the four pages (of more than  
12 two hundred) of Moriel’s notes in which Moriel claimed that Vega admitted to the murder.

13           66.     *Defendants’ illegal use of Fernando Perez in People v. Dekraai.* The *Massiah*  
14 violations in Leonel Vega’s case were neither accidents nor isolated incidents. Revelations in  
15 *People v. Dekraai*, a high-profile Orange County death penalty case, made clear that the  
16 Informant Program is widespread and highly systematized.

17           67.     Four days after Scott Dekraai was charged with murder in 2011, when Dekraai  
18 was represented by counsel, OCSD moved Dekraai into a cell next to Fernando Perez, a longtime  
19 OCSD and OCDA informant, and a member of the Mexican Mafia.

20           68.     In a later meeting with Perez and OCSD, Deputy District Attorney Dan Wagner  
21 learned that Perez reported receiving statements about the crime from Dekraai, after having been  
22 placed next to Dekraai in order to elicit information. Wagner and members of his prosecution  
23 team then interviewed Perez, but elected to not ask any questions about his informant history. In  
24 fact, he was awaiting sentencing on his own case, which could have exceeded forty-five years.

25           69.     Rather than refuse to use information produced by Perez, OCDA obtained  
26 OCSD’s approval to place a tape recorder in the jail to record Perez’s discussions with Dekraai,

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1 even though OCDA knew that Dekraai was represented by counsel. OCSD and OCDA captured  
2 more than 100 hours of conversation between Perez and Dekraai.

3 70. OCDA went to great lengths to keep any information relating to Perez from  
4 Dekraai's defense counsel, including by refusing to turn over material they were required to  
5 produce under *Brady v. Maryland*. OCDA also repeatedly misinformed the court about the  
6 existence and extent of the Informant Program. As *People v. Dekraai* proceeded, it became clear  
7 that OCSD and OCDA were trying to conceal not only material information relating to Perez and  
8 the "confession" that he elicited, but also the very existence of an Informant Program that  
9 routinely and systematically violates the United States and California Constitutions.

10 71. *Dis-Iso Schemes*. One popular scheme employed by OCSD was the so-called  
11 "dis-iso" scheme in which an informant and a target inmate are placed together in the jail's  
12 disciplinary isolation—dis-iso—cell, thereby giving the informant direct access to the inmate and  
13 strongly suggesting to the inmate that the informant could not be working for OCSD.

14 72. In *People v. Leonel Vega*, SHU deputies intentionally orchestrated the violation of  
15 Vega's *Massiah* rights by placing him in disciplinary isolation along with Oscar Moriel. Both  
16 Moriel and SHU deputies later denied, in sworn testimony, that Vega and Moriel had been  
17 intentionally placed together in order to facilitate Moriel's informant work.

18 73. The SHU deputies continued their denials even after they were confronted with  
19 notes Moriel wrote, which discussed use of the dis-iso scam with Moriel and a second target.  
20 Those notes were withheld from Vega for five years.

21 74. In addition, a 2009 letter that also was withheld from Vega for years showed that  
22 an OCSD investigator wrote to the Assistant Sheriff that the Santa Ana police had "requested  
23 help in getting Moriel, an informant for SAPD, and Vega together and record any conversation  
24 they may have. IRC Special Handling deputies have come up with a plan to house both Vega  
25 and Moriel in adjoining cells in IRC Dis Iso."

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Assistant Sheriff Mike James

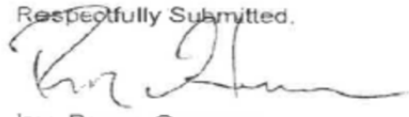
I request permission to wire adjoining cells at the OCSD Intake Release Center (IRC) to audio record two inmates. We would like to record any conversations between Vega, Leonel (04-10-80) Bkg # 2436967 and Moriel, Oscar Daniel (09-22-80) Bkg # 2327313. Vega and Moriel are documented Delhi Criminal Street Gang members. Santa Ana P.D. Det. Chuck Flynn has requested help in getting Moriel, a CI for SAPD, and Vega together and record any conversation they may have.

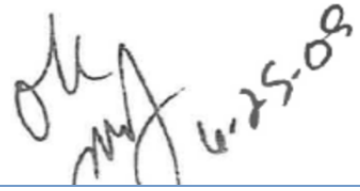
IRC Special Handling Deputies have come up with a plan to house both Vega and Moriel in adjoining cells in IRC Dis Iso.

Vega is in custody for CPC 187 Murder and Det. Flynn believes they may gain valuable evidence reference the murder from recorded conversations between the two.

Thank you for your consideration in this matter.

Respectfully Submitted,

  
Inv. Roger. Guevara



75. Even *after* all of this information, including a letter that plainly laid out the “dis-iso scam,” came to light, OCSD and OCDA continued to insist that they had done nothing wrong. Indeed, SHU deputy Seth Tunstall and Deputy DA Erik Peterson suggested that a former federal prosecutor, Judge Terri Flynn-Peister, had limited the documents that OCDA could share with Vega. In her own testimony, Judge Flynn-Peister denied this accusation, and the Court credited her denial.

76. In *People v. Henry Rodriguez*, the prosecution team directed by OCDA hid records specifically relevant to (a) the *Massiah* violation that had occurred, (b) the relationship between the informant and said prosecution team, and (c) the benefit to the informant’s own case that he received in consideration for his informant efforts directed at Rodriguez.

77. TRED records and various other inmate classification documents made clear that the informant, Michael Garrity, was acting at the behest of OCSD during his incarceration. As the Court of Appeal eventually found, OCSD “knew Rodriguez was confessing” to an informant

1 and “facilitated the relationship by allowing them to remain housed next to each other for  
2 months.”

3 78. The Court further found that one of the district attorneys “suspected *Massiah* was  
4 implicated,” but “did nothing to investigate the extent of [the informant’s] work as a CI while  
5 under OCSD’s supervision.” Because “[p]ortraying [the informant] as a morally upright inmate  
6 with a conscience who was just trying to do the right thing was of paramount importance to the  
7 prosecution,” OCDA refused to request records from OCSD that OCDA knew or strongly  
8 suspected would contradict that story.

9 **3. *The Informant Program Routinely Violates Arizona v.***  
10 ***Fulminante by Subjecting Inmates to Threats of Violence to***  
11 ***Elicit Information***

12 79. The constitutional abuses inherent in OCSD’s and OCDA’s Informant Program  
13 begin with *Massiah* violations, but they do not end there.

14 80. Many OCSD and OCDA informants are members of prominent criminal street  
15 gangs facing their own criminal charges for violent crimes. These informants routinely use  
16 intimidation, including threats of violence and death, in order to elicit information from target  
17 inmates.

18 81. *Greenlighting*. In one common ploy, called “greenlighting,” the informant  
19 explains to the target that the informant is a member of a well-known gang, and that the gang has  
20 “greenlit” the target, meaning the target is to be attacked, and possibly killed, on sight. The  
21 informant further explains that the target has been “greenlit” because of the target’s involvement  
22 in the crime for which he is suspected. The informant then warns that the “greenlight” will be  
23 rescinded if, and only if, the target confesses to his role in the crime.

24 82. OCSD and OCDA are and have at all relevant times been aware that informants  
25 routinely used such threats to elicit information, but have done nothing to stop this practice. By  
26 turning a blind eye to the threats made by their informants, and by continuing to use these

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1 informants to gather information, OCSD and OCDA facilitate, encourage, and benefit from the  
2 continued violation of inmates' constitutional rights.

3       83. *Defendants' illegal use of Raymond Cuevas and Jose Paredes in multiple*  
4 *criminal cases.* Raymond Cuevas and Jose Paredes are two informants whom OCSD and  
5 OCDA—as well as the LAPD and Los Angeles District Attorney's Office—have repeatedly  
6 used. Both have employed threats of violence to coerce confessions from suspects in Orange  
7 County and throughout Southern California.

8       84. Paredes previously held a leadership role in the Mexican Mafia within the Los  
9 Angeles jails, and ordered assaults and killings on its behalf. Cuevas was long-time member of a  
10 local street gang before turning full-time informant. On numerous occasions, OCSD placed  
11 Cuevas and/or Paredes in proximity to suspects from whom the OCSD wished to elicit  
12 confessions. Cuevas and/or Paredes then coerced confessions from suspects by threatening that  
13 the gangs had placed the targets on a green light list for execution, and then promising to have  
14 the suspect's names removed from the list if the suspect described his involvement in whatever  
15 crime purportedly had landed him on the list.

16       85. On information and belief, OCSD and OCDA knew that Cuevas and Paredes had  
17 employed threats of violence and murder while working in Orange County. Nevertheless, the  
18 agencies continued to use both men as informants, and continued to pay them generously for  
19 their work. During one 18-month period, law enforcement paid Cuevas and Paredes  
20 approximately \$150,000. Defendants also continued to provide them with other benefits,  
21 including gifts, nearly unheard of "perks," and, most importantly, letters supporting reduced  
22 sentences for past crimes.

23       86. In 2012, Cuevas and Paredes coerced a confession from Anthony Calabrese, a  
24 suspect in a drive-by shooting. Calabrese was placed in protective custody because law  
25 enforcement believed that the Mexican Mafia banned its associates from participating in drive-by  
26 shootings, and that Calabrese may have violated this ban. The OCSD suggested that Cuevas and  
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1 Paredes could mention to Calabrese that he had been green lit because of his presumed violation  
2 of the drive-by prohibition.

3 87. OCSD then placed Cuevas in protective custody as well, wearing a wire. He  
4 informed Calabrese that Calabrese was on a Mexican Mafia green light list because of his  
5 involvement in the drive-by, but that Cuevas could have Calabrese removed from the list if  
6 Calabrese admitted his role in the shooting. Paredes later made the same offer. Calabrese  
7 eventually confessed.

8 88. Cuevas employed a variation on the same approach in the case of Nuzzio  
9 Begaren, who OCDA believed had hired gang members to murder his wife. One of the alleged  
10 murderers-for-hire was Rudy Duran. Cuevas threatened Duran that if Duran did not testify about  
11 the events leading to the murder, the Mexican Mafia would order him killed and Cuevas would  
12 personally assault him.

13 89. OCSD recorded those threats. Duran later testified on behalf of the prosecution.  
14 The OCDA never turned over the recording of Cuevas' threats to Begaren's defense attorneys.  
15 And OCSD and OCDA continued to use Cuevas and Paredes as informants.

16 90. *Defendants' illegal use of Brian Ruorock in People v. Jose Derosas.* Brian  
17 Ruorock employed a similar green light scam in coercing a confession from Jose Derosas, who  
18 had been charged with attempted murder. The charge arose from a confrontation between Jose  
19 Derosas, his brother Oscar, and a man named David Montoya. When Montoya appeared to reach  
20 for something in his waistband, one of the Derosas allegedly shot Montoya in the chest. The  
21 Derosas were moved into Ruorock's section of the Orange County Jail shortly after their arrest in  
22 2011.

23 91. Ruorock, like Cuevas and Paredes, was a Mexican Mafia gang member. Like  
24 Cuevas and Paredes, he used his gang affiliation and threats of violence to coerce a confession  
25 from Jesus Derosas. He told Derosas that the Mexican Mafia believed that a child had been  
26 present at the Montoya shooting, a violation of gang rules for which Derosas could be killed.  
27 Derosas succumbed to the ploy, writing a letter to Ruorock in which he insisted that no child  
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1 witnessed the confrontation with Montoya. For OCSD, this confirmed that Derosas played a role  
2 in the shooting.

3 92. *Defendants' illegal use of Lance Wulff and Jeremy Bowles in People v. Derek*  
4 *Adams.* Yet another example arose in the case of Derek Adams. Adams was arrested on  
5 suspicion of murdering Gregory Heintz, who had ties to a white supremacist gang. OCSD  
6 placed two professional informants, Lance Wulff and Jeremy Bowles, who had their own white  
7 supremacist ties, in close proximity to Adams. Wulff and Bowles used the promise of protection  
8 from gang retribution to coerce a confession from Adams. Wulff told Adams that if Adams had  
9 shot Heintz for personal, rather than gang-related, reasons, Adams would be safe. Adams then  
10 confessed to his role in the crime.

11 93. The threats these informants made and continue to make are plain, they are  
12 explicit, and they are unconstitutional. Indeed, the green light scam bears a striking resemblance  
13 to the ploy used 25 years ago, in Arizona, by an informant named Anthony Sarivola. Sarivola  
14 befriended a fellow inmate, Oreste Fulminante, who was suspected of having killed his 11-year-  
15 old stepdaughter. Sarivola knew that other inmates were treating Fulminante poorly because he  
16 was accused of murdering a child. Sarivola promised Fulminante protection, but only if  
17 Fulminante would tell him about the murder. Fulminante then confessed that he had murdered  
18 his stepdaughter. The Supreme Court determined that, under these circumstances, Fulminante's  
19 confession was unconstitutionally coerced. The coercion violated his rights under the Fifth and  
20 Fourteenth Amendments because he had been presented with a "credible threat of physical  
21 violence."

22 **4. *The OCDA Has a Policy, Practice, and Custom of Withholding***  
23 ***Information Related to the Informant Program in Violation of***  
24 ***Brady v. Maryland and California Penal Code section 1054 et***  
25 ***seq.***

26 94. On information and belief, OCDA has a policy, practice, and custom of  
27 withholding information relating to its Informant Program from defense counsel, in violation of  
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1 its constitutional and statutory obligations. As discussed above, OCDA withheld enormous  
2 amounts of *Brady* material in the *Dekraai* matter. Both the Superior Court and Court of Appeal  
3 found that OCDA had violated its constitutional duties in that case.

4 95. *Dekraai* exposed the OCDA's cavalier attitude toward *Brady* and Penal Code  
5 section 1054. The testimony of Deputy District Attorney Peterson, for example, made clear that  
6 he simply withheld evidence whenever it advantaged him to do so. His only explanation for his  
7 repeated failures to comply with the law was that, after *fifteen years* as an Orange County  
8 District Attorney, his understanding of *Brady* was still "evolving."

9 96. OCDA intentionally withheld information regarding Perez from Dekraai's  
10 defense counsel. For example, OCDA Investigator Bob Erickson wrote a memorandum to  
11 Deputy District Attorney Erik Peterson detailing the useful information unconstitutionally  
12 elicited from Dekraai and presenting it as "consideration" in Petersen's sentencing requests for  
13 Perez. Erickson wrote "I respectfully request that you keep [Perez's] name, as it relates to the  
14 *Dekraai* case, confidential. Nothing about [the informant] or his statements regarding the  
15 *Dekraai* case have been discovered to the defense." OCDA withheld this memo from the  
16 defense for nearly two years, and disclosed it only when the court ordered it to do so.

17 97. Deputy District Attorney Wagner authored a memo to others within OCDA's  
18 office stating: "Before deciding if/when/how to disclose Fernando's identity to the *Dekraai*  
19 defense lawyers, we are going to need to talk to the prosecutor(s) on Fernando's other cases and  
20 analyze several things," including the prospect of not calling Perez as a witness in the other cases  
21 in which he had gathered information from defendants, to bolster his credibility in Dekraai's  
22 case. When OCDA did eventually disclose Perez's identity, it withheld notes in Perez's file  
23 cautioning that Perez should not be used as an informant because he had proven to be  
24 untrustworthy.

25 98. OCDA did not just fail to turn over information regarding Perez; it actively  
26 resisted discovery requests from Dekraai's attorney, Scott Sanders. Sanders first requested  
27 discovery relating to Perez on October 15, 2012. The OCDA denied this request on the basis  
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1 that discovery was inappropriate because it intended to introduce only the recordings of Perez's  
2 conversations with Dekraai, not to call Perez as a witness. Only after the court granted a defense  
3 motion and ordered OCDA to disclose records relating to Perez did the office reveal what it had  
4 been fighting so hard to keep hidden.

5 99. Over the next eight months, the OCDA produced several thousand pages of  
6 documents and audio and video files, much of which the government should have disclosed  
7 earlier to defense counsel, pursuant to *Brady*. Even today, there remains a gap in the Special  
8 Handling Log of approximately 5 ½ consecutive months. The timing of this gap covers the  
9 period immediately prior to Perez's contacts with Dekraai.

10 100. It is perhaps unsurprising that, in every one of the examples of *Massiah* and  
11 *Fulminante* violations discussed above, the OCDA also failed to abide by *Brady* and Penal Code  
12 Section 1054, as they failed to do in *Dekraai*. For example, in *People v. Nuzzio Begaren*, there  
13 was significant evidence that longtime informant Raymond Cuevas unconstitutionally coerced a  
14 witness to testify against Begaren by threatening him with violence. The OCDA never turned  
15 over to Begaren a tape that conclusively showed that Cuevas threatened to kill the witness,  
16 Duran. That tape *also* memorialized Cuevas and Duran's discussions about murdering another  
17 witness whom Cuevas deemed a "rat." The long-time OCDA Senior Deputy who withheld this  
18 evidence told a reporter that the information was not discoverable because it was "redundant."

19 101. Although the prosecutor later conceded that the information should have been  
20 produced pursuant to Penal Code section 1054.1, both he and Deputy District Attorney Wagner  
21 continued to insist that this evidence was not *Brady* material. In other words, two senior  
22 members of OCDA claimed that evidence showing (a) a potential *Massiah* violation; (b) a  
23 potential *Fulminante* violation; and (c) that the witness who testified against Begaren was  
24 planning to kill another man, was somehow not required to be produced.

25 102. OCDA's routine flouting of its statutory and constitutional obligations is not  
26 limited to the cases discussed above. In *People v. Joseph Govey*, the OCDA resisted turning  
27 over impeachment information related to the informant in the case and then, on the final day for  
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1 discovery compliance ordered by the court, dismissed the most serious charges against Govey.  
2 Two days later, rather than produce information that would impeach an OCDA informant and  
3 shed further light on the Informant Program, the OCDA dismissed the entire case. In the case  
4 against Govey's co-defendant, *People v. Shirley Williams*, OCDA withheld the same  
5 information. After Williams filed a habeas petition, OCDA vacated Williams' gang  
6 enhancement conviction, allowing her to be released from prison.

7 103. In *People v. Eric Ortiz*, the defense moved for a new trial based upon the failure  
8 of the prosecution to disclose information related to a key informant. The court held a hearing to  
9 determine if the withheld information would be relevant to a *Massiah* claim. A number of SHU  
10 deputies refused to testify, instead invoking their Fifth Amendment rights. The court vacated  
11 Ortiz's conviction.

12 104. Perhaps most shocking is the case of 14-year-old Luis Vega. In 2009, Santa Ana  
13 police arrested Vega, along with a man named Alvaro Sanchez, for attempted murder.  
14 Eyewitnesses told police that Vega was a member of the Delhi street gang and had been in the  
15 car with the shooter. Although police had no record of Vega being associated with the Delhi  
16 gang, and although Vega had an alibi for the time of the shooting, Vega was arrested and held on  
17 a \$1,000,000 bond.

18 105. Shortly after Vega's arrest, two of the OCSD's professional informants  
19 independently informed police, in written statements, that Vega was innocent. Professional  
20 informant Juan Calderon told prosecutors both that Vega was innocent, and that Alvaro Sanchez  
21 had participated in the shooting. Oscar Moriel was, as discussed above, one of Orange County's  
22 most prolific informants. He, too, told law enforcement officials that Sanchez had confessed to  
23 the crime *and* had admitted that Vega was not present. Prosecutors reacted by giving Sanchez a  
24 deal—16 years in prison instead of a potential life sentence—while hiding the exculpatory  
25 information from Vega's defense counsel. Luis Vega, an innocent child, languished in jail for  
26 *two years* before OCDA finally dropped the charges against him, all because they wanted to hide  
27 the existence of the illegal Informant Program. Indeed, OCDA never acknowledged that they  
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1 buried the information that could have freed him; Scott Sanders uncovered it during the *Dekraai*  
2 proceedings.

3 106. These are only examples. OCDA had, and, on information and belief, still has, a  
4 policy, practice, and custom of not obtaining informant-related *Brady* material from the OCSD,  
5 including but not limited to failing to investigate or otherwise confirm whether OCSD has  
6 handed over all possible *Brady* evidence.

7 107. The OCDA's failure to disclose the *Brady* evidence discussed above also violates  
8 California Penal Code Section 1054.1, which requires OCDA prosecutors to disclose, without a  
9 request from defense counsel, "[r]elevant written or recorded statements of witnesses" (among  
10 other things). The OCDA also has a policy, practice, and custom of withholding evidence long  
11 past the 30 days before trial when California law requires such evidence be disclosed. *See*  
12 California Penal Code Section 1054.7. Therefore, its policy, practice, and custom of failing to  
13 turn over information related to the Informant Program at all violates Sections 1054.1 and 1054.7  
14 in all the same cases.

15 **B. The OCDA and OCSD's Words and Actions Establish that They Have Not**  
16 **Implemented Necessary Reforms and Are Not Planning To Do So**

17 108. In addition to hiding the Informant Program from defense counsel, OCDA and  
18 OCSD have gone to great lengths to convince the public and the courts that there is no Informant  
19 Program; that the few informants the agencies have worked with always operated within the  
20 confines of the law; and that OCDA attorneys at all times properly disclosed information about  
21 these informants. None of this is true.

22 109. When the Informant Program and its built-in constitutional abuses first came to  
23 light in *Dekraai*, the OCSD and OCDA did not acknowledge any error. Instead, the agencies  
24 began a multi-year fight to keep the Informant Program intact, a fight in which OCSD and  
25 OCDA repeatedly, and knowingly, misled the court, the public, and defense counsel.

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1           110. In *Dekraai*, multiple OCSD officers testified, falsely and under oath, that there is  
2 no Informant Program in the Orange County jails and that there are no records of informant  
3 movements or other documentation relating to informant activity.

4           111. Special Handling Deputies denied, under oath, that an Informant Program exists  
5 in the jails. Asked why an informant had been moved near Dekraai, they blamed nursing staff or  
6 pled ignorance, and denied there was any way to refresh their memories of why various inmate  
7 movements had been made. Deputy Grover testified that the time he spent working with  
8 informants was “less than zero.”

9           112. After TRED records finally were revealed over the OCSD and OCDA’s  
10 vociferous objections, the OCSD officers were forced to change their tune. Deputy Grover  
11 testified in 2015 that he was instructed not to mention TREDs from “day one in training in  
12 classification and Special Handling.” Deputy Bieker, another SHU deputy, testified that he had  
13 been instructed to hide the existence of the TREDs: “My understanding of the TRED was that  
14 they weren’t allowed in court for whatever reason.”

15           113. Incredibly, OCSD Deputy Garcia admitted in 2015 that he had reviewed TRED  
16 records prior to his initial testimony and then *testified that no such records existed*. His  
17 explanation? “[T]hat’s the way we were trained.”

18           114. Garcia confessed that, at a meeting with OCDA, his “superiors [at OCSD]  
19 instructed him to keep TRED records confidential.” OCSD officers also admitted that TRED  
20 was, in fact, used to track informant and inmate movement and contained other notes regarding  
21 various informants.

22           115. OCDA failed to be forthcoming in *Dekraai* and has repeatedly, and falsely,  
23 publicly argued, in court and otherwise, that it had no knowledge of or control over the OCSD’s  
24 unconstitutional use of informants.

25           116. With regard to OCDA, the *Dekraai* trial court concluded that “the People’s failure  
26 to provide the defense with any information whatsoever for nearly two years concerning the  
27 existence of the computerized TRED housing records maintained within the Orange County Jail,  
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1 despite repeated orders from this court to produce just such records, constitutes a serious  
2 discovery violation.”

3 117. The trial court ultimately disqualified the entire OCDA because the office could  
4 not be trusted to ensure that OCSD would provide all required evidence. The Court of Appeal  
5 upheld the trial court’s decision, ruling that, among other things, the “OCDA’s loyalty to the  
6 OCSD interfered with its ability to discharge its constitutional and statutory obligations . . .  
7 Contrary to the Attorney General’s<sup>3</sup> attempts to lay all the blame on the OCSD, the OCDA was  
8 complicit in the wrongdoing—DAs Wagner and Simmons knew Perez questioned Dekraai, who  
9 was represented by counsel, and then obtained OCSD approval to place a recording device in  
10 Dekraai’s cell for Perez to obtain additional statements.”

11 118. The Court of Appeal added: “Based on the extensive misconduct in the record,  
12 we disagree with the Attorney General that it is ‘sheer speculation that law enforcement officials  
13 will continue to conceal information’ when the OCDA has failed to and continues to fail to  
14 properly supervise OCSD.” The Court concluded, “[t]he magnitude of the systemic problems  
15 cannot be overlooked.”

16 119. In the face of revelations that their offices orchestrated, condoned, and shielded  
17 from scrutiny an Informant Program that spawned innumerable constitutional violations, the  
18 OCDA and the OCSD continue to insist that they have done nothing wrong. Indeed, both  
19 agencies have gone to great lengths to mislead the courts, and the citizens of Orange County, into  
20 believing that there is no systematized Informant Program and that any constitutional violations  
21 were rare and merely the result of “good faith” mistakes.

22 120. For example, Defendant/Respondent Hutchens has said the issue is merely one of  
23 “semantics” and that “there is no program, per se. There is activity.” Contrary to these attempts  
24 to place blame on a few rogue deputies, staff throughout the chain of command knew about the  
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27 <sup>3</sup> Because the entire OCDA had been recused, the California Attorney General took over the case on appeal.

1 Informant Program. As documented in the 2009 letter to Assistant Sheriff James, discussed  
2 above, knowledge of the program pervaded the Department's ranks.

3 121. In the words of the trial court in *Dekraai*: "The sheriff can say what she wants,  
4 she can ignore the facts, if she thinks that's politically beneficial," but "[w]e know what  
5 happened. The debate over what has been going on in the jails is over."

6 122. After the OCDA was finally forced to turn over the TRED records in *Dekraai*,  
7 Tony Rackauckas and others in his office proclaimed publicly, and falsely, that the OCDA had  
8 no knowledge of the existence of these records. Asked about the lengthy history of the  
9 Informant Program in an interview with 60 Minutes in 2017, Rackauckas insisted, "It's simply  
10 not the case," and flatly stated that, directly contrary to the findings of California courts in  
11 multiple cases,<sup>4</sup> his "office did not withhold evidence; we have not withheld any evidence."

12 123. More recently, Rackauckas insinuated that his office was disqualified from the  
13 *Dekraai* case because Judge Goethals' son was denied a position at the OCDA, not as a result of  
14 any misconduct by the Office, and that the Court of Appeals upheld the Judge's decision only  
15 because of their social connections.

16 124. These are not the words of agencies that intend to change their ways. On  
17 information and belief, neither the OCDA nor the OCSD has taken, or intends to take, the steps  
18 necessary to stop the ongoing constitutional violations detailed above, which have become part  
19 and parcel of the way in which crimes are investigated and prosecuted in Orange County.

20 125. For the past thirty years, the OCDA and OCSD have concealed a complex  
21 Informant Program that intentionally and routinely violates criminal defendants' rights. As the  
22 Court of Appeal found, the agencies' problems are "systemic" and "cannot be overlooked." The  
23 Court of Appeal rightly rejected the argument that it is "sheer speculation that law enforcement  
24 officials will continue to conceal information." Given the systemic abuses detailed herein, it is a  
25 near certainty.

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26 <sup>4</sup> For example, and as discussed above, the California Court of Appeal in both *Rodriguez* and *Dekraai* found that the  
27 OCDA intentionally withheld *Brady* information.

1 **First Cause of Action**

2 **(42 U.S.C. Section 1983; Violation of the 5th & 14th Amendments'**

3 **Due Process Guarantee of *Brady* Evidence)**

4 *By Plaintiffs/Petitioners P.E.O.P.L.E. and Webb*

5 126. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
6 above as if fully set forth herein.

7 127. The Due Process Clause of the United States Constitution requires prosecutors to  
8 produce to criminal defendants all favorable, material evidence.

9 128. Defendants/Respondents, however, have a policy, practice, and custom of  
10 suppressing evidence that is material and favorable to the defense, including evidence contained  
11 in multiple databases of information related to informants.

12 129. Defendants/Respondents implement this policy, practice, and custom by failing to  
13 conduct basic inquiries into the existence of favorable evidence and/or by hiding the evidence  
14 that is material and favorable to the defense of which they have knowledge.

15 130. Defendants'/Respondents' unconstitutional policy, practice, and custom directly  
16 and proximately caused systemic violations of the 5th and 14th Amendments. As a result,  
17 Plaintiffs/Petitioners P.E.O.P.L.E. and Webb have suffered ongoing injuries necessitating relief.

18 **Second Cause of Action**

19 **(Violation of California Constitution Article 1, Section 7)**

20 *By Plaintiffs/Petitioners P.E.O.P.L.E. and Webb*

21 131. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
22 above as if fully set forth herein.

23 132. Article 1, Section 7 of the California Constitution guarantees the right to due  
24 process of law, including the right to receive favorable, material evidence.

25 133. In spite of these clear constitutional mandates, Defendants/Respondents routinely  
26 fail to obtain from law enforcement agencies and disclose to criminal defendants evidence that is  
27 favorable to the defense.





1 Defendants/Respondents also have systematically failed to produce evidence within the statutory  
2 time limits prescribed in the Penal Code.

3 140. Defendants'/Respondents' policy, practice, and custom directly and proximately  
4 caused systematic violations of California Penal Code 1054 et seq. As a result,  
5 Plaintiffs/Petitioners have suffered ongoing injuries necessitating relief.

6 **Fourth Cause of Action**

7 **(42 U.S.C. Section 1983; Violation of the 6th and 14th Amendments'**

8 **Guarantee of the Right to an Attorney)**

9 *By Plaintiffs P.E.O.P.L.E. and Webb*

10 141. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
11 above as if fully set forth herein.

12 142. The 6th and 14th Amendments to the U.S. Constitution prohibit the elicitation of  
13 incriminating information from criminal defendants after their right to an attorney has attached,  
14 including interrogation by informants working at the behest of the government.

15 143. In spite of these clear constitutional mandates, as detailed above, the OCDA and  
16 OCSD have a policy, practice, and custom of using jailhouse informants to elicit incriminating  
17 information from individuals after their right to an attorney has attached.

18 144. Defendants'/Respondents' unconstitutional policy, practice, and custom directly  
19 and proximately caused systematic violations of the 6th and 14th Amendments. As a result,  
20 Plaintiffs/Petitioners P.E.O.P.L.E. and Webb have suffered ongoing injuries necessitating relief.

21 **Fifth Cause of Action**

22 **(Violation of California Constitution Article 1, Section 15)**

23 *By Plaintiffs/Petitioners P.E.O.P.L.E. and Webb*

24 145. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
25 above as if fully set forth herein.

26 146. Article 1, Section 15 of the California Constitution guarantees the right to an  
27 attorney and prohibits the elicitation of incriminating information from criminal defendants after  
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1 their right to an attorney has attached. This provision also bars interrogation by informants  
2 working at the behest of the government.

3 147. In spite of these clear constitutional mandates, as detailed above, the OCDA and  
4 OCSD have a policy, practice, and custom of using jailhouse informants to elicit incriminating  
5 information from individuals after their right to an attorney has attached.

6 148. Defendants'/Respondents' unconstitutional policy, practice, and custom directly  
7 and proximately caused the violations of Article 1, Section 5 of the California Constitution. As a  
8 result, Plaintiffs/Petitioners P.E.O.P.L.E. and Webb have suffered ongoing injuries necessitating  
9 relief.

10 **Sixth Cause of Action**

11 **(Writ of Mandate; Violation of California Penal Code Section 4001.1(B))**

12 *By All Plaintiffs/Petitioners*

13 149. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
14 above as if fully set forth herein.

15 150. California Penal Code Section 4001.1(b) mandates that "No law enforcement  
16 agency and no in-custody informant acting as an agent for the agency, may take some action,  
17 beyond merely listening to statements of a criminal defendant, which is deliberately designed to  
18 elicit incriminating remarks."

19 151. In spite of this clear statutory mandate, as detailed above, the OCDA and OCSD  
20 have a policy, practice, and custom of using jailhouse informants to elicit incriminating  
21 information from individuals after their right to an attorney has attached.

22 152. Defendants'/Respondents' policy, practice, and custom directly and proximately  
23 caused the violations of California Penal Code Section 4001.1(b). As a result,  
24 Plaintiffs/Petitioners have suffered ongoing injuries necessitating relief.

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1 **Seventh Cause of Action**

2 **(42 U.S.C. Section 1983; Violation of the 5th and 14th Amendments'**

3 **Guarantee of Freedom from Coercive Interrogation)**

4 *By Plaintiffs/Petitioners P.E.O.P.L.E. and Webb*

5 153. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
6 above as if fully set forth herein.

7 154. The 5th and 14th Amendments to the U.S. Constitution prohibit the use of  
8 coercive methods to interrogate suspects and criminal defendants, including interrogations by  
9 informants working at the behest of the government.

10 155. Defendants/Respondents know that informants in their employ have a custom of  
11 using coercive interrogation methods to elicit incriminating information from suspects and  
12 criminal defendants. These threats have included suggestions that an informant will not provide  
13 protection from harm or death by gang members unless the suspect confesses.  
14 Defendants/Respondents have a policy, practice, and custom of approving of the informants' use  
15 of threats to elicit confessions.

16 156. Defendants'/Respondents' unconstitutional policy, practice, and custom directly  
17 and proximately caused the violations of the 5th and 14th Amendments. As a result,  
18 Plaintiffs/Petitioners P.E.O.P.L.E. and Webb have suffered ongoing injuries necessitating relief.

19 **Eighth Cause of Action**

20 **(Violation of California Constitution Article 1, Section 7)**

21 *By Plaintiffs/Petitioners P.E.O.P.L.E. and Webb*

22 157. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
23 above as if fully set forth herein.

24 158. Article 1, Section 7 of the California Constitution guarantees the right to due  
25 process of law and prohibits the use of coercive methods to interrogate suspects and criminal  
26 defendants, including interrogations by informants working at the behest of the government.

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1 159. Informants repeatedly use coercive interrogation methods to elicit incriminating  
 2 information from suspects and criminal defendants at the behest of and/or with the knowledge  
 3 and approval of the Defendants/Respondents. These threats have included suggestions that an  
 4 informant will not provide protection from harm or death by gang members unless the suspect  
 5 confesses.

6 160. Defendants'/Respondents' unconstitutional policy, practice, and custom directly  
 7 and proximately caused the violations of Article 1, Section 7 of the California Constitution. As a  
 8 result, Plaintiffs/Petitioners have suffered ongoing injuries necessitating relief.

9 **Ninth Cause of Action**

10 **(Taxpayer Action Under California Code of Civil Procedure  
 11 Section 526a to Prevent Illegal Expenditure of Funds)**

12 *By Plaintiffs/Petitioners P.E.O.P.L.E. and Webb*

13 161. Plaintiffs/Petitioners re-allege and incorporate by reference each of the allegations  
 14 above as if fully set forth herein.

15 162. Defendants/Respondents are illegally expending public funds by performing their  
 16 duties in violation of the constitutional and statutory provisions described above.

17 **Prayer for Relief**

18 Plaintiffs/Petitioners respectfully request that this Court grant the following relief:

19 A. A declaration that Defendants'/Respondents' policies, practices, or customs detailed  
 20 above violate the right to counsel as guaranteed by the U.S. Constitution and California  
 21 Constitution by using informants to elicit incriminating information from criminal  
 22 defendants after their right to counsel has attached.

23 B. A declaration that Defendants'/Respondents' policies, practices, or customs detailed  
 24 above violate the Due Process Clause of the 5th and 14th Amendments to the U.S.  
 25 Constitution and the California Constitution by using informants to coerce statements  
 26 from defendants.

- 1 C. A declaration that Defendants'/Respondents' policies, practices, or customs detailed  
2 above violate the Due Process Clause of the 5th and 14th Amendments to the U.S.  
3 Constitution, the California Constitution, and California state law by failing to disclose  
4 exculpatory and impeachment evidence related to informants.
- 5 D. A writ of mandate ordering Defendants/Respondents to comply with the discovery  
6 mandates of Penal Code Section 1054.1 et seq., including, but not limited to, disclosure  
7 of evidence favorable to the defense, disclosure of statements by witnesses who will  
8 testify at trial and by defendants in criminal cases, and compliance with the statutory  
9 discovery deadlines.
- 10 E. A writ of mandate ordering Defendants/Respondents to comply with California Penal  
11 Code Section 4001.1(b), prohibiting the use of informants to elicit incriminating  
12 information from criminal defendants after their right to counsel has attached.
- 13 F. A permanent injunction enjoining Defendants/Respondents from failing to comply with  
14 their discovery obligations under the U.S. Constitution and California Constitution to  
15 disclose exculpatory and impeachment evidence.
- 16 G. A permanent injunction enjoining Defendants/Respondents from using informants to  
17 elicit incriminating information from criminal defendants after their right to counsel has  
18 attached.
- 19 H. A permanent injunction enjoining Defendants/Respondents from coercing information  
20 from individuals in their custody by implicit or explicit threats of violence, including  
21 through the use of informants.
- 22 I. A permanent injunction requiring that if the OCDA intends to use at a criminal  
23 defendant's trial the testimony of a person to whom the defendant made a statement  
24 against the defendant's interest while the person was imprisoned or confined in the same  
25 correctional facility as the defendant (for purposes of this proposed remedy,  
26 "Informant"), the state shall disclose to the criminal defendant any information in the  
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1 possession, custody, or control of the state that is relevant to the Informant's credibility,  
2 including:

- 3 a. the Informant's complete criminal history, including any charges that were  
4 dismissed or reduced as part of a plea bargain, and all known information about  
5 all cases currently pending against the Informant or cases for which the Informant  
6 is currently jailed or confined;
- 7 b. any grant, promise, or offer of immunity from prosecution, reduction of sentence,  
8 or other leniency or special treatment, given by the state in exchange for the  
9 Informant's testimony;
- 10 c. information concerning other criminal cases in which the Informant has testified,  
11 or offered to testify, against a defendant with whom the Informant was  
12 imprisoned or confined, including any grant, promise, or offer given by the state  
13 in exchange for the testimony;
- 14 d. a summary of the Informant's likely testimony or, where available, a copy of the  
15 record or transcript made of any sworn proffers or statements; and
- 16 e. a copy of the Informant's jail records, including cell movements.

17 J. A permanent injunction requiring the OCDA to create, maintain, and preserve for  
18 disclosure (as relevant) to all criminal defendants whose cases involve an informant a  
19 database containing information sufficient to remedy the deficiencies outlined above,  
20 including but not limited to information described in subsections (a) through (c) above,  
21 and drawing from information gathered from OCSD and other law enforcement  
22 partners.

23 K. A permanent injunction requiring Defendants/Respondents to (a) identify individuals in  
24 whose cases informant(s) testified, provided information, or otherwise were used based  
25 on information contained in TRED, OCII, the Special Handling Log, and any other  
26 relevant sources of information, (b) notify those individuals that they may have claims for  
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1           habeas relief and should seek the advice of an attorney, and (c) provide all relevant  
2           evidence to those individuals.

3 L.       Appoint a monitor to assure compliance with the injunctive relief set forth above.

4 M.       Costs and attorneys' fees pursuant to CCP §1021, 42 USC § 1988, and any other  
5           applicable law.

6 N.       All other relief the Court deems just and proper.

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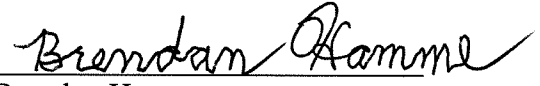
Respectfully submitted,

DATED: April 4, 2018

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AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
SOMIL TRIVEDI (*pro hac vice* application forthcoming)

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