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17 PAUL GARY WALLACE

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 THE UNITED STATES OF AMERICA,
21 Plaintiff,
22 vs.
23 PAUL GARY WALLACE, et. al.,
24 Defendant.

25 CASE NO.: CR 20-293-AB-1
26 **DEFENDANT WALLACE'S**
27 **MOTION TO CONTINUE JURY**
28 **TRIAL DUE TO UNTIMELY**
DISCLOSURE OF
BRADY/GIGLIO EVIDENCE RE
FBI CASE AGENT AND
INFORMANT WITNESSES

29 PLEASE TAKE NOTICE that on March 11, 2022, Defendant, Paul Gary
30 Wallace, by and through counsel Shaun Khojayan and Amy E. Jacks, will move
31 this Court for an order continuing the jury trial in this matter from March 15,
32 2022 to May 17, 2022 because of the government's untimely disclosure of
33 *Brady/Giglio* evidence regarding its primary case agent and at least three of its
34 cooperating informant witnesses.

1 Concurrently, Mr. Wallace moves for an Order Shortening Time, so that
2 this motion may be heard on March 11, 2022 before the commencement of trial
3 currently scheduled for Tuesday, March 15, 2022.

4 Defendant’s motion is based on the attached memorandum, the files,
5 records and transcripts in this case, and such further evidence and argument as the
6 Court may permit at a hearing on this matter.

7
8 DATED: March 9, 2022 Respectfully submitted,

9
10 /s/ Amy E. Jacks
11 AMY E. JACKS
12 Attorney for Defendant
13 PAUL GARY WALLACE

14 /s/ Shaun Khojayan
15 Shaun Khojayan
16 Attorney for Defendant
17 PAUL GARY WALLACE
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 A grand jury returned an indictment against defendant Paul Gary Wallace on
4 July 16, 2020, charging Mr. Wallace with Count 1, conspiracy to commit
5 racketeering in violation of 18 U.S.C. § 1962(d) and Count 2, aiding and abetting
6 the use of a firearm during a crime of violence (murder) resulting in death in
7 violation of 18 U.S.C. §§ 924(c)(1)(A)(ii), (iii), (j)(1), 2(a). The allegations
8 against Mr. Wallace are based on his alleged participation in the East Coast Crips
9 (“ECC”), a South Los Angeles street gang, for a period of over 50 years, dating
10 back to the “late 1970s” (See Doc. 1 Indictment ¶ 2).

11 Mr. Wallace was arraigned on the indictment on July 22, 2020. Trial was
12 originally scheduled for September 15, 2020. Trial was continued until May 18,
13 2021 (Doc. 24). And then again until January 18, 2022. Because of the
14 coronavirus pandemic, the Court was unable to begin the trial on January 18,
15 2022 and continued the trial until January 25, 2022. The pandemic caused the
16 United States District Court to stop summoning jurors in January 2022 and trial
17 was continued by the Court until March 15, 2022.

18 During the pendency of these proceedings Mr. Wallace moved at least four
19 times for the Court to order the government to represent that it has met its
20 *Brady/Giglio* obligations and to produce *Brady/Giglio* information in a timely
21 matter. (Docs. 48, 60, 89, and 105). The government steadily represented that it
22 was aware of and in compliance with their affirmative duty to seek out and
23 disclose this information. As it turns out, the government’s assurances were false
24 and misleading.

25
26 Mr. Wallace and his defense team have done their best to ferret out important
27 *Brady/Giglio* information independent of government disclosures. And, they
28 have found significant *Brady/Giglio* material that the government has still not

1 produced on its own accord. But they were not aware of or prepared to confront
2 the government disclosures made in the last 24 hours (5-6 days before the
3 scheduled start of trial).

4 On March 8, 2022, at 9:17 pm, after the final pre-trial conference the same day
5 at 11:00 am, the government emailed defense counsel about some disturbing
6 information about its primary case agent (name redacted out of courtesy, redacted
7 email and Mr. Wallace's response are attached as Exhibit 1, which also disclosed
8 less serious, but concerning, misconduct by two of the LAPD Detectives involved
9 in this case investigation):

10 In approximately July 2015, Agent [name redacted] contacted members of the
11 Los Angeles District Attorney's Office regarding the murder prosecution of an
12 individual who had previously been a cooperating informant ("CI") [whose
13 identity was not disclosed but in the past few hours has been identified as an
14 MS-13 gang member who has since been convicted for the kidnapping, rape,
15 and murder of a 13 year old girl and possibly another murder] for Agent [name
16 redacted], but who had since been closed as a CI. Generally, Agent [name
17 redacted] communicated to members of the District Attorney's Office his
18 belief that the former CI was innocent and had been wrongly charged for the
19 crime, which involved the kidnapping, rape, and murder of a young victim.
20 Agent [name redacted] also spoke with and provided assistance to the defense
21 attorney for the former CI [after being specifically told not to do that by FBI
22 counsel, but that was not contained in the initial disclosure]. Finally, Agent
23 [name redacted], using his own personal funds, provided the former CI with
24 approximately \$400 on the CI's jail commissary account over approximately
25 10 years while the former CI was incarcerated.

26 As a result of this conduct, the FBI determined that Agent [name redacted]
27 engaged in misconduct when he misused his position by improperly
28 intervening in the prosecution of an inactive CI, namely, when he argued for
the dismissal of murder charges against the former CI. The FBI also
determined it to have been misconduct when Agent [name redacted] attempted
to undermine the state's prosecution by providing assistance to the CI's
defense attorney. Finally, it was found that Agent [name redacted]'s provision
of his own personal funds to the former CI constituted an improper financial
relationship with the former CI while he/she was incarcerated.

1 In subsequent disclosures today, the government has provided information that
2 Agent [name redacted] did not act alone, but in concert with three other FBI
3 agents, who were also determined by the DOJ OIG to have committed misconduct
4 in reference to the CI. This information was not initially disclosed by the
5 government, but in discussions with defense counsel today, the government
6 produced it. The date of DOJ's report of investigation of SA [name redacted]'s
7 misconduct is dated May 19, 2020, approximately two months before Mr.
8 Wallace's indictment in this case and during the pendency of the case
9 investigation.

10 As the Court may recall, Agent [name redacted] was specifically discussed at
11 the final pre-trial conference as the witness who would be, over defense objection,
12 putting the government's spin on the BOP calls made by Mr. Wallace. What may
13 be unknown to the Court is that Agent [name redacted] has acted as the
14 government's primary case agent during the investigation of this case. And, when
15 the government's cooperating informants, who provided "information" about Mr.
16 Wallace to avoid the consequences of their own criminal conduct (for CW-1 a
17 felon in possession of a firearm and for CW-2 pimping his minor granddaughter
18 while acting as a government informant), kept violating the provisions of their
19 pretrial release (CW-1) and supervised release (CW-2), the government arranged
20 to have their pretrial supervision and supervised release transferred to Agent
21 [name redacted] and his partner.¹

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¹ This raises the additional concern as to whether and, if so, when, the government or SA [name redacted] informed United States District Court judges overseeing CW-1's (Judge Kronstadt) and CW-2's (Judge Fischer) cases of the misconduct of Agent [name redacted] with a former CI before obtaining the Court's permission to have Agent [name redacted] and/or his partner conduct the pretrial supervision (CW-1) or post-conviction supervised release (CW-2) of the government's cooperating witnesses in this case.

1 The government's disclosures are clearly the tip of the iceberg when it comes
2 to Agent [name redacted] and obviously require additional discovery and
3 investigation to determine the full scope of the misconduct and whether and how
4 it may have impacted the investigation of this case, the expected testimony of
5 CW-1 and CW-2, and the governmental benefits each expects to receive as the
6 result of their "cooperation."

7 As if that is not enough, the government made an additional disclosure tonight
8 at 7:26 pm: a partial police report that CW-4, the alleged eyewitness to the
9 charged homicide of R.P. in 2003, committed a rape, rape with a foreign object,
10 and forcible oral copulation of a young female on October 26, 2019.² After the
11 female reported the incident LAPD officers were able to get evidence of the
12 victim being lured into CW-4's truck, CW-4's truck entering a motel parking lot
13 with the victim, and CW-4 obtaining a room with false identification where he
14 committed some of the sex offenses on the victim. A CODIS DNA hit confirmed
15 CW-4 was the perpetrator of the sex offenses and he was arrested in March 2020.
16 Per the partial report, CW-4 was interrogated and made repeated false statements
17 to law enforcement about his conduct (the audio and video recordings have not
18 been produced). As far as defense counsel can determine this evening, a case has
19 not been filed on CW-4.³ Interestingly, CW-4 was first interviewed by SA [name
20 redacted] in regards to this case on October 28, 2019 and again on January 9,
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24 ² The government had previously disclosed an arrest of CW-4 by Burbank PD for child
25 annoyance on a 16 year old minor female on March 18, 2019. The minor's report of CW-4's
26 behavior is eerily similar to the account the rape victim provided months later in October 2019.
27 The Burbank arrest was settled for a misdemeanor disturbing the peace (PC 415) on May 13,
28 2021, after contact between the USAO and the Burbank City Attorney. To date, contacts
between SA [name redacted] and the Burbank City Attorney and/or the Burbank Police
Department, if any, have not been disclosed.

³ The LAPD arresting officers noted the fact of the March 18, 2019 Burbank PD arrest and the
striking similarities to the October felony sex offenses.

1 2020, when he was told that he was going to be a witness in this case. Contacts
2 between SA [name redacted] and the Los Angeles County District Attorney's
3 Office and/or the LAPD, if any, have not been disclosed.

4 Thus, SA [name redacted] has had substantial contact with CW-1, CW-2, and
5 CW-4 during the investigation and prosecution of this case and currently oversees
6 (with the assistance of his partner) the pretrial release of CW-1 and supervised
7 release of CW-2. SA [name redacted]'s recently disclosed misconduct regarding
8 a confidential informant and involving other sworn law enforcement officers is
9 the type of information that Mr. Wallace's defense team has a duty to thoroughly
10 investigate prior to the start of trial if they are to provide competent and effective
11 representation at trial. Not only does Mr. Wallace need more complete
12 disclosures from the government about SA [name redacted]'s misconduct and
13 interactions with CW-1, CW-2, and CW-4 in this case, but he needs time to
14 conduct an independent investigation into the facts and circumstance of the
15 disclosed misconduct. The type of investigation that needs to be done cannot be
16 performed in the five days before trial commences or during trial. Depending on
17 the results of such an investigation, the misconduct of SA [name redacted] could
18 impact the defense strategy at trial, defense voir dire, the opening statement, and
19 the cross-examination of SA [name redacted] if he is called as a witness, further
20 investigation of CW-1, CW-2, and CW-4, and the cross-examination of CW-1,
21 CW-2, and CW-4.
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23 Additionally, further discovery and investigation is needed into CW-4's felony
24 sex offenses, his post-arrest lies to law enforcement, the reasons for the lack of
25 felony case filing by the Los Angeles County District Attorney's Office, and the
26 reasons for the favorable disposition of his Burbank child annoyance case for an
27 offense that does not require him to register as a sex offender. Again, the type of
28 investigation that must be done to provide competent and effective representation

1 of Mr. Wallace at trial cannot be conducted in the five days before trial or during
2 trial and the results of such an investigation can potentially impact the defense
3 strategy for the entire trial, from voir dire, to opening statement, to witness cross-
4 examination.

5 Mr. Wallace has filed numerous pleadings outlining the government's
6 *Brady/Giglio* obligations and the disclosure policies outlined in the United States
7 Attorney's Manual. In summary, the Due Process Clause of the Fifth
8 Amendment of the United States Constitution requires the prosecution to disclose
9 all evidence that favors the defendant which is material to the issue of guilt or
10 which could impeach the testimony of any witness. *Brady v. Maryland*, 373 U.S.
11 83, 87 (1963); *Kirkpatrick v. Whitley*, 992 F.2d 491, 497 (5th Cir. 1993) (citing
12 *United States v. Bagley*, 473 U.S. 667 (1985). "Suppression by the prosecution of
13 evidence favorable to an accused upon request violates due process where the
14 evidence is material either to guilt or to punishment, irrespective of the good faith
15 or bad faith of the prosecution." *Brady*, 373 U.S. at 87; *United States v. Swensen*,
16 894 F.3d 677, 683 (5th Cir. 2018).

17 While the prosecution has a duty to disclose any favorable evidence that could
18 be used at trial, it is frequently overlooked that the prosecution also has a duty to
19 disclose any favorable evidence that could be used "in obtaining further
20 evidence." *Giles v. Maryland*, 386 U.S. 66, 74 (1967). Additionally, favorable
21 evidence need not be competent evidence or evidence admissible at trial so long
22 as it is material to the preparation of the defense. See *Sellers v. Estelle*, 651 F.2d
23 1074, 1077 n.6 (5th Cir. 1981) (evidence suppressed was material to the
24 preparation of petitioner's defense, regardless whether it was intended to be
25 admitted into evidence).

26
27 The Supreme Court has never precisely pinpointed the time at which the
28 disclosure under *Brady* must be made. It is abundantly clear, however, that

1 disclosure by the government “must be made at such a time as to allow the
2 defense to use the favorable material effectively in the preparation and
3 presentation of its case, even if satisfaction of this criterion requires pre-trial
4 disclosure.” *United States v. Pollack*, 534 F.2d 964, 973 (D.C. Cir. 1976).
5 “Manifestly, a more lenient disclosure burden on the government would drain
6 *Brady* of all vitality.” *United States v. Elmore*, 423 F.2d 775, 779 (5th Cir. 1970).
7 And, at a minimum, the government is required to make *Brady* disclosures that
8 are “sufficiently specific and complete” to permit effective use by the defense.
9 *United States v. Rodriguez*, 496 F.3d 221, 226 (2d Cir. 2007).

10 The incomplete information disclosed by the government in the past two
11 days is so close to the trial that Mr. Wallace is not in the position to fully
12 understand it, thoroughly investigate it, or use it effectively at trial in examining
13 SA [name redacted] or the three government informants he has had contact with.
14 Based on the foregoing Mr. Wallace asks the Court to continue the trial
15 approximately 60 days to May 17, 2022.
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18 Dated March 9, 2022

19 Respectfully submitted,

20 /s/ Amy E. Jacks

21 AMY E. JACKS

22 /s/ Shaun Khojayan

23 SHAUN KHOJAYAN

24 Attorneys for Defendant

25 PAUL GARY WALLACE
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