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5 Attorney for Defendant  
Donald James Myers  
6

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF LOS ANGELES**  
9

10 THE PEOPLE OF THE STATE OF )  
11 CALIFORNIA, )  
12 Plaintiff, )

13 v. )

14 DONALD JAMES MYERS 07/31/1965 M )  
15 AKA: ANGRYGAY MONIKER )

16 P242 )  
17 P302a, P602k )

18 Defendant. )

Case No: **6CJ06496**

**DEFENDANT'S REPLY IN SUPPORT OF  
NOTICE OF MOTION AND MOTION FOR  
AN ORDER THAT THE PROSECUTION  
PROVIDE THE DEFENSE WITH  
DISCOVERY IN LAW ENFORCEMENT  
PERSONNEL FILES,**

[*Pitchess* motion]

19 DATE: April 13, 2016  
20 TIME: 8-30 A.M.  
21 DEPT: D54

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Opposition of the Real Party in Interest (hereinafter “the LAPD”) is an impressive  
4 and probably pre-prepared ‘tour de force’ of the applicable law with which the Defendant does  
5 not disagree. Notwithstanding, the Opposition largely ignores the factual showing of “good  
6 cause” and the “specific factual scenario” which Defendant has set forth in his motion,  
7 supporting declaration and exhibits. Accordingly, Defendant’s motion should be granted.

8 In that regard, if the Court agrees, Defendant stipulates to the LAPD’s proposed  
9 protective order as being consistent with the applicable law, and proper under the  
10 circumstances herein.

11 **II. THE OPPOSITION LACKS A MEANINGFUL ARGUMENT AS TO THE FACTS**

12 The 17 ½ page opposition, full of law, is largely silent as to the applicable facts. Indeed,  
13 the opposition merely addresses Defendant’s factual scenario in the most brief, conclusory and  
14 superficial manner. See generally, Opposition, pp.3:3-17 and 4:1-4. In essence, the opposition  
15 contends that the requested information is not material because “[a] private person’s arrest  
16 gives the officers probable cause to arrest the defendant” (Opposition, p.3:16-17), “the  
17 defendant merely denies the charge” (Opposition, p.4:1), and, “defendant has failed to provide  
18 a plausible factual scenario that is contrary to the police report” (Opposition, p.4:5-7). In this  
19 respect, the Opposition is wrong.

20 **III. THE MOTION SETS FORTH A PLAUSIBLE FACTUAL SCENARIO**

21 The Opposition “acknowledges that the burden for establishing good cause [herein] is  
22 low” (citation omitted) and that it is a “lax standard.” (Opposition, p.12:21-22)

23 Defendant’s motion at bar sets forth the limited nature of this request with the requisite  
24 specificity complained of in the opposition. (Motion, p. 2:13-3:23) The primary requests are ##  
25 (1) and (2) relating to “sexual bias” and “allegations of false arrest, fabrication of police reports,  
26 false testimony, perjury, and false or misleading internal reports including but not limited to false  
27 overtime or medical reports.”

1 The supporting declaration of Graham Berry sets forth the material facts in support of  
2 Defendant's motion. Specifically, in most pertinent part, it states that:

3 "For many decades, members of the public have protested the  
4 alleged criminal conduct and alleged human rights abuses of the  
5 Church of Scientology which has used various tactics (both lawful  
6 and unlawful) to try and stop or interfere with these first  
7 amendment protests wherever and whenever they occur." (Para. 6)

8 "The defendant herein, Mr. Myers, is one of the over nine thousand  
9 people who, beginning in late January/early February 2008, have  
10 engaged in monthly and other global protests against Scientology  
11 crime and abuse in over 110 cities in over 42 countries around the  
12 planet. On a number of occasions the defendant herein has been  
13 part of a smaller group, and sometimes on his own, protesting  
14 alleged Scientology forced labor, human trafficking, violence,  
15 unlawful imprisonment and other abuses at various Scientology  
16 locations including the "Big Blue" and former Cedars of Lebanon  
17 Hospital buildings located along L. Ron Hubbard Way." (Para. 7)

18 "At these protests the Scientology organization employed off-duty  
19 LAPD officers to restrict and chill the first amendment activity. On  
20 duty police were frequently called to warn away protestors and  
21 sometimes to arrest them on what the arrestees complained were  
22 false complaints and charges. Mr. Myers was one such person.  
23 Allegations were made of improper Scientology "street  
24 closing/filming permits," enforced by collusive LAPD officers  
25 being directed by Scientology executives such as Scientology  
26 executive Ken Long and his attorney herein, Mr. Kendrick Moxon.  
27 It is relevant to note that attorney Moxon was named by the U.S.  
28 Department of Justice as an unindicted co-conspirator (for  
submitting fake handwriting samples to the FBI) in the largest ever  
known criminal infiltration and burglary of [at least nine]  
departments of the U.S. Government. Many documents could be  
attached to verify this history. However, it would unnecessarily  
clutter the court's file." (Paragraph 13)

"In addition, the defendant is an openly gay man. The Scientology  
organization has an open bias against all gay people considering  
them to be among the lowest of the low, as having no rights at all,  
and who are to be removed from society and exterminated. The  
LAPD also has a history of open bias against gay people. As far as  
Scientology is concerned, it has policy letters referring to  
homosexuals as persons who are 1.1 on its tone scale, "covertly  
hostile" and who should be removed from society, quarantined and  
exterminated without sorrow. Dozens of documents could be

1 attached to verify this institutional discrimination, by both the  
2 Scientology organization and the LAPD, against homosexuals. It  
3 would unnecessarily clutter the court's file. However, attached  
4 hereto as Exhibit 3 is an examination of some of Scientology's  
5 homophobic documents. The article was written by the former  
6 number 3 executive in the organization." (Paragraph 15)

7 "Mr. Myers is also expected to contend that the current prosecution  
8 is the product of a false police report by a person with a history of  
9 malice towards Mr. Myers, who acted in collusion with certain  
10 L.A.P.D. officers to falsely arrest him and to subject him to three  
11 days and nights of confinement in various jails before the single  
12 [false] charge of sexual battery was dismissed and Mr. Myers  
13 released with no charges pending. Nearly ten weeks later the three  
14 charges herein were filed. Scientology policy documents referring  
15 to the practice of putting "heads on a pike;" shaming and/or  
16 making examples of critics as part of the Scientology policy to  
17 "destroy [them] utterly without sorrow." (Paragraph 16)

18 Mr. Myers is adamant that the events and conduct, as alleged and  
19 charged, did not occur. His version of the pertinent facts is at 180  
20 degrees to the version of PPA KLong [long-time Scientology  
21 executive, para-legal and Sea Organization staffer Ken Long].  
22 Indeed, the key participant in the current charges has been totally  
23 omitted from the reports and other discovery produced by the  
24 people at arraignment. (Paragraph 17)

25 In addition, the Opposition memorandum further explains the factual scenario that  
26 supports that supports this '*Pitchess*' motion. For example:

27 "Mr. Myers is expected to contend that the current prosecution is  
28 the product of a false police report by a person employed and  
controlled by an organization with a history of criminal conduct  
and of malice towards Mr. Myers; and in the latest case, an  
organization and a complainant which and who the defense alleges  
acted in collusion with the L.A.P.D. officers named in the motion  
to falsely arrest him, and to then subject him to three days and  
nights of confinement in various Los Angeles jails before the  
single [false] charge of sexual battery was dismissed and Mr.  
Myers released with no charges pending. Nearly ten weeks later  
the three new charges herein were filed; no doubt upon pressure  
from the Scientology enterprise to, in the words of their founder L.  
Ron Hubbard, "put [Myer's] head on a pike" as a warning to all of  
the other first amendment protestors."

(Defendant's Memorandum, p.9:12-23)

1 “A copy of the relevant police report dated 2015 Nov-8 AM 9:54  
2 AM is attached to the Berry Decl. as Exhibit 1. The arrest of Mr.  
3 Myers occurred nearly 15 hours prior to that date and time.”  
(Defendant’s Memorandum, p.6:5-7)

4  
5 “In addition, the Scientology organization has made a practice of  
6 calling the LAPD to the scene of almost any first amendment  
7 activity, alleged misconduct, and then demanded the removal and  
8 arrest of protestors who are labelled “suppressive persons” (“SPs”)  
9 by the Scientology organization which teaches that SPs have no  
10 rights at all. The defendant has been one of the victims of this  
11 despicable activity. Not surprisingly, various protestors including  
12 this defendant have alleged collusive conduct between the LAPD  
13 and the Scientology organization. In addition, the defendant is an  
14 openly gay man. The Scientology organization has an open bias  
15 against all gay people considering them to be among the lowest of  
16 the low, as having no rights at all, and who are to be removed from  
17 society and exterminated. See attached Berry Declaration (“Berry  
18 Decl.”), Exhibit 6. The LAPD also has a history of open bias  
19 against gay people.” (Defendant’s Memorandum, p.5:16-23)

20  
21 “Relevant Scientology documents deem gay persons to have no  
22 rights of any description and that they must be removed from  
23 society and exterminated “without remorse.” Berry Decl. ¶15,  
24 Exhibit 6. The LAPD has its own history of homophobia which  
25 continues among some officers.” (Defendant’s Memo., p.7:19-23)

26  
27 “Mr. Myers is an openly gay man who used the moniker the  
28 ‘Angry Gay Pope’ and protested Scientology with a Bishop’s  
Miter and a party mask. Berry Decl., ¶12, Exhibits 4,5.  
Scientology used private investigators and off-duty LAPD officers  
to try and prevent the protests of the Anonymous picketers who  
included Mr. Myers. They picketed and protested anonymously  
(with masks) because of the well-known CSI “Fair Game” policies  
and practices. Notwithstanding the anonymity, CSI still located  
these many of these protestors, thereafter harassing their parents  
and others associated with them. Mr. Myers was one such person.  
Berry Decl., ¶13, Exhibits 4-5.” (Defendant’s Memo., p.7:19-23)

29 The foregoing factual scenario is clearly at odds with the characterizations of it in the  
30 LAPD’s Opposition.

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1 **IV. THE INFORMATION REQUESTED IS MATERIAL TO THE CASE**

2 The moving papers herein demonstrate that the proposed defense includes evidence and  
3 argument that the events charged, in large part, did not occur as alleged. For example, there was  
4 no intentional battery (sexual or otherwise), there was no religious services or interference with  
5 religious services, and there was no trespass (when requested, defendant left business premises  
6 that were open to public access). Berry declaration, ¶17.

7 On the other hand, as the moving memorandum and supporting declaration claim, there  
8 is a long history of LAPD involvement with the Scientology organization in responding to its  
9 claims of wrong-doing by protestors when no such wrong-doing occurred. There is also a long  
10 history of alleged collusion between the LAPD and the Scientology organization in connection  
11 with alleged fabrication of police reports, fabrication of probable cause, false testimony,  
12 perjury, etc. E.g. Berry declaration, ¶¶6, 7, 13-14.

13 In addition, the defense currently intends to raise the defense of sexual orientation bias  
14 and prejudice against both the LAPD officers and the Scientology organization. E.g. Berry  
15 declaration, ¶15. There is also material in the police report that would support such a defense.

16 Moreover, the requested information is material to the defendant's intended defense of  
17 improper collusion between the Scientology organization staff and the LAPD officers whose  
18 designated records are sought. E.g. Berry declaration, ¶17. Clearly, the four LAPD officers  
19 were unable to determine whether or not there was probable cause to arrest and charge the  
20 defendant but they went ahead anyway and co-operated with the arrest and imprisonment (for  
21 three days) of the defendant by persons and organization with long histories of fabricating  
22 evidence and other criminal wrong-doing. Defendant will be seeking the testimony of all four  
23 LAPD officers at trial.

24 On the basis of the foregoing, defendant submits that the requested information, if it  
25 exists, would either "support the proposed defense, or be likely to lead to information that  
26 would support the proposed defense." It is "factually specific and tailored to the support the  
27 claim of officer misconduct." *Warwick v. Superior Court* (2005) 35 Cal. 4<sup>th</sup> 1011,1027.  
28

1 The law is clear that Defendant's proposed defense does not have to be persuasive in  
2 order to succeed on a *Pitchess* motion.

3 "Indeed, a defendant is entitled to discover relevant information  
4 under *Pitchess* even in the absence of any judicial determination  
5 that the potential defense is credible or persuasive."  
6 *Warwick v. Superior Court* (2005) 35 Cal. 4<sup>th</sup> 1011,1026.

7 The law is also clear that the primary issue regarding a *Pitchess* motion is  
8 materiality.

9 ". . . the threshold for discovery embodied in section 1043 has been  
10 characterized by our Supreme Court as 'relatively low.' (*City of*  
11 *Santa Cruz v. Municipal Court* (1989) 49 Cal. 3d 74, 83-86, (*Santa*  
12 *Cruz*)). All the law requires to show good cause to permit such  
13 discovery is the 'materiality' of the information to the subject  
14 matter of the pending litigation and a reasonable belief that the  
15 governmental agency has the 'type' of information requested."  
16 (*Fletcher v. Superior Court* (2002) 100 Cal.App. 4<sup>th</sup> 386, 392: see  
17 also, OBM, p. 18.)

18 As to admissibility: (1) If the Court orders production of the information; and (2) if  
19 there is information produced; and (3) if the Court's in-camera inspection orders information  
20 (names, addresses, telephone numbers) produced; and (4) if the person (s) identified can be  
21 located and served with process; and (5) if an officer implicated by the information testifies;  
22 then (6) the information may be admissible to impeach that officer's testimony. *Warwick v.*  
23 *Superior Court Id.* at p. 1027.

24 **V. THE DEFENDANT STIPULATES TO THE PROPOSED PROTECTIVE ORDER**

25 The Defendant accepts the opposition argument that a protective order should issue to  
26 limit the information disclosed and the very limited manner in which it is to be disclosed.  
27 Therefore, the Defendant would stipulate to the proposed protective order submitted with the  
28 opposition herein.

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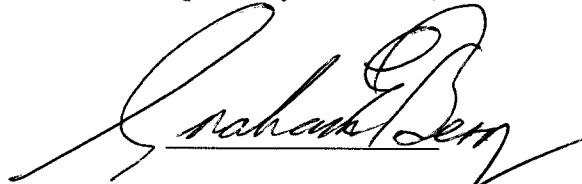
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1 **VI. CONCLUSION**

2 For the foregoing reasons, the pending motion should be granted.

3  
4 Dated: April 7, 2016

Respectfully submitted,

5  
6  
7 

8 GRAHAM E. BERRY  
9 Attorney for Defendant Donald James Myers



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 ) ss.  
4 COUNTY OF LOS ANGELES )

5 I reside in the County of Los Angeles, State of California. I am over the age of 18.

6 **On April 8, 2016** I served the foregoing document described as:

7 **DEFENDANT'S REPLY IN SUPPORT OF NOTICE OF MOTION AND MOTION FOR**  
8 **AN ORDER THAT THE PROSECUTION PROVIDE THE DEFENSE WITH**  
9 **DISCOVERY IN LAW ENFORCEMENT PERSONNEL FILES,**  
10 [*Pitchess* motion]

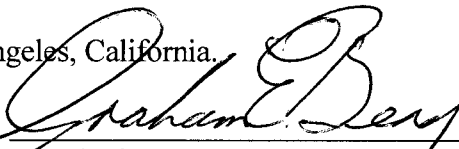
11 By placing a true copy thereof in a sealed envelope addressed as stated below and  
12 depositing the sealed envelope with the United States Postal Service with postage by U.S. Post  
13 Priority Mail Express (next business day delivery) and with postage fully prepaid:

14 Deputy City Attorney Jeffrey Steven Blumin  
15 Los Angeles City Attorney's Office  
16 201 North Los Angeles Street, L.A. Mall, Space 301A  
17 Los Angeles, CA 90012

18 And by Facsimile to Fax No. (213) 978-2082 addressed to Deputy City Attorney Jeffrey Steven  
19 Blumin

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
21 true and correct.

22 Executed this 8th day of April, 2016, at Los Angeles, California.

23  
24  
25  
26  
27  
28  
Signed:   
Print Name: Graham E. Berry  
Address: 3384 McLaughlin Avenue  
Los Angeles, CA 90066-2005