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Attorney for Defendant Mr. Tilotta

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No.: 19cr4768-GPC
)	
Plaintiff,)	
)	Motion for discovery and for leave to
v.)	file further motions, and Rule 16.1
)	status report
GIOVANNI TILOTTA,)	
)	
Defendant.)	
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)	

I.
Introduction

Mr. Tilotta is charged with two firearms-related offenses in a 23-count indictment focusing on retired Sheriff's Captain Marco Garmo and others. Discovery is voluminous and ongoing. Mr. Tilotta makes the following requests to protect his right to full discovery.

II.

Rule 16.1 Status Report

Under newly enacted Rule 16.1, the parties must meet and confer within 14 days of the arraignment to discuss a timetable and procedures for pretrial disclosure. Counsel for Mr. Tilotta and the government have done so.

The initial discovery production consists of thousands of pages agent's reports, emails and other documents. The government indicates it is processing dozens of videos and other digital recordings which will be provided shortly. Other outstanding areas of discovery include search warrant returns – digital and otherwise – bank and other financial records, additional agents' reports, and other items.

III.

Motion to Compel Discovery/Preserve Evidence

This request is not limited to those items that the prosecutor knows of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge of any "closely related investigative [or other] agencies" under *United States v. Bryan*, 868 F.2d 1032 (9th Cir. 1989), and discovery of which the government attorney may become aware through the exercise of due diligence:

(1) The Defendant's Statements. Mr. Tilotta requests disclosure of all copies of any written or recorded statement made by him or any codefendants; any written record containing the substance of any oral statements made by him or any

1 codefendant and any written summaries of his or any codefendant's oral statements
2 contained in the handwritten or rough notes of the government agent; any response
3 to any Miranda warnings which may have been given by him or any codefendant;
4 any response by any defendant to interrogation; as well as any other statements by
5 the defendants. FED. R. CRIM. P. 16(a)(1)(A).
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7 (2) Arrest Reports, Notes and Dispatch Tapes. Mr. Tilotta also specifically
8 requests the government turn over all arrest reports, notes, dispatch or any other
9 tapes, and TECS records that relate to the circumstances surrounding his arrest or
10 any questioning. This request includes, but is not limited to, any rough notes,
11 records, reports, transcripts or other documents which contain statements of the
12 defendant or any other discoverable material. FED. R. CRIM. P. 16(a)(1)(A); *Brady v.*
13 *Maryland*, 373 U.S. 83 (1963). The government must produce arrest reports,
14 investigator's notes, memos from arresting officers, dispatch tapes, sworn
15 statements, and prosecution reports pertaining to the defendant. FED. R. CRIM. P.
16 16(a)(1)(B) and (C); FED. R. CRIM. P. 26.2 and 12(I).
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21 (3) Criminal Record. Evidence of a defendant's record is available under FED.
22 R. CRIM. P. 16(a)(1)(D). Evidence of other "similar" acts is discoverable under FED.
23 R. CRIM. P. 16(a)(1)(D) and FED. R. EVID. 404(b) and 609.
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25 (4) Evidence Seized. Mr. Tilotta requests production of evidence seized as a
26 result of any search, either with or without a warrant. FED. R. CRIM. P. 16(a)(1)(E).
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28 (5) Tangible Objects. Mr. Tilotta requests the opportunity to inspect and copy

1 as well as test, if necessary, all documents and tangible objects, including
2 photographs, books, papers, documents, fingerprint analyses, vehicles, or copies of
3 portions thereof, which are material to the defense or intended for use in the
4 government's case-in-chief or were obtained from or belong to the defendant. FED.
5 R. CRIM. P. 16(a)(1)(E).

7 (6) Request for Preservation of Evidence. Mr. Tilotta specifically requests the
8 preservation of all dispatch recordings, inter-officer radio communication
9 recordings, agents' rough notes, any documents, and any other physical evidence
10 that may be destroyed, lost, or otherwise put out of the possession, custody, or care
11 of the government and which relate to the arrest or the events leading to the arrest
12 in this case.

15 (7) Reports of Examinations and Tests. Mr. Tilotta requests the opportunity
16 to inspect and copy any reports of physical and mental examinations and any
17 scientific tests which are material to the preparation of the defense or intended for
18 use in the government's case-in-chief. FED. R. CRIM. P. 16(a)(1)(F).

21 (8) Expert Witnesses. Mr. Tilotta requests the name, qualifications, and a
22 written summary of the opinion/testimony and bases thereon of any person that the
23 government intends to call as an expert witness. FED. R. CRIM. P. 16(a)(1)(G).

25 (9) Brady Material. Mr. Tilotta requests all documents, statements, agents'
26 reports, and tangible evidence favorable to the defendant on the issue of guilt, which
27 affects the credibility of the government's case, or which may result in a lower
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1 sentence under the United States Sentencing Guidelines. Under *Brady*,
2 impeachment as well as exculpatory evidence falls within the definition of evidence
3 favorable to the accused. *United States v. Bagley*, 473 U.S. 667 (1985); *United States*
4 *v. Agurs*, 427 U.S. 97 (1976). Mr. Tilotta specifically requests all favorable
5 *Brady/Giglio* material that is admissible or likely to lead to admissible evidence.
6 *United States v. Price*, 566 F.3d 900 (9th Cir. 2009).

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9 (10) Giglio Information. Mr. Tilotta requests all statements and/or promises,
10 express or implied, made to any government witnesses in exchange for their
11 testimony in this case, and all other information which could arguably be used for
12 the impeachment of any government witnesses. *Giglio v. United States*, 405 U.S.
13 150 (1972); *accord Price*, 566 F.3d 900 (9th Cir. 2009).

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15 (11) Informants and Cooperating Witnesses. Mr. Tilotta requests disclosure
16 of the name(s), address(es), criminal record and location(s) of all informants or
17 cooperating witnesses used or potentially to be used in this case, and disclosure of
18 any informant who was a percipient witness in this case or otherwise participated
19 in the crime charged. *Roviaro v. United States*, 353 U.S. 52, 61-62 (1957). Mr.
20 Tilotta also requests that the government disclose any information in its possession
21 regarding other parties culpable in this matter as these individuals are relevant and
22 material to Mr. Tilotta's defense.

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26 (12) Jencks Act Material. Mr. Tilotta requests production in advance of trial
27 of all material, including dispatch tapes, which the government must produce
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1 pursuant to 18 U.S.C. § 3500. Advance production will avoid the possibility of delay
2 at the request of defendant to investigate the Jencks material. A verbal
3 acknowledgment that "rough" notes constitute an accurate account of the witness'
4 interview is sufficient for the report or notes to qualify as a statement under
5 §3500(e)(1). *Campbell v. United States*, 373 U.S. 487, 490-92 (1963).
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7 (13) Potential 404(b)/609 Evidence. Mr. Tilotta requests prior notice of any
8 other crimes or bad acts that the government intends to introduce, whether in its
9 case in chief, for impeachment or rebuttal. FED. R. CRIM. P. 16(a)(1)(D); FED. R.
10 EVID. 404(b) and 609(b). Mr. Tilotta requests such notice well before trial in order
11 to give the defense time to investigate and prepare for trial.
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15 (14) Any Information That May Result in a Lower Sentence Under the
16 Guidelines. As discussed above, this information is discoverable under *Brady v.*
17 *Maryland*, 373 U.S. 83(1963). This request includes any information that could
18 affect any base offense level or specific offense characteristic under Chapter Two of
19 the Guidelines. Also included in this request is any information relevant to a
20 Chapter Three adjustment, a determination of the defendant's criminal history, or
21 any other application of the Guidelines. Additionally, Mr. Tilotta specifically
22 requests any evidence the government intends to use at sentencing;
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26 (15) Evidence of Bias or Motive to Lie. Mr. Tilotta requests any evidence that
27 any prospective government witness is biased or prejudiced against the defendant,
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1 or has a motive to falsify or distort his or her testimony. *Pennsylvania v. Ritchie*,
 2 480 U.S. 39 (1987); *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988);

3 (16) Impeachment Evidence. Mr. Tilotta requests any evidence that any
 4 prospective government witness has engaged in any criminal act whether or not
 5 resulting in a conviction and whether any witness has made a statement favorable
 6 to the defendant. See FED. R. EVID. 608, 609 and 613. Such evidence is discoverable
 7 under *Brady v. Maryland*, supra. *See United States v. Strifler*, 851 F.2d 1197 (9th
 8 Cir. 1988)(witness' prior record); *Thomas v. United States*, 343 F.2d 49 (9th Cir.
 9 1965)(evidence that detracts from a witness' credibility);

10 (17) Evidence of Criminal Investigation of Any Government Witness. Mr.
 11 Tilotta requests any evidence that any prospective witness is under investigation by
 12 federal, state or local authorities for any criminal conduct. *United States v. Chitty*,
 13 760 F.2d 425 (2d Cir. 1985);

14 (18) Evidence Affecting Perception, Recollection, Ability to Communicate, or
 15 Truth Telling. Mr. Tilotta requests any evidence, including any medical or
 16 psychiatric report or evaluation, tending to show that any prospective witness's
 17 ability to perceive, remember, communicate, or tell the truth is impaired; and any
 18 evidence that a witness has ever used narcotics or other controlled substance, or has
 19 ever been an alcoholic. *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988);
 20 *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980);
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1 (19) Witness Addresses. Mr. Tilotta requests the name and last known
2 address of each prospective government witness. *See United States v. Napue*, 834
3 F.2d 1311 (7th Cir. 1987); *United States v. Tucker*, 716 F.2d 576 (9th Cir. 1983)
4 (failure to interview government witnesses by counsel is ineffective assistance);
5 *United States v. Cook*, 608 F.2d 1175, 1181 (9th Cir. 1979) (defense has equal right
6 to talk to witnesses). The defendant also requests the name and last known address
7 of every witness to the crime or crimes charged (or any of the overt acts committed
8 in furtherance thereof) who will not be called as a government witness. *United*
9 *States v. Cadet*, 727 F.2d, 1453 (9th Cir. 1984);

10 (20) Name of Witnesses Favorable to the Defendant. Mr. Tilotta requests the
11 name of any witness who made an arguably favorable statement concerning the
12 defendant or who could not identify him or who was unsure of his identity, or
13 participation in the crime charged. *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir.
14 1968); *Chavis v. North Carolina*, 637 F.2d 213, 223 (4th Cir. 1980);

15 (21) Evidence Material to the Preparation of the Defense. Mr. Tilotta requests
16 disclosure of any statement or document that may be "relevant to any possible
17 defense or contention" that he might assert, including inculpatory evidence that may
18 cause him to abandon a defense. *United States v. Bailleaux*, 685 F.2d 1105 (9th Cir.
19 1982). See Fed. R. Crim. P. 16(a)(1)(E)(i) (right to all documents "material to the
20 preparation of the defense"); *United States v. Marquiz-Jaquez*, 718 F.3d 1180, 1183
21 (9th Cir. 2013) (even material which may cause a defendant to abandon a line of
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1 defense is material to preparing a defense). He specifically requests his TECS entry
2 records, and those related to the vehicle in which he was arrested. The information
3 contained in such records will assist him prepare for, or abandon, a defense.
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5 (22) Personnel Records of Government Officers Involved in the Arrest. Mr.
6 Tilotta requests all complaints and other related internal affairs documents
7 involving any of the immigration officers or other law enforcement officers who were
8 involved in the investigation, arrest and interrogation of him, pursuant to *Pitchess*
9 *v. Superior Court*, 11 Cal. 3d 531, 539 (1974). Because of the sensitive nature of
10 such *Henthorn* documents, defense counsel will not be able to procure them from any
11 other source;
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14 (23) Prosecutor's Duty to Inspect Agent's Files. Mr. Tilotta requests that the
15 court order the prosecutor to personally review the personnel files of the agents
16 involved.
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18 (24) Release of Evidence for Defense Testing. Mr. Tilotta requests that the
19 government release to his designated expert all items seized so that the defense may
20 conduct independent testing of the items.
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22 (25) Subpoena, Intercept and Warrant Information and Evidence. Mr. Tilotta
23 requests a copy of all electronic interception orders, search warrants and subpoenas
24 (whether state or federal, whether written or telephonic, and including recordings
25 or transcripts of telephonic applications), and related applications for electronic
26 interception, subpoenas and warrants, status reports, their affidavits, attachments,
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1 and inventories related to this case. He also requests copies of all documents
2 provided to or seized by the government pursuant to such court-authorized orders.
3 He requests copies of all recordings made by the government made pursuant to
4 warrant or order as well as line-sheets and any other documentation of such
5 recordings.
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7 (26) Probationary Status/Fourth Amendment Waiver. Mr. Tilotta requests
8 copies of all court files, court orders, minute orders, transcripts, Probation or Parole
9 directives, or any other documents material to determining whether he was on a
10 probationary or other status requiring him to waive his Fourth Amendment rights
11 to be free from unreasonable search or seizures.
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13 (26) Residual Discovery/All Other Relevant Materials. Mr. Tilotta intends for
14 this motion to cover the full extent of discoverable material. He therefore requests
15 that the government be required to disclose all other discoverable material which
16 he otherwise has failed to request.
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19 **III.**
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21 **Mr. Tilotta Seeks Leave to File Further Motions**

22 Upon review of any additional discovery, Mr. Tilotta requests an opportunity
23 to file further, substantive motions.
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25 Respectfully submitted,

26 Dated: January 2, 2020

/s/ Jeremy Warren

JEREMY D. WARREN

Attorneys for Mr. Tilotta