

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

*

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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**MOTION FOR DISCOVERY OF PROSECUTION FILES, RECORDS,
AND INFORMATION NECESSARY TO A FAIR TRIAL**

Joe Client respectfully moves this Court to order the State¹ to disclose and produce to undersigned counsel, and permit counsel to inspect, copy, and photograph, the materials specified in this motion. In support of this motion, Mr. Client submits the following:

1. In October 2004, Mr. Client was indicted for the capital offense of murder during a first-degree robbery under Alabama Code section 13A-5-40(a)(2). The State is seeking the death penalty.

2. The United States Supreme Court and the Alabama Supreme Court have recognized repeatedly that the prosecutor has a duty to disclose relevant evidence to the defendant. The prosecution's failure to do so "casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice." Brady v. Maryland, 373 U.S. 83, 88 (1963); see also Smith v. Cain, 565 U.S. 73, 75-76 (2012) (murder conviction reversed where State withheld police statements from sole eyewitness that directly contradicted his trial testimony in violation of Brady); Banks v. Dretke, 540 U.S. 668, 691 (2004) (capital petitioner's Brady claim cognizable in federal habeas proceedings where State withheld evidence that key witness was paid police informant); Kyles v. Whitley, 514 U.S. 419, 433 (1995) (prosecution must disclose favorable information to defense); United States

¹ As used in this motion, "the State" shall refer to any and all of the following organizations: the District Attorney for the 55th Judicial District of Alabama, the Maycomb Police Department, the Alabama Bureau of Investigation, and the Maycomb County Sheriff's Department. The "State" also means: (a) all present and former agents, officers, investigators, consultants, employees, and staff members of organizations or officials named above in this paragraph; (b) any other person or entity acting on the behalf of any of these organizations or officials or on whose behalf such person or entity has acted in the past; or (c) any other person or entity otherwise subject to the control of any of these organizations or officials.

v. Bagley, 473 U.S. 667, 674-75 (1985) (prosecution must disclose impeachment evidence); Davis v. Alaska, 415 U.S. 308, 320 (1974) (defendant must be afforded opportunity to impeach credibility of prosecution witness through cross-examination); Giglio v. United States, 405 U.S. 150, 154-55 (1972) (prosecution must disclose impeachment information, including agreements with state witnesses); Giles v. Maryland, 386 U.S. 66, 81 (1967) (remand necessary where prosecution violated due process by suppressing favorable evidence and knowingly using perjured testimony); Napue v. Illinois, 360 U.S. 264, 269 (1959) (prosecution may not allow false evidence to be presented to jury); Guzman v. Sec’y, Dep’t of Corrections, 663 F.3d 1336, 1355-56 (11th Cir. 2011) (finding Giglio violation and granting habeas relief where State failed to disclose \$500 payment to key State witness and failed to correct testimony that witness received no benefit for testimony); United States v. Pitt, 717 F.2d 1334, 1339 (11th Cir. 1983) (due process mandates disclosure of favorable evidence); Ex parte Womack, 541 So. 2d 47, 60-61 (Ala. 1988) (prosecution must reveal exculpatory and impeachment evidence).

3. Alabama courts have recognized that broader discovery is justified in capital cases. Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989). Because this is a capital case, this Court must apply heightened standards to ensure that it is fair. Under the Eighth Amendment, “fundamental respect for humanity” requires heightened reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Gardner v. Florida, 430 U.S. 349, 363-64 (1977)).

4. Under state and federal law, Mr. Client is entitled to discovery of the State’s files, records, and information. Mr. Client requests that this Court order the State and individuals named below to produce for inspection and copying the documents specified herein, wherever such documents may be located, with such production to be arranged with undersigned counsel within thirty (30) days from the date discovery is ordered. Mr. Client requests the following:

I. Discovery Regarding the Defendant

5. Mr. Client requests that the State provide all documents relating to Joe Client, including:

- a. all juvenile and adult detention, jail, prison, parole, probation, and presentence investigation records;
- b. all sentencing reports;
- c. all arrest, conviction, and adult and juvenile criminal records;

- d. all records of any law enforcement authority, including police incident reports, whether or not the incident resulted in a criminal charge, and any documents relating to a plea discussion with Joe Client;
- e. all records of any detention;
- f. all records that the prosecution or any law enforcement official has submitted to any professional personnel for examination or analysis in connection with this case;
- g. all institutional records of any kind, including but not limited to those prepared by the Alabama Department of Corrections, including at Holman Prison, William E. Donaldson Prison (formerly West Jefferson Prison), Taylor Hardin Secure Medical Facility, and Bryce Hospital; those prepared by Maycomb County, including the Maycomb County Jail; and any other institutional record that relates to Joe Client;
- h. all psychiatric documents relating to the conducting or results of any testing, examinations, or interviews of Joe Client, including but not limited to reports by the Alabama Department of Youth Services, the Alabama Department of Corrections, Taylor Hardin Secure Medical Facility, Bryce Hospital, or any other agency, and any other psychiatric, psychological, or mental health records concerning Joe Client; and
- i. all documents relating to any tests of any kind done on Joe Client, including but not limited to any tests of Mr. Client's blood, saliva, or hair.

II. Statements and Waivers

6. *By the Defendant.* List the dates, subject, and substance of, and produce in writing, reduce to writing, and/or provide copies of all written or oral statements, all responses to questions, directions, or communications of any kind made by the defendant that are known or may become known by the State and/or are in the possession, custody, or control of the District Attorney's office for the 55th Judicial Circuit, or that can be obtained from its agents or any other responsible person. This includes, but is not limited to, all statements (whether inculpatory or exculpatory, in any way relevant to the alleged crime, volunteered or in response to questions, directions, or communications of any kind, and all observed behavior of the defendant).

7. *Those Present During the Defendant's Statement.* Additionally, list the names, addresses, and phone numbers of each person present when any statements were made by the defendant. List the exact time, place, and date of any statements. State whether any statement was volunteered or made in response to questions. Identify any questioner or interrogator.

8. *Waiver Forms, Warnings, or Instructions Communicated to the Defendant.* Produce, list, provide, or reduce to writing all waiver forms, warnings, cautions, or instructions that were communicated to the defendant in any form in connection with any written or oral statement, response, communication, or observed behavior of the defendant at any interview, examination, or evaluation. Include the exact date, time, and place of any such communication and the names, addresses, and phone numbers of all witnesses to such warnings.

9. *Observations of or Communications by the Defendant Indicating Reluctance, Refusal, or Failure to Answer Questions.* Produce in writing, reduce to writing, and/or provide copies of all written or oral statements, all responses to questions, directions, or communications of any kind, and all observed behavior of the defendant during any interview, examination, or contact in which the defendant: (a) indicated that he did not wish to, or would not, respond to any question, direction, or communication; or (b) failed to respond to any question, direction, or communication.

10. *Statements of Co-conspirators, Co-defendants, and Accomplices.* Produce in writing, reduce to writing, and/or provide copies of the same information requested in paragraphs one through nine above, for any written or oral statements made by any co-defendant or alleged co-conspirator whether indicted or not and whether or not the statements were written or recorded by the State and its agents or any other responsible person.

III. Physical Evidence

11. *From or of the Defendant.* List and describe all objects, substances, or materials seized from the defendant at any time in connection with this charge, including but not limited to items seized from his body, home, vehicle, place of business, the scene of his arrest, or from anyone or any place purported to belong to the defendant. State the name, address, and phone number of each individual who seized items from the defendant or another or who was present when any item was seized. State specifically where the item was seized and the exact date and time of seizure.

12. *From or of Any Co-defendant, Co-conspirator, or Accomplice.* List and describe all physical objects, substances, and materials, seized from or allegedly belonging to any co-defendant or alleged co-conspirator. If the item(s) was seized in a building or vehicle, state exactly where within the building and room or vehicle each item was seized. State the exact time, date, and place of seizure and the name, address, and phone number of each individual present when such item was seized and indicate which individual seized each item. List the name, address, and phone number of each person who was present when each item seized came into the possession of the State or any responsible person.

13. *From the Victim.* Provide the same information requested in paragraphs 11 and 12 for all physical samples, substances, evidence, and materials taken, turned over by, or seized from any victim, living or deceased.

14. *All Crime Scene Evidence.* List, describe, and produce for inspection all physical evidence removed from the crime scene. Describe exactly the location where each item was seized. State the name, address, and phone number of each individual who seized each item. Provide the same information for all individuals present.

15. *All Physical Evidence for Testing.* Produce for inspection and testing all physical evidence obtained in connection with the investigation of this case, including that which has not been specifically described above.

16. *Video and Audio Recordings.* Produce and provide a copy of any and all audio or video recordings, including but not limited to recordings from dashboard- and body-mounted cameras, regardless whether it is stored on a public or private server, made at or taken from any location as evidence during the course of this investigation involving the defendant, any co-defendant or co-conspirator, or any other person in connection with the charged crime, whether or not they were charged in connection with this offense. Identify the date, time, place, and purpose of the audio or video recording. Provide the name, address, and phone number of all persons recorded. Provide the name, work address, and phone number of any and all persons, including where applicable, law enforcement officers, who monitored or engineered or were responsible for said recordings. Produce any logs or notes regarding when and how said recordings were made.

17. *Photographs.* Produce copies of all photographic images stored in any format, including digital photographs, of the defendant, co-defendants/co-conspirators, victim, scene of the crime, any alleged weapon, any pretrial photographic identification procedure or display, any photographs of lineups, and any composites done in connection with this case.

18. *Data.* Produce and provide a copy of any and all data obtained during the course of this investigation, including but not limited to data obtained from a mobile phone, tablet, laptop or desktop computer, data storage device or online data storage service, or social media or other online sources.

19. *Books, papers, documents, and other tangible objects.* Produce all books, papers, documents, and tangible objects, or legible copies thereof, that are in the possession, custody, or control of the State that have any evidentiary value in regard to the guilt or innocence or the sentence of the defendant or which may lead to such evidence or which the State has gathered and/or is retaining for potential use at any trial or hearing in this case.

IV. Circumstances of the Investigation, Identification, and Arrest

20. *Circumstances of Arrest/Defendant Being Taken Into Custody.* State specifically the circumstances that led to the defendant's arrest and/or being taken into custody for questioning and the arrest itself, including but not limited to the date, time, and place of his arrest and the names, addresses, and phone numbers of the person(s) arresting the defendant and all those present at the time of the arrest.

21. *Search and Arrest Warrants.* Produce any search warrants, arrest warrants, and all supporting affidavits filed in support of such warrants, including those that law enforcement attempted to obtain, in the investigation of this or related matters, including warrants directed at other suspects.

22. *Nature of Identifications.* State the exact date, time, and place of any and all of the following procedures: lineups, "show-ups," photographic displays, or "composite" renderings, that were conducted in connection with this case by any representative of any law enforcement, prosecution, court, or detention authority. For each procedure, state the name, address, phone number, and position of each participant, each attorney present, and all other persons present.

23. *Circumstances of Identifications.* State any positive, tentative, or hesitant identifications of any person in the procedures described in paragraph 22. State whom each witness identified, if anyone. Describe exactly the nature or degree of the identification, including but not limited to the amount of time between first viewing the person(s) in the procedure and making an identification, and the content of any statements made by any person to whom the procedure was presented. Produce a copy of any videotape, photograph, or drawing used in any attempted or completed identification procedure as already requested.

24. *Composite Photographs/Drawings.* State the exact date, time, and place of each composite drawing or photographic composite attempted or completed by any person in connection with this case known to the State or any other responsible person. Provide the name, address, and phone number of each witness, potential witness, or person who attempted or completed any composite drawing or picture, of any artist, professional personnel or person who assisted in attempting or completing any composite drawing or picture, and of any other person present. Produce a copy of any composite attempted or completed as already requested.

V. Scientific Reports

25. All documents, raw test data, reports, notes, charts, x-rays, and oral reports relating to the conducting or results of any medical, pathological, toxicological, DNA, chemical, biochemical, criminalistic, laboratory, forensic, or scientific examinations, investigations, or analyses regarding the death of Mr. Victim, whether or not those tests or results were conclusive, including but not limited to:

- a. the search of the crime scene;
- b. the search of the 1976 Ford Pinto Station Wagon bearing Alabama license plate ABC-123;
- c. any postmortem scientific or physical test(s) or experiment(s) conducted in connection with the death of Mr. Victim, including but not limited to all tests conducted by the State, including but not limited to the county coroner's office, the Alabama Department of Forensic Sciences, the Alabama Bureau of Investigation, the Maycomb County Sheriff's Department, and the Maycomb Police Department;
- d. any physical, medical, psychiatric, psychological, neurological or autopsy examination conducted, and tissue, blood, bodily fluid, hair, or other corporeal substance gathered in connection with this investigation or which may be used in evidence by the prosecuting attorney, including but not limited to all such records of any living or deceased victim;
- e. any items or substances seized from the defendant's or co-defendant's/co-conspirator's bodies, alleged residences, or places of business, the scene of the crime alleged, any automobile, jail, or other place purported to belong to the defendant or to any other person investigated in connection with this case;

- f. records, reports, and results, whether negative, positive, or inconclusive, relating to any attempt to obtain fingerprints, footprints, or voiceprints in connection with the alleged crime. State the name, address, and phone number of each person who attempted to obtain fingerprints or voiceprints and the location or subject matter of such attempt, and state the results of each attempt;
- g. copies of all laboratory reports prepared in connection with the investigation of this offense and/or the prosecution of the defendant, whether positive or negative, conclusive or inconclusive;
- h. reports, memoranda, charts, and tape recordings of any “lie detector” or “polygraph” test administered to the defendant or any co-defendant/co-conspirator or other person in connection with this case. State the name, address, and phone number of the polygraph test operator and a copy of any pre- or post-test interview. Attach any written report indicating the results of any such test whether conclusive or inconclusive. Reduce to writing and provide any oral opinion or result of any polygraph examiner or test or any pre- or post-test interviews not previously reduced to writing; and
- i. all specific information requested in paragraphs 25(a) through (g) regarding scientific data, reports, records or results, including the names, addresses, and telephone numbers of any persons involved in obtaining, transferring, testing, or analyzing physical objects or samples collected in the investigation of the alleged crime involving any item or any person not already mentioned.

VI. Witnesses and Involved Persons

26. List the name, address, and phone number of any informant, caller, or cooperating source who provided information to the police concerning the charged crime.

27. List the name, address, and phone number of each person who has knowledge of the charged offense or knowledge pertaining to this case or who has been interviewed by the State or any of its representatives or any police department or any law enforcement agency in connection with this case.

28. List the name, address, and phone number of any person having to do with the offenses charged in the indictment, including witnesses.

29. List the name, address, and phone number of each sheriff, deputy sheriff, police officer, federal law enforcement officer, jail or correctional guard, probation or parole

officer, representative of a law enforcement authority, and forensic or other scientific analyst who has had any connection with the investigation of the alleged crime.

30. List the name, address, and phone number for each representative of any prosecution, detention, or court authority (prosecutor, jailer, or judge) who has had any connection with the investigation of the alleged crime.

31. State how the persons listed in paragraphs 26-30 are connected with the alleged crime.

32. Provide detailed information regarding the municipal, county, state, and FBI arrest and conviction records of all persons referred to or listed in Section VI. This specifically includes any lay, expert, and other witnesses at any trial or hearing in this case and includes all co-defendants and alleged co-conspirators.

33. Attach copies of all reports, records, audio and video recordings, data downloads, investigative letters, and memoranda made by any representative of any law enforcement authority in connection with the investigation of the charged offenses.

34. Provide copies of all written statements, whether inculpatory or exculpatory, relevant in any way to the alleged crime, made by any person, witness, or potential witness in connection with the charged offenses in the possession of the State or any other responsible person.

35. Provide any and all notes, records, messages, and all other documentation of all oral statements made by any persons which tend either to exculpate or inculcate the defendant or which provide information relevant to the charged offenses. Provide the name, address, and phone number of each speaker and of each person present when each statement was made. If no written record was made of such statement, provide a list of persons who have given oral statements, and the name, address, and phone number of each speaker and of each person present when each statement was made.

36. Provide each document relating to any communications or statements (written or oral); memoranda, summaries, and audio or video recordings of such communications or statements; as well as grand jury testimony, made to any person by any of the following: Joe Client, Henry Cousins, Taylor Cousins, Inez Integrity, Vera Veracity, Mark Police, George Expert, Donald Brown, and any other person, including any confidential informant, who made any such communication or statement, including but not limited to those relevant to:

- a. the death and alleged robbery of Mr. Victim;
- b. all events leading up to the death and alleged robbery of Mr. Victim; and
- c. any condition of Joe Client, Henry Cousins, and Taylor Cousins, including but not limited to their mental or physical state, at any time.

37. The names, addresses, and phone numbers of all persons who have given written, recorded, video or oral statements, and communications referred to in paragraph 36 (including subparagraphs (a) through (c)) above.

38. All names, addresses, and phone numbers of any persons with knowledge of any facts or circumstances surrounding the death and alleged robbery of Mr. Victim;

39. All documents to, from, or between law enforcement officers regarding the death and alleged robbery of Mr. Victim.

40. All documents to, from, or between the District Attorney and his staff, excluding those portions, if any, which contain the opinions, theories, or conclusions of the prosecuting attorneys.

41. All documents relating to any potential state witness at Joe Client's trial, including:

- a. all juvenile and adult detention, jail, prison, parole, probation, and presentence investigation records;
- b. all sentencing reports;
- c. all arrest, conviction, and adult and juvenile criminal records;
- d. all records of any law enforcement authority, including all documents relating to any plea negotiations between any witness and the State;
- e. all records of any detention or court authority;
- f. all records of any prosecuting authority;
- g. all psychiatric, psychological, and mental health records;

- h. all education records;
- i. all documents relating to any lie detector test taken by any state witness; and
- j. all other records and reports.

42. All documents and any information regarding the use of confidential informants in the investigation of the alleged murder of Mr. Victim.

43. All documents and any information regarding the background, arrest record, or criminal record of Mr. Victim.

VII. Other Exculpatory and Favorable Evidence

44. Produce copies of all written, oral, or visual reward offers made in this case by any party. List all responses to any reward offers. Provide the name, address, and phone number of any respondent and the date and time of the response.

45. Any documents in the State's possession or available to the State that are exculpatory or favorable to Joe Client on the issue of guilt or punishment regarding any element of the offense of capital murder related to the death and alleged robbery of Mr. Victim, including but not limited to:

- a. favorable or exculpatory evidence provided by any person or relating to any of the following individuals: Joe Client, Henry Cousins, Taylor Cousins, Inez Integrity, Vera Veracity, Mark Police, George Expert, Donald Brown, and any other person;
- b. any and all information, including letters, records of telephone calls, memoranda, and any other records or documents, disclosing bias, prejudice, or prejudgment by persons against Joe Client, and the name, address, and phone number of each person making a statement indicating such views;
- c. any and all other information respecting any State witness that is favorable to Joe Client on the issue of guilt or punishment regarding any element of the offense of capital murder or would show a statutory or nonstatutory mitigating circumstance in the death of Mr. Victim, including but not limited to the alleged robbery of Mr. Victim;

- d. any and all other information respecting any State witness or potential State witness that would tend to show bias or tend to impeach the witness's testimony or would lead to impeaching information, including information concerning criminal convictions, legal, licensure, or administrative proceedings, findings related to an issue of dishonesty, or any familial, friendly, or other relationship with any other person connected with this case, including any friend of Mr. Victim or his family;
- e. any and all information in any form whatsoever that derives from any person and is exculpatory with respect to Joe Client having allegedly robbed Mr. Victim, including but not limited to any information obtained from any of the following people: Henry Cousins, Taylor Cousins, Inez Integrity, Vera Veracity, Mark Police, George Expert, and Donald Brown;
- f. any and all information that would support a showing that this offense was committed while Joe Client was under the influence of intoxication or mental or emotional disturbance;
- g. any and all information relevant to the capacity of Mr. Client to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law, especially any such information that would support a finding that Mr. Client's capacity was substantially impaired;
- h. any information supporting the existence of any nonstatutory mitigating circumstance;
- i. any information supporting the existence of any statutory mitigating circumstance; and
- j. any evidence that will be offered by the State at Mr. Client's trial in support of any alleged aggravating circumstance.

VIII. Psychiatric Information

46. All psychiatric documents relating to the conducting or results of any testing, examinations, or interviews of Joe Client, including but not limited to reports by the Alabama Department of Corrections, the Alabama Department of Mental Health and Mental Retardation, Taylor Hardin Secure Medical Facility, and any other agency.

IX. The Maycomb District Attorney's Office

47. The entire case files of the District Attorney for the 55th Judicial District of Alabama relating to the death of Mr. Victim and the related prosecution of Joe Client for capital murder.

48. Reveal any familial relationship (whether by blood, marriage, common-law, custody rights, or adoption), friendship, or business relationship, current, past, or expected, between any staff member or employee of the Maycomb District Attorney's and any other person involved in or related to the investigation, prosecution, or trial of Joe Client for the death of Mr. Victim.

X. Maycomb County District and Circuit Courts

49. Mr. Client moves that this Court order the Clerk for the Maycomb County Circuit Court and the Clerks for the Maycomb County District Court and the Maycomb County Juvenile Court to disclose to Mr. Client's counsel, and permit them to inspect, copy, and photograph, all records of any proceeding from the dockets of the respective courts (both the juvenile dockets and the regular adult dockets) involving Joe Client, Henry Cousins, and Stan Bridge.

XI. The Sheriff's Department of Maycomb County and the Maycomb Police Department

50. The accused moves that this Court order the Sheriff's Department of Maycomb County, Alabama, and the Police Department of Maycomb, Alabama, to disclose to counsel, and permit them to inspect, copy, and photograph, all materials referenced in paragraphs 1 through 46 (including all subparagraphs) above.

XII. Alabama Bureau of Investigation and the Alabama Department of Forensic Sciences

51. Mr. Client moves that this Court order the Alabama Bureau of Investigation and the Alabama Department of Forensic Sciences to disclose to counsel, and permit them to inspect, copy, and photograph, all materials related to the case of Mr. Victim.

XIII. Materials Withheld from Production and Continuing Nature of the Defendant's Discovery Requests

52. If any document or portion of any document covered by these requests is withheld from production, Mr. Client requests the following information with respect to each such document or partial document:

- a. the reason(s) for withholding;
- b. the date of the document;
- c. identification by name, job, title, and the last known business and home address of each person who wrote, drafted, or assisted in the preparation of the document;
- d. identification by name, job, title, and the last known business and home address of each person who received or has had custody of the document or copies thereof;
- e. a brief description of the nature and subject matter of the document;
- f. the length of the document; and
- g. a statement of the facts that constitute the basis of any claim of privilege, work product or other grounds for nondisclosure.

53. *Continuing Nature of Discovery Request.* Pursuant to Rule 16.3 of the Alabama Rules of Criminal Procedure, each request is continuing in nature and additional responsive documents that are obtained or discovered before, during, or after trial should be produced as soon as they are obtained or discovered.

54. *Disposition of Items.* If any document responsive to a request was but is no longer in the possession, custody, or control of the District Attorney, state whether such document: (a) is missing or lost; (b) has been destroyed, (c) has been transferred to others; or (d) has otherwise been disposed of. For each instance, explain the circumstances surrounding such disposition, identify each person who authorized such disposition, indicate the dates of such authorization and disposition, and identify the document or item and each person or entity that may currently have custody or control of such document or item or any copy thereof.

55. *Destruction of Evidence.* State whether any item, object, or property described in paragraphs 1-51 has been disposed of. Specify the exact date and method of disposal and the person(s) responsible for disposal. State the name, address, and phone number of any and

all persons who were notified of the disposal or destruction of any item in connection with this case.

Conclusion

56. This request for the inspection, examination, and testing of the specific items set out above is essential to ensure Mr. Client his rights to a fair trial, due process, confrontation, prepare a defense, and the effective assistance of counsel as guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the Alabama Constitution, and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court enter an order granting this motion.

Respectfully submitted,

/s/ Linda Lawyer

Linda Lawyer

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Counsel for Joe Client

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 09/29/17]