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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 REGENTS OF THE UNIVERSITY OF
CALIFORNIA, A PUBLIC
16 CORPORATION, UNIVERSITY OF
CALIFORNIA, LOS ANGELES and
17 PATRICK HARRAN (7-13-69),

18 Defendants.

CASE NO. BA392069

**DEFENDANT PATRICK HARRAN'S
NOTICE OF MOTION AND MOTION
FOR FRANKS HEARING, TO QUASH
ARREST WARRANT, AND
DEMURRER TO FELONY
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Penal Code § 1004(5)]

Hearing Date: TBD
Time: TBD
Division: 30
Judge: Hon. Shelly Torrealba

Felony Complaint Filed: Dec. 27, 2011

[Declaration of John J. O'Kane IV in Support
Thereof; Proposed Order thereon filed and
served concurrently herewith]

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Baudendistel v. Terhune</i> , No. 2:89-cv-00731 (E.D. Cal.)	20
<i>Baudendistel v. Tillson</i> , 915 F.2d 1581 (9th Cir. 1990)	13
<i>Cowan v. Superior Court (The People)</i> , 14 Cal. 4th 367 (1996)	23, 26
<i>Franks v. Delaware</i> , 438 U.S. 154 (1978)	passim
<i>In re Extradition of Powell</i> , 4 F. Supp. 2d 945 (S.D. Cal. 1998)	5
<i>In re Kelley</i> , 52 Cal. 3d 487 (1990)	21
<i>In re Mostman</i> , 47 Cal. 3d 725 (1989)	21
<i>People v. Benjamin</i> , 77 Cal. App. 4th 264 (1999)	18
<i>People v. Bradford</i> , 15 Cal. 4th 1229 (1997)	18, 22
<i>People v. Gabriel</i> , 206 Cal. App. 4th 450 (2012)	20
<i>People v. Gerold</i> , 174 Cal. App. 4th 781 (2009)	26
<i>People v. Greenberger</i> , 58 Cal. App. 4th 298 (1997)	26
<i>People v. Huston</i> , 210 Cal. App. 3d 192 (1989)	18, 20
<i>People v. Johnson</i> , 145 Cal. App. 4th 895 (2006)	24

TABLE OF AUTHORITIES

		Page(s)
1		
2		
3	<i>People v. Lutzenberger,</i>	
4	50 Cal. 3d 1 (1990)	5
5	<i>People v. Murray,</i>	
6	No. A098937, 2003 WL 22009775 (Cal. Ct. App. Aug. 26, 2003)	5
7	<i>People v. Robinson,</i>	
8	47 Cal. 4th 1104 (2010)	26
9	<i>People v. Sandlin,</i>	
10	230 Cal. App. 3d 1310 (1991)	5, 18
11	<i>People v. Scott,</i>	
12	52 Cal. 4th 452 (2011)	18, 22
13	<i>People v. Standard,</i>	
14	181 Cal. App. 3d 431 (1986)	20
15	<i>People v. Terry,</i>	
16	127 Cal. App. 4th 750 (2005)	24
17	<i>People v. Williams,</i>	
18	21 Cal. 4th 335 (1999)	26
19	<i>United States v. Hall,</i>	
20	113 F.3d 157 (9th Cir. 1997)	20, 21, 22
21	<i>United States v. Meling,</i>	
22	47 F.3d 1546 (9th Cir. 1995)	20
23	<i>Wright v. Superior Court (The People),</i>	
24	15 Cal. 4th 521 (1997)	25
25	STATUTES	
26	18 U.S.C. § 1001	16
27	Cal. Code Regs. tit. 8, § 3203(a)(6)	2
28	Cal. Code Regs. tit. 8, § 3380 <u>et seq.</u>	10
	Cal. Code Regs. tit. 8, § 3383(b)	2
	Cal. Code Regs. tit. 8, § 5191(f)(4)	2
	Cal. Lab. Code § 6425	2, 25

TABLE OF AUTHORITIES

	Page(s)
1	
2	
3	Cal. Lab. Code § 6425(a) 9, 23, 24
4	Cal. Penal Code § 118 16
5	Cal. Penal Code § 190.2 14
6	Cal. Penal Code § 801 passim
7	Cal. Penal Code § 804 6, 24, 25
8	Cal. Penal Code § 805(a) 23
9	Cal. Penal Code § 1004 23
10	Cal. Penal Code § 1004(5) 1, 2
11	Cal. Penal Code § 1054 5
12	
13	OTHER AUTHORITIES
14	Sen. Com. on Public Safety, Rep. on Sen. Bill No. 610 25
15	Stats. 2008, ch. 110, § 1 (SB 610), effective January 1, 2009 25
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

TABLE OF CONTENTS

	Page
I. PRELIMINARY STATEMENT.....	3
II. STATEMENT OF RELEVANT FACTS	7
A. Case Background.....	7
B. Timeline of Prosecution and District Attorney's Attempts to Avoid the Running of the Statute of Limitations	8
C. The Issuance of the Arrest Warrant and the District Attorney's Reliance on Cal/OSHA Senior Special Investigator Brian Baudendistel	9
D. Neither Investigator Baudendistel nor the District Attorney Revealed to the Magistrate that Investigator Baudendistel Committed Murder and that His Credibility is Critical to the Issuance of the Arrest Warrant	13
III. ARGUMENT	17
A. The Court Should Conduct a Franks Hearing	17
1. Governing Law	18
2. Investigator Baudendistel Deliberately Omitted Material Information Or Made Statements With Reckless Disregard For The Truth.....	18
a. Investigator Baudendistel Is The Affiant Ultimately Responsible For The Arrest Warrant In This Case	18
b. Investigator Baudendistel Committed Murder And Has Likely Engaged In A Systematic Campaign Of Deceit To Hide His Past	19
3. The Affidavit Does Not Support A Finding Of Probable Cause Without The BOI Report	20
a. No Reasonable Magistrate Would Have Issued An Arrest Warrant Where, As Here, The Sole Affiant Was Involved In A Murder And Has Concealed Or Lied About That Fact.....	20
b. Excising Certain Portions Of, Or Statements In, The BOI Report Is Not Viable In This Case.....	21
B. The Arrest Warrant Should be Quashed.....	21
C. If the Arrest Warrant is Quashed, The Charges Against Professor Harran Are Time-Barred and Should be Dismissed	23
1. A Demurrer is the Appropriate Method To Challenge A Felony Complaint Barred by the Statute of Limitations	23
2. The Statute of Limitations for Professor Harran's Alleged Violations of Labor Code § 6425(a) Expired on December 29, 2011	23
3. The Filing of a Felony Complaint Alone is Insufficient to Commence Prosecution Under Penal Code § 804	24
4. The "New" Allegations of the Amended Felony Complaint Do Not Save the Original Felony Complaint from the Statute of Limitations Bar	25
IV. CONCLUSION	27

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** at 8:30 a.m. on July 27, 2012, in
3 Division 30 of the above-entitled Court, located at 210 West Temple Street, Los Angeles,
4 California, Defendant Patrick Harran ("Professor Harran") will, and hereby does, (1)
5 move this Court for an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154
6 (1978), (2) move this Court to quash the arrest warrant filed against him in the above-
7 entitled matter, and (3) on those bases, thereafter demur to the Amended Felony
8 Complaint in this action, pursuant to Section 1004(5) of the California Penal Code and
9 any other applicable law, on the grounds that the arrest warrant filed against Professor
10 Harran in this matter is defective and should be quashed, and therefore no prosecution was
11 properly brought against him during the applicable three-year statute of limitations period.
12 Cal. Penal Code § 1004(5).

13 Respectfully submitted,

14 DATED: July 26, 2012

15 PAUL HASTINGS LLP
16 THOMAS P. O'BRIEN
17 DANIEL PRINCE
18 JOHN J. O'KANE, IV
19 LILLIAN CHU

20 By: 

21 THOMAS P. O'BRIEN

22 Attorneys for Defendant
23 Patrick Harran
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1. Professor Harran demurs to count I of the Complaint, a violation of Labor Code Section 6425 for willful violation of Title 8 of California Code of Regulations, Section 5191(f)(4), on the grounds that the Complaint is barred by the statute of limitations. Penal Code § 1004(5).

3. Professor Harran demurs to count III of the Complaint, a violation of Labor Code Section 6425 for willful violation of Title 8 of California Code of Regulations, Section 3383(b), on the grounds that the Complaint is barred by the statute of limitations. Penal Code § 1004(5).

PAUL HASTINGS LLP
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JOHN J. O'KANE, IV
LILLIAN CHU

Attorneys for Defendant
Patrick Harran

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 On December 27, 2011, two days prior to the expiration of the statute of
4 limitations, the Los Angeles District Attorney's Office (the "District Attorney" or the
5 "Office") filed three felony charges against the Regents of the University of California
6 (the "Regents"), a Public Corporation, the University of California, Los Angeles
7 ("UCLA"), and Professor Patrick Harran ("Professor Harran"), one of the world's leading
8 organic chemists, and caused an arrest warrant to be issued for Professor Harran in an
9 attempt to prevent the statute of limitations from expiring pursuant to Section 801 of the
10 Penal Code. The charges against Professor Harran arose from a December 2008
11 laboratory fire at UCLA, in which research associate Sheharbano "Sheri" Sangji ("Sheri
12 Sangji" or "Ms. Sangji") was fatally injured, and ignored an initial California Division of
13 Occupational Safety and Health ("Cal/OSHA") investigation that determined there was no
14 willful misconduct involved in the accident. Cal/OSHA Senior Special Investigator Brian
15 A. Baudendistel ("Investigator Baudendistel") re-investigated the incident and prepared a
16 written report (the "BOI Report" or the "Report"), which served as the affidavit upon
17 which the Magistrate solely relied in issuing an arrest warrant for Professor Harran in this
18 case to stop the statute of limitations from expiring. (See Declaration of John J. O'Kane
19 IV ("O'Kane Decl.") Ex. L (Felony Complaint for Arrest Warrant ("Complaint"),
20 attaching the BOI Report) (Dec. 27, 2011).)

21 Incredibly, the affidavit failed to disclose to the Magistrate that at age 16,
22 Investigator Baudendistel murdered a man in cold blood during a failed drug deal and
23 almost certainly lied or deliberately misled the District Attorney within the past two
24 months about his involvement in that heinous crime. Neither Investigator Baudendistel
25 nor the District Attorney disclosed Investigator Baudendistel's previous involvement in a
26 first degree murder (plainly, a crime of moral turpitude) or his cover-up of that fact to the
27 Magistrate prior to the issuance of the arrest warrant (or at any time since), which is a
28

1 clearly material and intentional omission of information the Magistrate should have been
2 able to consider prior to the issuance of the arrest warrant.

3 In addition to the fact that the affidavit is riddled with inaccuracies and
4 manipulations of witness testimony designed to lay blame on Professor Harran (who was
5 not even present in the laboratory at the time of the accident), Investigator Baudendistel's
6 credibility—or lack thereof—is squarely at issue here. It is a near certainty that
7 Investigator Baudendistel has made repeated misrepresentations (or omissions) to state
8 and/or federal law enforcement officials with respect to his prior crime of murder in
9 connection with, for example: (a) his application for employment with Cal/OSHA; (b)
10 any criminal background checks in response to which Investigator Baudendistel submitted
11 materials; (c) his service on any state or federal task forces; (d) Investigator
12 Baudendistel's application—as an admitted killer—to obtain and/or renew a Firearms
13 Permit; and, of course (e) dozens (or hundreds) of matters in which Investigator
14 Baudendistel has offered an affidavit, declaration, or testimony. Indeed, when questioned
15 by prosecutors in this case, Investigator Baudendistel denied being a murderer, which
16 required the Office to compare his fingerprints with those of the killer to determine that
17 they were one and the same person.¹

18 Professor Harran should be granted an evidentiary hearing to further explore
19 the credibility of Investigator Baudendistel, the affiant upon which the prosecution's arrest
20 warrant completely rests. An application for a *Franks* hearing “must challenge the
21

22 ¹ Those fingerprints, as described more fully herein, were a match. (O’Kane Decl.,
23 Ex. J.) Thus, it is clear that Investigator Baudendistel made some type of material
24 misstatement or omission (or deliberately misled) the District Attorney in this case. When
25 questioned about his involvement in the Myer killing, he could either (1) admit his
26 involvement (in which case there would be no need for a fingerprint check), or (2) deny
27 his involvement (which, if credible, would similarly have not required a fingerprint
28 check). The fact that the District Attorney needed to resort to a fingerprint comparison
makes it abundantly clear that Investigator Baudendistel was not forthright with the
District Attorney. **This fact alone should convince this Court of the need for a *Franks***
hearing.

1 truthfulness of the affiant” *People v. Sandlin*, 230 Cal. App. 3d 1310, 1317 (1991).²
2 This Motion does precisely that. Investigator Baudendistel personally conducted the
3 investigation³ into the tragic death of Ms. Sangji and the District Attorney adopted wholly
4 his Report in deciding to press charges against Professor Harran and apply for an arrest
5 warrant.

6 While the ultimate conclusions drawn by the Report await trial, the fact that,
7 as a 16-year-old, Investigator Baudendistel murdered a 26-year-old man in cold blood for
8 the purpose of stealing methamphetamines, later tested positive for cocaine use while
9 serving his sentence in the custody of the California Youth Authority, and almost certainly
10 has purposefully misrepresented the truth about those facts ever since⁴ is ripe and a proper
11 justification for a *Franks* hearing.⁵ The defense has propounded an informal request for
12 discovery on the District Attorney for information related to Investigator Baudendistel,
13 pursuant to Penal Code § 1054. While the District Attorney has not yet produced relevant
14

15 ² Although the case law supporting this motion typically arises in the search warrant
16 context, *Franks* applies to challenges to arrest warrants as well. *See In re Extradition of*
17 *Powell*, 4 F. Supp. 2d 945, 955 (S.D. Cal. 1998) (“When a criminal defendant requests a
18 *Franks* Hearing to challenge a Magistrate Judge’s issuance of an arrest warrant, a
19 reviewing court conducts the *Franks* Hearing.”) (internal quotation marks omitted);
People v. Murray, No. A098937, 2003 WL 22009775, at *3 (Cal. Ct. App. Aug. 26, 2003)
20 (“The *Franks* test applies to omissions from arrests warrants.”).

21 ³ Notably, Cal/OSHA had already conducted an investigation into the accident. That
22 investigation concluded that although there were violations of California health and safety
23 codes, it did not find that the violations were “willful.” (*See O’Kane Decl.* ¶ 17, Ex. K.)

24 ⁴ Regardless of Investigator Baudendistel’s representations to the State or other
25 authorities over the past twenty-plus years, it is clear from the correspondence exchanged
26 among the parties here that Investigator Baudendistel was not truthful with the District
27 Attorney’s Office within the past two months. (*See supra* note 1.)

28 ⁵ In the alternative, Professor Harran respectfully requests that this Court consider
this Motion as a request for an evidentiary hearing pursuant to the principles announced in
People v. Luttenberger, 50 Cal. 3d 1 (1990), as the evidence provided in this Motion
demonstrates (1) inconsistencies in the affiant’s statements and (2) reason to believe that
the affiant withheld critical information from the magistrate.

1 (and potentially exculpatory) discovery, the defense ascertained—without the assistance
2 of the District Attorney, which sat on credible information regarding Investigator
3 Baudendistel’s true identity for nearly two months—that: (1) there are only three
4 individuals in the United States with the name “Brian Baudendistel”; (2) Investigator
5 Baudendistel was raised in the same area as the Baudendistel involved in the killing; and
6 (3) it is likely that, based on Investigator Baudendistel’s own statements concerning his
7 whereabouts, he shares the same birthday as the Baudendistel involved in the murder.
8 While the District Attorney refused to conclusively admit Investigator Baudendistel’s
9 identity for nearly two months,⁶ representatives of the Office have previously stated that
10 there was likely a match, and that Investigator Baudendistel has played fast and loose with
11 the truth during the District Attorney’s (meager) efforts to identify him as the admitted
12 murderer.

13 Now that the defense’s suspicions about Investigator Baudendistel have
14 proven true, the prosecution’s case fails. First, Investigator Baudendistel’s credibility is
15 irreparably damaged, such that he could not have reasonably served as an affiant in
16 support of an arrest warrant. Next, because the arrest warrant for Professor Harran was
17 issued solely on the basis of the Report, and material information regarding Investigator
18 Baudendistel’s credibility was **deliberately** hidden from the Magistrate, there is no
19 support for a determination of probable cause in this case. The arrest warrant should
20 therefore be quashed. Finally, if the arrest warrant were quashed, no valid prosecution
21 was brought against Professor Harran during the applicable statute of limitations period.⁷

22
23 ⁶ Defense counsel brought their suspicions regarding Investigator Baudendistel to a
24 representative of the District Attorney’s Office on June 1, 2012, and were informed at that
25 time the Office was “aware” of the possibility, but that Investigator Baudendistel was not
26 the same person who committed murder in 1985. (O’Kane Decl., ¶16.) On July 23,
2012, the Office finally admitted that Investigator Baudendistel had indeed committed
murder. (*Id.* at ¶ 16.)

27 ⁷ Under Section 804 of the Penal Code, a felony prosecution is commenced when
28 (1) an indictment or information is filed, (2) the defendant is arraigned on a complaint, or
(3) an arrest warrant or bench warrant is issued. In Professor Harran’s case, no indictment

1 As a result, the amended felony complaint ("FAC") filed in this case on February 28,
2 2012, is properly the subject of a defense demurrer.

3 For the following reasons, this Court should: (1) grant Professor Harran's
4 request for a *Franks* hearing to conclusively determine the issue of Investigator
5 Baudendistel's credibility;⁸ (2) thereafter quash the arrest warrant issued for Professor
6 Harran, as the Government has purposefully misled the Court; and (3) sustain Professor
7 Harran's demurrer to the FAC on the grounds that the charges are time-barred.⁹

8 **II. STATEMENT OF RELEVANT FACTS**

9 **A. Case Background**

10 Professor Harran is a nationally-renowned synthetic organic chemist whose
11 research includes the development of therapies for cancer and obesity. (BOI Rep. at 8;
12 *see also* Publications, Harran Research Group, UCLA website, *available at*
13 <http://www.chem.ucla.edu/harran/publications.html> (last visited July 23, 2012).) Prior to
14 his appointment as the inaugural D.J. & J.M. Cram Chair in Organic Chemistry at UCLA,
15 Professor Harran was a tenured professor at the University of Texas, Southwestern
16 Medical Center. (BOI Rep. at 8.) Professor Harran joined the UCLA faculty in July
17 2008, after a recruiting process that began in October of 2007. (BOI Rep. at 68.) When
18 he arrived at UCLA, Professor Harran was placed in a temporary laboratory space while
19 his permanent laboratory was under construction. (BOI Rep. at 8.)
20
21

22 or information has yet been filed, nor has he been arraigned on the complaint. As such, a
23 valid arrest warrant, filed just two days before the statute of limitations ran, was necessary
24 to prevent the prosecution of Professor Harran from being time-barred.

25 ⁸ *See supra* note 5.

26 ⁹ Professor Harran includes his demurrer to the FAC here to preserve his rights. If
27 the Court would prefer for Professor Harran to defer briefing on the statute of limitations
28 issue until the questions concerning Investigator Baudendistel's credibility are resolved,
Professor Harran would be inclined to do so at the Court's direction.

1 Ms. Sangji was hired at UCLA as a Research Associate in October 2008.
2 (BOI Rep. at 9.) Ms. Sangji obtained a bachelor's degree in Chemistry from Pomona
3 College in May 2008, and worked as a Synthetic Chemist at Norac Pharma after her
4 graduation but prior to coming to UCLA. (*Id.*) On her first day at UCLA, Professor
5 Harran observed Ms. Sangji as she properly completed a chemical transfer without
6 difficulty. (BOI Rep. at 71.)

7 On Thursday, October 30, 2008, UCLA Environmental, Health & Safety
8 ("EH&S") Chemical Safety Officer Michael Wheatley ("Mr. Wheatley") conducted an
9 inspection of the temporary lab space in which Professor Harran's group was housed as
10 they waited for the construction of his permanent lab to be completed. (BOI Rep. at 42-
11 44.) After receiving the inspection report, Professor Harran requested—and received—
12 permission from UCLA to defer a subsequent inspection until after he was moved into his
13 permanent lab. (*Id.*) Despite the deferral of re-inspection, Professor Harran worked with
14 his research team to ensure that the discrepancies identified by Mr. Wheatley's inspection
15 were immediately corrected. (O'Kane Decl. Ex. O (Transcript of BOI Interview of
16 Andrew Roberts (Aug. 14, 2009) ("Roberts BOI Interview"), at 150-151).)

17 On December 29, 2008, Ms. Sangji was conducting research involving the
18 chemical tertbutyllithium, commonly known as "t-BuLi." (BOI Rep. at 2.) She sustained
19 second and third degree burns to her body after the plunger of the syringe she was using
20 became dislodged and released the chemical onto her hands and torso. (*Id.*) Tragically,
21 Ms. Sangji died eighteen days later, on January 16, 2009. (*Id.*)

22 B. Timeline of Prosecution and District Attorney's Attempts to Avoid the
23 Running of the Statute of Limitations

24 Although the laboratory fire occurred on December 29, 2008, and the BOI
25 Report was filed on December 29, 2009, the District Attorney waited until December 27,
26 2011—just two days before the statute of limitations would cut off the prosecution—to
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1 bring charges against Professor Harran.¹⁰ A representative of the District Attorney's
2 Office explained the long delay by stating that this case was not a high priority for the
3 Office. On February 28, 2012, after being informed that they failed to properly charge the
4 Regents within the statute of limitations, the District Attorney filed the FAC in an
5 apparent attempt to plead around the three-year statute of limitations bar. (*See* FAC.) The
6 FAC is based upon the same set of operative facts as, and largely contains language
7 identical to, that of the initial complaint. (*Compare generally* FAC with Compl.)
8 However, the FAC now contains allegations concerning the date of Ms. Sangji's passing.
9 (FAC at 2.) Given that the alleged violations of Labor Code Section 6425(a) were
10 committed and complete on December 29, 2009, this amendment is irrelevant as to
11 Professor Harran.

12 C. The Issuance of the Arrest Warrant and the District Attorney's Reliance on
13 Cal/OSHA Senior Special Investigator Brian Baudendistel

14 An arrest warrant for Professor Harran was issued on or about December 27,
15 2011. To establish probable cause for the issuance of that warrant, the government solely
16 relied upon Investigator Baudendistel's BOI Report. (Compl.) The BOI Report was
17 appended to a sworn declaration from Los Angeles District Attorney Investigator David
18 Higuera ("Higuera"). (*Id.*) However, Higuera, on the face of the complaint, had no
19 involvement in the preparation of the BOI Report. (*Id.*) Instead, the BOI Report was
20 prepared and filed by Investigator Baudendistel. (BOI Rep. at 1.) Thus, it is Investigator
21 Baudendistel—not Higuera—who is the true affiant attesting to the alleged facts which
22 support charges against Professor Harran. (*See* discussion *infra* at III.A.2.a.) This entire
23 case, and the arrest warrant itself, hinges on the Report authored by Investigator
24 Baudendistel and the conclusions he draws, particularly given that a previous Cal/OSHA
25

26 ¹⁰ With exceptions not applicable here, a prosecution for a crime punishable by
27 imprisonment "shall be" commenced within three years after commission of the offense.
28 Cal. Penal Code § 801.

1 investigation determined that there were no willful violations of safety regulations
2 involved in this tragedy. (O’Kane Decl. at ¶ 17; Ex. K; BOI Rep. at 17-23.)

3 The BOI Report draws several conclusions critical of Professor Harran. The
4 BOI report states that the procedure Ms. Sangji used was completely out of the industry
5 mainstream. (BOI Rep. at 92.) More specifically, the Report states that Ms. Sangji was
6 not properly trained and that Professor Harran failed to have proper standard operating
7 procedures for t-BuLi use. (BOI Rep. at 92.) The Report also states that “more
8 significant[] . . . was Professor Harran’s failure to both provide appropriate personal
9 protective equipment to Victim Sangji and to ensure that PPE was utilized by his
10 laboratory personnel.”¹¹ (*Id.*)

11 Critically, however, the Report (and therefore, the affidavit itself)
12 mischaracterizes or ignores outright testimony and other evidence, in Investigator
13 Baudendistel’s possession at the time he drafted the Report, that tends to prove that
14 Professor Harran did not violate any health or safety regulation, much less that he did so
15 “willfully.” For example, Investigator Baudendistel and the District Attorney failed to
16 inform the Magistrate that:

- 17
- 18 • Investigator Baudendistel specifically affirmatively declares that he
19 does not understand chemical scientific literature. (*See* O’Kane Decl.
20 Ex. M (Transcript of BOI Interview of Professor Daniel O’Leary
(Sept. 24, 2009) (“O’Leary BOI Interview”), at 14.)
- 21 • The very technical bulletin upon which Investigator Baudendistel
22 relies specifically states:
 - 23 ○ “Some chemists still believe that very specialized equipment
24 and complicated techniques are required for handling air-
25 sensitive reagents. This is often not the case.” (O’Kane Decl.
26 Ex. N, at 1.)

27 ¹¹ “PPE” is shorthand for Personal Protective Equipment, as described at Title 8 of
28 the California Code of Regulations Section 3380 et seq.

- 1 • Graduate Student Researcher Andrew Roberts, who accompanied
2 UCLA EH&S during its inspection of Professor Harran's lab and had
3 received UCLA's laboratory safety training, testified that:
 - 4 ○ Lab coats were available in a stock room in Young Hall at
5 UCLA. (Roberts BOI Interview, at 127.)
 - 6 ○ There were lab coats available to "anyone working in
7 Professor Harran's lab[.]" (*Id.*)
- 8 • UCLA Chemical Safety Officer Wheatley testified that:
 - 9 ○ Lab coats were available in Professor Harran's lab during his
10 October 2008 inspection. (*See* O'Kane Decl. Ex. P (Transcript
11 of BOI Interview of Michael Wheatley (July 29, 2009)
12 ("Wheatley BOI Interview"), at 219).)
 - 13 ○ At the time of the accident, the UCLA laboratory safety
14 manual "suggest[ed] wearing a lab coat in the lab." (*Id.* at
15 221.)
- 16 • Professor Daniel O'Leary, Ms. Sangji's Chemistry thesis advisor
17 from Pomona College, stated that:
 - 18 ○ Ms. Sangji received laboratory safety training at Pomona
19 College at least three times, including a video regarding fires
20 (although "not necessarily" a laboratory fire). (O'Leary BOI
21 Interview, at 3.)
 - 22 ○ Ms. Sangji's undergraduate chemistry work would have
23 exposed her to flammable solvents. (*Id.* at 4-5.)
 - 24 ○ Typically, when people are working with alco-lithiums (a
25 class of chemicals which includes t-BuLi), "they're either
26 going to be working with a syringe or . . . a cannula transfer . .
27 . ." (*Id.* at 5.)
 - 28 ○ Indeed, Professor O'Leary stated that "[Sangji's] use of the
syringe [to transfer t-BuLi] didn't fall too far off, off what I
would consider to be normal." (*Id.* at 6.)
 - There is a "mix of opinion" in the chemistry community
regarding whether to use a glass or polypropylene syringe to
transfer alco-lithiums. (*Id.*)
 - The method of transferring alco-lithiums depends on the type
of research being done, and that "[u]sually the traditions [of
using a syringe or cannula method] just get carried along."
(*Id.* at 11.)
 - **Incredibly, the BOI Report omits this statement
from Professor O'Leary, yet excoriates Professor**

1 **Harran for making nearly the same precise**
2 **statement.** (BOI Rep. 91-92) (“Dr. Harran’s failure to
3 utilize required standard operating procedures relative
4 to the use and handling of t-Butyllithium, [sic] was also
5 a causal element in this case. . . .[a]s Dr. Harran
6 confirmed, ‘**...in my field we pass down knowledge**
7 **open, ah, one generation to another and this is**
8 **lore.**’” (bold emphasis in original).)

- 9 ○ People reading Ms. Sangji’s publications may conclude that
10 she “had a massive amount of synthetic [chemistry]
11 experience . . .” (O’Leary BOI Interview, at 14.)
- 12 ○ Ms. Sangji had “a pretty significant amount of experience in
13 kind of traditional synthetic organic [chemical]
14 manipulations.” (*Id.* at 15.)
- 15 • Hui Ding, a post-doctoral researcher in Professor Harran’s temporary
16 lab, stated that Professor Hurley was “oftentimes” working with Ms.
17 Sangji, because “she’s working on some compounds that Professor
18 Hurley is working on.” (See O’Kane Decl. Ex. R (Transcript of BOI
19 Interview of Hui Ding (Aug. 20, 2009) (“Ding BOI Interview”), at
20 344).)
 - 21 ○ Indeed, the BOI Report **misstates Dr. Ding’s testimony**, as
22 the Report states that “Dr. Ding stated that Paul Hurley would
23 occasionally work with Victim Sangji, as they were working
24 on related research.” (BOI Rep. at 53) (emphasis added.)
 - 25 ○ Given Professor Harran’s statements that Dr. Hurley was
26 responsible for training Ms. Sangji (*e.g.*, BOI Rep. at 91),
27 contrasted against the Report’s conclusion that “it is clear that
28 Victim Sangji was not properly trained, if at all . . .” (emphasis
added), the Report’s failure to accurately state Dr. Ding’s
testimony is nothing short of incredulous.
- William Peck, former manager of UCLA EH&S, stated that t-BuLi
was a “pretty common” compound in the organic chemistry section.
(See O’Kane Decl. Ex. Q (Transcript of BOI Interview of William
Peck (Feb. 5, 2009) (“Peck BOI Interview”), at 403).)
- Wei Feng Chen, a post-doctoral researcher in Professor Harran’s
temporary lab, stated that there were lab coats available to personnel
in storage on the third floor and there were funds to obtain lab coats
as well. (See O’Kane Decl. Ex. S (Transcript of BOI Interview of
Wei Feng Chen (Aug.20, 2009) (“Chen BOI Interview”), at 310).)

Investigator Baudendistel's manipulative and result-focused presentation of the evidence—particularly in light of the facts described above and results of the prior Cal/OSHA investigation—demonstrate that consideration of the investigating officer, his background, and the Report's biased conclusions should have been brought to the Magistrate's attention.

D. Neither Investigator Baudendistel nor the District Attorney Revealed to the Magistrate that Investigator Baudendistel Committed Murder and that His Credibility is Critical to the Issuance of the Arrest Warrant

Counsel for Professor Harran conducted a preliminary investigation into Investigator Baudendistel. (O'Kane Decl. at ¶¶ 4-12 .) The investigation was launched after a review of *Baudendistel v. Tillson*, 915 F.2d 1581 (9th Cir. 1990). In that case, Brian A. Baudendistel, a ward of the California Youth Authority, sought relief for ineffective assistance of counsel after pleading no contest to a charge of first degree murder. *Id.* News articles appearing to describe that murder reported that a Brian Baudendistel and two others were charged with special circumstance murder in connection with the shooting death of biker Michael Myer, of Diamond Springs, California. (*3 held to answer on murder charges*, Mountain Democrat & Placerville Times (Mar. 4, 1985), at A-1 (O'Kane Decl. Ex. B).)

Baudendistel and his cohorts shot Myer in the course of a failed drug deal. (*Id.*) One co-conspirator would later testify at a preliminary hearing that Baudendistel (1) suggested that the trio shoot Myer because Myer was a "local" who could easily find them after the hold-up, and (2) Baudendistel would be lying if he denied any involvement in the killing. (Clare Wood, *Rosick again faces murder charge*, Mountain Democrat & Placerville Times (May 27, 1985), at A-2 (O'Kane Decl. Ex. D).) Other reports indicated that Baudendistel was likely to plead guilty to murder in juvenile court to avoid the possibility of being charged as an adult (*see Rosick faces 2nd, tougher prelim*, Mountain Democrat & Placerville Times (May 16, 1985), at A-3 (O'Kane Decl. Ex. C).).¹²

¹² If Baudendistel had been charged as an adult with first degree murder with special circumstances, the same charge his adult co-conspirator was facing (*see O'Kane Decl.*,

1 The investigation has also identified evidence that Investigator Baudendistel
2 obtained a Firearms Permit through the California Department of Consumer Affairs,
3 Bureau of Security and Investigative Services. (O’Kane Decl. at ¶ 9.) Notably, the
4 Firearms Permit application requests information regarding the applicant’s background,
5 including his or her criminal history. (O’Kane Decl. Ex. E.) Investigator Baudendistel
6 also has a Private Investigators License through the Department of Consumer Affairs.
7 (O’Kane Decl. at ¶ F.)

8 Given Investigator Baudendistel’s senior investigatory position at
9 Cal/OSHA and the aforementioned licenses, and the fact that he has previously been
10 adjudicated guilty of first degree murder, it is extremely likely that he has made numerous
11 misrepresentations or omissions of material fact to state and/or federal law enforcement
12 personnel during his tenure as a Cal/OSHA investigator.¹³ These include, without
13 limitation, statements or omissions concerning his application for employment with
14 Cal/OSHA, various criminal background checks, service upon any state or federal task
15 force(s), the firearms application, and/or various matters in which Investigator
16 Baudendistel has offered an affidavit, declaration, or other testimony.¹⁴ Put simply,

17
18 Ex. D), rather than as a juvenile, Baudendistel would have faced the death penalty. Penal
19 Code § 190.2.

20 ¹³ Surprisingly, defense’s investigation has also discovered that Investigator
21 Baudendistel, a murderer with a drug-related conviction, serves on the Temple City Safety
22 Commission, a position that may have included a background check or screening process.
(O’Kane Decl. Ex. G.)

23 ¹⁴ Without an evidentiary hearing, Professor Harran is foreclosed from affirmatively
24 establishing the likely existence of a variety of misstatements, omissions, or other acts on
25 the part of Investigator Baudendistel that would call his credibility as an affiant directly
26 into question. What is certain, however, is that the true affiant in this case pled guilty to
27 murder, somehow became a state criminal investigator in spite of that fact and—
28 regardless of the (extremely unlikely) propriety of his employment as a state
investigator—he has (at best) deceived the District Attorney’s office within the past two
months. There is no other credible explanation for the District Attorney’s need to verify a
state investigator’s actual identity through the use of a fingerprint comparison.

1 Investigator Baudendistel cannot be trusted for any purpose, and Professor Harran is
2 entitled to a hearing to probe Investigator Baudendistel's credibility further.

3 On June 1, 2012, Professor Harran's counsel informed a representative of
4 the District Attorney of the significant likelihood that Investigator Baudendistel was
5 involved in the 1985 Myer slaying. (O'Kane Decl., ¶ 13.) In that initial discussion, the
6 representative said that the Office was already aware there were possible questions
7 regarding Investigator Baudendistel's criminal history, but denied that Investigator
8 Baudendistel was the same Baudendistel that committed murder. Subsequently, another
9 Office representative proclaimed that Investigator Baudendistel had passed several
10 criminal background checks in the past. Later, however, the Office acknowledged that
11 Investigator Baudendistel had likely committed murder, and had been "too cute by half"
12 in the responses he provided the District Attorney when pressed for information.

13 Strangely, weeks after stating conclusively that Investigator Baudendistel
14 had not committed murder, the Office later said that Investigator Baudendistel was never
15 *directly* asked whether he committed murder. It is nearly impossible to believe that such
16 an esteemed prosecutorial agency, when presented with credible information questioning
17 the integrity of a lead investigator—indeed, the sole investigator in a high-profile
18 prosecution—would (1) fail to make any inquiry for a month, and later (2) only make an
19 indirect inquiry when it finally did investigate. Despite Baudendistel's denial to the
20 Office that he was the Baudendistel who committed murder, the Office ordered fingerprint
21 cards based on information presented by the El Dorado County Sheriff's Department, who
22 told the Office that the Baudendistel involved in the 1985 Myer slaying shares the same
23 name and date of birth as Investigator Baudendistel. Thus, it is plain as day that
24 Investigator Baudendistel's responses to the Office's inquiries—whatever they were—
25 warranted further investigation. On July 23, 2012, the Office finally confirmed that,
26
27
28

1 based on a fingerprint exemplar match, Investigator Baudendistel is the same Brian
2 Baudendistel that pled guilty to murder.¹⁵

3 The Office's failure to confirm Baudendistel's involvement for over a
4 month led Professor Harran to serve informal discovery requests upon the District
5 Attorney on July 3, 2012 (the "Initial Requests"). (O'Kane Decl. ¶ 14; Ex. H.) The
6 Initial Requests seek, *inter alia*, any and all documents concerning, referring, or relating
7 to the investigation of the murder in which Brian Baudendistel was involved, the
8 prosecution and resolution of that case, as well as any knowledge of the same on the part
9 of the District Attorney or any other government body or agency. They also seek
10 documents, including personnel records, that may establish whether Investigator
11 Baudendistel made any misstatements or omissions of material fact to a government
12 agency or officer (collectively, the "Requested Information"). Even with the Office's
13 recent confirmation of Investigator Baudendistel's true identity, the Requested
14 Information is highly relevant to the interests of justice and the preparation of Professor
15 Harran's defense, particularly in view of 18 U.S.C. Section 1001 and California Penal
16 Code Section 118, which criminalize perjury and/or making misrepresentations to a peace
17 officer. Based on the Office's need to verify its own investigator's identity through the
18 use of fingerprint cards, it is clear that at least some type of material misstatement or
19 deliberate omission was made by Investigator Baudendistel to the District Attorney within
20 the past two months. The requested information also constitutes *Brady* material.

21 On July 6, 2012, the Office responded to the Initial Requests by refusing to
22 produce any documents. (O'Kane Decl. at ¶ 15; Ex. I.) Although on July 23, 2012, the

23 ¹⁵ As Baudendistel apparently lied to (or deliberately misled) the Office, he is subject
24 to prosecution under California law. Certainly, any lies or material omissions made by
25 Investigator Baudendistel to state law enforcement officials during any criminal
26 background checks he somehow passed over the past three years would subject him to
27 prosecution under state law. Similarly, if Investigator Baudendistel has served on any
28 federal task forces and was required to pass background checks as part of that work, he is
subject to prosecution pursuant to 18 U.S.C. § 1001, a felony which carries a sentence of
five years in federal prison and has a statute of limitations of five years.

1 Office finally admitted Investigator Baudendistel committed the crime of murder, the
2 Office continues to withhold relevant information it has regarding the credibility of
3 Investigator Baudendistel. This key issue—the credibility and criminal history of the
4 primary investigating officer and affiant in this case—must be resolved prior to
5 arraignment to secure Professor Harran’s rights.¹⁶

6 **III. ARGUMENT**

7 **A. The Court Should Conduct a *Franks* Hearing.**

8 The information uncovered by the defense investigation, as well as
9 Investigator Baudendistel’s obvious and recent denials and/or material omissions in the
10 wake of questioning by the Office, raises compelling issues concerning Investigator
11 Baudendistel’s credibility as an affiant for the arrest warrant. Investigator Baudendistel
12 has almost certainly engaged in a campaign of lies and misinformation for the course of
13 several decades¹⁷ to conceal his past, which calls his credibility into serious question. **No**
14 **reasonable magistrate would have issued an arrest warrant solely on the basis of a**
15 **report filed by a state investigator who committed first degree murder (a crime of**
16 **moral turpitude), deliberately failed to disclose that offense to the Magistrate, likely**
17 **deceived this State and the public for years, and for the past two months has**
18 **deliberately misled or outright lied to the District Attorney.** Professor Harran should
19 be permitted to explore this critical issue now, before this prosecution proceeds any
20 further. Thus, the Court should order a *Franks* hearing.

21 ¹⁶ Professor Harran specifically reserves any and all rights with respect to his ability
22 to serve supplemental discovery requests upon the District Attorney or other entities or
persons after review of the Requested Information.

23 ¹⁷ As above, while it is likely that Investigator Baudendistel has not been truthful with
24 respect to his past for decades, the fact that the District Attorney needed to pull fingerprint
25 cards on a state-employed, Senior Special Investigator with responsibility for criminal
26 investigations in order to confirm or deny that same investigator’s involvement in a
27 murder makes it abundantly clear that Investigator Baudendistel has not been fully truthful
28 with the prosecuting authorities in this case within the past several weeks. His current
credibility is therefore entirely in question and a valid source of inquiry for Professor
Harran.

1 1. Governing Law

2 A defendant has the right to challenge the veracity of statements contained
3 in an affidavit to establish probable cause for an arrest warrant to issue.¹⁸ *Franks v.*
4 *Delaware*, 438 U.S. 154, 171-72 (1978); *People v. Bradford*, 15 Cal. 4th 1229, 1297
5 (1997). The court must grant an evidentiary hearing if the defendant makes a substantial
6 preliminary showing that (1) the affiant has made statements which were deliberately false
7 or in reckless disregard for the truth, and (2) after removing the improper statements, the
8 remaining content of the affidavit is insufficient to justify a finding of probable cause.
9 *People v. Benjamin*, 77 Cal. App. 4th 264, 271-72 (1999); *People v. Sandlin*, 230 Cal.
10 App. 3d 1310, 1316 (1991); *see Franks*, 438 U.S. at 172. In California, *Franks* applies to
11 omissions as well as misstatements. *People v. Huston*, 210 Cal. App. 3d 192, 219 (1989).
12 “A defendant who challenges a [] warrant based on *omissions* in the affidavit bears the
13 burden of showing an intentional or reckless omission of material information that, when
14 added to the affidavit, renders it insufficient to support a finding of probable cause.”
15 *People v. Scott*, 52 Cal. 4th 452, 484 (2011).

16 2. Investigator Baudendistel Deliberately Omitted Material Information
17 Or Made Statements With Reckless Disregard For The Truth

18 a. Investigator Baudendistel Is The Affiant Ultimately
19 Responsible For The Arrest Warrant In This Case

20 The initial complaint in this case was filed on December 27, 2011. That
21 complaint for arrest warrant states that “attached hereto and incorporated herein are
22 official reports and documents of a law enforcement agency which the undersigned
23 believes establish probable cause for the arrest.” (Compl., at 3.) The only documents
24 appended to the complaint are the BOI Report, a news article regarding Ms. Sangji’s
25 death, and photographs of Ms. Sangji’s burns and a melted syringe. (*See* Compl.)
26 Although Mr. Higuera, an affiant by title only, signed the request for arrest warrant, he did
27 not conduct any of the investigation that produced the Report. Investigator Baudendistel
28 did. Thus, this court should be concerned about Investigator Baudendistel’s—not Mr.

¹⁸ *See supra* note 3.

1 Higuera's—credibility. Mr. Higuera is merely a straw man; Investigator Baudendistel is
2 the true affiant here. Further, regardless of who is the signed affiant, the fact that the sole
3 investigator in this case, who conducted all the interviews and examined all the evidence
4 contained in the Report, concealed his previous crime of moral turpitude (and has misled
5 the authorities regarding the same) from the Magistrate renders the Report and affidavit
6 not credible.

7 b. Investigator Baudendistel Committed Murder And Has Likely
8 Engaged In A Systematic Campaign Of Deceit To Hide His
9 Past

10 The defense's investigation into Investigator Baudendistel uncovered
11 significant evidence linking Investigator Baudendistel to the Myer killing in 1985. (See
12 discussion *supra* at II.D.) Prior to confirming that Investigator Baudendistel's fingerprints
13 matched that of Brian A. Baudendistel, an admitted killer, representatives of the Office
14 initially denied that they were the same person, then later indicated that they believed
15 Investigator Baudendistel was in fact involved in the Myer slaying and expressed that
16 Investigator Baudendistel had provided them evasive responses when asked about the
17 issue—that he was being “too cute by half.” In addition, the numerous inaccuracies
18 contained in the BOI Report also calls Investigator Baudendistel's credibility and the
19 accuracy of the arrest warrant affidavit into question. (See discussion *supra* at II.C.)

20 As Investigator Baudendistel is the same individual that was involved in the
21 Myer murder, it is almost certain that he has made material misstatements or omissions
22 over the course of many years to disguise that fact, beginning with his ability to obtain
23 employment with a state agency as an investigator. As discussed above, Investigator
24 Baudendistel has state permits which require the applicant to disclose his or her criminal
25 history. (O'Kane Decl. at ¶¶ 9-10.) The Office has suggested that Investigator
26 Baudendistel denied his involvement with the murder and provided them with misleading
27 responses when they questioned him about his past.¹⁹ A review of Investigator

28 ¹⁹ A *Franks* Hearing will also help determine how and when the Office actually
became aware of Baudendistel's prior criminal history. Given that when counsel for

1 Baudendistel's personnel file, employment application(s), and other documents is almost
2 certain to yield evidence of more misstatements or omissions. A *Franks* hearing will
3 allow this Court to conclusively establish whether Investigator Baudendistel's credibility
4 is so tainted as to justify quashing the arrest warrant in this case.

5 3. The Affidavit Does Not Support A Finding Of Probable Cause
6 Without The BOI Report

- 7 a. No Reasonable Magistrate Would Have Issued An Arrest
8 Warrant Where, As Here, The Sole Affiant Was Involved In A
9 Murder And Has Concealed Or Lied About That Fact

10 An omitted fact is material "if [its] omission would make the affidavit
11 *substantially misleading* . . . if, because of [its] inherent probative force, there is a
12 substantial possibility [it] would have altered a reasonable magistrate's probable cause
13 determination." *Huston*, 210 Cal. App. 3d at 219. The failure to disclose a witness'
14 previous criminal convictions is grounds for voiding a warrant when the warrant is based
15 entirely on statements given by the witness. *See United States v. Hall*, 113 F.3d 157, 160-
16 61 (9th Cir. 1997); *see also United States v. Meling*, 47 F.3d 1546, 1555-56 (9th Cir.
17 1995) (information concerning an informant's mental health and recent felony convictions
18 material because they "substantially eliminate[d]" the informant's credibility). It is
19 extremely unlikely that the arrest warrant would have been issued if the Magistrate had
20 been informed that Investigator Baudendistel committed murder and lied about it.²⁰ *See*

21 Harran raised the issue of Baudendistel's previous crimes with a representative of the
22 Office, counsel was informed that the Office was aware of the allegations already, it is
23 possible that the Office was aware of his credibility issues prior to filing the Arrest
24 Warrant and, thus, knowingly and deliberately omitted this material information from the
25 Magistrate. (*See also supra* notes 14-15, 17.)

26 ²⁰ Notably, it seems that while Investigator Baudendistel was serving his sentence for
27 the Myer killing, he tested positive for cocaine use. *See Baudendistel v. Terhune*, No.
28 2:89-cv-00731 (E.D. Cal.). Depending on the circumstances, drug-related offenses have
also been found to be crimes of moral turpitude (*see, e.g., People v. Gabriel*, 206 Cal.
App. 4th 450, 459 (2012) (holding that cultivation of marijuana is a crime of moral
turpitude); *People v. Standard*, 181 Cal. App. 3d 431, 435 (1986) (finding that possession
of marijuana for sale is a crime involving moral turpitude), and it is possible that
Baudendistel's cocaine use while serving a sentence for murder can be considered a crime

1 *In re Mostman*, 47 Cal. 3d 725, 737 (1989) (first-degree murder is “universally morally
2 reprehensible” and can destroy an affiant’s credibility); *In re Kelley*, 52 Cal. 3d 487, 494
3 (1990) (“Conviction of some crimes establishes moral turpitude per se . . . includ[ing] . . .
4 extremely repugnant crimes such as murder.”). As above, the affidavit relies solely upon
5 the Report to establish the factual basis for the charges brought in this case. Stripping the
6 Report from the affidavit renders it impotent; the charges simply cannot be substantiated
7 without it, and the warrant should not have been issued.

8 b. Excising Certain Portions Of, Or Statements In, The BOI
9 Report Is Not Viable In This Case

10 As discussed extensively throughout this Motion, the BOI Report was solely
11 authored by Investigator Baudendistel. That Report is the result of an investigation
12 conducted by Investigator Baudendistel, relying upon document reviews and interviews
13 carried out by him. The failure to disclose a witness’s previous convictions is grounds for
14 voiding a warrant where the warrant is based entirely on statements given by the witness.
15 *See United States v. Hall*, 113 F.3d 157, 160-61 (9th Cir. 1997). Any determination that
16 Investigator Baudendistel’s credibility was tainted cannot be limited to a single section or
17 conclusion of the Report, as he was solely responsible for its compilation. Instead, every
18 single fact and opinion presented to the Magistrate was provided by a murderer who has
19 lied about his criminal history. Therefore, any such determination would require the
20 report to be stricken in its entirety.

21 B. The Arrest Warrant Should be Quashed.

22 The arrest warrant in this case is based squarely upon the BOI Report. The
23 Report was prepared by a state investigator who committed murder and engaged in a
24 consistent pattern of denial and deception. If the Report is stricken, the arrest warrant
25 cannot stand. It should be quashed.

26
27 of moral turpitude as well. Investigator Baudendistel may have also lied on applications
28 or in other circumstances with respect to this drug test.

1 As above, if the defendant makes the preliminary showing required, the trial
2 court must hold a *Franks* evidentiary hearing. *Franks*, 438 U.S. at 155-56; *Bradford*, 15
3 Cal. 4th at 1297. At the hearing, the defendant has the burden to prove (on a
4 preponderance standard) that material false statements or omissions were made
5 deliberately or in reckless disregard for the truth. *Franks*, 438 U.S. at 155-56; *Bradford*,
6 15 Cal. 4th at 1297. If the affidavit with the addition of the material information is
7 insufficient to establish probable cause, “the warrant must be voided.” *Bradford*, 15 Cal.
8 4th at 1297; *see also Scott*, 52 Cal. 4th at 484.

9 Here, significant evidence shows that Investigator Baudendistel deliberately
10 concealed his involvement in a murder, and likely has systematically lied about it ever
11 since. The disclosure of his criminal history and subsequent activities (non-disclosure on
12 various forms, etc.), as well as the District Attorney’s need to pull Investigator
13 Baudendistel’s fingerprints to confirm his identity raises serious questions about his
14 credibility.²¹ Clearly, Investigator Baudendistel was aware of his prior special
15 circumstance murder conviction, as well as his positive drug test while serving his
16 sentence with the California Youth Authority, and his decision to omit that information
17 regarding his credibility from the Magistrate was deliberate. It is impossible to believe
18 that a Magistrate reviewing an affidavit that is entirely based on a report filed by such an
19 individual would find probable cause.

20 In *United States v. Hall*, the court held that where omitted information
21 regarding criminal acts goes to the heart of a witness’s credibility, and where there is
22 “virtually no evidence” without that witness, the warrant should be voided.²² 113 F.3d at
23 160-61. The court noted that the judge reviewing the warrant request “depend[s] on the
24 prosecutor and the [officer] to present him with the truth, **and to bring to his attention**
problems with their informant’s credibility.” *Id.* at 160 (emphasis added). Similarly, in

25 ²¹ Although an issue for a different court on another day, it also raises serious
26 questions concerning any and all prosecution(s) brought solely or primarily on the basis of
27 a report filed by Investigator Baudendistel.

28 ²² *See supra* note 2.

1 this case, the magistrate that reviewed the warrant application relied on Investigator
2 Baudendistel (and the District Attorney's Office or Mr. Higuera) to highlight any issues
3 with respect to the basis of the charges against Professor Harran. Their collective
4 intentional and/or reckless failure to do so provided the Report a false sense of reliability.
5 When his criminal history and campaign of lies—if established—is considered, the Report
6 loses all credibility and cannot establish probable cause.

7 C. If the Arrest Warrant is Quashed, The Charges Against Professor Harran
8 Are Time-Barred and Should be Dismissed

9 1. A Demurrer is the Appropriate Method To Challenge A Felony
10 Complaint Barred by the Statute of Limitations

11 Section 1004 of the Penal Code states that a defendant may demur to an
12 accusatory pleading “any time prior to the entry of a plea, when it appears upon the face
13 thereof . . . [t]hat it contains matter which, if true, would constitute a legal justification or
14 excuse of the offense charged, or other legal bar to the prosecution.” Cal. Penal Code
15 § 1004. Where it appears on the face of the complaint that the charges therein are barred
16 by the statute of limitations, a demurrer is the proper vehicle to raise the issue and
17 challenge the complaint. *Cowan v. Superior Court (The People)*, 14 Cal. 4th 367, 392-93
18 (1996).

19 2. The Statute of Limitations for Professor Harran's Alleged Violations
20 of Labor Code § 6425(a) Expired on December 29, 2011

21 The prosecution of any crime “punishable by imprisonment in the state
22 prison or pursuant to subdivision (h) of Section 1170 **shall be** commenced within three
23 years after commission of the offense.” Cal. Penal Code § 801 (emphasis added). The
24 exceptions to this general rule—not applicable here—apply to offenses punishable by
25 death or life imprisonment, or a prison term of more than eight years. *Id.* “For the
26 purpose of determining the applicable limitation of time . . . [a]n offense is deemed
27 punishable by the maximum punishment prescribed by statute for the offense, regardless
28 of the punishment actually sought or imposed.” Cal. Penal Code § 805(a).

1 In this case, the District Attorney filed three separate counts for alleged
2 violations of Section 6425(a) of Labor Code against Professor Harran.²³ A violation of
3 section 6425(a) is punishable by: (1) imprisonment in a county jail for a term not
4 exceeding one year, or by a fine not exceeding one hundred thousand dollars (\$100,000),
5 or both; or (2) imprisonment in the state prison for 16 months, or two or three years, or by
6 a fine of not more than two hundred fifty thousand dollars (\$250,000), or both. Cal. Lab.
7 Code § 6425(a). As a result, the three-year statute of limitations of Section 801 of the
8 Penal Code applies here. The FAC alleges that Professor Harran violated three
9 occupational safety and health standards “[o]n or about December 29, 2008.” (Compl., at
10 1-2.) Accordingly, the statute of limitations for these offenses expired on December 29,
11 2011.

12 3. The Filing of a Felony Complaint Alone is Insufficient to Commence
13 Prosecution Under Penal Code § 804

14 Section 804 of the Penal Code provides that prosecution for an offense is
15 commenced only when: (1) an indictment or information is filed (2) a complaint is filed
16 charging a misdemeanor or infraction; (3) the defendant is arraigned on a complaint that
17 includes felony charges; or (4) an arrest warrant or bench warrant is issued. Courts have
18 interpreted this statute consistent with its plain meaning; merely filing a felony complaint
19 is insufficient to initiate a prosecution. *See, e.g., People v. Johnson*, 145 Cal. App. 4th
20 895, 900–01 (2006) (“A felony prosecution is not ‘commenced’ for purposes of the statute
21 of limitations upon the mere filing of a felony complaint.”); *People v. Terry*, 127 Cal.
22 App. 4th 750, 764 (2005) (“The filing of a criminal complaint does not generally
23 commence the prosecution of a felony for statute of limitation purposes and, unless a
24 formal arrest warrant issues or the case is certified to the superior court (see § 859a), the
25 statute of limitation ordinarily continues to run until an information is filed.”). Further,
26 the legislative history of the most recent amendment of Section 804 in 2008 confirms that
the Legislature did not intend to permit prosecutors to commence a prosecution by simply

27 ²³ A violation of section 6425(a) of the Labor Code is an alternative felony /
28 misdemeanor, or “wobbler,” offense.

1 filing a felony complaint.²⁴ Therefore, under Section 804, the District Attorney's filing of
2 a felony complaint on December 27, 2011, did not commence a prosecution against
3 Professor Harran. A valid arrest warrant was also required. Cal. Penal Code § 804.
4 Professor Harran has not been arraigned in this case, nor has an indictment or information
5 been filed. Because the arrest warrant is defective and should be quashed, the District
6 Attorney failed to commence a prosecution against Professor Harran within the statute of
7 limitations. The FAC should be dismissed.

8 4. The "New" Allegations of the Amended Felony Complaint Do Not
9 Save the Original Felony Complaint from the Statute of Limitations
10 Bar.

11 The District Attorney may argue that the FAC, filed on February 28, 2012,
12 and which added the date of Ms. Sangji's death, overcomes any statute of limitations issue
13 in this case. The FAC is immaterial because it is based on the same set of operative facts
14 (*i.e.* the lab accident), contains the same counts and allegations as the original complaint
15 filed in December 2011, and was filed well after the statute of limitations on these charges
16 expired. As the alleged crime occurred on December 28, 2008—the date of the lab
17 accident—when Ms. Sangji's died is not an essential element of the charged offense.²⁵
18 Cal. Penal Code § 801; *Wright v. Superior Court (The People)*, 15 Cal. 4th 521, 537
19 (1997). Regardless of which alleged date is used to calculate the limitations period, no
20 prosecution was timely commenced against Professor Harran because the Office's basis
21 for commencing the prosecution here is the arrest warrant, which, as above, should be
22 quashed.

23 ²⁴ As originally introduced, the Senate Bill to amend section 804, known as "SB
24 610," proposed that the statute be amended to permit the commencement of a prosecution
25 solely upon the filing of a felony complaint. (Sen. Com. on Public Safety, Rep. on Sen.
Bill No. 610.) However, SB 610 was later amended to provide that a prosecution may
only be commenced after the filing of a felony complaint *and* the defendant's arraignment
thereon. (Stats. 2008, ch. 110, § 1 (SB 610), effective January 1, 2009.)

26 ²⁵ Section 6425 of the Labor Code criminalizes violations causing death *or*
27 impairment of an employee. Ms. Sangji suffered burns on her body on December 28,
28 2009—the date of the tragic accident. The impairment required by the statute had,
therefore, already occurred before her death.

1 Notably, neither waiver nor the “invited error” doctrine apply here.²⁶ It is well-
2 established that “when the charging document indicates on its face that the action is time-
3 barred, a person convicted of a charged offense may raise the statute of limitations at any
4 time.” *People v. Williams*, 21 Cal. 4th 335, 341 (1999); *see also People v. Gerold*, 174
5 Cal. App. 4th 781, 787 (2009) (“[A]llow[ing] defendants to lose the protection of the
6 limitation accidentally could mean that persons could languish in prison under convictions
7 that could not have occurred had they merely thought of the statute of limitations in time .
8 . . strong public policy reasons favor[] finding a statute of limitations for the initiation of
9 a criminal proceeding an issue of fundamental jurisdiction.”) (citation omitted). While the
10 District Attorney may argue that Professor Harran waived the statute of limitations or is
11 estopped to assert it, that argument is not compelling. Professor Harran never waived the
12 statute of limitations and a defendant may raise that issue at any time.

13 As a result of the foregoing, neither the initial nor amended complaint in this case
14 is sufficient to commence a prosecution, and no exception to the limitations period is
15 present in this case. The District Attorney was statutorily required to commence this
16 prosecution on or before December 29, 2011. It did not. This court should therefore
17 sustain Professor Harran’s demurrer and dismiss each of the charges against him. *People*
18 *v. Robinson*, 47 Cal. 4th 1104, 1112 (2010) (“Once the statute of limitations for an offense
19 expires without the commencement of prosecution, prosecution for that offense is forever
20 time-barred.”).

21 ²⁶ The California Supreme Court has recognized only a limited exception to the
22 general rule that the statute of limitations can never be waived. This limited exception
23 applies where: (1) the defendant provides an express waiver; (2) the waiver is knowing,
24 intelligent, and voluntary; (3) it is made for the defendant’s benefit and after consultation
25 with counsel; and (4) the waiver does not handicap the defendant’s defense or contravene
26 any other public policy reasons motivating the enactment of the statute of limitations.
27 *Cowan*, 14 Cal. 4th at 372. The doctrine of “invited error” is similarly limited. “The
28 doctrine of invited error is designed to prevent an accused from gaining a reversal on
appeal because of an error made by the trial court at his behest. If defense counsel
intentionally caused the trial court to err, the appellant cannot be heard to complain on
appeal.” *People v. Greenberger*, 58 Cal. App. 4th 298, 371 (1997).

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court should grant Professor Harran's request
3 for a *Franks* hearing, quash the arrest warrant filed against Professor Harran, and dismiss
4 the charges against him in the above-entitled matter.

5 Respectfully submitted,

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7 DATED: July 26, 2012

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