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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF LOS ANGELES

8 PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO. BA069796

9 Plaintiff,)

) PEOPLE'S RESPONSE TO
) DEFENDANT'S MOTION TO
) COMPEL DISCOVERY; POINTS
11) AND AUTHORITIES; ORDER
) SUPPORTING DECLARATION

11 v.

12 SAMMY MARSHALL

13 Defendant)

) Hearing Date: 12/1 /95
) Dept.: 115

14 TO: HONORABLE JUDGE OF THE ABOVE ENTITLED COURT
15 AND DEFENDANT SAMMY MARSHALL AND HIS ATTORNEYS OF RECORD.

16 PLEASE TARE NOTICE that in Department 115 of the above entitled
17 Court, on a future date convenient for this Court and all parties to this action, the
18 People will do the following:

19 1. Move this Honorable Court to amend item 3 of the Court's August
20 21, 1995 Discovery Order to read as follows: "Hard copies of all data Genetic
21 Design has sent to outside consultants for the purpose of Hardy-Weinberg/linkage
22 studies of Genetic Design's data bases. The data is not required to be provided on
23 computer diskettes. "

24 2. Move this Honorable Court to amend item 4 of the Court's August
25 21, 1995 Discovery Order to read as follows: "Access to all correspondence between
26 Genetic Design and any agency or organization that has submitted samples to Genetic
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1 Design for the purpose of proficiency testing. Access is to provided to: (a) copies of
2 documents that accompanied any samples submitted; (b) copies of Genetic Design's
3 report of its results in any proficiency tests; and (c) copies of correspondence
4 concerning interpretation of results and whether results were correct or incorrect.

5 3. Object to defendant's request to have his counsel and his expert
6 present to observe **rescoring** of the autoradiograph.

7 4. Object to defendant's informal request to provide copies of
8 documentation regarding internal proficiency testing conducted by Genetic Design and
9 instead order that defendant's have access to such documentation.

10 5. Move this court to order the defendant and his representatives,
11 experts, investigators, consultants and any other individual(s) associated with his
12 defense, to only use, analyze and disseminate all provided discovery for purposes of
13 the defense of this case and for no other purposes.

14 6. Move the Court to order the defendant to pay all outstanding bills to
15 Genetic Design prior to any discovery compliance required by the Court.

16 7. Allow the People a resonable amount of time to comply with all
17 Court orders before entertaining possible sanctions to the People.

18 This motion will be based upon the attached points and authorities,
19 supporting declaration, the pleadings, documents, and evidence presented at the
20 hearing on this motion.

21 DATED: December 1, 1995

22 Respectfully submitted,

23 **GIL GARCETTI**
24 District Attorney of
25 Los Angeles County

26 BY


27 **IRENE WAKABAYASHI**
28 Deputy District Attorney

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 I.

4 **INTRODUCTION**

5 The People and their DNA experts have not “stonewalled defendant’s
6 discovery requests, fed defendant false and misleading information about its DNA test
7 procedures, and flouted a discovery order” as alleged by defendant Marshall in his
8 motion. Furthermore, the People have not and will never attempt to hide any
9 problems regarding any piece of evidence against the defendant.

10 The People and their expert are requesting this Court to modify it’s
11 August 21, 1995 discovery order and deny defendant’s request for some other
12 informally requested items. However the People’s requests are based on valid reasons
13 as discussed below.

14 There are items that Genetic Design has been ready to provide to the
15 defendant. It is the defendant’s failure to pay his outstanding bill to Genetic Design
16 that is reason the items have not yet been provided. The defendant was made aware
17 that no further compliance was forthcoming without payment in a letter from Michael
18 DeGuglielmo, Forensic Director of Genetic Design to Mr. Ronald Geltz dated August
19 24, 1995. (Exhibit 5 of the Defendant’s Motion). Item number 5 of this letter
20 specifically states as such. Additionally, on both November 7, 1995 and November
21 16, 1995, I informed William Thompson that the defendant had to pay all outstanding
22 bills to Genetic Design before Mr. DeGuglielmo would provide any further discovery.

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1 II.

2 DEFENDANT MISCHARACTERIZES GENETIC DESIGN AND THE
3 QUALIFICATIONS OF MICHAEL DEGUGLIELMO

4 Defendant, on page 3 his motion, disparagingly describes Michael
5 Deguglielmo as “an uncertified technician”. As pointed out on page 2 of Mr.
6 DeGuglielmo’s Declaration and attached curriculum vitae (attached as Exhibit 1 to
7 People’s response), he is an experienced and well qualified expert in the area of
a forensic DNA analysis.

9 On page 15 of the defendant’s motion, he describes Genetic Design as a
10 “small, unaccredited lab without an established track record.” As noted on pages 1
11 and 2 of Mr. DeGuglielmo’s Declaration, this is not true.

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13 **III.**

14 THE FOLLOWING ITEMS WILL BE PROVIDED TO THE
15 DEFENDANT UPON PAYMENT OF ALL OUTSTANDING BILLS

16 The defendant is requesting the Court order that Genetic Design provide
17 him a floppy diskette of the scanned image of the autoradiograph. As indicated on
1a page 4 and 5 of Mr. DeGuglielmo’s Declaration, Genetic Design is willing to provide
19 such a diskette once all outstanding bills are paid.

20 The defendant is informally requesting the names and phone numbers of
21 the individuals that scored the autoradiograph. Those names are listed in item
22 number 1 of the August 24, 1995 letter attached as Exhibit 4 to defendant’s motion.
23 Genetic Design will provide a resume or curriculum vitae or if neither is available
24 statement of professional qualifications of the individuals who scored the
25 autoradiograph. Additionally, Genetic Design will provide a list of the names of all
26 individuals that witnessed or participated in the rescoring.

1 Declaration, the cost and effort of providing the requested information is enormous.
2 For the reasons stated in his Declaration, the People are moving this Court to amend
3 the August 21, 1995 order to require access to the external proficiency testing.

4 As to item number 4 of the August 21, 1995 Order Mr. DeGuglielmo
5 told me that he could not provide the data on a diskette, but will provide a hard copy
6 of the database. As stated on page 3 and 4 of Mr. DeGuglielmo's Declaration, it
7 would be unfair and unfeasible to require Genetic Design to provide a diskette. For
8 the reasons stated in the Declaration, the People are moving this Court to amend the
9 August 21, 1995 order to require hard copies of the data base.

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11 **IV.**

12 PEOPLE REQUEST THE COURT TO ORDER THAT THE
13 DEFENDANT'S ACCESS TO INTERNAL PROFICIENCY TESTING

14 The defendant has informally requested that they provided copies of
15 documentation regarding internal proficiency testing. For the reasons stated on pages
16 2 and 3 of Mr. DeGuglielmo's Declaration, the People object to that request.
17 However the defendant, through his representatives, may review the documentation by
18 setting up an appointment with Genetic Design.

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20 **V.**

21 PEOPLE OBJECT TO DEFENDANT'S REQUEST TO REQUIRE GENETIC
22 DESIGN TO RESCORE THE AUTORADIOGRAPH IN THE PRESENCE
23 OF WILLIAM THOMPSON AND THE DEFENDANT'S EXPERT

24 In defendant's moving papers, William Thompson writes that when I
25 spoke with him on October 23, 1995, I agreed that this request "made sense". On
26 that date, I had been in possession of the District Attorney file of this case for less
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1 **than 48** hours. I had not ever spoke with Mr. DeGuglielmo. Mr. Thompson
2 indicated to me that he had a spoken to Mr. DeGuglielmo at a conference and that
3 during their conversation Mr. DeGuglielmo agreed to a number of things including
4 **rescoring** the autoradiograph with the defendant's expert present. Based on that
5 representation, I stated that the request appeared reasonable. However, I then spoke
6 with Mr. DeGuglielmo. He informed me that this in fact was not true and that their
7 discussion was limited to the issue of making a floppy disk containing the image of the
a autoradiograph as described on page 5 of Mr. DeGuglielmo's Declaration.

9 Furthermore, as Mr. DeGuglielmo states on page 5 of his Declaration,
10 the presence of the defendant's representatives in the laboratory would compromise
11 the confidentiality and/or interfere with the analysis of other cases.

12 Defendant's reliance on cases that stand for the proposition that the
13 People are required to turn over exculpatory evidence to the defendant is not
14 applicable here. The People are not aware of any evidence of fabrication or
15 exculpatory evidence. Se also Mr. DeGuglielmo's Declaration.

16 Additionally, the defendant argues that he has right to test the original
17 evidence. In this case, the People have no objection to the defendant testing the
18 remainder of the vaginal aspirate. In fact, Mr. Geltz informed me that he has invited
19 the defendant to do so. Larry Blanton, the Los Angeles Police Department criminalist
20 assigned to this case has informed me that the following remains of the vaginal
21 aspirate: an amount of the vaginal aspirate forwarded to Genetic Design and an
22 amount of the vaginal aspirate that was not used by Genetic Design and thus returned
23 to him. He believes that there is sufficient quantity to perform an RFLP test. Despite
24 defendant's assertion that there is not enough to test. According to Mr. Blanton, no

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VII.

CONCLUSION

For the above reasons the People request the Court to do as follows:

1. Move this Honorable Court to amend item 3 of the Court's August 21, 1995 Discovery Order to read as follows: "Hard copies of all data Genetic Design has sent to outside consultants for the purpose of Hardy-Weinberg/linkage studies of Genetic Design's data bases. The data is not required to be provided on computer diskettes."

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