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CONSOLIDATED MOTIONS AND DEMANDS FOR DISCOVERY, PRESERVATION AND INSPECTION OF EVIDENCE, STATEMENTS, AND SCIENTIFIC REPORTS; NOTICE OF ELECTION TO PROCEED UNDER OCGA § 17-6-1 et seq.; PRELIMINARY MOTION TO SUPPRESS STATEMENTS; PRELIMINARY MOTION TO SEVER COUNTS OF INDICTMENT AND FOR BIFURCATED PROCEEDINGS; PRELIMINARY MOTION TO SEVER THE TRIAL OF DEFENDANTS; PRELIMINARY MOTION TO SUPPRESS STATEMENTS OF CO-DEFENDANTS; PRELIMINARY MOTION IN LIMINE REGARDING SIMILAR TRANSACTIONS EVIDENCE; PRELIMINARY MOTION TO SUPPRESS IDENTIFICATION EVIDENCE; PRELIMINARY MOTION IN LIMINE REGARDING PREJUDICIAL PHOTOGRAPHS; MOTION FOR DOBBINS HEARING AND MOTION IN LIMINE REGARDING RECORDED EVIDENCE; MOTION FOR DISCLOSURE, HEARING, AND MOTION IN LIMINE REGARDING ELECTRONIC SURVEILLANCE; MOTION TO INVOKE THE RULE PRIOR TO VOIR DIRE; MOTION TO RECORD ALL PROCEEDINGS; MOTION FOR PEREMPTORY CHALLENGES; AND MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS.

Comes Now, the above-named Defendant, by and through the undersigned counsel, and respectfully moves this Honorable Court to grant Defendant's motions and demands as set forth herein.

Respectfully submitted, this ____ day of May, 2006.

Sessions & Fleischman, LLC

Attorneys for Defendant

D. Benjamin Sessions

Ga. Bar No.: 141280

Address: 3155 Roswell Road, Suite 220

Atlanta, Georgia 30305

Telephone: (470) 225-7710

Facsimile: (678) 348-7165

E-mail: Ben@TheSessionsLawFirm.com

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A. NOTICE OF DEFENDANT'S ELECTION TO PROCEED UNDER
O.C.G.A. § 17-16-1 et seq.

Comes Now, the Defendant in the above-styled case, by and through his Counsel of record, and hereby provides written notice pursuant to O.C.G.A. § 17-16-2(a) of his election to have the provisions of O.C.G.A. § 17-16-1 et seq. apply to Defendant's case.

In his concurring opinion in *Hammitt v. State*, 225 Ga. App. 21, 482 S.E.2d 437 (1997), Judge Blackburn elucidated the purposes, contours and remedies in the Georgia discovery statutory scheme:

A primary purpose of requiring disclosure of evidence and witnesses well in advance of trial is to allow counsel time to reflect with deliberation upon such evidence, to consider how it could best be presented at trial and how it affects his overall trial strategy, and to seek to develop other evidence to corroborate or impeach the discovered evidence. When wrongfully withheld evidence is disclosed for the first time in the middle of a trial, the defendant may be presumed to have been prejudiced, as his attorney has not had the opportunity to reflect upon such evidence and to determine what other investigation may be required as a result of its use and how it impacts the existing trial strategy and the subpoena and call of witnesses.

The burden is on the state to produce any witness statements and to make available for inspection all discoverable items in its possession, including any items in the possession of the police. The burden is not on the defense counsel to pry such items from the grip of the state based on clues to their existence found in the state's file. The defendant is entitled to presume that items not produced do not exist and to plan his trial strategy accordingly. A finding of bad faith in **failing to produce required evidence** cannot be avoided by the practice of leaving referenced to the existence of such evidence in the state's file rather than producing the same. The obligation is to produce the evidence, and its presence on a list in the state's file simply establishes that the state is aware of its existence.

As the burden is on the prosecution to produce or assemble for review all discoverable evidence, it has an affirmative obligation to keep apprized of all discoverable items in its possession or in the possession of the police. The prosecution cannot avoid a finding of bad faith by merely claiming ignorance of the contents of the police file. Where the prosecution fails to produce discoverable items, and does not provide an adequate explanation for its failure, these facts alone would be sufficient to authorize the trial court to infer bad faith. This is particularly so where the state attempts to use such evidence at trial without having disclosed it to the defense.

OCCA § 17-16-6 clearly reflects two principal goals. First, and most important, any remedy fashioned by the trial court must be designed to restore to defendant all those rights which the legislature intended for the defendant to have had the state met its burden under the statute, and to correct the prejudice to the defendant caused by the state's failure to perform its mandatory discovery obligations, regardless of whether the state acted in bad faith. Second, the statute clearly contemplates the imposition of punitive sanctions, including the exclusion of evidence, to deter the state from violating its discovery obligations. This deterrent goal is important because, if the most serious consequence of a failure to perform is the mere grant of a continuance, the state would have little incentive to ensure that it fully complies with its discovery obligations.

B. DEMAND FOR COPY OF INDICTMENT/ACCUSATION AND LIST OF WITNESSES

Comes Now, the above-named Defendant, by and through the undersigned counsel, prior to arraignment, and demands a copy of the indictment, included therein the names of grand jurors, and list of witnesses on whose testimony the charges against him are founded, and a complete list of witnesses whom the District Attorney may call to testify at trial. In the event that the State is proceeding in this case upon an accusation, the Defendant demands a copy of the accusation.

This request includes, but is not limited to, the existence and identity of all expert witnesses connected to this case (*Allison v. State*, 256 Ga. 851, 353 S.E.2d 805), supplemented as required by OCGA § 17-16-31.

The following information regarding said witnesses: (a) the name of said witnesses, including all known aliases; (b) current location of said witnesses; (c) date of birth of said witness; (d) social security number of said witness; and (e) current telephone number of said witness. *See*, OCGA § 17-16-8.

This demand is made pursuant to the Constitution of the State of Georgia, Article 1, Section 1, Paragraph XIV; OCGA § 17-16-3; and USCR Rule 30.3. *Bentley v. State*, 210 Ga. App. 862, 438 S.E.2d 110 (1993)(holding that Georgia Constitutional provision providing a criminal defendant with a list of witnesses “overrides all legislative enactments upon the subject”; registering the court’s “stern disapproval” of dilatory production of the names of witnesses is mandatory, and late compliance is “specious and empty”; production must assure reasonable pretrial “access to evidence”).

In the event such information is not provided, Defendant herein moves in limine to prohibit the State from using said witness; or, in the alternative, for a confidential interview of said witness and/or a continuance until such time as this Defendant has had a reasonable time to interview and investigate the information provided by said witness. *See* OCGA §§ 17-16-6, 17-16-8; USCR 30.3; *Workman v. State*, 198 Ga. App. 455, 402 S.E.2d 75 (1991); *Cunningham v. State*, 137 Ga. App. 758, 225 S.E.2d 98 (1976).

C. DEMAND FOR STATEMENTS OF DEFENDANT

Comes Now, the above-named Defendant, by and through the undersigned counsel, and pursuant to OCGA § 17-16-4(a)(1), demands copies of any and all

statements made by him, whether written or oral, incriminating or exculpatory, to any law enforcement officer, or to any other person at the behest or demand, direct or indirect, of any law enforcement officer.

1. This demand includes any relevant written or recorded statements or oral statements made by the defendant within the possession, custody, or control of the state or prosecution and that portion of any written record containing the substance of any relevant oral statement made by the defendant, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a law enforcement officer or member of the prosecuting attorney's staff. *See*, OCGA § 17-16-4(a)(1).
2. Statements of co-conspirators that are attributable to the Defendant and are "arguably admissible" against him at trial, either during the State's case-in-chief, or rebuttal [OCGA § 17-6-4(a)(1)]; *see also* OCGA § 24-3-5; *Crawford v. State*, 210 Ga. App. 36, 435 S.E.2d 64 (1993); *Orkin v. State*, 236 Ga. 176, 223 S.E.2d 61 (1976); *Etheridge v. State*, 163 Ga. 186, 136 S.E.2d 72 (1926); *Porterfield v. State*, 137 Ga. App. 449, 224 S.E.2d 94; *Knight v. State*, 239 Ga. 594, 236 S.E.2d 390 (1977).
3. This request specifically includes but is not limited to, statements to relevant third parties (*Walraven v. State*, 250 Ga. 401, 297 S.E.2d 278 (1982), *aff'd*, 255 Ga. 276, 336 S.E.2d 798 (1985)); statements previously made in custody in other proceedings (*Byers v. State*, 198 Ga. App. 793, 403 S.E.2d 321 (1986)); and all statements standing upon the same footing as the above-

referenced statements, including all “transactional statements” made to law enforcement officers or others.

4. The Defendant further demands a true and correct copy of the Defendant’s Georgia Crime Information Center criminal history pursuant to OCGA § 17-16-4(a)(2).
5. The Defendant demands disclosure of any such statements no later than 10 days prior to the trial of this matter.
6. In the event that said statements are not provided timely to the Defendant, Defendant requests that the State be prohibited at trial from introducing the evidence not disclosed or presenting the witness not disclosed pursuant to OCGA § 17-16-6. *See*, OCGA § 17-16-6; *United States v. Noe*, 821 F.2d 604 (11th Cir. 1987); *McKenney v. State*, 204 Ga. App. 411, 419 S.E.2d 731 (1992).

D. PRELIMINARY MOTION TO SUPPRESS STATEMENTS OF THE DEFENDANT

Comes Now, the above-named Defendant, by and through the undersigned counsel, and respectfully moves this Honorable Court prior to trial to suppress any and all statements made by him to law enforcement officers after his arrest in violation of the Constitution and laws of the United States and the State of Georgia and applicable caselaw, including but not limited to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States; Articles I, II, XIII, XIV, and XVI of the Constitution of the State of Georgia (1983); OCGA § 24-3-50, *et seq.*; and *Brown v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed.2d 682 (1936), *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), *Miranda v. Arizona*, 384 U.S. 436,

86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and their progeny (*see, e.g., Edwards v. Arizona*, 451 U.S. 477 (1981); *Davis v. United States*, 512 U.S. 452 (1994)); and in support states:

1. Defendant is charged with a criminal felony violation of the laws of Georgia.
The State, by and through the District Attorney, will attempt to introduce into evidence at trial oral admissions, written statements, and audio- or video-tape recordings of statements made by the Defendant to law enforcement officers or agents of the State while in custody.
2. Those statements which may incriminate the Defendant were made in the absence of counsel and without an intelligent or knowing waiver of counsel and were not voluntary. *See, e.g., State v. Ritter*, 268 Ga. 108, 485 S.E.2d 492 (1997); *Adcock v. State*, 263 Ga. 759, 438 S.E.2d 910 (1994); *In re: J.C.*, 210 Ga. App. 186, 435 S.E.2d 759 (1993).
3. As the Defendant has not been furnished with any discovery at this time, he requests the opportunity to particularize this motion within a reasonable period of time after receipt of discovery from the State;
4. In the event that said evidence is not provided timely to the Defendant, and at the latest ten (10) days prior to trial, Defendant requests that the State be prohibited at trial from introducing the evidence not disclosed or presenting the witness not disclosed pursuant to OCGA § 17-16-6.

WHEREFORE, the Defendant respectfully prays for a *Jackson v. Denno* hearing prior to trial to determine the voluntariness of the statements in the totality of circumstances and to determine the validity of any waiver of counsel prior to the Defendant's interrogation. Defendant further requests the suppression of any such

statements. *See, Peinado v. State*, 223 Ga. App. 271, 477 S.E.2d 408; *Hall v. State*, 176 Ga. App. 498, 336 S.E.2d 604.

E. DEMAND FOR THE PRODUCTION OF DISCOVERABLE MATERIAL
PURSUANT TO OCGA § 17-16-1, et seq.

Comes Now, the above-named Defendant, by and through the undersigned counsel, having elected to have the provisions of OCGA § 17-16-1, *et seq.*, apply to Defendant's case and hereby formally requests in writing that the State disclose to the Defense or produce to the Defendant for inspection, copying, photographing, examination, testing or analysis all material required pursuant to OCGA § 17-16-1, including the following:

1. Any and all books, papers, documents, photographs, tangible objects, audio and visual tapes or films, recordings, buildings, and other places controlled by the State and any other items as described or contemplated in OCGA § 17-16-4(a)(3), including any information stored by the State on computer.
2. A true and correct copy of Defendant's Georgia Criminal Information Center criminal history pursuant to OCGA § 17-16-4(a)(2).
3. In the event that said evidence is not provided timely to the Defendant, and at the latest ten (10) days prior to trial or prior to any postindictment/postaccusation pretrial evidentiary hearing. Defendant moves that the State be prohibited from introducing the evidence not disclosed or presenting the witness not disclosed pursuant to OCGA § 17-16-6.

F. MOTION FOR DISCOVERY, INSPECTION, PRODUCTION AND
COPYING OF EVIDENCE FAVORABLE TO THE ACCUSED PURSUANT
TO *BRADY* v. *MARYLAND*

Comes Now, the above-named Defendant, by and through the undersigned counsel, and respectfully moves this Court, pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article 1, § 1, Paragraphs 1, 11, and 14 of the Georgia Constitution, as construed and applied in the case of *Brady v. Maryland*, 373 U.S. 83 (1970), and its progeny including, *Giles v. Maryland*, 386 U.S. 66 (1967); *Giglio v. United States*, 405 U.S. 105 (1972); and *Hicks v. State*, 232 Ga. 393 (1974), to order the Prosecution to permit Defense Counsel to inspect and copy all evidence in the possession and control of the State which may be favorable to the Defendant and material to the issues of guilt or punishment or could reasonably weaken or affect any evidence proposed to be introduced against the Defendant at trial or at sentencing. The evidence sought is to include, but not be limited to:

1. All evidence, including statements of individuals, physical evidence or test results indicating or tending to indicate that the Defendant is not guilty of the offense charged or mitigating on the issue of sentence.
2. All statements of any witness which contradict in any way the statements of other witnesses or which contradict other statements made by that witness.
3. All reports, memoranda or other information in possession of the State which contain information exculpatory, helpful, favorable or arguably favorable to the Defendant on guilt or innocence or as to sentence.

4. A complete and detailed list of the arrests and convictions of all State witnesses, whether the State will actually call these witnesses at the trial or not, including any and all charges currently pending against said witnesses which have not yet been officially disposed of by plea, trial or otherwise. *See, Strong v. State*, 232 Ga. 294, 299-300, citing *Brady v. Maryland*, 373 U.S. 83 (1968).
5. Memoranda, documents or reports of any scientific tests or experiments or studies made in connection with the above-styled case, including any photograph examinations of any witnesses, which may be arguably favorable to the defense.
6. Copies of any and all arrest warrants relating to this case pursuant to OCGA § 17-4-41.
7. Copies of any and all search warrants and warrant returns relating to this case pursuant to OCGA § 17-5-25.
8. Copies of any and all police or sheriff's reports relating to this case pursuant to OCGA § 24-10-26; *Henderson v. State*, 255 Ga. 687 (1986); OCGA § 50-18-70; *Cox Enterprises, Inc. v. Harris*, 256 Ga. 299 (1986).
9. The criminal and/or probation records or any lists or summaries reflecting the criminal and/or probation records of all alleged unindicted co-conspirators in this matter.
10. A copy of Defendant's prior criminal record, if any.
11. The name, identity and whereabouts of any informant, confidential participant, or undercover or secret agent who gave information during the

investigation of or leading to the indictment or accusation and arrest of the Defendant, whether said person was paid by or received any promise of other remuneration of any sort from the State for such information.

12. Furnish a list of all disbursements and/or consideration and/or favors or promises of any sort given to any one or all informants, confidential participants, or undercover or secret agents in this case.
13. Give a full and complete list of all disbursements of the State or any agent or officer in connection with the investigation or prosecution of this case.
14. All information concerning any polygraph tests or examinations conducted by the State or any of its agents in the investigation and prosecution of this case, including the names of all persons subject to such tests, copies of test results, a list of all questions asked and answers given, dates and times of the tests, and results thereof.
15. Grand Jury exhibits, pages and transcripts of Grand Jury testimony in that Defendant, upon information and belief, states that such testimony will be exculpatory, lead to the discovery of impeaching information and/or will furnish the basis for impeaching information.
16. A full and complete list of all persons who were investigated in any way as a “suspect” in this case; and a copy of any report(s) related thereto.
17. Access to, copies, or printouts of any information stored by the State on any computer; including, but not limited to, evidence categories, file menus, suspect lists, officer details, incident reports, telephone logs and/or reports, pay records, etc.

18. Full and complete information on the purported victims in this matter, including:

- a. alleged losses sustained by the purported victims as a result of the actions allegedly undertaken by the Defendant;
- b. any and all documents, records, or other papers reflecting any amount which the State may contend would be owed for restitution to any victim (OCGA §§ 17-14-1, 17-14-3, and 17-14-8 through 17-14-10).

19. All material now known to the State or which may become known which is exculpatory in nature or favorable to the accused or which may lead to exculpatory material. This request includes reports of any investigations conducted by the State or its agents, or individuals other than the Defendant.

20. The State is required to reveal to the defense not only information “in its file”, but should also be ordered to make inquiry of all law enforcement or other agencies involved in this prosecution and to require those agencies to review their files and to provide to the prosecution any information arguably favorable to the defendant, including information specifically described above. At a minimum, inquiry should be made of the police investigatory files. *See, e.g., Pennsylvania v. Ritchie*, 480 U.S. 54, 57-61 (1987); *Freeman v. Georgia*, 599 F.2d 64, 69 (5th Cir. 1975)(State held accountable for information known only to investigating police detective); *Brown v. State*, 261 Ga. 66, 401 S.E.2d 492 (1992); *Isaacs v. State*, 259 Ga. 717, 386 S.E.2d 316 (1989).

21. In *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995), the Court emphasized the prosecutor's personal duty to become aware of, and disclose, material exculpatory information:

The prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.

Id., at ____, 115 S. Ct. at 1567.

As one Court has noted, this means that a prosecutor "[m]ust employ whatever means are necessary to discharge her obligation". *United States v. Alvarez*, 86 F.3d 901, 905 (9th Cir. 1996). Thus, the "better practice" is "for the prosecutor herself to review such materials", *Id.*, as it is "particularly important for the prosecutor to ensure that a careful and proper *Brady* review is done." *Alvarez*, 86 F.2d at 905;¹ *see also, McMillan v. Johnson*, 88 F.3d 1554, 1567-68 (11th Cir. 1996)("The Constitution imposed the duty to disclose exculpatory and impeachment evidence to the defense on the prosecutor...Investigators satisfy their obligations under *Brady* when they turn over to the prosecutor ... Our case law clearly established that an accused's due process rights are violated when the police conceal exculpatory or impeachment evidence.") *West v. State*, 213 Ga. App. 362, 444 S.E.2d 398 (1994)(reversal for failure to provide exculpatory evidence is withheld; and that late disclosure "deprive[s] [an accused] of a fair trial".); *Holland v. State*,

¹ The *Alvarez* court noted that delegating the responsibility to a non-attorney police officer to review his own and/or others' notes is "clearly problematic", recommending that, as noted, the prosecutor herself undertake the task. *Id.*

221 Ga. App. 821, 472 S.E.2d 711 (1996)(reversal where discovery provided was not accurate and complete and was therefore misleading).

22. Likewise, to the extent that a review may create uncertainty about the materiality and/or producibility of any evidence, the “prudent prosecutor will resolve doubtful questions in favor of disclosure.” *United States v. Agura*, 427 U.S. 97, 108 (1976). Thus:

¶It is not the role of the prosecutor to decide that facially exculpatory evidence need not be turned over because the prosecutor thinks the information is false.

Alvarez, supra, at 905.

23. There may be other items and matters of evidence, information and data in existence that are not enumerated aforesaid and of which Defendant is unaware, Defendant now requests and demands Defendant be afforded with any and all evidence and information, whether specifically delineated and listed herein or not, which is known or may become known, or which through due diligence may be learned from the investigating officers of the witnesses or persons having knowledge of this case, which is exculpatory in nature or favorable to the accused or which might serve to mitigate punishment. This includes any evidence impeaching or contradicting the testimony of prosecution witness, or instructions to prosecution witnesses not to speak with or disclose the facts of the case with defense counsel. *See, Agurs v. United States*, 427 U.S. 97 (1976); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1968); *United States v. Giglio*, 405 U.S. 150, 92 S.Ct. 763, 31

L.Ed.2d 104 (1972); *Sellers v. Estelle*, 651 F.2d 1074, 1077, n.6 (5th Cir. 1981); *Banks v. State*, 235 Ga. 121 (1975); *Rini v. State*, 235 Ga. 218 (1975); *Holbrook v. State*, 162 Ga. App. 400, 401 (1982).

WHEREFORE, the Defendant prays as follows:

- (a) That a hearing be held on this motion in order that the proper foundation may be laid as to what evidence, information and data is in the possession of the State and prosecution and that the State be directed to make such disclosures immediately;
- (b) That if any part of said documentary evidence is not made available to the Defendant prior to trial, he respectfully moves the Court for an order directing the District Attorney to produce all such documents and evidence and to submit the same to his counsel at the close of the State's evidence;
- (c) Without waiving the foregoing, the Defendant requests that an exact copy be made of each item which is not presented to Defense counsel and that the same be sealed and included in the record of this case for the purpose of insuring effective review of the Court's denial of the Defendant's previous request for disclosure; and
- (d) That the duty of the District Attorney to disclose pursuant to this motion be considered as continuing up until and through the trial and post-judgment proceedings.

G. DEMAND FOR NAMES, INFORMATION, AND STATEMENTS OF WITNESSES

Comes Now, the above-named Defendant, by and through the undersigned counsel, and pursuant to OCGA §§ 17-16-7 and 17-16-8 demands the production at the earliest opportunity of the names, current locations, dates of birth, social security numbers, and telephone numbers of the State's witnesses in this matter; the Defendant further demands the production at the earliest opportunity the statement(s) of any witness that is in the possession, custody, or control of the State or prosecution that relates to the subject matter concerning the testimony of a witness that the State intends to call as a witness at trial or at any post-indictment/accusation pretrial evidentiary hearing.

1. Further, Defendant is entitled to such statements in that same are now substantive evidence which may go to the jury. *E.g.*, *Gibbons v. State*, 248 Ga. 858, 286 S.E.2d 717 (1982); *Cuzzort v. State*, 254 Ga. 745, 334 S.E.2d 661 (1985); *Waldrup v. Baker*, 180 Ga. App. 121, 348 S.E.2d 566 (1986).
2. The Defendant anticipates that the prosecution will call a number of witnesses in the trial. To ensure the Defendant's adequate and proper rights of cross-examination and confrontation and the Defendant's right to effective representation of counsel as provided for in the Constitution and laws of the United States and the State of Georgia and applicable caselaw, these statements and information are demanded at the earliest opportunity but no later than ten (10) days prior to trial and five (5) days prior to any post-indictment/accusation pretrial evidentiary hearing.
3. In the event that said evidence is not provided timely to the Defendant, and at the latest ten (10) days prior to trial or five (5) days prior to any post-indictment/accusation pretrial evidentiary hearing, Defendant moves that the

State be prohibited from introducing the evidence not disclosed or presenting the witness not disclosed pursuant to OCGA § 17-16-6; and/or for a continuance for a reasonable time to investigate the same. *See, Marshall v. State*, 320 Ga. App. 116, 495 S.E.2d 585 (1998).

H. MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION ON STATE'S WITNESSES

Comes Now, the above-named Defendant, by and through the undersigned counsel, and respectfully moves this Court for the entry of an Order directing the State to investigate and disclose all of the following within the possession, custody or control or the existence of which is known or by the exercise of due diligence could become known, to the State:

1. Any and all consideration or promises of consideration given to or made on behalf of any prospective State witness, including putative co-defendants of Defendant. By "consideration," Defendant refers to absolutely anything of value or use, including but not limited to immunity grants, witness fees, special witness fees, payment of medical bills and expenses, transportation assistance, assistance to members of witness' family or associates of witness, assistance or intervention or favorable treatment with respect to any criminal, civil, juvenile or administrative disputes with the State or the United States, and anything else which could arguably create an interest or bias in the witness in favor of the State or against the Defendant or acts as an inducement to testify or to color testimony.

2. Any and all prosecutions, investigations or possible prosecutions pending or which could be brought against the witnesses and any probationary, parole, juvenile or deferred prosecution status of the witness.
3. Any and all records and information regarding the witness' past criminal and juvenile history.
4. Any and all records and information showing prior misconduct or bad acts committed by the witness.
5. Any and all personnel files for the witness.
6. Any and all inconsistent statements made by any witness about the alleged crime.
7. Due process requires that the State not suppress evidence favorable to the accused or discrediting its own case and, upon request, that it disclose to the Defendant all such information. *United States v. Agurs*, 427 U.S. 97 (1976); *Brady v. Maryland*, 373 U.S. 83 (1963). This request encompasses information which bears upon the credibility of its witnesses as well as matters more directly material to guilt or innocence. *Giglio v. United States*, 404 U.S. 250 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959). Georgia courts have also held that such information must be provided to the accused upon request. See, e.g., *Smith v. State*, 221 Ga. App. 306, 471 S.E.2d 227 (1996) (failure to fully "reveal deal" with informant requires reversal); *Carroll v. State*, 222 Ga. App. 560, 474 S.E.2d 737 (1996); *Dinning v. State*, 266 Ga. 694, 470 S.E.2d 431 (1996)(officers who investigated case were "part of the

prosecution team” for purposes of *Giglio*; and failure to “reveal deal” is reversible error).

8. Courts have held various types of information to be covered under rubric of

Brady and its progeny:

i. Testimony about deals:

a. *Brown v. Wainwright*, 785 F.2d 1457 (11th Cir. 1986)

b. *United States v. Foster*, 874 F.3d 491 (8th Cir. 1988)

ii. Prior statements of witnesses:

a. *United States v. Minsky*, 963 F.2d 870 (6th Cir. 1992)

b. *Lindsay v. King*, 769 F. 2d 1034 (5th Cir. 1985)

iii. Prior misidentification:

a. *McDowell v. Dixon*, 858 F.2d 945 (4th Cir. 1988)

iv. Hesitancy in Identification:

a. *United States v. Sheehan*, 442 F. Supp. 1003 (D. Mass. 1977)

b. *People v. Wright*, 480 N.Y.S.2d 259 (Sup. Ct. 1984)

v. Revealing the deal:

a. *United States v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993)

b. *Ovimette v. Moran*, 942 F.2d 1 (1st Cir. 1991)

c. *Singh v. Prunty*, 142 F.3d 1157 (9th Cir. 1998)

vi. Police reports, ballistic reports, lab reports, etc.:

a. *Williams v. Whitley*, 940 F.2d 132 (5th Cir. 1991)

b. *U.S. ex rel Smith v. Fairman*, 769 F.2d 386 (7th Cir. 1985)

c. *Anderson v. South Carolina*, 709 F.2d 887 (4th Cir. 1983)

d. *United States v. Spagnuolo*, 960 F.2d 990 (11th Cir. 1992)

vii. Motive to testify:

a. *Bagley v. Lumpkin*, 798 F.2d 1297 (9th Cir. 1986)

b. *Hughes v. Bowers*, 711 F. Supp. 1574 (N.D. Ga. 1989)

viii. Criminal records:

a. *Moore v. Kemp*, 824 F.2d 847 (11th Cir. 1987)

Indeed, Courts have recognized that an “open file” policy is not sufficient to discharge these types of *Brady* issues. *See, Smith v. Secretary, Dep’t of Corrections*, 50 F.3d 801 (5th Cir. 1995). In short, “[t]he *Brady* rule is one of the methods for seeking to ensure due process – a fair trial.” *Wilson v. Whitley*, 28 F.3d 433, 433 (5th Cir. 1994).

9. Further, the right of counsel for the Defendant to confront, cross-examine and impeach witnesses is cherished and remains “the principal means by which the believability of a witness and the trust of this testimony are tested.” *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *see also, Pointer v. Texas*, 380 U.S. 400 (1965); Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Defendant respectfully prays that a hearing be held on this matter; that the Court grant this Motion and Order disclosure as requested herein; and that the Defendant be allowed to amend this Motion as disclosure of evidence provides and warrants further basis for relief, both legal and equitable, as the Court may deem just and proper.

I. MOTION TO REQUIRE THE STATE TO REVEAL ANY AGREEMENT
ENTERED INTO BETWEEN THE STATE AND ANY PROSECUTION
WITNESS THAT COULD CONCEIVABLY INFLUENCE HIS OR HER
TESTIMONY

Comes Now, the above-named Defendant, by and through the undersigned counsel, and respectfully moves the Court for an Order requiring the State to reveal any agreement entered into between the District Attorney's office or any other law enforcement agency and any prosecution witness that could conceivably influence said witness' testimony.

The credibility of prosecution witnesses will be an important issue in this case. The evidence of any understanding or agreement as to future prosecution or any other consideration is relevant to that issue. *See, Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); *see also, Brady v. Maryland*, 373 U.S. 83 (1963). This would include any and all consideration given to or made on behalf of co-conspirators, whether indicted or unindicted and any other government witness. By "consideration", the Defendant refers to absolutely anything of value or use, including but not limited to immunity grants, witness fees, release on bail, release on bail without security, special witness fees, transportation assistance, assistance to members of witness' families or associates of witnesses, assistance or favorable treatment with respect to any criminal, tax, civil, forfeiture, or administrative disputes or potential dispute