

Appellant/respondent Virginia Lopez hereby requests this court to take judicial notice of the attached document. This request is made pursuant to Evidence Code sections 452, 453, 459.

Evidence Code section 452, subdivision provides, in pertinent part:

Judicial notice may be taken of the following matters to the extent that they are not embraced within section 451:

...

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States . . .

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

...

Evidence Code section 453 makes section 452 mandatory under certain conditions:

The trial court shall take judicial notice of any matters specified in Section 452 if a party requests it and :

(a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

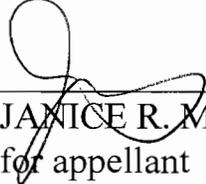
(b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Evidence Code section 459 provides:

- (a) The reviewing court shall take judicial notice of . . .
(2) each matter that the trial court was required to notice under Section 451 or 452. The reviewing court may take judicial notice of any matter specified in Section 452. . . .

DATED: _____

5/5/12



JANICE R. MAZUR, attorney
for appellant

DECLARATION OF JANICE R. MAZUR

I, Janice R. Mazur, declare:

1. I am attorney for the appellant in this action. The following facts are personally known to me and if called upon to do so, I could and would competently testify thereto.

2. Appellant respectfully requests this court to take judicial notice of the document attached hereto as Exhibits A, which is an official Memorandum issued by Bonnie M. Dumanis, District Attorney for the County of San Diego on December 18, 2009, and directed to all "Defense Counsel, San Diego Deputy District Attorneys, and San Diego Deputy City Attorneys" advising that "It has recently come to the attention of the District Attorney and the City Attorney that Pacific Toxicology Laboratories (hereinafter "Pac Tox"), *the crime lab utilized by law enforcement to test blood and urine, has issues concerning reliability.* The San Diego Sheriff's Crime Lab who serves all of the law enforcement agencies

within San Diego County (with the exception of the San Diego Police Department) *has decided to no longer utilize Pac Tox for drug analysis of blood and urine samples.*” The memorandum went on to disclose that over a period of several months in 2009, Pac Tox had reported incorrect results in a number of blood samples.

3. The Memorandum is an official act of the executive branch of the State of California, it is not reasonably subject to dispute and is capable of immediate and accurate determination, particularly since the agency which generated it is involved in this action as a representative of the People.

4. The memorandum is relevant to one of the main issues in this case, to wit, the importance of a defendant’s right to confront witnesses as to the accuracy of forensic test results.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 12th day of November 2009 in Whitefish, MT.

DATED: 5/5/10

MAZUR & MAZUR

By: _____

Janice R. Mazur, Attorney for
Appellant Virginia Lopez

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

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December 18, 2009

**DISCOVERY ALERT: Pursuant to Penal Code Section 1054.1(e) and *Brady v. Maryland*,
373 U.S. 83 (1963)**

Re: Pacific Toxicology Laboratories

Attention: Defense Counsel, San Diego Deputy District Attorneys, and San Diego Deputy City Attorneys:

It has recently come to the attention of the District Attorney and the City Attorney that Pacific Toxicology Laboratories (hereinafter "Pac Tox"), the crime lab utilized by law enforcement to test blood and urine, has issues concerning reliability. The San Diego Sheriff's Crime Lab who services all of the law enforcement agencies within San Diego County (with the exception of the San Diego Police Department) has decided to no longer utilize Pac Tox for drug analysis of blood and urine samples.

Pursuant to and in fulfillment of Penal Code section 1054.1(e) and *Brady v. Maryland*, the following information is being disclosed:

- * From May 13, 2009 through July 15, 2009, Pac Tox had a group of cases where blood samples screened for amphetamine use initially tested negative but when retested came up positive for amphetamine (a false negative result).
- * On December 9, 2009, Pac Tox discovered that a blood sample which the lab originally reported as screening positive for Morphine later tested negative for Morphine.

For pending cases where Pac Tox analyzed the blood or urine specimen, please contact the Deputy District Attorney or Deputy City Attorney assigned to the case to discuss whether testing concerns exist and what testing alternatives are viable and appropriate.

For cases that have been adjudicated with an offense date between May 1, 2009 and December 8, 2009, you may want to review your case to determine whether Pac Tox tested a blood or urine sample. In circumstances where you have concerns about the veracity of the testing impacting the plea or verdict, you are urged to contact the Division that handled the case to discuss retesting options.

E-x A

AFFIDAVIT OF SERVICE BY MAIL

I am employed in the State of California, County of San Diego. I am over the age of eighteen and not a party to this action. My business address is 13465 Camino Canada, No. 106-103, El Cajon, CA 92021.

On May 5, 2010 I mailed documents described as **APPELLANT'S REQUEST FOR JUDICIAL NOTICE** via the United States mail in Whitefish, Montana in postage prepaid envelopes to interested parties in this action addressed as following:

Lynne McGinnis
Deputy Attorney General
110 W. "A" St., Suite 1100
P.O. Box 85266
San Diego, CA 92186-5266

Appellate Defenders, Inc.
555 West Beech St., Suite 300
San Diego, CA 92101

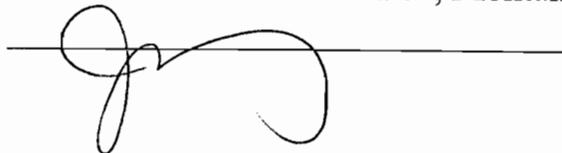
District Attorney
330 West Broadway
San Diego, CA 92101

The Honorable Lantz Lewis, Judge
San Diego Superior Court
250 E. Main St., Dept. EC-9
El Cajon, CA 92020

Court of Appeal
Fourth Appellate District, Div. One
750 "B" St. Suite 300
San Diego, CA 920101

Virginia Lopez (Appellant)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Whitefish, Montana on this 5th day of May, 2010.

A handwritten signature in black ink, appearing to be "Virginia Lopez", is written over a horizontal line. The signature is stylized with a large loop at the end.