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Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE	)	Case No.
OF CALIFORNIA,	)	
	)	
Plaintiff,	)	MOTION TO ADMIT EXPERT
	)	TESTIMONY REGARDING THE
	)	PHENOMENON OF COERCED
vs.	)	CONFESSIONS - PSYCHOLOGICAL
	)	FACTORS THAT MAY LEAD TO
	)	AN UNRELIABLE CONFESSION.
	)	
	)	Date:
Defendant.	)	Time:
_____	)	Dept:

**FACTS**

Give a brief description of case, particularly the confession at issue and the pertinent circumstances surrounding it. Defendant wishes to present the expert testimony of (insert expert's name), a social psychologist and expert in the field of coercive police interrogation and the phenomenon of coerced or false confession. (Insert name of expert)'s curriculum vitae is attached to this motion. Specifically, Defendant wishes (insert name of expert) to testify to (1) the phenomenon of coerced or false confession; and (2) the general psychological factors that can lead to a coerced or false confession, along with a description of supporting experiments. Defendant is not seeking to admit expert opinion as to the unreliability of the

confession in this particular case.

**I  
A FINDING BY THE TRIAL COURT THAT A CONFESSION  
IS VOLUNTARY DOES NOT PRECLUDE EXPERT TESTIMONY  
OF THE TYPE DESCRIBED ABOVE.**

Once a trial judge determines that a confession of a defendant was voluntary, the defendant is entitled to present to the jury all evidence on the issue of voluntariness of the confession.

It has long been held in California that:  
"Although the jury in California is not permitted to redetermine the issue of voluntariness, it may consider any evidence of coercion that may be presented by the defendant in order to determine the weight that the confession should be given." People v. Jimenez (1978) 21 C3d 595, 147 CR 172.

This allows a jury to give no weight to a confession if it finds it has been coerced.

The United States Supreme Court has determined that as part of the Sixth and Fourteenth Amendment guarantees of a meaningful opportunity to present a complete defense, a defendant has a right to present evidence about the physical and psychological environment in which his or her confession was obtained, even though the confession itself has been found voluntary and hence legally admissible. (Crane v. Kentucky (1986) 476 U.S. 683. Thus, Defendant has a federal constitutional right to present the expert evidence in question.

As the high court explained (476 U.S. at p 689):

"But the physical and psychological environment that

yielded the confession can also be of substantial relevance to the ultimate factual issue of the defendant's guilt or innocence. Confessions, even those that have been found to be voluntary, are not conclusive of the defendant's guilt or innocence. And, as with any other part of the prosecutor's case, a confession may be shown to be 'insufficiently corroborated or otherwise. . . unworthy of belief.' (Lego v. Twomey, supra, 404 U.S., at 485-486, 92 S.Ct., at 624-625.) Indeed, stripped of the power to describe to the jury the circumstances that prompted his confession, the defendant is effectively disabled from answering the one question every rational juror needs answered: If the defendant is innocent, why did he previously admit his guilt? Accordingly, regardless of whether the defendant marshaled the same evidence earlier in support of an unsuccessful motion to suppress, and entirely independent of any question of voluntariness, a defendant's case may stand or fall on his ability to convince the jury that the manner in which the confession was obtained casts doubt on its credibility."

## II

### **EXPERT EVIDENCE ON THE PHENOMENON OF FALSE OR COERCED CONFESSIONS AND THE GENERAL PSYCHOLOGICAL FACTORS WHICH CAN LEAD TO UNRELIABLE CONFESSIONS HAS BEEN PERMITTED IN CALIFORNIA AND OTHER STATE AND FEDERAL JURISDICTIONS.**

California Evidence Code Section 801 provides in pertinent part:

" Opinion testimony by expert witness  
If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:  
(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact;...

Federal Rule, Section 702 embodies a similar requirement, which is that expert testimony must assist the trier of fact in order to be admissible. Social psychologists study interpersonal relationships, and how persuasion,

interpersonal communication, conformity and influence affect people in given situations. A social psychologist can explain how people respond to certain kinds of direct or implied persuasion, intimidation, lies, suggestions and threats. This kind of information is far beyond the knowledge of the average citizen. It is within the province understanding of an expert in the field of social psychology such as (insert expert's name).

California has sanctioned the admissibility of the same type of expert testimony Defendant is seeking to have admitted in this case. In People v. Page (1991) 2 Cal.App.4th 161, the trial court allowed the expert to testify about the "factors which might induce a person to give a false statement or confession during an interrogation". It allowed the expert to give the jury an explanation of how a person could be influenced to give a false confession and a description of the relevant experiments. The reviewing court approved that scope of this type of expert testimony, which is what Defendant is seeking the admission of here, disallowing the expert's opinion about the reliability of the confession in that specific case. (Id., at pp. 183-184.)<sup>1</sup>

General expert testimony about the phenomenon of

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<sup>1</sup> The testimony allowed in Page is akin to expert identification testimony on specific psychological factors that affect the accuracy of eyewitness identification, which California courts have long since allowed when identification is a key element of the People's case and it is not substantially corroborated by reliable independent evidence. (People v. McDonald (1984) 37 Cal.3d 351, 377.)

coerced confessions such as described in Page has been approved outside of California as well. (See Callis v. State 684 N.E.2d 233, 239 (Ind.App.1997)[trial court properly admitted an expert's testimony regarding the phenomenon of coerced confessions and properly excluded his opinion about the specific interrogation in that case].) **Note: The expert in Callis was Dr. Richard Ofshe, so if he is your expert, note that your case involves the same expert whose testimony has already been specifically approved.**

Similarly, there is federal court authority approving such expert testimony. In United States v. Hall 93 F.3d 1337 (7th Cir. 1997), the defendant's theory of defense was that he suffered from a personality disorder that made him susceptible to suggestion and that he falsely confessed to win approval of his interrogators, whom he wanted to please. (Id., at p. 1341.) The defendant unsuccessfully sought the admission of the expert testimony of a social psychologist concerning the existence of false confessions "and that certain indicia can be identified to show when they are likely to occur." **(Note: the expert in this case was Dr. Ofshe, so if you are using him, highlight that fact)** The expert further would have described "what factors experts in the field rely upon to distinguish between reliable and unreliable confessions." (Id., at p. 1341.) The reviewing court found the exclusion of such testimony reversible error, explaining that the trial court's ruling ignored the value of valid social science (Id., at p. 1345):

"Even though the jury may have beliefs about the subject,

the question is whether those beliefs were correct. Properly conducted social science research often shows that commonly held beliefs are in error. Dr. Ofshe's testimony, assuming its scientific validity, would have let the jury know that a phenomenon known as false confessions exists, how to recognize it, and how to decide whether it fit the facts of the case being tried." The district court's conclusion therefore missed the point of the proffer. It was precisely because juries are unlikely to know that social scientists and psychologists have identified a personality disorder that will cause individuals to make false confessions that the testimony would have assisted the jury in making its decision. It would have been up to the jury, of course, to decide how much weight to attach to Dr. Ofshe's theory, and to decide whether they believed his explanation of Hall's behavior or the more commonplace explanation that the confession was true. See 18 U.S.C. sec. 3501. But the jury here may have been deprived of critical information it should have had in evaluating Hall's case."

Hall was remanded to the trial court for a full hearing on whether the proffered expert testimony met the requirements of Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993) 509 U.S. 579, which requires a trial judge, when confronted with a proffer of expert scientific testimony, to determine "whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue." (Id., at p. 592.) Following a full evidentiary hearing, the district court concluded:

. . .Dr. Ofshe is qualified as an expert in the field of coercive police interrogation techniques which may lead to false confessions. The Court further finds that the science of social psychology, and specifically the field involving the use of coercion in interrogations, is sufficiently developed in methods to constitute a reliable body of specialized knowledge under Rule 702. . . ." (United

States

Hall, 974 F.Supp.1198, 1205 (C.D. Ill. 1997)

Further, the court delineated the limits of permissible expert testimony exactly along the lines Defendant seeks here:

". . . he can testify that false confessions do exist, that they are associated with the use of certain police interrogation techniques, and that certain of those techniques were used in Hall's interrogation in this case. Dr. Ofshe cannot explicitly testify about matters of causation, specifically, whether the interrogation methods used in this case caused Hall to falsely confess. Without experimental verification, such testimony would be speculative and prejudicial. Dr. Ofshe will simply provide the framework which the jury can use to arrive at its own conclusion." (Id., at p. 1205.)

#### **CONCLUSION**

Based on the foregoing, this court should admit the testimony of (insert expert's name) to explain why and how Defendant "confessed" in this case. To exclude this evidence will deprive Defendant of his federal constitutional right to present a complete defense.

Dated:

Respectfully submitted,

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Attorney for Defendant