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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
12 CENTRAL DIVISION

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15 PEOPLE OF THE STATE OF CALIFORNIA,
16 PLAINTIFF,
17 VS.
18 ELLIOT NERIA,
19 DEFENDANT.

Case No.: CD254562

EX PARTE MOTION FOR ANCILLARY
FEES; REQUEST THAT MEMORANDUM
AND DECLARATION BE SEALED.

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22 **STATEMENT OF THE CASE AND FACTS**

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24 On or about March 7, 2014, Elliot Neria was arraigned on a felony complaint alleging
25 violation of California Penal Code Sections 211 (robbery), 245(a)(4) (two counts) (assault by
26 means likely to produce great bodily injury), and 243(d) (battery with serious bodily injury).
27 Neria is also facing special allegations under California Penal Code 186.22(b)(1) (gang
28

1 allegation), 12022.7(a) (personal infliction of great bodily injury), 1192.7(c)(8) (personal
2 infliction of great bodily injury).

3 On September 5, 2014, retained counsel substituted in on his behalf, and new dates for
4 readiness hearing and trial were set. The defendant is in custody.

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6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 The law regarding the courts' duty to appoint experts in California is well established. In
8 1968, the California Supreme Court described the duty as follows:

9 A fundamental part of the constitutional right of an accused to be
10 represented by counsel is that his attorney . . . is obviously entitled to the aid
11 of such expert assistance as he may need . . . in preparing the defense.” In re
Ketchel, 68 Cal.2d 397, 399 (1968).

12 The Court of Appeals found in People v. Gunnerson, 74 Cal. App. 3d 370, 379 (2d Dist. 1977),
13 that “[t]he Sixth Amendment right to counsel is a meaningless gesture if counsel for an indigent
14 defendant is denied the use of working tools essential to the establishment of what would appear
15 to be a tenable or possible defense.” The right to counsel includes the right to the use of
16 appropriate experts and investigative services that may reasonably be able to assist counsel in
17 preparing and presenting a defense. Anderson v. Justice Court of San Benito County 99 Cal.
18 App.3d 398, 401(1979); In re Ketchel 68 Cal. 2d 397, 398 (1969); People v. Gunnerson 74 Cal.
19 App. 3d 370 (1970); Torres v. Municipal Court 50 Cal. App. 3d 778,783 (1975); see U.S.C.A.
20 Section 3006A(e); Mason v. State of Arizona 504 F.2d 1345, 1351 (9th Cir. 1974); Pruett v.
21 Superior Court 96 Cal. App.3d 939 (1977).

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24 When expert evidence is or may be required by any party to the action, the court on
25 motion of any party may appoint one or more experts to investigate, to consult with the party
26 about his investigation, and to testify relative to the fact or matter to which expert evidence is or
27 may be required. Evid. Code, §§ 730, 952.
28

1 Further, the defendant has a right to choose the expert. It would be improper to refuse to
2 appoint an expert of the defense's choice solely because the expert might charge more than other
3 experts a court would be willing to appoint. In Corenevsky v. Superior Court, the court rejected
4 the prosecution's suggestion that the defendants had to convince the trial court in seeking an
5 appointment under Penal Code § 987.9, show that the “amount requested is reasonable in light of
6 budgeted monies available, balancing the likely benefit to the defense against the total amount
7 requested.” 36 Cal.3d 307, 320 (1984).

8
9 **CONCLUSION**

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11 Accordingly, based upon the foregoing and accompanying affidavit, Elliot Neria
12 respectfully requests that this court adjudge him indigent and authorize the public expenditure of
13 funds for ancillary services as set forth in the attached Court Order.

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16 Dated this ____ of November, 2014.

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18 _____
Anton Vialtsin, Esq.