STATE OF MARYLAND	*	IN THE
VS.	*	CIRCUIT COURT
Adan Espinoza Canela	*	FOR
Case No.: 104176021, 23, 25, 27, 29, 31	*	BALTIMORE CITY
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STATE'S SUPPLEMENTAL DISCLOSURE

Now comes Gregg Bernstein, State's Attorney for Baltimore City and Cynthia M. Banks, Assistant State's Attorney for Baltimore City, and in accordance with Rule 4-263 (h) of the Maryland Rules of Procedure, hereby promptly supplements the State's prior disclosures with the following additional witnesses and/or information:

1. One Disk containing the following information:
    a. DNA files 101204IDMix
    b. Wit. Maintenance form-notice of additional witness
    c. Sample_52_Pro
    d. Sample_52_Co
    e. Sample_24_Pro
    f. Sample_24_Co
    g. F10-Profiler Ladder.fsa
    h. E0-Pro_B04-50.52.2.OL.fsa
    i. C7_Profiler Ladder.fsa
    j. C5-Cofiler Ladder.fsa
    k. B12.CO.B04-50.52.3Ul.fsa
    l. A5.cofiler ladder.fsa
    m. Baltimore24-discovery
    n. Baltimore2 52 report a
    o. Baltimore2 52 report
    p. Baltimore 2 24 report a
    q. Baltimore2 24 report
    r. Foley 2012
    s. Ballantyne 2012-validation
    t. JFS 2011-validation
    u. Shivers 2011
    v. JFS 2013 (Validation: **Note defense must adhere to the confidentially / non-distribution requirements of Journal of Forensic Science)**
    w. PloS_One 2009-**Validation**

2. Case specific data used by Cybergenetics was previously provided in Supplemental Discovery dated April 5, 2013 and is included in this Supplemental Discovery.

3. Cybergenetics only works with data files, and has no access to the underlying biological "samples," used in the validation studies. The data files are related to criminal cases from various jurisdictions. Cybergenetics does not have legal authority to release data provided to it for validation purposes only.

4. Maryland Commercial Law Code Ann section 11-1201(c) defines "Trade Secret" as any formula, pattern, compilation, program, device, method, technique, or process, that:

    a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

    b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

5. **Cybergenetics' source code is a "Trade Secret". Disclosure of this proprietary material would make it impossible for the company to provide this commercial technology and would be financially devastating.**

6. **In lieu of disclosure of its "source code" Cybergenetics is willing to conduct additional TrueAllele testing on a limited set of defense-provided data to further defense understanding of the system, its operation and its reliability. Cybergenetics is also willing to meet with defense experts (in person or via an Internet meeting) to show them the results in this case, and explain to them on a TrueAllele computer how the system operates, though Cybergenetics cannot provide defense with a executable version of the TrueAllele casework system which cost $60,000.**

7. The Pennsylvania appellate court in <u>Commonwealth v. Foley</u>, 2012 PA Super 31; 38 A.3d 882 (2012), addressed this very issue and held that scientist can validate the reliability of a computerized process even if the "source code" underlying the process is not available to the public; the argument that disclosure of the "source code" is necessary is misleading, because it is not necessary to access to the reliable of the system.

8. The Cybergenetics TrueAllele Casework system has been extensively validated and shown to be reliable, as discussed and described in the attached peer-reviewed articles.

9. The attached peer-reviewed publications describe the TrueAllele Casework system, core mathematics and statistical operation.

10. The TrueAllele source code is a complex mathematical program composed of approximately 170,000 lines of instruction. A complex system of this nature is assessed by how well it operates on real data, not by examining the text. For example during the infancy of forensic DNA analysis no court required the disclosure of the "source code / formula" for the chemistries utilized or the computer instruments used to develop the alleles. What the courts required was proof of the reliability and accuracy of the data being produced, through validation studies.

11. In <u>Cole v. State</u>, 378 Md. 42 (2003), the Court of Appeals does expand the breath of the discovery,[1] partially because the defense's expert was not allowed to observe laboratory practices. State through Cybergenetics invites defense experts to observe, ask questions and even submit their own samples for analysis (validation), to assist defense experts in understanding what test were performed and how they were performed. The <u>Cole</u> opinion does not address the issue of disclosure of privileged information or the "trade secret" of an expert witness.

     I HEREBY CERTIFY that on this   day of June, 2013, a copy of the foregoing State's Supplemental Disclosure was:

___x__ Hand delivered to the Defense Counsel, Brian Murphy, Esq., March 11, 2013:
      1206 St. Paul Street, Baltimore, Maryland 21202

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Cynthia M. Banks
Assistant State's Attorney for
Baltimore City
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[1] The case expanded discovery to included Standard Operating Procedures, proficiency testing, etc., and documents which the State is required to provide under Courts and Judicial Proceedings section 10-915, DNA disclosure.