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6

7 **Superior Court of California,**
8 **County of San Francisco**

9 **The People of the State**
10 **of California,**

11 Plaintiff,

12 v.

13 **Michael Foley,**

14 Defendant

Dept. No. 22

SCN.: 210942
MCN: 2442183

Date:

Time:

15 _____ /
16 **Motion to Dismiss**
17 **For *Brady* Violations, or in the alternative, to compel discovery.**

18 Defendant, moves the Court to dismiss this case for due process violations and
19 outrageous conduct for failure to disclose exculpatory evidence known to the state,¹ or in
20 the alternative, for an order compelling disclosure of the discovery previously requested
21 in this case. The motion is based on court documents in the case, the statement of facts
22 and memorandum of points and authorities below, the attached declaration of counsel,
23 and such additional evidence and authority as may be presented at the hearing on the
24 motion.
25

26 _____
27 ¹ *Brady v. Maryland* (1967) 373 U.S. 83.

1 Defendant requests that this court for the purposes of initial proffer as to the existence
2 of this misconduct take judicial notice under Evidence Code section 452 of the newspaper
3 articles detailing the investigation and course of this issue (Exhibit E,F,G,H) and the San
4 Mateo minutes detailing Madden’s conviction (Exhibit B).

5
6 **Statement of Facts**

7 **A. Defendant is charged with a drug case in which the drug were tested by Deborah
8 Madden.**

9 Defendant is charged in this case with violation of section(s) 11379(a) of the Health &
10 Safety Code with a out on bail enhancement (Pen. Code, § 12022.1– note that case was
11 dismissed, so the enhancement is no longer viable).² A review of the police report (SFNO.
12 091098915) in this case indicates that the San Francisco Police Department served a search
13 warrant on Michael Foley and the apartment he was allegedly staying at. Foley was stopped and
14 searched; police seized three baggies of suspected narcotics from his pocket.

15 The narcotics in this case were tested by criminalist Debbie Madden³ on October 26, 2010.
16 She wrote that 2.82 grams of methamphetamine were in these bags. (Also see Preliminary
17 transcript of D3cember 3, 2009 where the nature of the drug was proved under Pen.Code, section
18 872 police-officer hearsay over objection hearsay relying on Madden’s affidavit, Foley does not
19 have a copy of that declaration, pages 7-8.) As of this writing there has been no discovery of a
20 retest of these samples.

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23 _____
24 ² A copy of the Information is attached, marked as Exhibit A and made part of this
25 motion.

26 ³ Exhibit K – Narcotics Analysis form S.F.P.D, attached and made part of this
27 motion.

1 **B. Defendant moved for discovery on by local rule at his arraignment on the**
2 **Information and March 11, 2010 (specifically asking for information on Madden).**

3 Local Rule 16.8 mandates that “.At the time of the defendant's first appearance on a
4 felony trial or misdemeanor trial matter, an informal mutual request for continuing
5 discovery is deemed to have been made.” So, on 12/18/2009 (arraignment) an informal
6 discovery request was deemed made.

7 Moreover, defendant made a written informal discovery request specifically asking
8 for audit of the ASCALD certification form 2005 to present (2009 audit received),
9 statements by employee of the lab concerning improper or questionable lab procedures,
10 Madden’s records employment, retirement, misconduct suspicious activities, crimes,
11 charges, allegations, drug use, drug theft ,and drug testing, Madden’s statement about the
12 “sloppy” practices at the Crime lab, any evidence concerning chain of custody, testing,
13 maintenance concerning controlled substances. *Engstrom/Wheeler* on Deborah Madden
14 prosecution witnesses.⁴ Despite this request, defense counsel was never provided with
15 any *Engstrom/Wheeler* on Madden. In addition, through this request, defense counsel
16 also requested any exculpatory evidence in the possession of any police department, the
17 District Attorney, or any other person or agency and available to the prosecution.⁵ The
18 latter request would include any information that Madden had regarding the “sloppy” lab
19 work and the “lost” and “mishandled” evidence about which she told police
20 investigators.⁶

21 **C. Madden had a Domestic Violence arrest in 2007 that was undiscovered to the**
22 **defense (not disclosed to the defense until 2-3rd week of March 2010).**

23 ⁴ Exhibit B - Informal Discovery Request filed on March 11, 2010 is attached
24 marked as B and made part of this motion.

25 ⁵ Exhibit B.

26 ⁶ Id.

1 By reading news accounts, March 10 through 18, 2010, defense counsel learned that
2 Madden had been arrested in late 2007. Court records confirm this long-time employee
3 suffered convictions for domestic violence and vandalism.⁷ Madden was arrested on
4 October 2, 2007 for domestic violence, assault, and vandalism charges.⁸ All three charges
5 are moral turpitude under *Wheeler*:⁹ a conviction for felony corporal injury under Pen C
6 §273.5¹⁰ and 245(a)(1)¹¹ are crimes of moral turpitude that may be used by the
7 prosecution to impeach the defendant's testimony.

8 Through discover to our office we now have a police report (expurgated) and
9 admission of the conviction, but further discover has been disapproved by the District
10 Attorney's Office unless the court reviews and release via l section 1054.7.¹² This
11 includes all the items request in the informal discovery letter, including an Inspector's
12 tapes and notes of admission by Ms. Madden, the contents of a search warrant affidavit,
13 the return. Indeed, an investigator was sent to San Mateo and the Clerk's office there
14 could not find the docket (and suggested it was in their DA's possession but did not
15 know).

17 ⁷ Exhibit C – San Mateo County Superior Court computer printout of court actions,
18 attached, marked as Exhibit C, and made part of this motion..

19 ⁸ Exhibit D - Copy of police incident report of Deborah Madden's arrest on
20 October 2, 2007, attached, marked as Exhibit D, and made part of this motion,

21 ⁹ *People v Wheeler* (1992) 4 Cal.4th 284; see also *People v Lopez* (2005) 129
22 Cal.App.4th 1508.

23 ¹⁰ *People v Rodriguez* (1992) 5 Cal.App.4th 1398; *People v Elwell* (1988) 206
24 Cal.App.3d 171.

25 ¹¹ *People v Thomas* (1988) 206 Cal.App.3d 689.

26 ¹² Exhibit J, a letter form Russ Guintini, Chief Assistant District Attorney, is
27 attached, and made part of this motion.

1 Alcohol was involved in this incident of domestic violence. Madden testified in her
2 defense and the Director of the San Francisco Crime Lab, Jim Mudge, testified as a
3 character witness. On February 19, 2008, during the trial, the court granted the San
4 Mateo prosecutor's request to explore the internal investigation being conducted by
5 Madden's employer at that time on cross- examination of Mudge or during direct
6 examination of a rebuttal witness.¹³

7 **D. Madden was convicted at trial in San Mateo of misdemeanor domestic violence in**
8 **2008 (given probation with drug and alcohol counseling) in which her supervisor**
9 **testified as to her character (not disclosed to defense until mid March 2010).**

9 Court records confirm this long-time employee suffered convictions for domestic
10 violence and vandalism.¹⁴ Madden was convicted of both charges on February 20, 2008.¹⁵
11 Madden was sentenced on May 9, 2008 as follows: Imposition of sentence suspended, 3
12 years supervised probation, 30 days county jail, 104 hours of domestic violence
13 counseling, abstain from the use and possession of alcoholic beverages, submit to alcohol
14 tests when directed by probation officer, participate in any education, rehabilitation or
15 treatment program as directed by probation officer, and not to possess any weapons,
16 among other conditions.¹⁶ The Office of the Public Defender received a letter from the
17 District Attorney giving the charges, date of arrest and conviction in mid March.

18 **E. Madden sister finds cocaine vial and reports to police lab on December 16, 2009**
19 **(not disclosed to defense– only learned via newspaper)**

20 Newspaper accounts indicate that Madden's sister informed the crime lab on
21 December 16, 2009 that she found what appeared to be a lab vial of cocaine at Madden's

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23 ¹³ Exhibit C.

24 ¹⁴ Exhibit C.

25 ¹⁵ Exhibit C.

26 ¹⁶ Exhibit C.

1 home in San Mateo. Despite informing the crime lab in December of last year, the San
2 Francisco police took two months to launch a criminal probe into Madden’s suspected
3 theft of drug evidence.¹⁷ In addition, newspaper accounts indicate that Madden has been
4 in treatment recently for drug and alcohol use.¹⁸

5 **F. Supervisor Lois Woodward does audit, finding tampering and missing evidence on in**
6 **December (not disclosed to defense except via paper).**

7 Defense counsel read newspaper accounts alleging Madden absconded with drug
8 samples during her work at the lab. Madden took an unexplained leave of absence from
9 her job in December 2009 and a lab audit conducted during the same month discovered
10 the tampering with samples. “That review was triggered when other technicians
11 suspected someone had been stealing evidence and supervisor noted apparent tampering
12 with the packaging of drug evidence, San Francisco Police Chief George Gascon said at a
13 news conference” on March 9, 2010.¹⁹ Specifically, the “investigation linked [Madden]
14 to missing drugs in at least six cases in the latter part of 2009.”²⁰ Police officials said that
15 Madden might have been summoned to testify in some of these six cases and may have
16 perjured herself about the evidence.²¹ According to authorities, “Madden was supposed

17 ¹⁷ Exhibit E - San Francisco Chronicle Article - March 15, 2010 - Police waited 2
18 months to investigate lab tech.; Exhibit F - San Francisco Chronicle Article - March 15,
19 2010 - SF Police waited 2 months before drug lab probe, attached, marked as Exhibit E,
and made part of this motion.

20 ¹⁸ Exhibit G - San Francisco Chronicle Article - March 10, 2010 - Crime lab
21 fallout: Drug defendants go free, attached, marked as Exhibit G, and made part of this
22 motion.

23 ¹⁹ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
24 technician accused of skimming, , attached, marked as Exhibit H, and made part of this
motion.

25 ²⁰ *Id.*

26 ²¹ *Id.*

1 to vouch for the weight and purity of seized drugs but instead used the cocaine.”²² The
2 tampering, theft and usage of drugs, as well as the alleged perjury, would be a basis for
3 impeachment of a witness at trial in terms of credibility. In addition, it is reasonably
4 probable that such evidence would undermine confidence in the jury verdict.

5 Newspaper accounts indicate that Madden was interviewed as part of an investigation
6 into the missing drugs where she “leveled charges of her own about the lack of control
7 over drug evidence. One official said Madden called the drug-testing process at the lab
8 ‘sloppy’.”²³ Madden also indicated that lab technicians “consistently lost or mishandled
9 evidence.”²⁴ These statements call into question the integrity and reliability of all crime
10 lab results.

11 **G. Search warrant issued and served with police finding gun (warrant is remains
12 undisclosed and sealed).**

13 As a result of the S.F.P.D. investigation, the police obtained a search warrant for
14 Madden’s San Mateo county home. After executing that warrant, police arrested Madden
15 on March 3, 2010 for weapons charges after a search of her home.²⁵ This arrest
16 constitutes another criminal offense and a violation of the terms of her domestic violence
17 probation. According to news reports, in her two-hour statement to police, Madden told
18 police that she began to use cocaine in October of 2009 and admitted to consuming
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20

21 ²² Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
22 technician accused of skimming.

23 ²³ Exhibit H.

24 ²⁴ Exhibit F.

25 ²⁵ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
26 technician accused of skimming.

1 cocaine from five samples of drug evidence.²⁶ Madden’s interview to police has not been
2 discovered. The search warrant affidavit is sealed.

3 **H. Newspaper report of SF Crime Lab audit from November, 2009 reveals substandard
4 procedures.**

5 Newspaper accounts also indicate that “police released an audit by the American
6 Society of Crime Laboratory Directors that shows the San Francisco lab does not have a
7 secure chain of custody for evidence, fails to keep detailed case records and does not meet
8 standards of cleanliness. The audit found that the lab is routinely underfunded and
9 understaffed and has to rely on overtime to fulfill its mission.”²⁷

10 **I. Defendant learns of the above only starting on March 10, 2010 in the newspaper.**

11 Despite Madden’s October, 2007 arrest for acts of moral turpitude, her February, 2008
12 San Mateo county jury trial, the San Mateo county prosecutor’s motion to cross-examine
13 Madden about her employers’ internal investigation of her, her February, 2008
14 conviction, her May, 2008 grant of probation, the allegations of substandard lab practices
15 revealed in a November, 2009 audit, Madden’s unexplained leave of absence from her job
16 on December 8, 2009, her February/March, 2010 admissions to the S.F.P.D. of stealing
17 cocaine and tampering with evidence, very little has been discovered to defense counsel
18 regarding this scandal. The first time defense counsel learned any information about
19 these events was by reading the March 10, 2010 edition of the San Francisco Chronicle.

20 Regardless of who the prosecution chooses to call as a witness at a jury trial, this same
21 lab technician is inexorably connected to the chain of custody in this case.

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23 ²⁶ *Id.*

24 ²⁷ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
25 technician accused of skimming; Exhibit I - ASCLD/LAB Inspection Report - San
26 Francisco Police Department Criminalistics Laboratory (Inspected: November 17-20,
2009), attached, marked as Exhibit H, and made part of this motion.

1 Failure to provide the above information constitutes a Fifth Amendment due process
2 violation.²⁸ Moreover, the failure of the District Attorney to provide this information by
3 the trial date, while simultaneously maintaining that she intended to dismiss the case, has
4 substantially and irreparably prejudiced the defense. Defense counsel no longer has the
5 ability to investigate and pursue this information with the proper diligence prior to trial.
6 Though the District Attorney's conduct may not have been an intentional ploy to
7 handicap the defense, the reality is that she has utterly disregarded her obligations to
8 provide the defense with timely discovery while simultaneously maintaining that she did
9 not intent to proceed to trial. Accordingly, because the prosecution has failed to make
10 even a cursory attempt to comply with the requirements of *Brady*, defense counsel
11 requests that the Court dismiss the complaint.

12 13 **Memorandum of Points and Authorities**

14 **1. Due Process requires the discovery sought here**

15 **A. *Brady* requires disclosure.**

16 The duty of the District Attorney to provide discovery to the defense within a
17 reasonable time prior to trial stems from both the statutory scheme of Penal Code
18 Sections 1054 *et. seq.* and from the Due Process Clause of the United States Constitution
19 as first articulated in *Brady v. Maryland*.²⁹ Moreover, the prosecution's discovery
20 obligations pursuant to the U.S. Constitution are wholly independent of and in addition
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25 ²⁸ *Brady v. Maryland* (1967) 373 U.S. 83.

26 ²⁹ *Id.*

1 to any such obligations under Penal Code § 1054.³⁰ No statute can limit the due process
2 rights of criminal defendants.³¹

3 **B. The statutory scheme (Pen. Code, §1054 et seq.) cannot shield *Brady* discovery**

4 Under the statutory discovery scheme set forth in Penal Code Sections 1054 *et seq.*,
5 the Court “may make any order necessary to enforce the provisions of this chapter,
6 including but not limited to immediate disclosure, contempt proceedings, delaying or
7 prohibiting the testimony of a witness or the presentation of real evidence, continuance
8 of the matter, or any other lawful order. Further, the court may advise the jury of any
9 failure or refusal to disclose and of any untimely disclosure.”³²

10 **C. The prosecution is responsible for all information known by the prosecution team**

11 In addition, under *Brady v. Maryland*, the Due Process Clause of the United States
12 Constitution requires the government to disclose all evidence “favorable to the accused”
13 on issues of either guilt or punishment. Cases decided subsequent to *Brady* have
14 reaffirmed and extended the duty of disclosure, holding that the duty to disclose does not
15 depend on whether or not the Defense has requested the material;³³ that it is immaterial
16 whether the prosecution actually possesses or even knows of the existence of the
17 material sought because “the individual prosecutor has a *duty to learn* of any favorable
18 evidence known to the others acting on the government’s behalf in the case, including
19 the police”;³⁴ emphasis added); that evidence is favorable to the accused if it “either
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21 ³⁰ *Izazaga v. Superior Court* (1991) 54 Cal. 3d 356.

22 ³¹ *Ibid.*

23 ³² Pen. Code § 1054.5(b).

24 ³³ *U.S. v. Bagley* (1985) 473 U.S. 667.

25 ³⁴ *Kyles v. Whitley* (1995) 514 U.S. 419.

1 helps the defendant or hurts the prosecution,” extending to any information regarding the
2 thoroughness and integrity of the investigation in the case,³⁵ and that the duty of
3 disclosure extends not only through trial but beyond conviction.³⁶

4 Thus, the prosecution’s duty to disclose under the United States Constitution and
5 Penal Code Sections 1054 *et. seq.* includes not only exculpatory evidence, but also any
6 evidence which impeaches, discredits, undercuts, or raises doubts about the
7 prosecution’s case. Moreover, the duty to disclose encompasses not merely information
8 actually within the knowledge and possession of the District Attorney, but any and all
9 material within the knowledge and possession of the law enforcement agencies
10 investigating the case.³⁷ Finally, having breached the 30 day window prior to trial, the
11 prosecution and the defense are required to meet their discovery obligations
12 immediately, in order for both sides to have sufficient time to investigate and prepare for
13 trial.

14 **2. Chain of custody is relevant and crucial to the admission of evidence.**

15 The state may claim that any discovery the defense seeks “merely goes to the chain of
16 custody” as if to suggest chain-of-custody is not a relevant and material issue at trial. Not
17 so. The party offering real evidence has the burden of showing to the satisfaction of the
18 trial court that, taking all the circumstances into account, including the ease or difficulty
19 with which the particular evidence could have been altered, it is reasonably certain that
20 there was no alteration. “The requirement of reasonable certainty is not met when some
21 vital link in the chain of possession is not accounted for, because then it is as likely as
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23 ³⁵ *Kyles v. Whitley*, *supra*, 514 U.S. 419; *In re Sassounian* (1995) 9 Cal. 4th 535.

24 ³⁶ *People v. Garcia* (1993) 17 Cal. App. 4th 1169.

25 ³⁷ *In re Brown* (1998) 17 Cal. 4th 873, 882; *People v. Robinson* (1995) 31 Cal. App.
26 4th 494.

1 not that the evidence analyzed was not the evidence originally received. Left to such
2 speculation the court must exclude the evidence. ... Conversely, when it is the barest
3 speculation that there was tampering, it is proper to admit the evidence and let what
4 doubt remains go to its weight.”³⁸

5 The defense has a right to present evidence that would impeach the chain of custody.
6 The trial court has broad discretion to determine the admissibility of evidence.³⁹ Over a
7 chain of custody objection, the party offering the evidence has the burden of proof of
8 showing “to the satisfaction of the trial court that, taking all the circumstances into
9 account including the ease or difficulty with which the particular evidence could have
10 been altered, it is reasonably certain that there was no alteration.”⁴⁰ The requirement of
11 “reasonable certainty” is not met when some vital link in the chain of possession is not
12 accounted for, because then it is as likely as not that the evidence analyzed was not the
13 evidence originally received.⁴¹ Left to such speculation, our Supreme Court cautions, the
14 court must exclude the evidence.⁴²

15 **3. The sanction ought to be dismissal**

16 As a sanction for the failure to timely produce discoverable material, the Court may
17 dismiss the Information in whole or in part.⁴³ Further, as noted above, the Court may also
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20 ³⁸ *People v. Lucas* (1995) 12 C.4th 415, 444.

21 ³⁹ *People v. Williams* (1997) 16 Cal.4th 153, 196.

22 ⁴⁰ *People v. Catlin* (2001) 26 Cal.4th 81, 134.

23 ⁴¹ *Ibid.*

24 ⁴² *People v. Jimenez* (2008) 165 Cal.App.4th 75.

25 ⁴³ *Hobbs v. Muni Court* (1991) 233 Cal.App.3d 670, 696; *Stanton v. Superior*
26 *Court* (1987) 193 Cal.App.3d 265.

1 consider contempt proceedings, exclusion of testimony and/or jury instructions as
2 remedies for discovery violations.

3 Here, the sanction of dismissal is appropriate given that the District Attorney failed to
4 provide *any* requested discovery and failed to even respond to the discovery request. The
5 failure of the District Attorney to provide the necessary discovery – including classic
6 *Brady* material – by the trial date after declaring ready for trial is unacceptable and a
7 flagrant disregard for the rights of Defendant and demonstrates an utter disregard for the
8 Due Process which cannot be countenanced. The defense now is placed in the incurable
9 and utterly prejudicial position of being unable to properly investigate the potential
10 exculpatory information, despite the defense’s diligent efforts in requesting this
11 information.

12 Furthermore, independent of any other obligations imposed by Federal or State law,
13 State Bar Rules of Conduct prohibit withholding of evidence that prosecutors have a
14 legal obligation to produce.⁴⁴ It is expected that prosecutors with exculpatory information
15 will disclose such matters promptly.⁴⁵ Intentionally concealing material evidence is an
16 act of moral turpitude and dishonestly in view of the State Bar Rules of Professional
17 Conduct.⁴⁶ This, if found true, would warrant a dismissal.

18 Moreover, a prosecutor’s duty under *Brady* to disclose material exculpatory evidence
19 extends to evidence the prosecutor or the prosecution team knowingly possesses or has

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21 ⁴⁴ Rules of Professional Conduct, rule 5-220 [suppression of evidence]; see also,
Merrill v. Superior Court (1994) 27Cal.App.4th 1586, 1595.

22 ⁴⁵ *People v. Gonzales* (1990) 51 Cal.3d 1179, at 1261.

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24 ⁴⁶ *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Reporter 896, 910.
25 See also, *In the Matter of Benjamin Thomas Field*, Review Department of the State Bar
26 Court, 05-O-00815, 06-O-12344 (imposing a four year suspension on Santa Clara
Assistant District Attorney Field for, in part, concealing exculpatory information in a
criminal proceeding).

1 the right to possess. The prosecution team includes both investigative and prosecutorial
2 agencies and personnel.⁴⁷

3 A prosecutor has a duty to search for and disclose exculpatory evidence if the
4 evidence is possessed by a person or agency that has been used by the prosecutor, or the
5 investigating agency to assist the prosecution, or the investigating agency in its work.
6 The important determinant is whether the person or agency has been “acting on the
7 government's behalf”⁴⁸ or “assisting the government's case.”⁴⁹ Where the person or
8 agency resists disclosure, the prosecution may have no other choice but to suffer the trial
9 court’s sanction of exclusion of the pertinent witness or dismissal of the criminal matter
10 for the prosecutor's failure to fulfill its constitutional mandate.⁵⁰

11 Evidence of irregularities in the handling and testing of evidence at the Crime Lab is
12 exculpatory because a jury would be entitled to consider evidence casting doubt about
13 whether the substances admitted into evidence at trial are the same substances seized by
14 police in connection with the defendant’s arrest.

15 **Conclusion**

16 Defendant respectfully requests that the Court dismiss the Information based on the
17 *Brady* violations of the District Attorney. Here, the prosecutor seeks to delay or prevent
18 otherwise discoverable information under Penal Code § 1054.7. However, the
19 government has yet to show good cause as required by the statute. Moreover, the
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21 ⁴⁷ *Kyles v. Whitley* (1995) 514 U.S. 419, 437-438.; *See In re Brown* (1998) 17
22 Cal.4th 873, 879; *People v. Robinson* (1995) 31 Cal.App.4th 494, 499.

23 ⁴⁸ *Kyles v. Whitley, supra*, 514 U.S. at p. 437.

24 ⁴⁹ *In re Brown, supra*, 17 Cal.4th at p. 881.

25 ⁵⁰ *Dell M. v. Superior Court* (1977) 70 Cal.App.3d 782; *People v. Brophy* (1992) 5
26 Cal.App.4th 932.

1 argument that the prosecution has re-tested the narcotics – and not call Madden as a
2 witness – fails because Madden is inexorably intertwined in the chain of custody in this
3 case. The defense has a right to present evidence to impeach that chain.

4 In the alternative, Defendant requests that the Court issue an order compelling the
5 District Attorney to comply with her discovery obligations immediately and that the
6 Court impose other sanctions as it deems appropriate, including contempt findings and
7 jury instructions regarding the failure to timely produce discovery.

8 Dated: March 24, 2010 Respectfully submitted,
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11 Christopher F. Gauger, Deputy Public Defender

12 I declare under penalty of perjury that I contacted Asst. Dist. Attorney Richard
13 Heckler on March 24, 2010 and he has a “non-vociferous objection” to the order to
14 shorten time. March 24, 2010 _____, Chrsiotpher F. Gauger
15

16 **Order Shortening Time**

17 Good cause having been shown, it is hereby ordered that time for filing and service of
18 this motion in *People v. Foley* SCN 210942 is shortened in order that it may be heard at
19 the Friday 03-26-2010 at 9:00 a.m. so long as filing and service is accomplished no later
20 than 5:00 p.m. on the date this order is signed.

21 Dated: March 25, 2010.

22 _____
23 Judge of the Superior Court
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1 The foregoing is true and correct, except those portion made upon information and belief
2 and declarant is informed and believed those portion to be true and correct subscribed under
3 penalty of perjury this 24th day of March 2010 in the County of San Francisco
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7 Christopher F. Gauger
8 Attorney at Law
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2 **Proof of Service**

3 I, the undersigned say:

4 I am over eighteen years of age and not a party to the above action. My business
5 address is 555 Seventh Street, San Francisco, California 94103.

6 On _____, 2010, I personally served the attached petition on:

7 Clerk of the Superior Court
8 850 Bryant Street, Room 101
9 San Francisco, California 94103

10 Office of the District Attorney
11 City and County of San Francisco
12 850 Bryant Street, Room 300
13 San Francisco, California 94103

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on _____, 2010, at San Francisco, California.

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