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6
7 **Superior Court of California, County of San Francisco**

8
9 **The People of the State
of California,**

Dept. No. 22

10 **Plaintiff,**

MCN.:

11 **v.**

Date:

12 **Name of Client,**

Time:

13 **Defendant**
14 _____ /

15 **Opposition to motion to quash defense subpoena duces tecum
or in the alternative to compel discovery and
16 Memorandum of Points & Authorities in Support Thereof**

17 Defendant moves the Court to dismiss the Motion to Quash the defense subpoena
18 duces tecum, or in the alternative, for an order compelling disclosure of the discovery
19 previously requested in this case. The motion will be based on Court documents in the
20 case, the statement of facts and memorandum of points and authorities below, the
21 attached declaration of counsel, and such additional evidence and authority as may be
22 presented at the hearing on the motion.

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25
26 **Statement of Facts**
27

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

3 Defendant is charged in this case with violation of section(s) 11351.5 & 11352 of the
4 Health & Safety Code. A review of the police reports in this case indicates that the San
5 Francisco Police Department [FILL IN FACTS FROM POLICE REPORT, ETC. HERE].

6 The narcotics in this case were tested by criminalist Debbie Madden.¹

7 **B. Defendant moved for discovery on [REDACTED].**

8 Before trial, defendant's counsel made an informal discovery request specifically
9 asking for *Wheeler* on all prosecution witnesses as well as any *Brady* material.²
10 Moreover, defense counsel is deemed to have served an Informal Discovery Request on
11 the prosecutor's office on the date of the first appearance by counsel.³ In addition, thru
12 this request, defense counsel also requested any exculpatory evidence in the possession of
13 any police department, the District Attorney, or any other person or agency and available
14 to the prosecution.⁴ The latter request would include any information that Madden had
15 regarding the "sloppy" lab work and the "lost" and "mishandled" evidence about which
16 she told police investigators.⁵ On March 17, 2010 the District Attorney's Office sent our
17 office a letter admitting that Madden had a 273.5 and 594 misdemeanor convictions from
18 early 2008.
19
20

21 ¹ Exhibit A – Narcotics Analysis form S.F.P.D.

22 ² Exhibit B - Informal Discovery Request filed on June 17, 2009.

23 ³ San Francisco Local Rule of Court 16.8.

24 ⁴ Exhibit B - Informal Discovery Request filed on June 17, 2009.

25 ⁵ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
26 technician accused of skimming.

1 **C. Madden had a Domestic Violence arrest in 2007 that was undiscovered to the**
2 **defense (not disclosed to the defense until 3-17-2010).**

3 By reading news accounts, March 10, 2010 to the present, defense counsel learned
4 that Madden had been arrested in late 2007. Court records confirm this long-time
5 employee suffered convictions for domestic violence and vandalism.⁶ Madden was
6 arrested on October 2, 2007 for domestic violence, assault, and vandalism charges.⁷ All
7 three charges are moral turpitude under *Wheeler*:⁸ a conviction for spousal abuse under
8 Pen C §273.5⁹ and 245(a)(1)¹⁰ are crimes of moral turpitude that may be used by the
9 defense to impeach Madden’s testimony. In March, 2010, the District Attorney’s Office
10 provided a redacted copy of a police report.

11 Alcohol was involved in this incident of domestic violence. Madden testified in her
12 defense and the Director of the San Francisco Crime Lab, Jim Mudge, testified as a
13 character witness. On February 19, 2008, during the trial, the court granted the San
14 Mateo prosecutor’s request to explore the internal investigation being conducted by
15 Madden’s employer at that time on cross- examination of Mudge or during direct
16 examination of a rebuttal witness.¹¹

17
18 ⁶ Exhibit C – San Mateo County Superior Court computer print out of court
19 actions.

20 ⁷ Exhibit D - Copy of police incident report of Deborah Madden’s arrest on
21 October 2, 2007.

22 ⁸ *People v Wheeler* (1992) 4 Cal.4th 284; see also *People v Lopez* (2005) 129
23 Cal.App.4th 1508.

24 ⁹ *People v Rodriguez* (1992) 5 Cal.App.4th 1398.

25 ¹⁰ *People v Elwell* (1988) 206 Cal.App.3d 171; *People v Thomas* (1988) 206
26 Cal.App.3d 689.

27 ¹¹ Exhibit C.

1 **D. Madden was convicted at trial in San Mateo of misdemeanor domestic violence in**
2 **2008 (given probation with drug and alcohol counseling) in which her supervisor**
3 **testified as to her character (not disclosed to defense; defense discovered through**
4 **independent investigation).**

5 Court records confirm this long-time employee suffered convictions for domestic
6 violence and vandalism.¹²Madden was convicted of both charges on February 20, 2008.¹³
7 Madden was sentenced on May 9, 2008 as follows: Imposition of sentence suspended, 3
8 years supervised probation, 30 days county jail, 104 hours of domestic violence
9 counseling, abstain from the use and possession of alcoholic beverages, submit to alcohol
10 tests when directed by probation officer, participate in any education, rehabilitation or
11 treatment program as directed by probation officer, and not to possess any weapons,
12 among other conditions.¹⁴

13 **E. Madden sister finds cocaine vial and reports to police lab on 12-16-2009 (not**
14 **disclosed to defense; defense read in news account on 3-10-2010)**

15 Newspaper accounts indicate that Madden's sister informed the crime lab on
16 December 16, 2009 that she found what appeared to be a lab vial of cocaine at Madden's
17 home in San Mateo. Despite informing the crime lab in December of last year, the San
18 Francisco police took two months to launch a criminal probe into Madden's suspected
19 theft of drug evidence.¹⁵ In addition, newspaper accounts indicate that Madden has been
20 in treatment recently for drug and alcohol use.¹⁶

21 ¹² Exhibit C.

22 ¹³ Exhibit C.

23 ¹⁴ Exhibit C.

24 ¹⁵ Exhibit E - San Francisco Chronicle Article - March 15, 2010 - Police waited 2
25 months to investigate lab tech.; Exhibit F - San Francisco Chronicle Article - March 15,
26 2010 - SF Police waited 2 months before drug lab probe.

27 ¹⁶ Exhibit G - San Francisco Chronicle Article - March 10, 2010 - Crime lab
fallout: Drug defendants go free.

1 **F. Supervisor Lois Woodward does audit, finding tampering and missing evidence in**
2 **December, 2009 (not disclosed to defense; defense learned reading news account of 3-**
3 **10-2010).**

4 Defense counsel read newspaper accounts alleging Madden absconded with drug
5 samples during her work at the lab.¹⁷ Madden took an unexplained leave of absence from
6 her job in December 2009 and a lab audit conducted during the same month discovered
7 the tampering with samples. “That review was triggered when other technicians
8 suspected someone had been stealing evidence and supervisor noted apparent tampering
9 with the packaging of drug evidence, San Francisco Police Chief George Gascon said at a
10 news conference” on March 9, 2010.¹⁸ Specifically, the “investigation linked [Madden]
11 to missing drugs in at least six cases in the latter part of 2009.”¹⁹ Police officials said that
12 Madden might have been summoned to testify in some of these six cases and may have
13 perjured herself about the evidence.²⁰ According to authorities, “Madden was supposed
14 to vouch for the weight and purity of seized drugs but instead used the cocaine.”²¹ The
15 tampering, theft and usage of drugs, as well as the alleged perjury, would be a basis for
16 impeachment of a witness at trial in terms of credibility. In addition, it is reasonably
17 probable that such evidence would undermine confidence in the jury verdict.

18 Newspaper accounts indicate that Madden was interviewed as part of an investigation
19 into the missing drugs where she “leveled charges of her own about the lack of control

20 ¹⁷ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
21 technician accused of skimming.

22 ¹⁸ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
23 technician accused of skimming.

24 ¹⁹ *Id.*

25 ²⁰ *Id.*

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

1 over drug evidence. One official said Madden called the drug-testing process at the lab
2 'sloppy'."²² Madden also indicated that lab technicians "consistently lost or mishandled
3 evidence."²³ S.F. Police Chief Gascon told the press that the evidence of theft and
4 tampering from the SF Crime Lab, "put the hard work of every other employee of the
5 crime lab into question."²⁴ These statements call into question the integrity and reliability
6 of all crime lab results.

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

9 As a result of the S.F.P.D. investigation, the police obtained a search warrant for
10 Madden's San Mateo county home. After executing that warrant, police arrested Madden
11 on March 3, 2010 for weapons charges after a search of her home.²⁵ This arrest
12 constitutes another criminal offense and a violation of the terms of her domestic violence
13 probation. According to news reports, in her two-hour statement to police, Madden told
14 police that she began to use cocaine in October of 2009 and admitted to consuming
15 cocaine from five samples of drug evidence.²⁶ Madden's interview to police has not been
16 discovered. The search warrant affidavit is sealed.

17 **H. Newspaper report of SF Crime Lab audit from November 20, 2009 reveals
18 substandard procedures.**

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

21 ²³ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2
22 months to investigate lab tech.

23 ²⁴ Exhibit H - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test
24 technician accused of skimming.

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

27 ²⁶ *Id.*

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

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

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

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

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

20 **Memorandum of Points and Authorities**

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

22 **A. *Brady* requires disclosure**

23 _____
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).

1 The duty of the District Attorney to provide discovery to the defense within a
2 reasonable time prior to trial stems from both the statutory scheme of Penal Code
3 Sections 1054 *et. seq.* and from the Due Process Clause of the United States Constitution
4 as first articulated in *Brady v. Maryland*.²⁸ Moreover, the prosecution’s discovery
5 obligations pursuant to the U.S. Constitution are wholly independent of and in addition to
6 any such obligations under Penal Code § 1054.²⁹ No statute can limit the due process
7 rights of criminal defendants; the discovery statutes contemplate disclosure *outside* the
8 statutory scheme pursuant to constitutional requirements as enunciated in *Brady*.³⁰

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

10 Under the statutory discovery scheme set forth in Penal Code Sections 1054 *et seq.*, a
11 party is entitled to seek court enforcement of the required disclosures on a showing that it
12 has complied with the informal discovery procedures and that the opposing party has not
13 provided the desired materials and information within 15 days of it having been
14 requested.³¹ In addition, Penal Code Section 1054.7 mandates that all parties make the
15 required disclosures at least 30 days prior to trial or, if the information is not known to or
16 in the possession of the party 30 days prior to trial, as soon as the party acquires such
17 information.³² The Court “may make any order necessary to enforce the provisions of this
18 chapter, including but not limited to immediate disclosure, contempt proceedings,
19 delaying or prohibiting the testimony of a witness or the presentation of real evidence,
20

21 ²⁸ *Brady v. Maryland* (1967) 373 U.S. 83.

22 ²⁹ *Izazaga v. Superior Court* (1991) 54 Cal. 3d 356.

23 ³⁰ *Ibid.*

24 ³¹ Pen. Code § 1054.5(b).

25 ³² Pen. Code § 1054.7.

1 continuance of the matter, or any other lawful order. Further, the court may advise the
2 jury of any failure or refusal to disclose and of any untimely disclosure.”³³

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

4 In addition, pursuant to *Brady v. Maryland*, the Due Process Clause of the United
5 States Constitution requires the government to disclose all evidence “favorable to the
6 accused” on issues of either guilt or punishment. Cases decided subsequent to *Brady* have
7 reaffirmed and extended the duty of disclosure, holding that the duty to disclose does not
8 depend on whether or not the Defense has requested the material;³⁴ that it is immaterial
9 whether the prosecution actually possesses or even knows of the existence of the material
10 sought because “the individual prosecutor has a *duty to learn* of any favorable evidence
11 known to the others acting on the government’s behalf in the case, including the police”;³⁵
12 emphasis added); that evidence is favorable to the accused if it “either helps the defendant
13 or hurts the prosecution,” extending to any information regarding the thoroughness and
14 integrity of the investigation in the case;³⁶ and that the duty of disclosure extends not only
15 through trial but beyond conviction.³⁷

16 Thus, the prosecution’s duty to disclose under the United States Constitution and Penal
17 Code Sections 1054 *et. seq.* includes not only exculpatory evidence, but also any evidence
18 which impeaches, discredits, undercuts, or raises doubts about the prosecution’s case.
19 Moreover, the duty to disclose encompasses not merely information actually within the
20

21 ³³ Pen. Code § 1054.5(b).

22 ³⁴ *U.S. v. Bagley* (1985) 473 U.S. 667.

23 ³⁵ *Kyles v. Whitley* (1995) 514 U.S. 419.

24 ³⁶ *Kyles v. Whitley, supra*, 514 U.S. 419; *In re Sassounian* (1995) 9 Cal. 4th 535.

25 ³⁷ *People v. Garcia* (1993) 17 Cal. App. 4th 1169.

1 knowledge and possession of the District Attorney, but any and all material within the
2 knowledge and possession of the law enforcement agencies investigating the case.³⁸
3 Finally, having breached the 30 day window prior to trial, the prosecution and the defense
4 are required to meet their discovery obligations immediately, in order for both sides to
5 have sufficient time to investigate and prepare for trial.

6 **2. Chain of custody is no minor part of the evidence**

7 The state may claim that any discovery the defense seeks “merely goes to the chain of
8 custody” as if to suggest chain-of-custody is not a relevant and material issue at trial. Not
9 so. The party offering real evidence has the burden of showing to the satisfaction of the
10 trial court that, taking all the circumstances into account, including the ease or difficulty
11 with which the particular evidence could have been altered, it is reasonably certain that
12 there was no alteration. “The requirement of reasonable certainty is not met when some
13 vital link in the chain of possession is not accounted for, because then it is as likely as not
14 that the evidence analyzed was not the evidence originally received. Left to such
15 speculation the court must exclude the evidence. ... Conversely, when it is the barest
16 speculation that there was tampering, it is proper to admit the evidence and let what doubt
17 remains go to its weight.”³⁹

18 The defense has a right to present evidence that would impeach the chain of custody.
19 The trial court has broad discretion to determine the admissibility of evidence.⁴⁰ Over a
20 chain of custody objection, the party offering the evidence has the burden of proof of
21 showing “to the satisfaction of the trial court that, taking all the circumstances into
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23 ³⁸ *In re Brown* (1998) 17 Cal. 4th 873, 882; *People v. Robinson* (1995) 31 Cal. App.
24 4th 494.

25 ³⁹ *People v. Lucas* (1995) 12 C.4th 415, 444.

26 ⁴⁰ *People v. Williams* (1997) 16 Cal.4th 153, 196.

1 account including the ease or difficulty with which the particular evidence could have
2 been altered, it is reasonably certain that there was no alteration.”⁴¹ The requirement of
3 “reasonable certainty” is not met when some vital link in the chain of possession is not
4 accounted for, because then it is as likely as not that the evidence analyzed was not the
5 evidence originally received.⁴² Left to such speculation, our Supreme Court cautions, the
6 court must exclude the evidence.⁴³

7 **3. The defense subpoena power is separate and apart from the statutory**
8 **scheme set forth in Penal Code § 1054 et. seq.**

9 The issuance of a subpoena duces tecum under Pen C §§1326-1327 is a ministerial act
10 requiring only that the described records be produced in court; it does not authorize legal
11 access to the records by the party who obtained the subpoena until the court has decided
12 that the party is legally entitled to receive them.⁴⁴ Therefore, the court should not quash
13 the defense subpoena. Instead, as a minimum, the court should require the subpoenaed
14 party to appear with the records.⁴⁵ As a failsafe, the court may hold an in camera hearing
15 to decide whether the defense is entitled to receive the documents but may not order
16 disclosure of the documents to the prosecution except as required by Pen C §1054.3.⁴⁶

17 Penal Code §1327, which sets out the requirements for subpoenas duces tecum in
18 criminal cases, requires only that the person subpoenaed be told the name of the case,

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20 ⁴¹ *People v. Catlin* (2001) 26 Cal.4th 81, 134.

21 ⁴² *Ibid.*

22 ⁴³ *People v. Jimenez* (2008) 165 Cal.App.4th 75.

23 ⁴⁴ Pen C §1326©; *People v Hammon* (1997) 15 C4th 1117; *People v Blair* (1979)
24 25 Cal.3d 640, 651.

25 ⁴⁵ *Pacific Lighting Leasing Co. .v Superior Court* (1976) 60 Cal.App.3d 552.

26 ⁴⁶ *Teal v. Superior Court* (2004) 117 CA4th 488, 492.

1 where and when to appear, and what documents or papers, if any, are requested. Code of
2 Civil Procedure §1985(b), which requires service of an affidavit or declaration showing
3 good cause for production of the requested items with a subpoena duces tecum, does not
4 apply in criminal cases.⁴⁷ Civil discovery rules generally do not apply in criminal cases.
5 See, e.g., *Pitchess v Superior Court* (1974) 11 C3d 531, 536 (CCP §§1985.3-1985.4, for
6 subpoenaing consumer records—called "personal records" (e.g., financial, medical, and
7 educational records, including electronic data of those records)—that do not apply in
8 criminal cases).

9 The criminal discovery procedures of Pen C §§1054-1054.10 do not regulate
10 discovery of information in the possession of uninvolved third parties,⁴⁸ such as
11 uninvolved prosecution or police agencies, hospitals,⁴⁹ public institutions, and private
12 businesses. Therefore, a subpoena duces tecum should be used to compel the production
13 of relevant materials in the possession of a third party.⁵⁰

14 The following are examples of information from third parties that related to the
15 charged case where a subpoena duces tecum was issued properly: Confidential records of
16 a state agency investigating the child abuse with which the defendant is charged;⁵¹ Child
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18

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20 ⁴⁷ *Michael B. v. Superior Court* (2002) 103 Cal.App.4th 1384.

21 ⁴⁸ *Teal v Superior Court* (2004) 117 CA4th 488, 491; *People v Superior Court*
22 (*Broderick*) (1991) 231 CA3d 584.

23 ⁴⁹ See *People v Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305; *People v*
24 *Superior Court (Mem. Med. Ctr.)* (1991) 234 Cal.App.3d 363, doctors (see *People v*
Superior Court (Broderick), *supra*).

25 ⁵⁰ Pen C §§1326-1328.

26 ⁵¹ *Pennsylvania v Ritchie* (1987) 480 U.S. 39.

1 Protective Services records concerning the victim;⁵² reports prepared by a city's special
2 investigation team about the crime;⁵³ videotape of minor victim's parents engaging in sex
3 acts similar to those it was alleged that defendant performed on minor victim.⁵⁴
4 Institutional records of agencies involved in the investigation of a case (but which were
5 not necessarily generated for the purpose of investigation of the case) or records of law
6 enforcement agencies or other organizations not involved in the investigation of the
7 instant case (but which are material to facts at issue and would aid in a fair trial) are
8 appropriately subject to subpoena duces tecum.⁵⁵

9 Sometimes the data sought through a subpoena duces tecum is arguably privileged. In
10 that situation, the court can hold an in camera hearing.⁵⁶ However, the court may not
11 condition disclosure of the documents to the defense on the prosecution's receiving a copy
12 of the documents. Disclosure of such documents to the prosecution is required only if and
13 when the defense decides to use the documents at trial, under the provisions of Pen C
14 §1054.3.⁵⁷

15 Most importantly, defense counsel must be allowed access to confidential files when
16 the trial court determines that they contain information that is *favorable to the defendant*
17
18

19 ⁵² *Lorenza P. v Superior Court* (1988) 197 Cal.App.3d 607 (defendant, mother of
20 victim, had right to records under Welf & I C §827).

21 ⁵³ *Vela v Superior Court* (1989) 208 Cal.App.3d 141.

22 ⁵⁴ *Rubio v Superior Court* (1988) 202 Cal.App.3d 1343 (marital privilege gave way
23 to defendant's constitutional rights).

24 ⁵⁵ *Barrett, supra*, 80 Cal.App.4th 1305.

25 ⁵⁶ *Pennsylvania v Ritchie* (1987) 480 US 39, 60; see Pen C §1326©.

26 ⁵⁷ Pen C §1326©; *Teal v Superior Court* (2004) 117 Cal.App.4th 488, 492.

1 *and material on guilt or punishment.*⁵⁸ Here, none of the material sought in the defense
2 subpoena duces tecum is privileged. Therefore, the motion to quash should be denied.

3 **Conclusion**

4 Defendant respectfully requests that the Court dismiss the motion to quash the defense
5 subpoena duces tecum. Here, the party moving to quash seeks to delay or prevent
6 otherwise discoverable information under Penal Code § 1054.7. However, the
7 government – which is not a party to these proceedings – has yet to show good cause as
8 required by the statute. Moreover, the argument that the prosecution has re-tested the
9 narcotics – and not call Ms. Madden as a witness – fails because Madden is inexorably
10 intertwined in the chain of custody in this case. The defense has a right to present
11 evidence to impeach that chain. It is precisely that evidence the defense seeks by issuing
12 these subpoena duces tecum.

13 In the alternative, if the argument is that the sought-after materials are to be discovered
14 through Penal Code § 1054 et. seq., then Defendant requests that the Court issue an order
15 compelling the District Attorney to comply with her discovery obligations immediately
16 and that the Court impose other sanctions as it deems appropriate, including contempt
17 findings and jury instructions regarding the failure to timely produce discovery.

18 If the state fails to comply, it has in essence deprived defendant of his Fifth
19 Amendment due process and Sixth Amendment confrontation rights and this court should
20 dismiss.

21 Dated: March 25, 2010

Respectfully submitted,

22 JEFF ADACHI
23 PUBLIC DEFENDER

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26 ⁵⁸ *In re Sassounian* (1995) 9 C4th 535, 543.

Matthew J. Rosen
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6 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

8 The People of the State
of California,

Dept. No. 22

9 Plaintiff,

MCN.:

10 v.

Date:

11 **Name of Client,**

Time:

12 Defendant
13 _____ /

14 **Declaration in Opposition of Motion to Quash**

15
16 I, **Matthew J. Rosen**, am an attorney duly licensed to practice law in the State of
17 California. All facts set forth below are personally known to me to be true, except those
18 which are set forth upon information and belief, and, as to those facts, I am informed and
19 believe, and thereupon allege, that they are true:

20 (1) My client, **Name of Client**, is charged by complaint filed **March 19, 2010**, with a
21 violation of Health & Safety Code § **11351.5**.

22 (2) On **March 19, 2010**, particularized discovery request was served on the District
23 Attorney.

24 (3) The District Attorney, **Breacha Ethics**, has failed to comply or even respond to the
25 request.

26 (4) The narcotics in this case were tested by Debbie Madden.

1 (5) The defense has complied with its discovery obligations, as set forth in Penal
2 Code Sections 1054, *et seq.*, and will continue to do so, providing the District Attorney
3 with any discoverable information as soon as the defense obtains it.

4 The Public Defender has the power to issue subpoenas under Penal Code section 1326.
5 (See *People v. Superior Court [Barrett]* (2002) 80 Cal.App.4th 1305, 1314.)

6 (6) A subpoena duces tecum issued by the Public Defender in a criminal matter, such
7 as this one, is exempt from the discovery provisions of the Code of Civil Procedure,
8 including the requirement of a "good cause" affidavit. (See *Pitchess v. Superior Court*
9 (1974) 11 Cal.3d 531, 535; *Michael B. v. Superior Court* (2002) 103 Cal.App.4th 1384,
10 1393-1396; *Fabricant v. Superior Court* (1980) 104 Cal.App.3d 905, 915.)

11 (7) I am informed and believe that the records listed in the attached subpoena duces
12 tecum are currently in the possession of the San Francisco Crime Laboratory and/or the
13 San Francisco Police Department. These records include records relating to Ms. Debbie
14 Madden – SFPD Criminalist who reviewed and/or performed the testing of these
15 substances. I am informed and believe that Ms. Debbie Madden is currently being
16 investigated by the SF Police for her unlawful behavior while employed at the Crime Lab.
17 I am also informed and believe that on or about March 3, 2010, a search warrant was
18 executed upon Ms. Madden's home. I am requesting the following information:

19 Materials relating to the SF Crime Lab

- 20 1. Standard Operating procedures and Quality Control and Quality Assurance
21 Manuals for the narcotics section of the SF Crime Lab;
22 2. Calibration and maintenance logs of all machines used in the testing in this case
23 including quality control records of reagents; including any technical review log from
24 the testing laboratory pertaining to one month prior to the testing in this case and
25 including the testing in this case.

1 3. Actual test results in this case, including but not limited to photographs, bench
2 notes, electronic data and any GC/MS traces. Please include all negative and positive
3 control results as well.

4 4. Curriculum Vitae of analyst Debbie Madden;

5 5. Proficiency test results for analyst Madden since accreditation of the lab in 2005,
6 including but not limited to all records of results in those proficiency tests, any
7 remedial actions taken due to the tests and any comments or corrective actions based
8 on proficiency test results;

9 6. Records of any event in the narcotics sections in which contamination was detected
10 either in a control or evidence sample and documentation of any corrective actions
11 taken;

12 7. Written policy on the destruction of documents and evidence in the lab and a
13 written explanation of why documents or results relating to this case were not
14 maintained in the case file;

15 8. Incidents in which the analyst was disciplined for actions taken in the lab including
16 those noted in a corrective action log or personnel file;

17 9. All audit reports, both internal and external, of the laboratory including
18 correspondence between the lab and the auditing agency, internal memorandum based
19 on audit findings, any corrective actions taken based on audit findings and a record
20 of any appeals of findings that the lab took, including those that were successful, from
21 2004 through the present;

22 10. The original bench notes for any testing done in the crime lab, including bench
23 notes, test results in whatever format called for by the testing method, including but
24 not limited to hand-written observations, photographs, drawings, electronic data and
25 any output of any machine used in testing such as for GC/MS, as well as all
26 calibration and maintenance logs related to this case.

1 11. Debbie Madden's personnel file - to the extent any documents contained therein
2 provide evidence of tampering, theft, or acts of moral turpitude as defined by *People*
3 *v. Castro* (1985) 38 Cal.3d 301.

4 Materials and documents related to S.F.P.D. investigation of Debbie Madden

5 12. All materials relating to the San Francisco Police Department investigation of
6 theft from the SF Crime Lab and tampering with SF Crime Lab evidence including,
7 but not limited to:

8 12A. Any and all statements of Debbie Madden to law enforcement - including
9 but not limited to statements made to Lt. Peter Walsh or any other member of
10 S.F.P.D. - as well as any video and audio tapes;

11 12B. Any and all statements of Debbie Madden to her superiors - including but
12 not limited to statements made to Lois Woodworth - including any video and
13 audio tapes;

14 12C. The results of the S.F.P.D. investigation of Debbie Madden's conduct,
15 including but not limited to police reports, supplemental statements and
16 chronologies;

17 12D. S.F.P.D. interviews with any and all witnesses - including Ms. Madden's
18 sister and any lab personnel and any internal or external memorandum
19 discussing the conduct of Ms. Madden;

20 12E. Any and all search and arrest warrant affidavits regarding Debbie Madden

21 13. Ms. Madden's California Criminal Identification Index (C.I.I. Record,
22 commonly known as a rap sheet – both local and statewide criminal history);

23 (8) My office has no means to obtain these records other than by subpoena duces
24 tecum.

1 (9) I am likewise informed and believe that said records are essential to the defense
2 and will facilitate the ascertainment of true facts and a fair trial in this matter. (*People v.*
3 *Superior Court [Barrett], supra*, 80 Cal.App.4th at pp. 1315-1316.)

4 (10) The records were due in Dept. 22 of the San Francisco Superior Court on 3/18/10
5 at 9:00. Failure to comply with a subpoena duces tecum may be punished as contempt.
6 (Penal Code § 1331; *Chapman v. Superior Court* (1968) 261 Cal.App.2d 194, 199; *In Re*
7 *Garcia* (1974) 41 Cal.App.4th 997, 999.)

8 (11) The items sought cannot readily be obtained by the defense through any other
9 means.

10 (12) The items requested are material to the defense in that they may demonstrate
11 and/or lead to evidence that defeat an element of the charged offense.

12 (13) If the Court wishes any further showing about the anticipated relevance and
13 materiality of the items requested, the Defense requests the opportunity to make such
14 showing in camera, or by a sealed declaration to the court, so as not to be compelled to
15 disclose privileged information to the District Attorney.

16 DATED: March 19, 2010

17 JEFF ADACHI
18 PUBLIC DEFENDER

19 Matthew J. Rosen
20 Attorney at Law
21 California State Bar #197105

1
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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