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4 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

5
6 THE PEOPLE OF THE STATE OF) Case No.
CALIFORNIA,)
7) POINTS AND AUTHORITIES
Plaintiff,) IN SUPPORT OF THE ADMISSION
8) OF THE COMPLAINING WITNESS'S
vs.) DIARY (or other writing)
9)
10)
11) Date:
Defendant.) Time:
12) Dept:

13 I

14 **FACTS**

15 Set forth the facts in your particular case regarding the
16 diary or other specific writing at issue, including its form
17 (e.g., diary, letter, etc.), date, and contents.
18

19 II

20 **ALL RELEVANT EVIDENCE IS ADMISSIBLE.**

21
22
23 According to California Constitution, art. I, § 28(d) and
24 Evidence Code § 350, all relevant evidence is admissible in any
25 criminal proceeding in this state. "Relevant evidence" is

1 evidence having any tendency is reason to prove or disprove any
2 material disputed fact. Included in this definition is evidence
3 relevant to the credibility of a witness or hearsay declarant.

4 (**Evidence Code § 210; People v. Scheid (1997) 16 Cal.4th 1.**)

5 Also included in this definition is evidence that raises a
6 reasonable doubt about a defendant's guilt. (**People v. Hall**
7 **(1986) 41 Cal3d 826, 833.**)

8 Relevant evidence may only be excluded under three
9 circumstances:

10 (1) where it is unduly prejudicial or time consuming, per
11 **Evidence Code § 352;**

12 (2) where it is protected by privilege, per **Evidence Code**
13 **§ 900 through 1070;** or

14 (3) where it constitutes inadmissible hearsay, per
15 **Evidence Code § 1200.**

17 III

18 **THE DOCUMENTS WRITTEN BY THE COMPLAINANT FULFILL**

19 **THE BEST EVIDENCE AND AUTHENTICATION**

20 **REQUIREMENTS FOR ADMISSIBILITY.**

21
22 Before a writing or its contents can be introduced into
23 evidence, the writing must be authenticated. (**Evidence Code §**
24 **1401.**) This may be done by introducing evidence sufficient to
25

1 sustain a finding that the documents are what the proponent of
2 the writing claims them to be. (**Evidence Code § 1400.**)

3 Methods of authentication which the defendant is prepared
4 to provide include: (1) evidence of the genuineness of the
5 handwriting, established by either the testimony of a qualified
6 lay witness, comparison by the trier of fact, or comparison
7 by an expert with a genuine writing (see Evidence Code **§§ 1416**
8 **through 1418**); or (2) evidence that the writing refers to or
9 states matters that are unlikely to be known by anyone other
10 that the alleged author of the writing. (**Evidence Code § 1421**;
11 **People v. Olguin (1994) 31 Cal.App.4th 1355, 1373** [writing
12 authenticated by content and location where found]; **People v.**
13 **Lynn (1984) 159 Cal.App.3d 715, 735** [jailhouse notes
14 authenticated based on defendant-writer's statements to others
15 after the notes were turned over to authorities, making it
16 unlikely that anyone else had penned them].)

17
18 According to the "best evidence rule," the original writing
19 itself is admissible to prove the content of a writing.
20 (**Evidence Code § 1520.**) The defense has the original documents
21 and will present them at the appropriate time.

22 **Evidence Code §352** does not preclude admission of the
23 diary (or other writing). (Set forth specifically the
24 particular facts and circumstances in your case as to why §352
25 does not bar admission of the evidence. E.g., the evidence will

1 not consume a substantial amount of time, confuse the jury, or
2 is not unduly prejudicial to the prosecution's case.)

3 IV

4 THE COMPLAINING WITNESS HAS NO BASIS TO
5 EXCLUDE HER WRITINGS BY A CLAIM OF PRIVILEGE.

6
7 Unless provided by statute, no person has a privilege to
8 refuse to: (1) be a witness; (2) disclose any matter or produce
9 any writing, object or other thing; or (3) prevent another from
10 being a witness or disclosing any matter or writing. (**Evidence**
11 **Code § 911.**)

12
13 The potential statutory privileges permitting a witness to
14 prevent the disclosure of a writing may be found in (**Evidence**
15 **Code §§ 930 through 1070.**) None of these privileges apply to
16 (insert victim's name in possessive form) situation as a
17 complaining witness who has put her own veracity at issue.

18 V

19 MANY EXCEPTIONS TO THE HEARSAY RULE APPLY
20 TO RENDER THE WRITINGS ADMISSIBLE.

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22 The journal and diaries were written under circumstances
23 supportive of their reliability and trustworthiness. (**Insert**
24 **victim's name**) believed them to be safe from prying eyes as
25 evidenced by their contents. She wrote of many intimate details

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Attorney for Defendant