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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

7 THE PEOPLE OF THE STATE OF) Case No.
8 CALIFORNIA,)
9 Plaintiff,) MOTION TO ADMIT
10 vs.) PAST RECOLLECTION
11) RECORDED
12 Defendant.) Date:
13) Time:
14) Dept:

14 **FACTS**

19 **LAW**

20 Evidence Code § 1237 provides:

21
22 (a) Evidence of a statement previously made by a
23 witness is not made inadmissible by the hearsay rule
24 if the statement would have been admissible if made by
25 him while testifying, the statement concerns a matter
as to which the witness has insufficient present

1 recollection to enable him to testify fully and
2 accurately, and the statement is contained in a
3 writing which:

4 (1) Was made at a time when the fact recorded in the
5 writing actually occurred or was fresh in the witness'
6 memory;

7
8 (2) Was made (i) by the witness himself or under his
9 direction or (ii) by some other person for the purpose
10 of recording the witness' statement at the time it was
11 made;

12
13 (3) Is offered after the witness testifies that the
14 statement he made was a true statement of such fact;
15 and

16
17 (4) Is offered after the writing is authenticated as
18 an accurate record of the statement.

19
20 (b) The writing may be read into evidence, but the
21 writing itself may not be received in evidence unless
22 offered by an adverse party."

23
24 **DISCUSSION**

1 The documents most often read to the jury under Past
2 Recollection Recorded exception are reports from police
3 officers. See e.g., People v. Dennis (1998) 17 Cal.4th 468,
4 530; People v. Cummings (1993) 4 Cal.4th 1233, 1292.) In
5 People v. Miller (1996) 53 Cal.Rptr.2d 773, 46 Cal.App.4th 412,
6 the court admitted the testimony of a police officer who had
7 interviewed a witness who by the time of trial had forgotten
8 what she said.

9 The court stated:

10 "Here, the witness acknowledged talking to the
11 detective on November 22 and she asserted that she was
12 trying to tell the detective the truth at that time.
13 She remembered discussing with him statements she
14 overheard about shooting police officers; however, she
15 was unable to recall if she told the detective that
16 Hunter was one of the people who made such a
17 statement. Despite her current lack of memory as to
18 what she had told the detective regarding Hunter,
19 there was a sufficient basis, as there was in
20 Cummings, upon which the trial court could conclude
21 that her statements to the detective were reliable and
22 met the requirements of Evidence Code section 1237.
23 As such, there was no violation of either defendant's
24 right to confrontation or cross-examination." Supra,
25 p. 779.

1
2 Similarly, in People v. Cummings, supra, the trial court
3 admitted, pursuant to Evidence Code §1237, a detective's
4 testimony as to the record of a conversation he made with an
5 informant, during which the informant reported that the
6 defendant had made incriminating statements. The informant had
7 testified "he had no recall of the conversations with [the
8 defendant] or [with the detective], had been undergoing
9 detoxification, was sometimes delusional, and was still having
10 drug-related problems at the time of trial. He testified,
11 however, that what he told [the detective] was the truth." (4
12 Cal.4th at pp. 1292-1293.) The reviewing court found that this
13 set of facts was adequate to establish the requisite foundation
14 under Evidence Code §1237 for the admission of the detective's
15 testimony.
16

17 **CONCLUSION**

18 Defendant requests that _____ be permitted to read
19 the _____ to the jury. The document meets the
20 requirements of Evidence Code § 1237.

- 21 1. _____ does not remember what he/she told
22 _____ in the _____ meeting.
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24 2. If he/she remembered it, it would be admissible
25 evidence pertaining to _____ at a time _____ now
alleges he/she was being molested.

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3. It was made at a time when the facts were clear in
_____ mind.

4. It was made by _____ to record events of
the meeting and statements made at the meeting.

5. It will be offered after _____ testifies
his/her statements were true at that time.

6. _____ can authenticate the writing.

Dated:

Respectfully submitted,

Attorney for Defendant