

1 [Attorney Name], SBN []
2 Firm Name
3 Firm Address
4 City, State Zip
5 Tel:
6 Email:

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8 Attorney for Defendant

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF [COUNTY]**

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA

14 Plaintiff,

15 vs.

16 [DEFENDANT'S NAME]
17 Defendant

CASE NO. [CASE NUMBER]

**POINTS AND AUTHORITIES IN SUPPORT OF
TO COMPEL DISCLOSURE OF BRADY
MATERIAL; DECLARATION OF [Attorney
Name]**

Date:

Time:

Dept:

Current Trial Date:

Case Filed:

18 **PLEASE TAKE NOTICE** that on the above date and time and in the above-designated
19 department, the defendant will move this court for an order requiring the District Attorney of the
20 County of Contra to disclose to the defense evidence with the possession of the District Attorney
21 or its agents statements and reports that are material and exculpatory with in the rule of *Brady v.*
22 *Maryland*. This motion will be based on the attached Memorandum of Points and Authorities,
23 the declaration of [Attorney Name], attorney for the defendant, and such other and further
24 evidence as may be presented at the time of the hearing.

25 Dated:

26 Respectfully submitted,
27 [Attorney Name]

28 by: _____
Attorneys for Defendant

1 **POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS**

4 **II.**

5 **DEFENDANT IS ENTITLED TO DISCOVERY OF INFORMATION IN THE**
6 **POSSESSION OF THIRD PARTIES**

7 By this motion, the defense seeks to compel the production of [INSERT INFORMATION
8 SOUGHT]

9 Motions for discovery by a criminal defendant are made to the sound discretion of the
10 trial court, "which has the inherent power to order discovery in the interests of justice." (*Hill v.*
11 *Superior Court (Los Angeles)* (1974) 10 Cal.3d 812, 816.) The basic principles underlying
12 criminal pretrial discovery is that an accused is entitled to a fair trial. (*Id.*) "[T]he state has no
13 interest in denying the accused access to all evidence that can throw light on the issues in the
14 case, and in particular, it has no interest in convicting on the testimony of witnesses who have
15 not been as rigorously cross-examined and as thoroughly impeached as the evidence permits."
16 (*Id.*) (Emphasis in original, citing *People v. Riser* (1952) 47 Cal.2d 566, 586.)

17 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, is direct authority for issuance of a
18 subpoenas duces tecum requiring production of information, or "discovery", in the possession of
19 a non-party, as recognized by the courts in *Pacific Lighting Leasing Company v. Superior Court*
20 (*Los Angeles*) (1976) 60 Cal.App.3d 552, 560, and *Millaud v. Superior Court (San Diego)*
21 (1986) 182 Cal.App.3d 471, 475-476. (See also, *People v. Broderick* (1991) 231 Cal.App.3d
22 584, [subpoena duces tecum is appropriate discovery tool directed to third parties despite
23 Proposition 115].) Central to the decisions in *Pacific Lighting* and *Millaud* is the realization
24 that information critical to a criminal defendant is not always within the possession or control of
25 the prosecution or its various agents.

26 The prosecution does not dispute the materiality of the interviews and related reports.
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1 They maintain, however, that they are prevented from disclosing the reports and interviews
2 because of privacy concerns and the juvenile nature of the investigation. While the defense has
3 begun the slow statutory process to gain access to the protected juvenile records, it is the defense
4 position that these state concerns are preempted by federal due process concerns. (*See Brady v.*
5 *Maryland* (1963) 373 U.S. 83.) These interviews were conducted by the San Ramon Police
6 Department with the assistance, in the normal course of events, of the office of the district
7 attorney. They are in the possession of the district attorney or their agents, and under *Brady*,
8 the prosecution is under a Constitutional Duty to produce the interviews and related reports.

9 The constitutional duty that requires prosecutors to disclose exculpatory evidence to a
10 criminal defendant under *Brady* is independent from the statutory duty to provide discovery,
11 such that evidence that is material under *Brady* must be disclosed to the defense,
12 notwithstanding any failure of the defense to enforce its statutory right to discovery. (*People v.*
13 *Superior Court* (App. 5 Dist. 2008) 77 Cal.Rptr.3d 352, 163 Cal.App.4th 28.) State's federal
14 constitutional duty under *Brady* to disclose exculpatory evidence to criminal defendant is
15 independent from its duty under reciprocal discovery provisions of Penal Code, and applies even
16 without request by the accused. (*Abatti v. Superior Court* (App. 4 Dist. 2003) 4 Cal.Rptr.3d 767,
17 112 Cal.App.4th 39.) Responsibility for *Brady* compliance lies exclusively with the
18 prosecution, including the duty to learn of any favorable evidence known to the others acting on
19 the government's behalf in the case. (*Walters v. Superior Court* (App. 4 Dist. 2000) 95
20 Cal.Rptr.2d 880, 80 Cal.App.4th 1074.) The prosecution team, subject to duty under *Brady* to
21 disclose material exculpatory evidence, includes both investigative and prosecutorial agencies
22 and personnel. (*People v. Superior Court* (App. 4 Dist. 2000) 96 Cal.Rptr.2d 264, 80
23 Cal.App.4th 1305.)

24 Evidence is “material” under the *Brady v. Maryland* standard for disclosure to defendant
25 under due process, if there is a reasonable probability that, had the evidence been disclosed to
26 the defense, the result of the proceeding would have been different. (*People v. Cook* (2006) 47
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1 Cal.Rptr.3d 22, 39 Cal.4th 566.) Brady material includes evidence that would help to impeach
2 a prosecution witness. (*Randolph v. People of the State of Cal.*, C.A.9 (Cal.)2004, 380 F.3d
3 1133.) The scope of the Brady disclosure obligation extends beyond the contents of the
4 prosecutor's case file, and encompasses the duty to ascertain as well as divulge any favorable
5 evidence known to the others acting on the government's behalf, including the police. (*People*
6 *v. Gutierrez* (App. 2 Dist. 2003) 6 Cal.Rptr.3d 138, 112 Cal.App.4th 1463.) Prosecutor's duty
7 under Brady to disclose material exculpatory evidence extends to evidence the prosecutor or the
8 prosecution team knowingly possesses or has the right to possess. (*People v. Superior Court*
9 (App. 4 Dist. 2000) 96 Cal.Rptr.2d 264, 80 Cal.App.4th 1305.) Because the individual
10 prosecutor has a duty to learn of any favorable evidence known to the others acting on the
11 government's behalf in the case, including the police, Brady suppression occurs when the
12 government fails to turn over even evidence that is known only to police investigators and not to
13 the prosecutor. (*In re Sodersten* (App. 5 Dist. 2007) 53 Cal.Rptr.3d 572, 146 Cal.App.4th
14 1163.)

15 DATED:

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[Attorney Name]

18 Attorney for Defendant
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1 **DECLARATION IN SUPPORT OF MOTION**

2 I, the undersigned, [Attorney Name], state:

3 I am an attorney at law duly licensed to practice in the state of California, and attorney of
4 record for the defendant herein.

5 I have informally request discovery from the prosecution, and received a number of reports and
6 interviews. These reports and interviews

7 It is the defense position that this material is critical to the defense, and that due process
8 under *Brady v. Maryland* both mandates that he prosecution disclose this material, and
9 supersedes any California law to the contrary. It is therefore request that the court issue an
10 order directing the Prosecution to provide copies of the interview and all related reports.

11 Date:

12 _____
13 [Attorney Name]

14 Attorney for Defendant
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