

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

7 Attorney for Defendant

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF [COUNTY]**
11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA

13 Plaintiff,
14 vs.
15 [DEFENDANT'S NAME]
16 Defendant

CASE NO. [CASE NUMBER]

**MOTION FOR IN CAMERA REVIEW OF
RECORDS OF LAW ENFORCEMENT
PERSONNEL; DECLARATION OF [Attorney
Name]**

Date:
Time:
Dept:
Current Trial Date:
Case Filed:

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20 PLEASE TAKE NOTICE that on the above date and time and in the above-designated
21 department, [NAME OF DEFENDANT] (“Defendant”) will move this court for an order

22 PLEASE TAKE NOTICE that on the above date in the above department of the above entitled
23 court, the defendant will move the Court for an Order to produce, for inspection and copying, the
24 documents and other items listed in Exhibit A attached hereto and incorporated herein by
25 reference.

26 This motion is made pursuant to Evidence section 1043 and *Pitchess v. Superior Court*
27 (1974) 11 Cal.3d 531, on the grounds that the documents sought for inspection contain material
28 evidence relevant to defendant's defense to the charges of violating *Penal Code* section 415.1,

1 fighting, making loud noise, or using offensive words in a public place; *Penal Code* section
2 148(a), resisting arrest; and *Penal Code* section 243(b) assault on a police officer.

3 This motion is based on this notice and motion, the attached memorandum of points and
4 authorities, the declaration of _____, police report number _____ attached herein as
5 Exhibit B, all other records and files in this action, and oral and documentary evidence that may
6 be presented at the hearing on this
7 motion.

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[Attorney Name]
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **SUPPORTING FACTS AND CONTENTIONS¹**

4 [INSERT SUPPORTING FACTS]

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7 **II. BACKGROUND: THE RIGHT TO DISCOVERY OF PERSONNEL RECORDS**

8 **A. THE DEVELOPMENT OF THE RIGHT THROUGH CASE LAW**

9 A criminal defendant's right to discovery is grounded on "the fundamental proposition that (the
10 accused) is entitled to a fair trial and an intelligent defense in light of all relevant and reasonably
11 accessible information" (People v. Memro (1985) 38 Cal.3d 658, 677, quoting Pitchess v.
12 Superior Court (1974) 11 Cal.3d 531, 535).

13 "(A)bsent some governmental requirement that information be kept confidential for the
14 purposes of effective law enforcement, the state has no interest in denying the accused access to
15 all evidence that can throw light on issues in the case, and in particular it has no interest in
16 convicting on the testimony of witnesses who have not been as rigorously cross examined and as
17 thoroughly impeached as the evidence permits" (People v. Riser (1956) 47 Cal.2d 566, 586,
18 quoted in Memro, supra at 677).

19 The defendant's attorney, on information and belief, may execute the declaration filed in support
20 of the motion. City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74.

21 **B. CODIFICATION OF THE RIGHT**

22 Apparently out of a desire to balance the discovery rights of criminal defendants or civil
23 plaintiffs against the privacy interests of police officers, the Legislature declared that peace
24 officer personnel records and records of civilian complaints against officers required to be kept by

25 _____
26 ¹ Factual allegations herein are made on information and belief as permitted in motions of this
27 nature. (See *Semsch v. Henry Mayo Newhall Memorial Hospital* (1985) 171 CA3d 162, 167;
28 *People v. Schmies* (1996) 44 CA4th 38, 53; *Star Motor Imports, Inc. v. Superior Court* (1979) 88
CA3d 201, 204 (offer of proof sufficient).

1 Penal Code section 832.5 were confidential and were not to be disclosed except by following the
2 discovery procedures contained in Evidence Code section 1043 and 1046. (Penal Code section
3 832.7.)

4 Peace officer personnel records are defined by Penal Code section 832.8 as:
5 ... any file maintained under that individual's name by his or her employing agency
6 and containing records relating to:

- 7 (a) employment history, or similar information;
- 8 (b) Personal data, including marital status, family members, educational and
9 medical history;
- 10 (c) Election of employee benefits;
- 11 (d) Employment advancement, appraisal, or discipline;
- 12 (e) Complaints, or investigations of complaints, concerning an event or action in
13 which he or she participated, or which he or she perceived, and pertaining to the
14 manner in which he or she performed his or her duties;
- 15 (f) Any other information the disclosure of which would constitute an
16 unwarranted invasion of personal privacy.

17 Evidence Code sections 1043 and 1045 provide that information regarding a peace officer
18 is properly discovered by a defendant upon a showing of relevance. These sections have been
19 interpreted by the California Supreme Court as expanding the scope of discovery initially granted
20 by the Pitchess case (Memro, supra, 38 Cal.3d at 680 ("If anything, then, the principles of
21 Pitchess were not only reaffirmed but expanded by the 1978 legislation").)

22 II A DEFENDANT HAS A RIGHT TO RECORDS RELEVANT TO PROVE THE 23 CHARACTER TRAIT OF THE OFFICER THAT IS AT ISSUE

24 Records relating to complaints are relevant to prove character traits of the officer and may
25 also be used to impeach and to refresh memory (People v. Zamora (1980) 28 Cal.3d 88; Pitchess
26 v. Superior Court (1974) 11 Cal.3d 531; Foster v. Superior Court (1980) 107 Cal.App.3d 218,
27 227; Evidence Code Section 1103).

28 Material in personnel files and complaints regarding fabrication of evidence or charges, racial
prejudice, false arrest, illegal search and seizure, improper charging and dishonesty are
discoverable where relevant to the charge or defense (Pierre C. v. Superior Court (1984) 159
Cal.App.3d 1120, 1122 1123). This is also true of information regarding evidence of habit or
custom evidenced by repeated instances of similar conduct. "...(E)vidence that the interrogating

1 officers had a custom or habit of obtaining confessions by violence, force, threat, or unlawful
2 aggressive behavior (is) admissible on the issue of whether (a) confession (is) coerced". (Memro,
3 supra at 681).

4 Reputation evidence, opinion evidence, and evidence of specific instances of conduct "is
5 admissible to show, inter alia, motive, intent or plan" and therefore discovery is proper when it
6 might lead to such evidence. (Id at 681 682).

7 III

8 A DEFENDANT IS NOT RESTRICTED SOLELY TO INFORMATION REGARDING 9 CITIZEN COMPLAINTS

10 It is important to note that while the most commonly known "Pitchess material" consists
11 of citizen complaints, it is by no means the sole material discoverable by the defense. Penal Code
12 section 1043 sets forth the procedure for obtaining "peace officer personnel records or records
13 maintained pursuant to Section 832.5 of the Penal Code or information from these records." The
14 records maintained under Penal Code section 832.5 are records of citizen complaints. There is
15 absolutely nothing, either in the statute or the case law that limits discovery to complaints.

16 It is equally important that the statute, in calling for a description of the "type" of records sought
17 to be disclosed, does not require the affiant to prove the existence of particular records. "[A]n
18 affidavit which describes the information sought as consisting of prior 'complaints of excessive
19 force' by specific officers...has specified a class, group or 'type' of information within the plain
20 meaning of the statute." City of Santa Cruz, supra, 49 Cal.3d at 91. Particularly in light of
21 Proposition 8, which has eliminated the various restrictions created by the Evidence Code on the
22 types of character evidence that may be admitted (see People v. Lang (1989) 49 Cal.3d 991, 264
23 Cal.Rptr. 386; People v. Harris (1989) 47 Cal.3d 1047), anything in the personnel file that might
24 lead to evidence of a relevant character trait is discoverable. California Constitution, Article I,
25 section 28, subdivision (d); People v. Wheeler (1992) 4 Cal.4th 294.

26 IV

27 A DEFENDANT IS ENTITLED TO THE COMPLAINTS THEMSELVES IF THE NAMES 28

1 AND ADDRESSES ARE INSUFFICIENT

2 People v. Matos (1979) 92 Cal.App.3d 862 provides that when the names and addresses of
3 the complainants alone are inadequate, the defendant has the right to examine the complaints
4 themselves.

5 CONCLUSION

6 The defendant respectfully requests that the motion be granted.

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8 Dated:

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Attorney for Defendant

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1 EXHIBIT A

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3 I. Any and all files, folders or other records, including, but not limited to Performance Evaluation
4 Folders and other documents maintained pursuant to the Performance Improvement Program
5 (PIP) maintained by the San Francisco Police Department or in the records of the Office of
6 Citizen Complaints under the name[s] of Officer[s]:

7 that record or reflect any instance of relevant conduct, including but not limited to:

- 8 a) discharging weapons in performance of duty or otherwise,
9 b) use of excessive force and violence,
10 c) bigotry against any racial or ethnic group,
11 d) false arrest,
12 e) fabrication of charges,
13 f) fabrication of evidence,
14 g) unreasonable or illegal searches and seizures under either the Fourth Amendment to the
15 United States Constitution or article I, section 13 of the California Constitution,
16 h) dishonesty,
17 i) racism,
18 j) improper tactics,
19 k) neglect of duty] or other instances of conduct unbecoming a police officer no matter
20 how named, filed, designated, preserved or catalogued by the San Francisco Police
21 Department or the Office of Citizen Complaints.

22 2. Any and all files as described above that record any complaints submitted by any inmate,
23 fellow officer, or private citizen complaining of any misconduct cited in paragraph 1 above.

24 3. The information sought by defendant in paragraphs 1 and 2 above includes, but is not limited
25 to, the following:

- 26 a. The names, addresses and telephone numbers of the persons who submitted complaints
27 described in paragraphs 1 and 2 above;

- 1 b. The names, addresses, and telephone numbers of all persons, whether police officers or
2 private witnesses, mentioned as witnesses to the events described in complaints described
3 above;
- 4 c. A copy of any statements made by the complainants and any witnesses who were
5 interviewed in the investigation of the complaints described above;
- 6 d. A copy of any statements made by the police officers interviewed in the investigation of
7 the above described complaints;
- 8 e. Verbatim copies of all other records, reports, notes and recordings made, and copies of
9 photographs taken in the course of the investigation of said complaints;
- 10 f. All department records and statements of opinion regarding reputation and other
11 information including, but not limited to, findings, letters, formal reports, and/or records
12 of conversations by superior officers or fellow officers of the Police Department personnel
13 listed above pertaining to any of the actions described in the complaints listed in
14 paragraphs 1 and 2 above;
- 15 g. The names and star numbers of all police officers involved in Police Incident report No.
16 _____;
- 17 h. All department records, evaluations, chronological logs, and statements of opinion
18 regarding reputation and other information including, but not limited to, findings, letters,
19 formal reports, and/or records of conversations by superior officers or fellow officers of
20 the Police Department personnel listed above pertaining to any of the character traits set
21 forth above.

22 Defendant further requests that counsel be informed of any instances where the Police
23 Department or the District Attorney's Office is aware, through any means whatsoever, that
24 the information contained in the complaints described in paragraphs 1 and 2 is no longer
25 current, valid or complete.

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DECLARATION

I, the undersigned, declare as follows:

1. That I am an attorney employed by the firm of _____. In that capacity, I am the attorney assigned to represent the defendant, _____, in the proceeding now pending before this court.

2. That, as a result of conversations with my client and a review of the case records and other information, I am informed and believe that [15. SELECT ONE OR MORE] [a. the police officers involved in the arrest of my client were the initial aggressors; that excessive force was used against my client (NOTE: IF EXCESSIVE FORCE IS ALLEGED, ATTACH A COPY OF THE POLICE REPORT); that any physical resistance offered by my client was reasonable and necessary to defend against further injury resulting from the use of excessive force][b. than an unreasonable and illegal search and seizure was conducted by the police][c. that the detention and arrest of my client was unlawful][d. that material fabrications were made by police officers in preparing the reports in this case, or by officers supplying that information][e. that my client is [African-American, Latino, etc] and that a motive for said police misconduct was racism].

3. [16. Additional facts here. Try to show how the material you seek is relevant to the charges and/or defenses. If the allegation is of excessive force during an arrest, ATTACH THE POLICE REPORT TO THE MOTION].

4. That information regarding propensities for [17. violence, prejudice, etc.] is needed to formulate and prove the defense in this case.

5. That such information appears relevant to prove character traits of the police in question, to impeach their testimony, to refresh recollection, and to prove conduct, custom, propensity and habit in conformity with such traits.

6. That I believe the information sought herein exists and is in the possession and under the control of the Chief of Police of the City and County of San Francisco, the Office of the District Attorney, or the Office of Citizen Complaints or their agents, and that the defendant cannot obtain the information from any other source, or by any other means than this motion.

1 I declare under penalty of perjury that the foregoing is true and correct, except as to those matters
2 stated on information and belief, and as to those matters I believe them to be true.

3 Executed on _____, 1999, at Walnut Creek, California.

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5 [Attorney Name]

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IV.

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CONCLUSION

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It is therefore respectfully requested that the court order an in-camera review of John
Doe's pupil records from HUSD to determine if, in fact, any are relevant, and if so, to disclose
them to the defense at an appropriate time.

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Respectfully submitted,

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Dated: March 16, 2022

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Patrick Clancy
Attorney for Defendant

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EXHIBIT LIST

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