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2016 MAR 25 PM 1:05

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF STANISLAUS

14 PEOPLE,

Plaintiff,

16 v.

17 GEORGIA DEFILIPPO,

18 Defendant.

Case No. 1490969

**NOTICE OF MOTION AND MOTION
 TO QUASH SUBPOENA DUCES TECUM**

Date: April 8, 2016
 Time: 9:30 a.m.
 Dept.: 26
 Judge: Honorable Barbara Zuniga

21 PLEASE TAKE NOTICE that on April 8, 2016 at 9:30 a.m., or as soon thereafter as
 22 counsel may be heard, in Department 26 of the Superior Court of the State of California,
 23 Stanislaus County, third party the California Department of Corrections and Rehabilitation
 24 (CDCR) will move this Court to quash the subpoena duces tecum issued on or about March 10,
 25 2016, by attorney Jesse Garcia. The subpoena seeks the prison records of CDCR inmate Ronald
 26 Cooper. The subpoena duces tecum is overbroad, seeks confidential and privileged information,
 27 and fails to establish good cause for the disclosure of the information. This motion is based upon
 28 this notice of motion and motion, and the supporting memorandum of points and authorities, and

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1 any exhibits attached thereto.

2 MEMORANDUM OF POINTS AND AUTHORITIES

3 INTRODUCTION

4 On March 10, 2016, defendant Georgia DeFilippo, through her attorney, issued a subpoena
5 on Pleasant Valley State Prison for the production of all files pertaining to CDCR inmate Ronald
6 Glenn Cooper, [REDACTED] 8. (Ex. 1, Subpoena February 26,
7 2016.) De Filippo's request is overly broad and she fails to provide any explanation as to how the
8 documents are material to her case. Even assuming, however, that DeFilippo provides good
9 cause for the requested documents, Cooper's prison central file for CDCR number [REDACTED] is
10 archived and Pleasant Valley State Prison is not the custodian of those records. Thus, there is no
11 obligation to produce these documents. Further, the confidential sections of Cooper's prison
12 central file's for CDCR numbers [REDACTED] and [REDACTED] contain documents that are privileged and
13 confidential under various criminal and civil statutes, including California Evidence Code
14 sections 1040 and 1041. If released, these documents could jeopardize institutional security and
15 the safety of other inmates. (See Cal. Code Regs., tit. 15, § 3321, subd. (a).) Accordingly,
16 defendant's subpoena should be quashed.

17 ARGUMENT

18 I. THE SUBPOENA DUCES TECUM SHOULD BE QUASHED AS OVERBROAD AND 19 BECAUSE DEFENDANT FAILED TO ESTABLISH GOOD CAUSE FOR THE RECORDS 20 SOUGHT.

21 A defendant may issue a subpoena to obtain records from a third party pursuant to Penal
22 Code sections 1326 and 1327. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1045; *People v.*
23 *Hammon* (1997) 15 Cal.4th 1117, 1128.) The defendant must establish "a plausible justification
24 or a good cause showing of need [for the requested records]." (*Alford*, at p. 1045.) The requests
25 for records must have a degree of specificity as to the materiality of the records to the issues of
26 defendant's trial. (See *People v. Gaulden* (1974) 36 Cal.App.3d 942, 961, citing *Ballard v.*
Super. Ct. (1966), 64 Cal.2d 159; see also *Alford*, at p. 1039.)

27 There is no absolute right to discovery in criminal proceedings. (*People v. Superior Court*
28 (*Barrett*) (2000) 80 Cal.App.4th 1305, 1314.) Where materials are sought from a third party

1 through a subpoena, the party seeking discovery must show specific facts constituting good cause
2 for discovery. (*Id.* at p. 1318; *City of Santa Cruz v. Super. Ct.* (1987) 190 Cal.App.3d 1669, 1672
3 overruled on other grounds in *City of Santa Cruz v. Municipal Ct.* (1989) 49 Cal.3d 74.)
4 Accordingly, a defendant must make a reasonable showing that the requested information will be
5 “both material and favorable to his defense.” (*Barrett, supra*, 80 Cal.App.4th at p. 1320 quoting
6 *United States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 867; *Lee v. Super. Ct.* (2009) 177
7 Cal.App.4th 1108, 1112, 1130 [finding subpoena duces tecum ineffective because the declaration
8 did not set forth a sufficient statement of materiality].) An affidavit does not satisfy the
9 materiality requirement by reciting pro forma allegations that the records sought are relevant and
10 material. Instead, a defendant “must have a plausible justification or good cause showing of
11 need.” (*Barrett, supra*, 80 Cal.App.4th at p. 1320, fn. 7 [internal citations omitted].) “Plausible
12 justification has been equated to ‘a proper and substantial showing by way of detailed affidavit in
13 which defendant commits himself under oath to a particular assertion of fact ...’” (*Santa Cruz,*
14 *supra*, 190 Cal.App.3d at p. 1673 quoting *People v. Navarro* (1978) 84 Cal.App.3d 355, 359.)
15 Unsupported blanket requests for documents must be quashed. (*Barrett, supra*, 80 Cal.App.4th
16 citing *People v. Serrata* (1976) 62 Cal.App.3d 9, 15.)

17 DeFilippo’s request should be quashed because it is an overly broad general demand for
18 documents because it requests all documents from Cooper’s confidential file. It is unreasonable
19 to conclude that every confidential document contained in Cooper’s prison central file is material
20 to DeFilippo’s pending charges. Thus, DeFilippo’s request for records is an overly burdensome
21 fishing expedition into the information contained within CDCR’s records, for no discernible
22 purpose, and therefore should be quashed. (See *Barrett, supra*, 80 Cal.App.4th at p. 1320; see
23 also *People v. Gaulden* (1974) 36 Cal.App.3d 942, 961; Cal. Code Regs., tit. 15, § 3321.)

24 Further, DeFilippo did not provide an affidavit in support of the subpoena and, therefore,
25 provides no explanation as to how the confidential section of Cooper’s prison central file will lead
26 to the discovery of relevant evidence. In fact, DeFilippo provides no explanation as to how
27 Cooper is involved in her pending charges or defense of those charges, let alone how the
28 confidential documents in his prison file are material to those charges. Because DeFilippo fails to

1 establish good cause supporting the production of the requested documents, the Court should
2 quash the subpoena.

3 **II. THE SUBPOENA SHOULD BE QUASHED FOR SEEKING THE DISCLOSURE OF**
4 **CONFIDENTIAL AND PRIVILEGED INFORMATION.**

5 Even if a showing of materiality and good cause can be made, the court retains wide
6 discretion to protect against disclosure of information which unduly affects a legitimate
7 governmental interest. (*Pitchess v. Super. Ct.* (1974) 11 Cal.3d 531, 538; *Hill v. Super. Ct.*
8 (1974) 10 Cal.3d 812, 817.) Disclosure of official information is against the public interest unless
9 the interests of justice requires disclosure. The Evidence Code protects as privileged all "official
10 information," which is defined as "information acquired in confidence by a public employee in
11 the course of his or her duty and not open, or officially disclosed, to the public prior to the time
12 the claim of privilege is made." (Evid. Code, § 1040, subd. (a).) As the California Supreme
13 Court has recognized, there is an important public policy interest in protecting confidential,
14 private information. (*People v. Hobbs* (1994) 7 Cal.4th 948, 957-958 [discussing the
15 [REDACTED], *In re Jackson* (1987) 43 Cal.3d
16 501, 505, 512 [discussing [REDACTED]]; *In re Prewitt*
17 (1972) 8 Cal.3d 470, 474-475 [discussing the balance between protecting confidential records
18 with a prisoner's right to be informed of the basis of a parole decision].) A similar privilege
19 [REDACTED] (Evid. Code, § 1041.)

20 In balancing these interests, the Court should conduct an in camera review of the records.
21 (See *People v. Jackson* (2003) 110 Cal.App.4th 280, 290-291 [in which the court conducted an in
22 camera review]; see also *Ochoa v. Super. Ct.* (2011) 199 Cal.App.4th 1274, 1283.) In its in
23 camera review, the Court should consider whether DeFilippo can meet her burden to show
24 whether the confidential, private records contain any material evidence, such that if DeFilippo
25 was deprived of the evidence, she would be denied a fair trial. (*People v. McCarthy* (1978) 79
26 Cal.App. 3d 547, 555 [a [REDACTED] a
27 [REDACTED]

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1 Here, the information sought is contained in the confidential section of the Cooper's central
2 files. (Ex. 1; see Cal. Code Regs., tit. 15, § 3321, subd. (a).) Such information is classified
3 confidential by law because the disclosure of this information "would endanger the safety of any
4 person" or "would jeopardize the security of the institution." (Cal. Code Regs., tit. 15, § 3321,
5 subd. (a).) As discussed above, DeFilippo has not made any showing that the requested
6 information is material to the charges she faces. Thus, after its in camera review, the Court
7 should sustain CDCR's objection to producing the material. If the Court orders CDCR to
8 produce any of the requested records, CDCR requests that the production be subject to the
9 proposed protective order attached as Exhibit 2.

10 **III. THE SUBPOENA SHOULD BE QUASHED AS TO CDCR NUMBER D84370 BECAUSE IT**
11 **IS NOT ADDRESSED TO THE CUSTODIAN OF RECORDS.**

12 A subpoena duces tecum must be served on the custodian of the records sought. (Pen. Code
13 § 1326; *Alford, supra*, 29 Cal.4th at p. 1045 [a subpoena duces tecum requires the person or entity
14 in possession of the materials sought to produce the information in court for the party's
15 inspection].) A person who is not the custodian of record, and who does not have access to the
16 requested documents, does not have an obligation to produce any documents. (*Chapman v.*
17 *Superior Court of Los Angeles County* (1968) 261 Cal.App.2d 194, 198.)

18 Here, DeFilippo served the subpoena on the "custodian of records at Pleasant Valley State
19 Prison." (Ex. 1.) The custodian of records at Pleasant Valley is the litigation coordinator. (Ex. 3,
20 Declaration of K. Geringer at ¶ 1.) The litigation coordinator has access to the active prison
21 central files for inmates housed at Pleasant Valley, which are stored electronically in CDCR's
22 Electronic Resource Management System (ERMS). (*Id.* at ¶ 3.) A litigation coordinator does not
23 have access to prison central files that are no longer active and are maintained on paper rather
24 than in ERMS. (*Id.* at ¶ ¶ 4-5.) These inactive, or archived, prison central files are available
25 only on paper and are stored at the CDCR archives unit in Sacramento. (*Ibid.*) Cooper's prison
26 central file for CDCR number [REDACTED] is an archived file that has not been uploaded into ERMS.
27 (*Id.* at ¶ 6.) The litigation coordinator at Pleasant Valley, therefore, does not have access to the
28 documents and is not the custodian of record. Thus, the Court should quash the subpoena with

1 respect to documents from [REDACTED] 20.

2 **CONCLUSION**

3 For the reasons stated above, CDCR respectfully requests that the subpoena be quashed. In
4 the alternative, assuming that the Court finds DeFilippo's request is appropriately tailored and
5 good cause exists, CDCR requests that any records produced after its in camera review be subject
6 to a protective order.

7 Dated: March 24, 2016

Respectfully Submitted,

8 KAMALA D. HARRIS
9 Attorney General of California

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