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FILED
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CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY Wesley Stein DEPUTY

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

14 **PEOPLE OF THE STATE OF**
CALIFORNIA,
15
16 Plaintiff,
17
18 **GEORGIA DEFILIPPO,**
19 Defendant.

Case No. 1490969
MOTION TO QUASH SUBPOENA
DUCES TECUM
Date: February 8, 2016
Time: 9:30 a.m.
Dept.: 26
Judge: Honorable Barbara Zuniga

21 PLEASE TAKE NOTICE that on February 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 January 27, 2016 by
25 attorney Marlisa Ferreira as it pertains to confidential records. The subpoena seeks the prison
26 records of former CDCR inmate Patrick Hampton, including any confidential records. The
27 subpoena duces tecum is overbroad, seeks confidential and privileged information, and fails to
28 establish good cause for the disclosure of the information. This motion is based upon this notice

1 of motion and motion, and the supporting memorandum of points and authorities, and any
2 exhibits attached thereto.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 INTRODUCTION

5 On January 27, 2016, the People of the State of California, through the Stanislaus County
6 District Attorney, issued a subpoena on the archives unit of CDCR for the production of
7 documents from the archived prison central file of former CDCR inmate Patrick Hampton,
8 including records contained in the confidential section of that file. (Ex. 1, Subpoena January 27,
9 2016.) The non-confidential documents will be turned over with limited redactions. The third
10 party, however moves to quash the subpoena as it pertains to the confidential section of
11 Hampton's central file. The confidential section of Hampton's prison central file contains several
12 categories of documents: (1) victim notification information; (2) medical documents; (3)
13 [REDACTED] (4) confidential memoranda related to incidents occurring while
14 Hampton was in CDCR custody; and, (5) [REDACTED] an
15 [REDACTED] s. These documents are all privileged and confidential under various
16 criminal and civil statutes, including California Evidence Code section 1040 and 1041, California
17 Civil Code section 1798, et seq. and California Penal Code section 679.03. CDCR now moves to
18 quash the subpoena as to the confidential section of Hampton's prison central file.

19 The subpoena duces tecum is overbroad and fails to establish good cause for the production
20 of the confidential and private records. (See *Alford v. Super. Ct.* (2003) 29 Cal.4th 1033, 1044-
21 1045; *People v. Hammon* (1997) 15 Cal.4th 1117, 1128.) Moreover, CDCR is not the custodian
22 of some of the records in Hampton's confidential file, including the documentation concerning
23 his previous [REDACTED]. In fact, the district attorney is the custodian of some of the
24 records concerning Hampton's involvement [REDACTED] and was provided copies of all
25 documents related to his [REDACTED] activity twenty years ago. Some of the information contained
26 in Hampton's file must be kept confidential because disclosure of that information would
27 endanger the safety of inmates and prison staff as well as jeopardize institutional security. (See
28 Cal. Code Regs., tit. 15, § 3321, subd. (a).) Other information contained in the confidential file is

1 also protected by various privileges, including the official information privilege, and various
2 privileges afforded to crime victims. (Evid. Code, § 1040, subd. (b); Pen. Code, § § 3058.8,
3 646.92, 679.03, 11155.) Accordingly, to the extent that it seeks disclosure of any confidential
4 information or private records, the People's subpoena should be quashed.

5 ARGUMENT

6 I. THE SUBPOENA DUCES TECUM SHOULD BE QUASHED AS OVERBROAD.

7 The district attorney may issue a subpoena to obtain records from a third party pursuant to
8 Penal Code sections 1326 and 1327. (*Alford, supra*, 29 Cal.4th at p. 1045; *Hammon, supra*, 15
9 Cal.4th at p. 1128.) There is, however, no absolute right to discovery in criminal proceedings.
10 (*Barrett, supra*, 80 Cal.App.4th at p. 1314.) Where materials are sought from a third party
11 through a subpoena, the party seeking discovery must show specific facts constituting good cause
12 for discovery. (*Id.* at p. 1318; *City of Santa Cruz v. Super. Ct.* (1987) 190 Cal.App.3d 1669, 1672
13 overruled on other grounds in *City of Santa Cruz v. Municipal Ct.* (1989) 49 Cal.3d 74.)
14 Accordingly, the party issuing a subpoena must make a reasonable showing that the requested
15 information is material to the case. (*Barrett, supra*, 80 Cal.App.4th at p. 1320 quoting *United*
16 *States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 867; *Lee v. Super. Ct.* (2009) 177 Cal.App.4th
17 1108, 1112, 1130.) An affidavit does not satisfy the materiality requirement by reciting pro
18 forma allegations that the records sought are relevant and material. Instead, a the subpoena must
19 demonstrate "a plausible justification or good cause showing of need." (*Barrett, supra*, 80
20 Cal.App.4th at p. 1320, fn. 7 [internal citations omitted].)

21 Here, the subpoena duces tecum should be quashed because it is an overly broad blanket
22 demand for Patrick Hampton's prison file. The only explanation the People provided as to why
23 the prison file is needed is that Hampton is a material witness who will be testifying at the
24 preliminary hearing in this case. (Ex. 1 at p. 2.) It is unreasonable to conclude that every
25 document contained in the confidential portion of Hampton's prison central file is material to the
26 case. Thus, the request for records is an overly burdensome fishing expedition into the
27 information contained within CDCR's records and should be quashed. (See *Barrett, supra*, 80
28 Cal.App.4th at p. 1320; see also *People v. Gaulden* (1974) 36 Cal.App.3d 942, 961; Cal. Code

1 Regs., tit. 15, § 3321.)

2 Presumably, the district attorney is seeking information concerning Hampton that could be
3 used as impeachment evidence against him by the defense. The only documents in his prison
4 central file that contain potentially admissible impeachment evidence [REDACTED]
5 [REDACTED] (Evid. Code, §§ 786, 787.) And these
6 documents were either created by the district attorney's office and sent to CDCR for placement in
7 Hampton's prison central file, or were provided to the district attorney's office by CDCR twenty
8 years ago. Thus, the subpoena should be quashed

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

11 Even if a showing of materiality and good cause can be made, the court retains wide
12 discretion to protect against disclosure of information which unduly affects a legitimate
13 governmental interest. (*Pitchess v. Super. Ct.* (1974) 11 Cal.3d 531, 538; *Hill v. Super. Ct.*
14 (1974) 10 Cal.3d 812, 817.) Disclosure of official information is against the public interest unless
15 the interests of justice require disclosure: [REDACTED]
16 (Evid. Code, § 1041.) In addition, CDCR has a duty under the Information Practices Act to
17 protect other inmates' privacy rights, and a duty under the Penal Code to protect victim
18 information. (Civ. Code, §§ 1798 et seq; Pen. Code, § 679.03, subd. (c).) Lastly, the Evidence
19 Code protects as privileged all "official information," which is defined as "information acquired
20 in confidence by a public employee in the course of his or her duty and not open, or officially
21 disclosed, to the public prior to the time the claim of privilege is made." (Evid. Code, § 1040,
22 subd. (a).) As the California Supreme Court has recognized, there is an important public policy
23 interest in protecting confidential, private information. (*People v. Hobbs* (1994) 7 Cal.4th 948,
24 957-958 [REDACTED]nal
25 [REDACTED], *In re Jackson* (1987) 43 Cal.3d 501, 505, 512 [REDACTED]
26 [REDACTED] *In re Prewitt* (1972) 8 Cal.3d 470, 474-475 [REDACTED]e
27 [REDACTED]sis
28 [REDACTED]

1 In balancing these interests, the Court should conduct an in camera review of the records.
2 (See *People v. Jackson* (2003) 110 Cal.App.4th 280, 290-291 [in which the court conducted an in
3 camera review]; see also *Ochoa v. Super. Ct.* (2011) 199 Cal.App.4th 1274, 1283.) In its in
4 camera review, the Court should consider whether the district attorney can meet her burden to
5 show whether the confidential, private records contain any material evidence. (*McCarthy, supra*,
6 79 Cal.App. at p. 555 [REDACTED] a
7 [REDACTED].) Here, part of the information sought is contained in the confidential
8 section of the Hampton's central files. (Ex. 1; see Cal. Code Regs., tit. 15, § 3321, subd. (a).)
9 Such information is classified confidential by law because the disclosure of this information
10 "would endanger the safety of any person" or "would jeopardize the security of the institution."
11 (Cal. Code Regs., tit. 15, § 3321, subd. (a).) As discussed above, the district attorney has not
12 demonstrated how the information is material to the case. Thus, after its in camera review, the
13 Court should sustain CDCR's objection to producing the material. If the Court orders CDCR to
14 produce any of the requested records, CDCR requests that the production be subject to the
15 proposed protective order attached as Exhibit 2.

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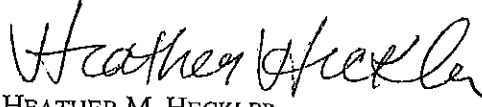
CONCLUSION

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

Dated: February 5, 2016

Respectfully Submitted,

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