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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

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

15 **FACTS**

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17
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19 **LAW**

20 Evidence Code § 1237 provides:

21 (a) Evidence of a statement previously made by a
22 witness is not made inadmissible by the hearsay rule if
23 the statement would have been admissible if made by him
24 while testifying, the statement concerns a matter as to
25 which the witness has insufficient present recollection
26 to enable him to testify fully and accurately, and the
27 statement is contained in a writing which:

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

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

1 made;

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

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

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

8 **DISCUSSION**

9 The documents most often read to the jury under Past
10 Recollection Recorded exception are reports from police officers.
11 See e.g., People v. Dennis (1998) 17 Cal.4th 468, 530; People v.
12 Cummings (1993) 4 Cal.4th 1233, 1292.) In People v. Miller
13 (1996) 53 Cal.Rptr.2d 773, 46 Cal.App.4th 412, the court admitted
14 the testimony of a police officer who had interviewed a witness
15 who by the time of trial had forgotten what she said.

16 The court stated:

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

25 Similarly, in People v. Cummings, supra, the trial court
26 admitted, pursuant to Evidence Code §1237, a detective's
27 testimony as to the record of a conversation he made with an
28 informant, during which the informant reported that the defendant

1 had made incriminating statements. The informant had testified
2 "he had no recall of the conversations with [the defendant] or
3 [with the detective], had been undergoing detoxification, was
4 sometimes delusional, and was still having drug-related problems
5 at the time of trial. He testified, however, that what he told
6 [the detective] was the truth." (4 Cal.4th at pp. 1292-1293.)
7 The reviewing court found that this set of facts was adequate to
8 establish the requisite foundation under Evidence Code §1237 for
9 the admission of the detective's testimony.

10 **CONCLUSION**

11 Defendant requests that _____ be permitted to read
12 the _____ to the jury. The document meets the
13 requirements of Evidence Code § 1237.

14 1. _____ does not remember what he/she told
15 _____ in the _____ meeting.

16 2. If he/she remembered it, it would be admissible evidence
17 pertaining to _____ at a time _____ now alleges
18 he/she was being molested.

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

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

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

25 6. _____ can authenticate the writing.

26 Dated:

27 Respectfully submitted,
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Attorney for Defendant