

1 **CLANCY LITIGATION GROUP**
Patrick E. Clancy, SBN 60805
2 Dr. Demosthenes Lorandos, SBN 177644
1600 S. Main St., Suite 185
3 Walnut Creek, CA 94596
Tel: (925) 256-4600
4 eFax: (888) 802-5089

5 Attorneys for Defendant

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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

8 THE PEOPLE OF THE STATE OF) Case No.
9 CALIFORNIA,)
10 Plaintiff,) POINTS AND AUTHORITIES
11 vs.) IN SUPPORT OF THE ADMISSION
12) OF THE COMPLAINING WITNESS'S
13) DIARY (or other writing)
14 Defendant.) Date:
Time:
Dept:

15
16 **I**

17 **FACTS**

18 Set forth the facts in your particular case regarding the
19 diary or other specific writing at issue, including its form
(e.g., diary, letter, etc.), date, and contents.

20 **II**

21 **ALL RELEVANT EVIDENCE IS ADMISSIBLE.**

22 According to **California Constitution, art. I, § 28(d)** and
23 **Evidence Code § 350**, all relevant evidence is admissible in any
24 criminal proceeding in this state. "Relevant evidence" is
25 evidence having any tendency is reason to prove or disprove any
26 material disputed fact. Included in this definition is evidence
27 relevant to the credibility of a witness or hearsay declarant.
28 (**Evidence Code § 210; People v. Scheid (1997) 16 Cal.4th 1.**)

1 Also included in this definition is evidence that raises a
2 reasonable doubt about a defendant's guilt. (**People v. Hall**
3 **(1986) 41 Cal3d 826, 833.**)

4 Relevant evidence may only be excluded under three
5 circumstances:

6 (1) where it is unduly prejudicial or time consuming, per
7 **Evidence Code § 352;**

8 (2) where it is protected by privilege, per **Evidence Code §**
9 **900 through 1070;** or

10 (3) where it constitutes inadmissible hearsay, per **Evidence**
11 **Code § 1200.**

12 III

13 **THE DOCUMENTS WRITTEN BY THE COMPLAINANT FULFILL**
14 **THE BEST EVIDENCE AND AUTHENTICATION**
15 **REQUIREMENTS FOR ADMISSIBILITY.**

16 Before a writing or its contents can be introduced into
17 evidence, the writing must be authenticated. (**Evidence Code §**
18 **1401.**) This may be done by introducing evidence sufficient to
19 sustain a finding that the documents are what the proponent of
20 the writing claims them to be. (**Evidence Code § 1400.**)

21 Methods of authentication which the defendant is prepared to
22 provide include: (1) evidence of the genuineness of the
23 handwriting, established by either the testimony of a qualified
24 lay witness, comparison by the trier of fact, or comparison
25 by an expert with a genuine writing (see Evidence Code **§§ 1416**
26 **through 1418**); or (2) evidence that the writing refers to or
27 states matters that are unlikely to be known by anyone other than
28 the alleged author of the writing. (**Evidence Code § 1421; People**
v. Olguin (1994) 31 Cal.App.4th 1355, 1373 [writing authenticated

1 by content and location where found]; **People v. Lynn (1984) 159**
2 **Cal.App.3d 715, 735** [jailhouse notes authenticated based on
3 defendant-writer's statements to others after the notes were
4 turned over to authorities, making it unlikely that anyone else
5 had penned them].)

6 According to the "best evidence rule," the original writing
7 itself is admissible to prove the content of a writing.
8 (**Evidence Code § 1520.**) The defense has the original documents
9 and will present them at the appropriate time.

10 **Evidence Code §352** does not preclude admission of the
11 diary (or other writing). (Set forth specifically the particular
12 facts and circumstances in your case as to why §352 does not bar
13 admission of the evidence. E.g., the evidence will not consume a
14 substantial amount of time, confuse the jury, or is not unduly
15 prejudicial to the prosecution's case.)

16 IV

17 THE COMPLAINING WITNESS HAS NO BASIS TO 18 EXCLUDE HER WRITINGS BY A CLAIM OF PRIVILEGE.

19 Unless provided by statute, no person has a privilege to
20 refuse to: (1) be a witness; (2) disclose any matter or produce
21 any writing, object or other thing; or (3) prevent another from
22 being a witness or disclosing any matter or writing. (**Evidence**
23 **Code § 911.**)

24 The potential statutory privileges permitting a witness to
25 prevent the disclosure of a writing may be found in (**Evidence**
26 **Code §§ 930 through 1070.**) None of these privileges apply to
27 (insert victim's name in possessive form) situation as a
28 complaining witness who has put her own veracity at issue.

**MANY EXCEPTIONS TO THE HEARSAY RULE APPLY
TO RENDER THE WRITINGS ADMISSIBLE.**

The journal and diaries were written under circumstances supportive of their reliability and trustworthiness. (Insert victim's name) believed them to be safe from prying eyes as evidenced by their contents. She wrote of many intimate details of her personal life, and thus would have had no motive to lie when creating them.

Initially, the journal and diaries will be introduced simply to prove that (insert victim's name) wrote the mere words which constitute the writings. Ultimately, however, they may be offered to prove the truth of the matters asserted therein. These writings are hearsay, since they are out of court statements and not made under oath. Nevertheless, several statutes permit admission of the contents of the writings, including but not limited to:

- (1) prior inconsistent statements, **Evidence Code § 1235;**
- (2) past recollection recorded, **Evidence Code § 1237;**
- (3) contemporaneous statement, **Evidence Code § 1241;**
- (4) then existing mental state, **Evidence Code § 1250;**
- (5) previously existing mental state, **Evidence Code § 1251.**

CONCLUSION

In view of the foregoing facts and discussion, the defense should be permitted to introduce the writings of the complaining witness as both exculpatory evidence and as negative impeachment of the alleged victim's credibility.

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Respectfully submitted,

Attorney for Defendant