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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO

13 PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 v.

17 LEE FARLEY,

18 Defendant(s).

Case No. 16013927
SCN 233062

19
20
21 **OPPOSITION TO MOTION FOR
DISCOVERY (Pen. Code, § 745)**

Date: May 4, 2021
Time: 9:00 a.m.
Dept.: 22

22
23 TO DEFENDANT(S) BY AND THROUGH THEIR ATTORNEY AND TO THE
24 HONORABLE COURT:

25 The People oppose the motion for discovery under Penal Code section 745. This
26 opposition will be based on the following memorandum of points and authorities, on any
27 exhibits lodged or filed with the Court, on all the papers and records on file in this action,
28 and on such oral and documentary evidence as may be presented at the hearing of the
motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3
4 Although the Racial Justice Act (the Act) provides for a motion for discovery and the
5 San Francisco District Attorney (SFDA) can provide some of the requested items,
6 Defendant here has failed to show good cause in other respects to justify an order to compel
7 that discovery. Accordingly, this Court should grant the motion as noted by SFDA but
8 otherwise deny the motion.

9 **STATEMENT OF THE CASE**

10 The Information charges Defendant with the murders (Pen. Code, § 187, subd. (a),
11 Counts 1, 2, 3, and 4) of four people—Yalani Chinyamurindi, Manuel O’Neal, Harith
12 Atchan, and David Saucier. Each count of murder carries special circumstance allegations
13 of intentional murder perpetrated by means of discharging a firearm from a motor vehicle
14 (Pen. Code, § 190.2, subd. (a)(21)), murder committed for criminal street gang purposes
15 (Pen. Code, § 190.2, subd. (a)(22)), and multiple murders (Pen. Code, § 190.2, subd. (a)(3)).
16 Each murder charge also includes firearm and gang allegations (Pen. Code, §§ 12022.53,
17 subd. (d) [personal and intentional discharge of a firearm causing death]; 12022.53, subd.
18 (d) [gang related personal and intentional discharge of a firearm causing death]; Pen. Code,
19 § 12022.53, subd. (c)) [personal and intentional discharge of a firearm]; Pen. Code, §
20 12022.53, subd. (c) [personal and intentional discharge of a firearm for purposes of a
21 criminal street gang]; Pen. Code, § 12022.53, subd. (b) [personal use of a firearm]; Pen.
22 Code, § 12022.53, subd. (b) [principal personal use of firearm for benefit of criminal street
23 gang]; Pen. Code, § 12022.5, subd. (a) [personal use of a firearm]; Pen. Code, § 186.22,
24 subd. (b)(1) [offense committed for benefit of, at direction of, and in association with
25 criminal street gang]).

26 The Information further charges Defendant with discharge of a firearm at an
27 occupied vehicle (Pen. Code, § 246, Count 5) and that charge also alleges personal and
28

1 intentional discharge of a firearm (Pen. Code, § 12022.53, subd. (d)), personal and
2 intentional discharge of a firearm for the benefit of a criminal street gang (Pen. Code, §
3 12022.53, subd. (d)), and committing the offense for the benefit of, at the direction of, and
4 in association of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)). The Information
5 further charges Defendant with possession of a firearm by a felon (Pen. Code, § 29800,
6 subd. (a)(1), Count 6) and alleges that Defendant committed the offense for the benefit of, at
7 the direction of, and in association with a criminal street gang (Pen. Code, § 186.22, subd.
8 (b)(1), Count 7). Further, the Information charges Defendant with participation in a
9 criminal street gang (Pen. Code, § 186.22, subd. (a)). Lastly, the Information alleges a prior
10 strike conviction (Pen. Code, § 667, subds. (d) & (e)), a prior serious felony conviction
11 (Pen. Code, § 667, subd. (a)(1)), and two prior state prison prior convictions (Pen. Code, §
12 667.5, subd. (b)).¹

13 14 **STATEMENT OF THE FACTS**

15 *Underlying Case*²

16 On January 9, 2015, a few minutes after 10:00 p.m., four young men, David Saucier
17 II, Haritch Atchan, Manuel O’Neal, and Yalani Chinyamurindi, were sitting in a parked
18 Honda Civic on Laguna Street near Page Street when at least 18 rounds of gunfire struck the
19 car. (RT 13-14, 164.) The four men died at the scene.

20 Although no witnesses saw the shooting, there was considerable forensic evidence
21 collected and a silver car was seen leaving the scene and speeding toward the Bay Bridge.
22 Police efforts to canvas the area for video surveillance turned up footage of a silver Hyundai
23

24 ¹ Defendant informally and formally requested discovery of information in a letter
25 that predated the enactment of the Racial Justice Act, as codified under section 745. This is
the first time Defendant has moved for discovery under the Racial Justice Act.

26 ² The summary of the facts is largely from the preliminary hearing on August 17
27 through 28, 2020. Some facts arise from the arrest warrant affidavit and police reports.
28 Where facts are from the preliminary hearing, a citation to the Reporter’s Transcript is
noted.

1 Sonata driving erratically away from the scene with a rear window missing.

2 Sgt. Moran, an experienced gang investigator recognized three of the victims:
3 Saucier, Atchan, and O'Neal, as members of the "Mac Block" criminal street gang. Sgt.
4 Moran was able to identify the fourth victim, Chinyamurindi, from social media. Sgt.
5 Griffin, an experienced gang investigator, also recognized the three Mac Block victims at
6 the scene of the shooting. (RT 619-620.) Ronan Shouldice, a retired SFPD CSI Inspector,
7 determined the trajectory of the fired shots as consistent with shooting from a moving motor
8 vehicle. (RT 166-167.) He determined there were at least 18 shots fired at the victims. (RT
9 164.) Mark Proia, a ballistics and firearms expert, testified that from the bullets and casings
10 recovered, there were four unique firearms used. (RT 314, 342, 366.)

11 Sgt. Damon Jackson testified as a gang expert that was familiar with and involved in
12 the investigations of two Western Addition criminal street gangs, Page Street and Mac
13 Block. (RT 977, 979-980.) Tensions between Mac Block and Page Street, whose territory
14 is one block from the shooting scene, had been rising prior to these killings. (RT 986-988.
994-994.)

15 Sgt. Jackson personally knew Defendant since 2005 and knew that he was an
16 admitted active gang member of Page Street at the time of the shootings. (RT 999-1000.)
17 Sgt. Jackson also knew Saucier and Atchan to be active Mac Block gang members. (RT
18 1011.)

19 Sgt. Jackson testified that the location of the shooting was significant. The four
20 victims, three of whom were active members of Mac Block, were in a stolen car, with two
21 firearms, just one block outside of Page Street territory. (RT 1023.) Sgt. Jackson also found
22 evidence that tied this shooting to the rivalry between the Mac Block and Page Street gangs
23 on social media.

24 Defendant was eventually identified as a shooter following an extensive
25 investigation. On January 13, 2015, a parole search and traffic stop was conducted on a
26 white Dodge Charger with Washington plates, driven by Lavonta Farley. The parole search
27 was of Defendant. (RT 251.) In the search, Off. Crosby located a Hertz damage incident
28 report relating to a silver Hyundai Sonata. (RT 252.) The license plate of the car for the

1 Hertz damage report matched the same plate as the silver car shown on video leaving the
2 area of the shooting, fleeing toward the Bay Bridge. (RT 706.) A review of video from
3 January 10, 2015, a day after the shooting, shows Lavonta Farley and Tylek Farley,
4 Defendant's brothers, returning the Hyundai Sonata to the Hertz in Concord and taking the
5 white Dodge Charger with Washington plates. (RT 716-718.) A bullet hole on the inside of
6 the rear passenger door, below the broken rear window, is observed on the Hyundai Sonata.
7 (RT 65.) Bullet fragments, keys to a Mercury vehicle, a parking ticket, and other
8 identifying items were also recovered. (RT 21-28 50-53 57-62, 731.) The recovered bullet
9 fragment had consistent characteristics to one of the four firearms identified as a weapon in
10 this case. (RT 366-367.)

11 On January 15, 2015, Defendant was arrested. Sgt. Griffin recovered Defendant's
12 cell phone and saw text messages discussing the trade of firearms of a caliber consistent
13 with the shell casings found at the scene of the shooting. (RT 627.) From cell phone
14 records, Defendant's phone pinged towers near the shooting in San Francisco and then later
15 hitting towers on the other side of the Bay Bridge. (RT 596-599.)

16 A review of Watchtower Security footage shows Defendant within two blocks of the
17 shooting midday on January 9, the day of the shooting. And then just minutes before the
18 shooting, another camera shows Defendant parking his Mercury Mountaineer (to which he
19 admitted he was the sole driver of (RT 729)), exiting his vehicle and speaking to the driver
20 of the Hyundai Sonata, returning to his Mountaineer and taking something, and, finally,
21 getting into the back seat of the Sonata. (RT 683-684.) The Sonata then drives northbound
22 toward the scene of the shooting. (RT 684.) Less than ten minutes later, Saucier, Atchan,
23 O'Neal, and Chinyamurindi were shot to death, the Sonata is shown fleeing toward the Bay
24 Bridge, and Defendant's phone places him in Oakland. (RT 596-599.)

25 *Race and Ethnicity Data in the San Francisco Criminal Justice System*³

26 The San Francisco District Attorney (SFDA) relies on the San Francisco Superior
27 Court's case management system (CMS) for the majority of suspect, defendant, and case

28 ³ The summary of race and ethnicity data in the San Francisco criminal justice system
is based upon the attached Declaration of Mikaela Rabinowitz.

1 data. These data are fed into the SFDA's DAMION case management system, from which
2 data can be extracted for analysis. SFDA does not independently collect any data about
3 race, ethnicity, or national origin of arrestees, defendants, or victims. Instead, data
4 concerning race or ethnicity is collected by the arresting or booking agency and is then
5 distributed through San Francisco's CMS. For data concerning race or ethnicity of victims,
6 the information is captured in the incident report and inputted into SFDA's system if
7 provided or available.

8 San Francisco's CMS currently serves as the Superior Court's criminal data system
9 and primary hub for criminal justice data in the City and County of San Francisco. Initially,
10 all data concerning race or ethnicity is gathered by either the arresting agency or the
11 booking agency. The input function will depend on whether the arrest is for a misdemeanor
12 or infraction, resulting in a citation to appear, or an arrest and booking through an SFPD
13 district station, or where the arrestee is booked into County Jail.

14 JMS transfers race data to the Justice Information System, JUSTIS. Currently, JMS
15 only sends race data to JUSTIS but does not transmit information concerning ethnic origin.
16 Data from JUSTIS is then pushed into the CMS hub. And because SFSD collects a different
17 set of race values than those in CMS, JUSTIS recodes this data to correspond with the race
18 values in CMS. CMS does not maintain data about race, ethnicity, or national origin of
19 victims.

20 The Court's CMS does not track most of the actions taken in a case in a way that can
21 be extracted for analysis. For example, after charges are filed by SFDA, specific motions,
22 such as a motion to dismiss a charge, are tracked in text-based court hearing notes that
23 cannot be extracted. Similarly, the allegation of an enhancement is noted only in text-based
24 court hearing notes that cannot be queried or extracted by either SFDA or the Court.

25 The SFDA case management system, DAMION, is a modular case management
26 system that was implemented by SFDA in 2003 with limited functionality. Since that time,
27 additional features and functions have been introduced, including additional data tracking
28

1 for criminal adult, juvenile and investigation cases, tracking of data and correspondence for
2 victim services, and the implementation of numerous system populated forms and reports.
3 Since 2011, SFDA has used DAMION to manage cases presented to and prosecuted by this
4 office. The majority of data are received via a feed from CMS. Additionally, data are
5 manually entered into DAMION directly by SFDA staff.

6 As the SFDA DAMION system is currently configured, data may be extracted from
7 the system, but this extraction is limited in a number of ways. SFDA can only extract data
8 on substantive arrest charges presented to SFDA by law enforcement agencies for charging
9 purposes, substantive charges filed by SFDA, and on the case outcome. SFDA has no
10 ability to extract data on individual charges within a given case, such as whether an
11 individual charge was dismissed post filing. SFDA can extract data on substantive gang
12 charges presented to or filed by SFDA, but not whether these specific charges were
13 dismissed after the case was filed. The SFDA DAMION system does not maintain a data
14 type or data category to extract any data concerning enhancements, including gang and
15 gang-related firearm enhancements. To extract any data related to gang or gang-related
16 firearm enhancements, SFDA would have to create a new data type to reflect the charging of
17 enhancements.

18 SFDA has engaged in efforts to improve the availability of data related to the use of
19 enhancements as well as charge-specific outcomes and has been unsuccessful. Due to these
20 and other limitations, the SFDA is in the process of procuring a new electronic case
21 management system, eProsecutor, with an anticipated deployment of early 2022. This new
22 system will not fix historical data challenges but will enable better data collection,
23 extraction, and analysis moving forward.

24 SFDA does not collect data about the race, ethnicity, or national origin of a victim
25 unless that information is input by personnel into the DAMION system for the Victim
26 Witness Services division of SFDA. When any race data for a victim is entered into that
27 DAMION system, personnel input into the DAMION system for Victim Witness Services
28

1 Division of SFDA based upon the assigned race categories listed in incident reports, if
2 provided.

3 In order to extract victim race data, race data would first have to be extracted for
4 persons charged with enumerated offenses from the DAMION system for the Criminal
5 Division. And then each corresponding case number would have to be individually entered
6 into the DAMION system for the Victim Witness Services division and corresponding race
7 data for the victim would have to be manually extracted on a case by case basis.
8

9 ARGUMENT

10 I. THE RACIAL JUSTICE ACT AND DEFENDANT'S REQUESTS FOR DISCOVERY

11 The Racial Justice Act allows a defendant to file a motion requesting disclosure of
12 "all evidence relevant to a potential violation" of the Act that is "in the possession or control
13 of the state." (Pen. Code, § 745, subd. (d).) The "state" as defined by the Act means the
14 Attorney General, District Attorney, or City Prosecutor. (Pen. Code, § 745, subd. (h)(4).)
15 The motion must describe "the type of records or information" sought. (Pen. Code, § 745,
16 subd. (d).) Upon a showing of good cause, the superior court must order that "the records
17 be released[,]" except those records that are privileged. (Pen. Code, § 745, subd. (d).) The
18 trial court, however, may allow the prosecution to redact any non-privileged records on a
19 good cause showing. (*Ibid.*)

20 In relevant part, a defendant may establish a violation of section 745 by proving by a
21 preponderance of the evidence that:

22 [t]he defendant was charged or convicted of a more serious offense than
23 defendants of other races, ethnicities, or national origins who commit
24 similar offenses and are similarly situated, and the evidence establishes that
25 the prosecution more frequently sought or obtained convictions for more
26 serious offenses against people who share the defendant's race, ethnicity, or
national origin in the county where the sentence was imposed[.]

27 (Pen. Code, § 745, subds. (a)(3).)
28

1 Defendant asserts that discovery is necessary to support a potential argument that the
2 decision to charge Defendant with the substantive gang charge (Pen. Code, § 186.22, subd.
3 (a)); gang enhancements (Pen. Code, § 186.22, subd. (b)(1)) and gang-related firearm
4 enhancements (Pen. Code, § 12022.53, subd. (e)) violates the RJA, specifically, Penal Code
5 section 745, subdivision (a)(3). (Motion at pp. 1, 7.) Here, Defendant makes several
6 requests. Related to policies and procedures, Defendant asks for any formal or informal
7 office policy—past or present—about decisions to dismiss gang allegations. (See Motion,
8 pp. 2-4.) The current policy about status sentencing enhancements, instituted on February
9 22, 2020, is publicly available on SFDA’s website. (<[https://sfdistrictattorney.org/wp-
10 content/uploads/2020/11/Status-Sentencing-Enhancements.pdf](https://sfdistrictattorney.org/wp-content/uploads/2020/11/Status-Sentencing-Enhancements.pdf)> [as of Apr. 12, 2021].)

11 Prior to District Attorney Chesa Boudin’s tenure, former District Attorney George
12 Gascón implemented a “blind-charging” tool in June 2019 that removes racial information
13 from police reports when prosecutors are deciding to criminally charge suspects.
14 (<[https://www.sfchronicle.com/crime/article/SF-DA-Gasc-n-launching-tool-to-remove-race-
15 when-13971721.php](https://www.sfchronicle.com/crime/article/SF-DA-Gasc-n-launching-tool-to-remove-race-when-13971721.php)> [as of Apr. 12, 2021].) SFDA will also provide copies of that
16 Mitigating Bias in Charging policy and a July 10, 2020 study entitled, “Blind Justice:
17 Mitigating Bias in Charging Decisions by Algorithmically Masking Race” from Stanford
18 University.

19 In 2017, there were two studies about examining racial disparities in San Francisco
20 funded by Quattrone Center at the University of Pennsylvania Law School. (See Owens,
21 Kerrison, & DaSilveria, EXAMINING RACIAL DISPARITIES IN CRIMINAL CASE OUTCOMES
22 AMONG INDIGENT DEFENDANTS IN SAN FRANCISCO, May, 2017 available at
23 <<https://www.law.upenn.edu/live/files/6793-examining-racial-disparities-may-2017-full>>
24 [as of Apr. 12, 2021]; see also MacDonald & Raphael, AN ANALYSIS OF RACIAL AND
25 ETHNIC DISPARITIES IN CASE DISPOSITIONS AND SENTENCING OUTCOMES FOR CRIMINAL
26 CASES PRESENTED TO AND PROCESSED BY THE OFFICE OF THE SAN FRANCISCO DISTRICT
27 ATTORNEY, December, 2017 available at
28

1 <<https://www.issuelab.org/resources/30712/30712.pdf>> [as of Apr. 12, 2021].) Lastly, the
2 Stanford Criminal Justice Center also produced studies about demographics of California
3 prosecutors and sentencing enhancements and incarceration in San Francisco.

4 (<<https://law.stanford.edu/wp-content/uploads/2015/08/Stuck-in-the-70s-Final-Report.pdf>>
5 [as of Apr. 12, 2021]; <[https://policylab.stanford.edu/media/enhancements_2019-10-
6 17.pdf](https://policylab.stanford.edu/media/enhancements_2019-10-17.pdf)> [as of Apr. 12, 2021].)

7 Those studies aside, Defendant makes further detailed requests for: (1) any office
8 policy about decisions to dismiss gang allegations; (2) a description of programs designed to
9 eliminate race as factors in alleging gang involvement and/or pursuing or dismissing gang
10 allegations; (3) communications about the race of the defendant, victim, or potential juror
11 that shows that any aspect of the case should be handled in a particular based upon that
12 person's race; (4) claims or complaints of any kind that allege race discrimination against
13 SFDA or any employee of SFDA; (5) a list of SFDA employees including information about
14 race; (6) any instance where a prosecutor is found to have violated *Batson v. Kentucky*; (7)
15 any disciplinary action for a violation of *Batson*; and (8) any correspondence about the
16 Racial Justice Act to and from SFDA. As noted below, Defendant's requests in these
17 respects should be denied because Defendant provides no plausible justification for this
18 discovery and Defendant's requests are also irrelevant and overbroad. Furthermore, some
19 requests also implicate privacy and confidentiality rights and intrude upon protected
20 governmental interests. Moreover, Defendant's requests relate to documents that are not in
21 SFDA's possession or would place an unreasonable burden on SFDA for production.

22 Defendant further requests case-specific information. (Motion, pp. 4-7.) Generally,
23 Defendant asks for information *since January 1, 2010* about: (1) individuals arrested for
24 homicide and referred to SFDA for prosecution; (2) of those individuals, copies of the arrest
25 record for the homicide arrests referred to SFDA for prosecution; (3) a list of all defendants
26 charged with homicide; (4) copies of all emails, records, or investigative reports filed,
27 pending or completed, or otherwise made about any racial disparities in charging gang
28

1 enhancements in San Francisco; (5) a list of all cases handed by SFDA where gang
2 involvement was alleged; (6) a list of all cases handled by SFDA where the office exercised
3 its discretion to dismiss a gang allegation; (7) a list of all cases handled by SFDA where the
4 office exercised its discretion to dismiss the gang allegation; and (8) a list of all cases
5 handled by SFDA where the office did not exercise its discretion to dismiss the gang
6 allegation.

7 As to case-specific information, Defendant's requests are overbroad as to time and
8 where Defendant requests information concerning homicides generally, as opposed to cases
9 involving both multiple homicide and substantive gang charges, Defendant's requests are
10 similarly overbroad and do not target similarly situated persons. But SFDA can provide
11 some electronic data about race for similarly situated suspects who are arrested for multiple
12 homicides and substantive gang charges and referred to SFDA for prosecution, as well as
13 defendants charged with both multiple homicides and substantive gang charges—within a
14 narrower, more specific time period. SFDA, however, does not have the capability to
15 extract data about any sentencing enhancements, including gang and gang-related firearm
16 enhancements, or dismissals of charges or enhancements, including whether gang charges or
17 gang-related enhancements were presented but dismissed. Once SFDA compiles the race
18 data for similarly situated defendants charged with multiple murders and substantive gang
19 charges, SFDA can also locate the corresponding race data for the victims in those cases if
20 available. As to the corresponding charging documents for those cases, Defendant can
21 reasonably access those documents through public records. For the remaining case-specific
22 requests and their sub-sections, Defendant provides no plausible justification for this
23 discovery, the requests are overbroad or vague, or they implicate privacy and confidentiality
24 rights and intrude upon protected governmental interests. Therefore, the People request that
25 the motion be denied, except as otherwise noted by SFDA.
26
27
28

1 **II. WHILE SFDA CAN PROVIDE SOME ELECTRONIC DATA ABOUT RACE FOR**
2 **SIMILARLY SITUATED DEFENDANTS, SFDA CANNOT PROVIDE ALL THE DATA**
3 **REQUESTED BY DEFENDANT**

4 Based upon current data systems and because SFDA can only extract data on charges
5 referred for prosecution, filed charges, and case outcomes, SFDA can provide race data of
6 similarly situated person referred to SFDA for charging for or persons charged with multiple
7 homicides and substantive gang charges. Once this data set is collected, a manual inquiry
8 into the corresponding victim race data can be made. SFDA, however, does not maintain
9 data of gang or gang-related firearm enhancements in any form. In this respect, Defendant's
10 discovery request requires SFDA to create a new record, which by analogy to the California
11 Public Records Act (CPRA), need not and should be disclosed under section 745.

12 As noted, caselaw concerning the CPRA is instructive as it relates to the
13 prosecution's discovery obligations under section 745 when the records sought are not
14 readily available to the District Attorney. (See, e.g., *Sander v. Superior Court* (2018) 26
15 Cal.App.5th 651, 665–666; *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 227;
16 *Regents of University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 400; see
17 also *Kissinger v. Rptrs. Comm. for Freedom of the Press* (1980) 445 U.S. 136, 152; *NLRB v.*
18 *Sears* (1975) 421 U.S. 132, 161-162; *Students against Genocide v. Dept. of State* (D.C. Cir.
19 2001) 257 F.3d 828, 837.)

20 “It is well established under California law and guiding federal precedent under the
21 Freedom of Information Act (FOIA) (see *Regents, supra*, 222 Cal.App.4th at p. 400) that,
22 while the CPRA requires public agencies to provide access to their existing records, it does
23 not require them to create new records to satisfy a request.” (*Sander, supra*, 26 Cal.App.5th
24 at pp. 665-666.) “If the agency would be required to create a new set of public records in
25 order to provide responses to a CPRA request, such agency action may be found to exceed
26 its statutory duties.” (*Fredericks, supra*, 233 Cal.App.4th at p. 227.)

27 “Federal law construing the FOIA is in accord.” (*Sander, supra*, 26 Cal.App.5th at p.
28 666.) “The Act does not obligate agencies to create or retain documents; it only obligates

1 them to provide access to those which it in fact has created and retained.” (*Kissinger, supra*,
2 445 U.S. at p. 152.) Nor does the FOIA require an agency to create material explaining
3 information in disclosed records. (*NLRB v. Sears* (1975) 421 U.S. 132, 161-162.) Simply
4 put, agencies are not required to create new documents. (*Students against Genocide, supra*,
5 257 F.3d at p. 837.)

6 That an agency is not required to create new documents under the CPRA also extends
7 to electronic materials or records derived from a database. (See *Sander, supra*, 26
8 Cal.App.5th 651.) In *Sander*, the court considered whether the State Bar was required to
9 disclose its admissions database, which included exam frequency, passage, LSAT score and
10 law school GPA, race and ethnicity, and law school codes and names. (*Id.* at p. 657.)
11 Although State Bar records were subject to disclosure, the records within the admissions
12 database were deemed confidential. (*Id.*) And the State Bar did not maintain admissions
13 data in the format requested by the petitioners, which would require the State Bar to create
14 new documents. (*Id.* at p. 662.) As the trial court noted, the proposed protocols would:

15 require the State Bar to recode its original data into new values. . . . For
16 example, the protocols group law schools into three classes, designating a
17 ‘school class’ code, which is not present in the original Admissions
18 Database. [Citations.] The protocols also involve recoding race/ethnicity
19 values to reflect four categories (Asian, Hispanic, Black, or White) instead
20 of the State Bar’s original eight race categories. Similar codes are created
21 with respect to year of graduation. [Citations.]

22 (*Id.* at p. 667.) Because disclosure under the protocols would require the creation of a new
23 record, the trial court concluded that the State Bar was not required to disclose the data. (*Id.*
24 at pp. 662-663.)

25 The Court of Appeal upheld the trial court’s order, concluding that CPRA does not
26 require agencies to create new records to satisfy a request. (*Sander, supra*, 26 Cal.App.5th
27 at p. 665.) “‘The basic rule is that an agency must comply with a request if responsive
28 records can be located with reasonable effort. [Citation.] If the agency would be required to
create a new set of public records in order to provide responses to a CPRA request, such

1 action may be found to exceed its statutory duties.” (*Id.* at p. 666 quoting *Fredricks, supra*,
2 223 Cal.App.4th at p. 227.) An agency may be required to search, extract, compile, or
3 redact electronically stored data, but the agency is simply not required to create new records.
4 (See *Sander, supra*, 26 Cal.App.5th at p. 667.)

5 Said otherwise, while a government agency “is required to produce nonexempt
6 responsive computer records in the same manner as paper records and can be required to
7 compile, redact or omit information from an electronic record[,]” an agency cannot be
8 compelled “to create a new record by changing the substantive content of an existing record
9 or replacing existing data with new data.” (*Sander, supra*, 26 Cal.App.5th at p. 669.) The
10 court in *Sander* also concluded that substantial evidence supported the trial court’s
11 conclusion that production would require the State Bar to recode, reprogram, or assign new
12 or different values to existing data and thus required it to create new records. (See *id.* at pp.
13 668–669.)

14 While SFDA may be required to and can extract and compile electronically stored
15 race data for similarly situated persons referred for charging and/or charged with both
16 multiple murders and substantive gang charges, gang and gang-related firearm
17 enhancements do not represent a data type or data category that is presently maintained by
18 SFDA. As such, it is not simply a question of searching, extracting, and compiling
19 electronically stored data as to any enhancements. Instead, Defendant’s request would
20 require SFDA create a new data type to reflect any enhancements referred or charged and in
21 effect create a new record under *Sander*. Because the balance of Defendant’s request
22 requires SFDA to create a new record, section 745 does not require SFDA to produce that
23 data. (See *Sander, supra*, 26 Cal.App.5th at pp. 665-667; *Fredericks v. Superior Court*,
24 *supra*, 233 Cal.App.4th at p. 227.)

25 In sum, SFDA can and will provide race data about persons referred to SFDA for
26 substantive charges for and those charged with both multiple homicides and substantive
27 gang charges, during a relevant period. But to the extent that Defendant’s discovery
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1 requests implicates records not presently maintained by SFDA, the request should be
2 denied.

3
4 **III. DEFENDANT HAS FAILED TO SHOW GOOD CAUSE FOR THE REMAINING
DISCOVERY REQUESTS**

5 While section 745 does not define good cause for purposes of discovery under the
6 Act, courts have defined good cause for purposes of discovery in other contexts. For
7 example, a motion for discovery of peace officer personnel under Evidence Code sections
8 1043 and 1045 must show good cause based upon an affidavit “which explains the
9 materiality of the information to the subject of the pending litigation and states on
10 reasonable belief that the governmental agency has the records or information.” (*People v.*
11 *Superior Court (Johnson)* (2015) 61 Cal.4th 696, 710; accord *City of Los Angeles v.*
12 *Superior Court* (2002) 29 Cal.4th 1, 9 and *Warrick v. Superior Court* (2005) 35 Cal.4th
13 1011, 1019; see also *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, 51 [good cause
14 under sections 1043 and 1045 “requires a defendant ‘to demonstrate the relevance of the
15 requested information by providing a “specific factual scenario” which establishes a
16 “plausible factual foundation” for the allegations of officer misconduct committed in
17 connection with the defendant.”].) “The ‘two-part showing of good cause is a “relatively
18 low threshold for discovery.”” (*Warrick, supra*, 35 Cal.4th at p. 1019.)

19 This relatively low threshold for discovery of peace officer personnel records,
20 however, does not permit a fishing expedition for disclosure of evidence. (*In re M.C.*
21 (2020) 58 Cal.App.5th 1138, 1142-1143 [affirming no good cause for discovery where
22 declaration stated that the prosecutor informed the defense that the personnel file had
23 “discoverable information” and no description of deputy’s role in case]; accord *People v.*
24 *Galan* (2009) 178 Cal.App.4th 6, 13 [no good cause when officer’s report of the defendant’s
25 statements to the police reasonably corroborated other officer’s observations of the
26 defendant’s driving].)

27 Similarly, in the context of a subpoena duces tecum, the subpoenaing party must
28

1 show “some cause for discovery other than ‘a mere desire for the benefit of all
2 information.”” (*Facebook v. Superior Court (Touchstone)* (2020) 10 Cal.5th 329, 344
3 (*Facebook*)). In that instance, a court must consider seven factors in deciding whether to
4 order release of the requested material. (*Id.*, citing to *City of Alhambra v. Superior Court*
5 (1988) 205 Cal.App.3d 1118 (*Alhambra*)).

6 First, a court must consider whether the defense has shown a plausible justification
7 for the release of records, meaning whether the defendant has presented “specific facts
8 demonstrating that the subpoenaed documents are admissible or might lead to admissible
9 evidence that will reasonably “assist [the defendant] in preparing his defense.””
10 (*Facebook, supra*, 10 Cal.5th at p. 345.) “The plausible justification consideration is but
11 one (albeit the most significant) of multiple factors that, together, reflect a global inquiry
12 into whether there is good cause for a criminal subpoena.” (*Id.* at p. 345, fn. 6.) Where the
13 material sought implicates privacy rights, a plausible justification “must be subject to even
14 closer examination in the absence of an apparent relationship between the alleged crime and
15 the sought private communications.” (*Id.* at p. 355.)

16 Second, a court must consider whether the request adequately describes the records
17 sought and is not overbroad. (*Facebook, supra*, 10 Cal.5th at p. 346.) A discovery request
18 is overbroad if it includes a “broad, blanket demand for documents” which amounts to
19 “nothing more than a fishing expedition.” (*People v. Serrata* (1976) 62 Cal.App.3d 9, 15;
20 see also *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1320, fn. 7 [an
21 SDT that makes a blanket demand for documents is nothing more than a fishing
22 expedition].)

23 Third, a court must consider whether the materials sought are reasonably available to
24 the entity from which they are sought, meaning are those materials available through other
25 sources. (*Facebook, supra*, 10 Cal.5th at p. 346.) Fourth, a court must consider whether
26 production of the records violates a third-party’s confidentiality or privacy rights or intrudes
27 upon a protected governmental interest. (*Id.*) Fifth, a court should also consider whether
28

1 the request is timely or premature. (*Id.* at p. 347.) Sixth, a court needs to decide whether
2 the production of the requested information would unreasonably delay the trial. (*Id.*)

3 Seventh, a court must consider whether production will place an unreasonable burden
4 on the third-party. (*Facebook, supra*, 10 Cal.5th at p. 346.) “For example, information
5 characterized by such broad descriptions as ‘all other similar crimes’ or ‘all crimes [e.g.,
6 murders] committed during [a certain time frame] with a similar modus operandi,’ may be
7 so inadequate as to make the discovery and location of such information an unreasonable
8 burden on the governmental entity.” (*Alhambra, supra*, 205 Cal.App.3d 1118, 1134, fn. 16.)

9 Defendant states “publicly available data show that the number of California state
10 prison inmates who have a gang enhancement offense are disproportionately Black
11 compared to the number of such inmates who are White and compared to the Black
12 population in California.” (Motion at p. 2:1-4.) In order to show a violation under this
13 section, though, section 745 specifically addresses the fact that criminal offenses within
14 California are, with few exceptions, prosecuted by county. (Pen. Code, § 745, subd. (a)(3)
15 [“in the county where the convictions were sought or obtained”].) Defendant asserts
16 conclusively that “statewide disparities are necessarily a product of the charging decisions
17 made at the county level.” (Motion at p. 12:9-11.) The People note, however, that
18 Defendant’s claim alone does not establish a nexus between the publicly available statewide
19 gang enhancement data and crimes prosecuted in San Francisco County. As stated in
20 *Johnson*, good cause can be found when the materiality of the information to the subject of
21 the pending litigation is explained. To establish good cause here, Defendant must show
22 more than just a statewide disparity that exists in the conviction of individuals for gang
23 enhancements by race as compared to the population.⁴

24
25 ⁴ For example, the study which reviewed the racial and ethnic disparities in case
26 dispositions of the SFDA found “[n]early all of the racial disparities in prosecution and
27 court disposition outcomes can be attributed to average difference in case characteristics that
28 are *determined prior to a case being presented to the office of the SFDA* as well as
differences in the prevalence of pre-trial detention.” (MacDonald & Raphael, *supra*, at p.

1 Nevertheless, a discovery request under section 745, subdivision (d) must be relevant
2 to a violation alleged under the Act, meaning that a defendant must show a plausible
3 justification for the records and information sought. (See *Facebook*, supra, 10 Cal.5th 329,
4 348 [to support a discovery request, there must be a plausible justification].) And the
5 request itself must not be overbroad. To be relevant and not overbroad, the request must
6 specifically describe the records or information sought. (Pen. Code, § 745, subd. (d)
7 [motion “shall describe the type of records or information the defendant seeks”]; see also
8 *Facebook*, supra, 10 Cal.5th 329, 348 quoting *Ballard v. Superior Court* (1966) 64 Cal.2d
9 159, 167 [to support a discovery request, a defendant must show “some better cause for
10 inspection than a mere desire for the benefit of all information[.]”].) To ensure relevancy
11 under the Act, the request must seek information concerning similarly situated individuals.
12 And to protect against overbreadth, reasonable restrictions should be placed on the scope of
13 a discovery request. For example, a discovery order should be limited to the relevant time
14 period which also accounts for legislative changes, prosecution practices, disposition
15 policies, and significant events like a global pandemic.
16

17 **A. Except as Stated Above, Defendant Has Not Provided a Plausible**
18 **Justification in Seeking Information Discovery About Policies and**
19 **Procedures and About Similarly Situated Individuals**

20 Defendant makes several broad discovery requests about SFDA policies and
21 procedures. Aside from those studies referenced above and provided to the defense here,
22 Defendant has not made a plausible justification as to how the remaining requested
23 documents are admissible or will lead to admissible evidence that would reasonably assist
24 any claim under section 745. And Defendant requests in this respect are vague and
25 overbroad not just in substance but also in time. The requests have no such limitation—just
26 all, past and present. Nor has Defendant shown how, for example, the identification of the

27 _____
28 20, ital. added.) This study, in and of itself, indicates how the existence of statewide
disparities in prison inmates cannot constitute good cause.

1 decision-maker provides a plausible justification for that information—if it were collected
2 or even known. Similarly, Defendant broadly requests “[a]ny communications” about the
3 race of a defendant, victim, or potential juror that suggests or indicates that a cases should
4 be handled in a particular way on account of that person’s race. (Motion, p. 3.) SFDA has
5 not and does not conduct business in this manner and does not maintain any such
6 information.⁵ (See *People v. Montes* (2014) 58 Cal.4th 809, 829 [state enforcement of
7 criminal laws on an unjustifiable standard, such as race, violates the equal protection
8 clause].)⁶ And Defendant provides no plausible justification for this overbroad request in
9 any event.

10 As to specific cases, Defendant requests information about all homicide cases—and
11 broadly so, as far back as January 1, 2010. This request in that respect does not seek
12 information about similarly situated individuals, i.e., Defendants charged with both
13 homicide and substantive gang charges, which is particularly important when Defendant’s
14 alleges a disparity in charging gang and gang-related firearm enhancements. (See also
15 *Alhambra*, *supra*, 205 Cal.App.3d at p. 1134, fn. 6.) In fact, Defendant’s request is more so
16 overbroad because it is not limited to multiple—here quadruple—homicides, which are rare
17 in San Francisco County. So, to request information on charged homicide cases, in general,
18 does not identify a similarly situated group.

20 **B. Defendant’s Discovery Requests Are Overbroad**

21 To the extent that Defendant requests information for as far back as January 1,
22 2010—when the charged offense occurred in 2015—and some requests have no time
23 limitation at all, Defendant’s discovery requests are overbroad and should be denied.

24 ⁵ The only caveat, of course, involves hate crimes, where a person’s protected status,
25 including race, is an element of the offense or allegation. This case, however, does not
26 include hate crime charges or allegations.

27 ⁶ While Penal Code section 745 was enacted expressly to address the challenges of proving
28 discriminatory intent and the limitations of this requirement (see e.g. *McClesky v. Kemp* (1987) 481,
U.S. 279, 295-299), it is unconstitutional to exercise prosecutorial discretion with a discriminatory
purpose. (Assem. Bill No. 2542 (2019-2020 Reg. Sess., § 2.)

1 (Compare *Alhambra*, *supra*, 205 Cal.App.3d at p. 1134, fn. 6.)
2

3 **C. Once the District Attorney Provides Race Data of Similarly Situated**
4 **Defendants Arrested for or Charged with Multiple Murders and**
5 **Substantive Gang Charges, the Accusatory Pleadings Sought by**
6 **Defendant Are Equally Available to Defendant Through Other Means**

7 Once SFDA provides race data for defendants arrested for and/or charged with both
8 multiple murders and substantive gang charges, Defendant can readily seek any publicly
9 available accusatory pleadings through the San Francisco Superior Court. Because the
10 records or information sought by Defendant is also available through the Court, the motion
11 to compel SFDA to disclose the same should be denied.

12 **D. Defendant Provides No Plausible Justification for Discovery of SFDA**
13 **Personnel Record Information, and that Same Request Implicates**
14 **Privacy and Confidentiality Rights.**

15 Defendant's request for personnel records from SFDA should be denied because
16 Defendant fails to show good cause for the overbroad request, and production of these
17 irrelevant records would violate the privacy rights of the SFDA employees. Article I,
18 Section 1 of the California Constitution establishes a right of privacy that creates a qualified
19 bar to discovery of information implicating individual privacy rights. (*Britt v. Superior*
20 *Court of San Diego County* (1978) 20 Cal.3d 844, 854-855; Cal. Const., art. I, §1.) Cases
21 analyzing requests for complaints and other personnel records under the CPRA recognize
22 the strong privacy interest that applies to employee personnel information. (See e.g.,
23 *IPTFE, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329 [disclosure of
24 personnel, medical, or similar files would constitute an unwarranted invasion of personal
25 privacy citing Gov. Code, § 6254, subd. (c)].)

26 While names and salaries of public employees are matters of public record, more
27 personal information, disclosure of which invades any individual's legitimate privacy
28 interests, is not subject to public disclosure under the California Constitutional privacy right
and related legal authority. (See, e.g., *IPTFE, supra*, 42 Cal.4th at pp. 319, 339; *New York*

1 *Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, 100, overruled on other grounds in
2 *Copley Press, Inc. v. Superior Court* (2006) 39 Cal. 4th 1272.) Thus, employee information
3 may be withheld where disclosure would result in “an unwarranted invasion of personal
4 privacy.” (*IFPTE, supra*, 42 Cal.4th at p. 329.) For example, unfounded or unsubstantial
5 complaints need not be disclosed because such disclosure would constitute an unwarranted
6 invasion of the employee’s personal privacy. (See *Associated Chino Teachers v. Chino*
7 *Unified School Dist.* (2018) 30 Cal.App.5th 530, 538-543.)

8 The “*Pitchess* Statutes,” Sections 832.7 and 832.8 of the California Penal Code,
9 impose still more stringent protections on discovery of personnel records of peace officers, a
10 classification that includes SFDA investigators, whose personnel records are encompassed
11 by Defendant’s requests. Section 832.7 of the Penal Code provides that, with enumerated
12 exceptions, “the personnel records of peace officers and custodial officers and records
13 maintained by any state or local agency pursuant to Section 832.5, or information obtained
14 from these records, are confidential and shall not be disclosed in any criminal or civil
15 proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code.”
16 (See also *Pitchess v. Superior Court* (1989) 49 Cal.3d 74, 85 [noting that defendants seeking
17 discovery of peace officer personnel information must make a showing of materiality and
18 request information “with adequate specificity to preclude the possibility that defendant is
19 engaging in a ‘fishing expedition’”].) And while these protections are less stringent
20 following the passage of Senate Bill 1421 (codified in Pen. Code, § 832.7), where the
21 records would not be protected from discovery under the amendments to *Pitchess* personnel
22 requests, they maintain their privacy as government employee personnel records as
23 addressed below.

24 Here, Defendant seeks: (1) a list of all SFDA employees since January 1, 2010,
25 including the race of the prosecutor and the date employment began and ended; (2) whether
26 any claims or complaints alleging racial discrimination have been lodged against *any* SFDA
27 employee since January 1, 2021; (3) any findings where the prosecutor violated *Batson*; and
28

1 (4) any disciplinary action for a violation of *Batson*. Aside from these requests being overly
2 broad, Defendant provides no plausible justification for purposes of section 745. Instead,
3 Defendant make broad, blanket demands, which exhibits a desire for the benefit of all
4 information. And while names of employees and dates of employment are subject to
5 disclosure, Defendant fails in the first instance to provide a plausible factual foundation that
6 this information supports an allegation under section 745 based on an alleged charging
7 disparity or that the documents requested are admissible or will lead to admissible evidence
8 that would reasonably assist in that claim. And although race data for DA employees may
9 be provided in aggregate form, this aggregate data is already publicly available. (See
10 <<https://law.stanford.edu/wp-content/uploads/2015/08/Stuck-in-the-70s-Final-Report.pdf>>
11 [as of Apr. 12, 2021].)

12 Complaints of racial discrimination against SFDA employees is not likely to lead to
13 the discovery of admissible evidence on Defendant's section 745 claim, and disclosure of
14 these complaints would violate the privacy rights of the employees, as discussed above. To
15 support a section 745 claim, a defendant must show either that a prosecutor or other actor in
16 the criminal trial exhibited racial animus against the Defendant *in that trial*, or that there is a
17 pattern of racial disparities in charging, based on the severity of charges sought and the race
18 of defendants across cases. Personnel information for SFDA employees unconnected with
19 this trial—including complaints of race discrimination, communications regarding race, and
20 the race of the employees—have no possible relevance to this showing, let alone sufficient
21 relevance to justify the substantial infringement on the privacy rights of these employees
22 that discovery would entail, particularly when SFDA employs not just prosecutors but also
23 paralegals and administrative staff. As to the *Batson*-type information, Defendant's claim
24 here rests on charging decisions, not jury selection. Without explaining how jury selection
25 and charging decisions are connected, Defendant has provided no plausible justification for
26 this information.
27
28

1 **E. Other Discovery Requests Similarly Implicate Confidentiality and**
2 **Privacy Rights**

3 To the extent that Defendant requests communications or decisional information that
4 implicate other privileges, such as the attorney work product and deliberative process
5 privileges, those requests should be denied as well. (Code Civ. Proc. § 2018.030 [attorney
6 work product]; Gov. Code, § 6255 [deliberative process].) Any requests for arrest records,
7 including criminal history summaries compiled by either local, state, or national agencies,
8 should also be denied, because state law designates this information as confidential and not
9 subject to disclosure. (Pen. Code, §§ 13302-13304.)

10 **F. Defendant Has Provided No Plausible Justification for the Incident**
11 **Reports and *Brady* and Impeachment Information and Production of**
12 **Those Records Would Be Unduly Burdensome**

13 Defendant also fails to show how the incident reports and any corresponding *Brady*
14 and impeachment information are admissible or would lead to admissible information that
15 would reasonably assist in a claim that Defendant was charged with more serious offenses
16 that defendants of other races, ethnicities, or nation origins who commit similar offenses and
17 are similarly situated to Defendant. Particularly, Defendant has not explained how evidence
18 exculpating other defendants referred for prosecution of or charged with multiple homicides
19 or substantive gang offenses or evidence impeaching witnesses in these other cases would
20 show a racial disparity here. There is simply no connection between this requested evidence
21 and any potential claim under section 745. These requests should therefore be denied.

22 Furthermore, the CPRA caselaw shows that Defendant's discovery request in this
23 respect is also unduly burdensome. "A clearly framed request which requires an agency to
24 search an enormous volume of data for a 'needle in the haystack' or, conversely, a request
25 which compels the production of a huge volume of material may be objectionable as unduly
26 burdensome." (*California First Amendment Coalition v. Superior Court* (1998) 67
27 Cal.App.4th 159, 166; see also *Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 924-
28 833; Gov. Code, § 6255, subd. (a).) The request for incident reports and any corresponding

1 *Brady* and impeachment information would require SFDA to order and search voluminous
2 homicide case files (which often consist of many boxes) in order to locate underlying police
3 reports and any and all exculpatory and impeachment evidence, even if that evidence bears
4 no relationship to the potential claims here. Therefore, Defendant's request for any
5 underlying police reports and *Brady* and impeachment evidence should be denied.
6

7 **G. To the Extent that Defendant Seeks CDAA Records, Those Records Are**
8 **Not in the Possession or Control of the State as Defined by Section 745**

9 Section 745 authorizes a request for discovery "in the possession or control of the
10 state." (Pen. Code, § 745, subd. (d).) The Act defines "state" as the Attorney General,
11 District Attorney, or City Prosecutor. (Pen. Code, § 745, subd. (h)(4).) Therefore, the Act
12 limits discovery to that within a district attorney's actual possession and control. The Act
13 does not extend those discovery obligations to records or information within a district
14 attorney's *constructive* possession. (Compare *People v. Superior Court (Barrett)* (2000) 80
15 Cal.App.4th 1305, 1314-1315; *In re Steele* (2004) 32 Cal.4th 682, 697 [under *Brady*, a
16 prosecutor must disclose favorable, material evidence in the prosecution's actual or
17 constructive possession]; see also *California State Univ., Fresno Assoc. v. Superior Court*
18 (2001) 90 Cal.App.4th 810 [an association that has some functional relationship to a public
19 agency is generally not subject to CPRA].) Here, Defendant's discovery request extends to
20 records that are not in the actual possession and control of SFDA, including advice, training,
21 or continuing legal education from CDAA or any other group or person. Accordingly, the
22 motion for any such records should be denied.

23 **IV. SHOULD THE COURT ORDER DISCLOSURE, INFORMATION SHOULD BE REDACTED**
24 **BASED UPON GOOD CAUSE AFTER AN IN CAMERA HEARING**

25 Section 745, subdivision (d) permits a court to allow the prosecution to redact
26 information prior to disclosure based upon good cause. (Pen. Code, § 745, subd. (d).)
27 Section 745 does not define good cause in this context either, but section 1054.7 provides
28 some guidance. Under section 1054.7, disclosure can be "denied, restricted, or deferred"

1 upon a showing of good cause. (Pen. Code, § 1054.7.) “Protecting the safety of witnesses
2 unquestionably is of the utmost importance, and a trial court has broad discretion to deny,
3 restrict, or defer disclosure of a witness’s identity prior to trial in order to provide such
4 protection.” (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1125 citing Pen. Code, §
5 1054.7.) “‘Good cause’ is limited to threats or possible danger to the safety of a victim or
6 witness or possible loss or destruction of evidence, or possible compromise of other
7 investigations by law enforcement.” (Pen. Code, § 1054.7; but see *Reid v. Superior Court*
8 (1997) 55 Cal.App.4th 1326, 1335-1336 [embarrassment, adverse publicity, or potential
9 invasion of privacy not good cause].)

10 Proceedings to delay or deny disclosure may be held in camera “upon the request of
11 any party,” sealed from inspection by the public, and preserved for any appeal or writ. (Pen.
12 Code, § 1054.7; *People v. Thornton* (2016) 1 Cal.5th 1043, 1099 [section 1054.7 does not
13 expressly prohibit ex parte hearings]; see also Evid. Code, § 915, subd. (b) [authorizing in
14 camera review to evaluate statutory privilege]; Evid. Code, § 1042, subd. (d) [requiring in
15 camera proceedings when challenge to discovery made based on privilege].)

16 Should the Court order the prosecution to produce discovery under section 745, the
17 People request that this Court hold an in camera hearing if that discovery implicates threats
18 or possible danger to the safety of a victim or witness or possible loss or destruction of
19 evidence, or possible compromise of other investigations by law enforcement so that the
20 information so implicated may be redacted, as provided by section 745, subdivision (d).

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CONCLUSION

For these reasons, the Court should deny the motion for discovery under section 745, except as otherwise above.

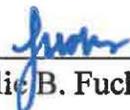
Date: April 13, 2021

Respectfully submitted,

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 CITY AND COUNTY OF SAN FRANCISCO

16 PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiff,

19 v.

20 LEE FARLEY,

21 Defendant(s).

Case No. 16013927

**DECLARATION OF MIKAELA
RABINOWITZ IN SUPPORT OF
OPPOSITION TO MOTION FOR
DISCOVERY**

Date: April 1, 2021
Time: 9:00 a.m.
Dept.: 22

22 I, Mikaela Rabinowitz, declare:

23 1. I am an employee of the San Francisco District Attorney's Office (SFDA) and
24 have been so employed for two months.

25 2. Currently, I am the Director of Data, Research, and Analytics. In that role, I
26 oversee all work related to data collection, extraction, and analysis. This includes querying
27 the SFDA case management system, DAMION, for internal performance management,
28 public records requests, discovery requests, and more.

1 3. In connection with my duties at SFDA, I have learned about data collection
2 within San Francisco's criminal justice system. Based upon this experience and on
3 information and belief:

4 a. SFDA relies on the San Francisco Superior Court's case
5 management system (CMS) for the majority of suspect, defendant, and case
6 data. These data are fed into the SFDA's DAMION case management system,
7 from which data can be extracted for analysis.

8 b. SFDA does not collect any data about race, ethnicity, or national
9 origin of arrestees or defendants;

10 c. Data concerning race or ethnicity is collected by the arresting or
11 booking agency and is then distributed through San Francisco's Case
12 Management System (CMS);

13 d. For misdemeanor arrests and infractions that result in a citation
14 to appear, law enforcement agencies, including SFPD and the California
15 Highway Patrol, record race information on the citation issued, which is then
16 sent to the Identification Bureau of SFPD;

17 e. The Identification Bureau of SFPD then initiates a case in CMS
18 and is responsible for entering the race information directly into CMS using
19 the ten codes currently available in the CMS system: American Indian, Black,
20 Chinese, Filipino, Hispanic/Latino, Japanese, Mexican American, White,
21 Other, and Unknown;

22 f. For arrests and booking at SFPD district stations, six race and 19
23 ethnicity values are collected at booking and stored in SFPD's New World
24 Systems (NWS) Booking Module:

25 i. The six race values in NWS include: American
26 Indian/Alaska Native, Asian or Pacific Islander, Black, White, Other,
27 and Refused;

1 ii. The 19 ethnicity values in NWS include: American
2 Indian, Asian Indian, Black, Cambodian, Chinese, Filipino,
3 Guamanian, Hawaiian, Hispanic, Japanese, Korean, Laotian, Other,
4 Other Asian, Pacific Islander, Samoan, Refused, Vietnamese, White,
5 and Not Entered; and

6 iii. These race and ethnicity values correspond with the
7 values collected by the San Francisco Sheriff's Department (SFSD),
8 but data from the NWS is not transferred to CMS or the Justice
9 Information System (JUSTIS);

10 g. For a felony arrest that results in booking into County Jail, the
11 SFSD collects race and ethnicity information and enters that information into
12 its jail data management system, JMS. SFSD also collects race and ethnic
13 origin data during classification or at release:

14 i. JMS race values include: American Indian/Alaska Native,
15 Asian or Pacific Islander, Black, White, Other, and Refused; and

16 ii. JMS ethnic origin values include: American Indian,
17 Asian Indian, Black, Cambodian, Chinese, Filipino, Guamanian,
18 Hawaiian, Hispanic, Japanese, Korean, Laotian, Other, Other Asian,
19 Pacific Islander, Samoan, Refused, Vietnamese, White, and Not
20 Entered;

21 h. JMS transfers race data to the Justice Information System,
22 JUSTIS. Currently, JMS only sends race data to JUSTIS but does not transmit
23 information concerning ethnic origin. Data from JUSTIS is then pushed into
24 the CMS hub. Because "Hispanic" is categorized as a value of "ethnic origin"
25 instead of race and JMS transmits only race data, no information about
26 Hispanic arrestees is transferred to CMS. And because SFSD collects a
27 different set of race values than those in CMS, JUSTIS recodes this data to
28

1 correspond with the race values in CMS.

2 i. As a result, cases initiated by an arresting agency include the ten
3 CMS codes for race, including: American Indian, Black, Chinese, Filipino,
4 Hispanic/Latino, Japanese, Mexican American, White, Other, and Unknown.

5 j. A case initiated by SFSD only includes race codes of American
6 Indian, Black, Chinese, White, Other, or Unknown.

7 k. I am informed and believe that CMS does not maintain data
8 about race, ethnicity, or national origin of victims.

9 l. SFDA accesses this data from CMS through its individual case
10 management systems, DAMION.

11 4. The Court's CMS does not track most of the actions taken in a case in a way
12 that can be extracted for analysis. For example, after charges are filed by SFDA, specific
13 motions, such as a motion to dismiss a charge, are tracked in text-based court hearing notes
14 that cannot be extracted. Similarly, the allegation of an enhancement is noted only in text-
15 based court hearing notes that cannot be queried or extracted by either SFDA or the Court.

16 5. The SFDA case management system, DAMION, is a modular case
17 management system that was implemented by SFDA in 2003 with limited functionality.
18 Since that time, additional features and functions have been introduced, including additional
19 data tracking for criminal adult, juvenile and investigation cases, tracking of data and
20 correspondence for victim services, and the implementation of numerous system populated
21 forms and reports. Since 2011, SFDA has used DAMION to manage cases presented to and
22 prosecuted by this office. The majority of data are received via a feed from the San
23 Francisco Superior Court's case management system CMS. Additional data are entered into
24 DAMION directly by SFDA staff.

25 6. As the SFDA DAMION system is currently configured, data may be extracted
26 from the system, but this extraction is limited in a number of ways. SFDA can only extract
27 data on substantive arrest charges presented to SFDA by law enforcement agencies for
28 charging purposes, substantive charges filed by SFDA, and on the case outcome. Our office

1 has no ability to extract data on individual charges within a given case, such as whether an
2 individual charge was dismissed post filing. SFDA can extract data on substantive gang
3 charges presented to or filed by our office, but not whether these specific charges were
4 dismissed after the case was filed.

5 7. I am informed and believe that SFDA has engaged in efforts to improve the
6 availability of data related to the use of enhancements as well as charge-specific outcomes
7 and has been unsuccessful. Due to these and other limitations, the SFDA is in the process of
8 procuring a new electronic case management system, eProsecutor, with an anticipated
9 deployment of early 2022. This new system will not fix historical data challenges but will
10 enable better data collection, extraction, and analysis moving forward.

11 8. The SFDA DAMION system does not maintain a data type or data category to
12 extract any data concerning gang and gang-related firearm enhancements. In order to
13 extract any data related to gang or gang-related firearm enhancements, SFDA would have to
14 create a new data type to reflect the charging of enhancements. DAMION does not have a
15 data field for tracking enhancements and data collection protocols require the entry of
16 substantive charges. Information on enhancements is tracked in written notes, which cannot
17 be extracted for analysis.

18 9. SFDA does not collect data about the race, ethnicity, or national origin of a
19 victim unless that information is input by personnel into the DAMION system for the
20 Victim Witness Services division of SFDA. I am informed and believe that when any race
21 data for a victim is entered into that DAMION system, personnel rely upon the assigned
22 race categories listed in incident reports.

23 10. If race data is extracted for persons charged with murder and substantive gang
24 offenses from the DAMION system for the Criminal Division, each corresponding case
25 number would have to be entered into the DAMION system for the Victim Witness Services
26 division of SFDA and corresponding race data for the victim would have to be manually
27 extracted on a case by case basis.

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct, based upon my personal knowledge, except to those items

1 stated on information and belief and as to those items, I believe them to be true.

2 Executed at San Francisco, California on April 12, 2021.

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5 Mikaela Rabinowitz

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