**SAMPLE NOTICE OF MOTION FOR PRE-TRIAL DISCOVERY AND BRADY MATERIALS IN POLICE MISCONDUCT CASE**

By , (State Bar No. )

Telephone No.:

Fax No.:

Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF X FOR THE COUNTY OF X

PEOPLE OF THE STATE OF X, )

) Case No.

Plaintiff, )

# ) NOTICE OF MOTION FOR PRE-

**)**

v. ) **TRIAL DISCOVERY**

) **AND *BRADY* MATERIALS**

)

JOHN DOE, Defendant. )

)

 )

TO: , Chief of Police for the City of

 , and their representatives:

The Defendant is moving for an order directing you to give the materials herein described to defendant’s attorney:

1. All complaints from any and all sources relating to acts of aggressive behavior, violence, excessive force, or attempted violence or excessive, racial bias, gender bias, ethnic bias, sexual orientation bias, coercive conduct, violation of constitutional rights, fabrication of charges,

fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, illegal search/seizure; false arrest, perjury, dishonesty, writing of false police reports, writing of false police reports to cover up the use of excessive force, planting of evidence, false or misleading internal reports including but not limited to false overtime or medical reports, and any other evidence of misconduct amounting to moral turpitude against Officer(s) Johnson and Jones.

Defendant specifically requests production of the names, addresses, dates of birth, and telephone numbers of all persons who filed complaints, who may be witnesses, and/or who were interviewed by the employing agency or their agents, the dates and locations of the incidents complained of, as well as the date of the filing of such complaints.

1. The defendant is *entitled* to discover any discipline imposed upon the named officers as a result of the investigation of any citizen complaint described in item one.
2. Any other material which is exculpatory or impeaching within the meaning of *Brady v.*

*Maryland* (1963) 373 U.S. 83. Trial courts are specifically empowered to examine police personnel files for *Brady* material.

4) The names, addresses, contact information, and transcripts of testimony of all persons who testified at any Civil Service type hearing (i.e. Office of Police Accountability, Office of Internal Affairs Hearing….) wherein the named officers were accused of any of the misconduct sought in items 1 and 3, above. The defendant also seeks copies of all evidence submitted during the course of the hearing and/or a list of evidence items submitted to the Commission and any hearing officer(s). In addition, all findings, rulings, and statements made by the Commission, its members and hearing officers.

This motion will be based upon this Notice, the declaration of counsel, attached points and authorities, and such additional evidence and arguments as may be presented at the hearing.

Dated this day of , 20 .

Respectfully submitted,

By

ORDER

IT IS HEREBY ORDERED THAT the foregoing items as set out in the Notice of Motion for Pretrial Discovery be delivered to , or his/her representative in Department , on or before , 20 .

JUDGE

DECLARATION IN SUPPORT OF MOTION FOR PRETRIAL DISCOVERY

I, the undersigned, declare:

I am the attorney of record for the above-named defendant.

People make complaints about police officers to the employing agency. The employing agency investigates those complaints and keeps a record in personnel files or other files. These files may contain findings, memoranda, recordings, reports, transcripts, opinions, diagrams, photographs, police reports, audio tapes, video tapes, and conclusions of the investigations made and of the disciplinary proceedings commenced as the result of those complaints. These files contain the names, addresses, telephone numbers, and statements of people interviewed as a result of the complaint. These files are in the possession of the employing agency. The materials contained in these files will only be made available to the defendant through a court order.

The Civil Service Commission is the administrative tribunal available to officers who wish to challenge discipline imposed upon them. A Civil Service Commission hearing is like a trial where witnesses – including the accused officers – may testify under oath and their testimony is transcribed; there may be a “prosecutor” and the officer may have his own defense representative or attorney; evidence may be presented and introduced, and rulings will be issued by the hearing officer(s) or Commission members. All of these materials are maintained by the employing City and/or by the Civil Service Commission and its hearing officers and will only be made available to the defendant through court order.

It is necessary that these materials be made available to the defendant in order to properly prepare this case for motions and trials. The requested discovery is material and relevant to the trial of this case (as well as any motions) and is necessary for the defense preparation for the following reasons:

[INSERT DEFENSE STATEMENT OF THE FACTS AND EXPLAIN THE RELEVANCE OF THE MATERIAL YOU ARE SEEKING –PUT IN SUFFICIENT FACTS TO ESTABLISH THE DEFENSE SCENARIO OF HOW THE INCIDENT HAPPENED. WRITE YOUR DECLARATION SPECIFYING IT IS MADE UPON INFORMATION AND BELIEF]

These materials will be used by the defense to locate witnesses to testify that the officer(s) have a character trait, habit, and custom of engaging in misconduct of the type alleged in this case. These witnesses would testify to specific instances of misconduct of the type alleged in this case. This evidence would be admissible and relevant to show the officers have a propensity to engage in the alleged misconduct, and that the officers engaged in such misconduct in this case.

Evidence that an officer has a habit, character, and custom to use excessive force is not only relevant to establish that a defendant’s use of force against the officer was in self-defense. In addition, evidence of an officer’s use of excessive force would be relevant to show that the officer has a habit, character, and custom to engage in misconduct amounting to moral turpitude. An officer who uses excessive force while on-duty has engaged in morally turpitudinous conduct and may be impeached with that conduct.

Such information would also be used by the defense to effectively cross-examine the officer at trial, and for impeachment purposes where appropriate. Additionally, such information would be used by the defense in the discovery of other admissible evidence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day of \_, 20 , at , X State.