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20 **UNITED STATES DISTRICT COURT**
21 **EASTERN DISTRICT OF CALIFORNIA**

22 JOAN SHELLEY, MICHELLE
23 LOFTIS, SANDRA
24 HOYOPATUBBI,

25 Plaintiffs

26 vs.

27 COUNTY OF SAN JOAQUIN, AND
28 DOES 1 THROUGH 100
INCLUSIVE,

Defendants.

) Case No.: 2:13-cv-00266 MCE (DADx)
)
) **PLAINTIFFS' NOTICE OF MOTION**
) **AND MOTION TO VACATE THE**
) **STIPULATED PROTECTIVE**
) **ORDER; OR IN THE ALTERNATIVE**
) **TO MODIFY STIPULATED**
) **PROTECTIVE ORDER;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES AND**
) **DECLARATIONS OF MARK**
) **CONNELLY, ALLAN FOX, KEVIN**
) **ATKINS AND SEN. CATHLEEN**
) **GALGANI IN SUPPORT THEREOF.**
)
) Date: April 17, 2015
) Time: 10:00 a.m.
) Place: Courtroom 27-8th Floor

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO VACATE THE STIPULATED PROTECTIVE ORDER
OR IN THE ALTERNATIVE TO MODIFY STIPULATIVE PROTECTIVE ORDER

1 TO THE COURT, DEFENDANT AND DEFENDANT'S ATTORNEY OF
2 RECORD:

3 PLEASE TAKE NOTICE THAT on April 17, 2015 at 10:00 a.m., or as soon
4 thereafter as counsel may be heard, in Courtroom 27 of the United States District
5 Court for the Eastern District of California, Sacramento, located at 501 I Street,
6 Sacramento, California, 95814, Plaintiffs will, and hereby do move this Court for
7 an Order pursuant to Fed. R. Civ. P. 26(c) to vacate the Stipulated Protective
8 Order, or in the alternative for an Order to modify the Stipulated Protective Order,
9 to allow potential witnesses and third parties access to review certain discovery,
10 including but not limited to, deposition transcripts, documents, and other material
11 information that has been labeled pursuant to the Stipulated Protective Order. This
12 Motion is made upon the following:

- 13 1. To allow Plaintiffs to properly investigate their claims against Defendant;
- 14 2. To allow potential witnesses and the public access to all information,
15 including but not limited to, discovery responses, deposition transcripts and
16 documents produced in this case;
- 17 3. To allow California State Senator Cathleen Galgiani (Sen. Galgiani) and
18 her legislative staff to better understand the process and procedure of local law
19 enforcement agencies in the deletion of missing persons from the National Crime
20 Information Center Missing Person File; and
- 21 4. To allow Sen. Galgiani and her legislative staff to read and review certain
22 testimony and documents to assist in creating further legislation that rectifies
23 deficiencies in reporting missing persons to both state and federal agencies.

24
25 **A. MEET AND CONFER:**

26 This Motion is made following the conference of counsel pursuant to Local
27 Rule 251 which took place on January 7, 2015 after counsel exchanged with
28 Defendant's counsel, Plaintiffs' position in augmenting and later vacating the

1 stipulated protective order. The parties were unable to reach agreement on the
2 issues raised in Plaintiffs' Motion. (Declaration of Mark Connely ¶2-3).

3 Plaintiffs' Motion is and will be based upon this Notice of Motion, the
4 Memorandum of Points and Authorities in support of the Motion, the pleadings,
5 records and files herein, Declarations of Mark Connely, Sen. Cathleen Galgiani,
6 Allan Fox and Kevin Atkins, and upon further oral and documentary evidence as
7 may be presented at the hearing on this matter.

8
9 Dated: March 9, 2015

**HALL HEATT & CONNELLY
GERAGOS & GERAGOS**

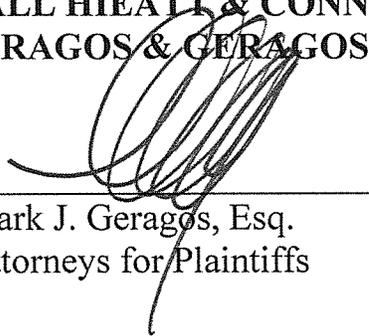
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12 By: 
13 Mark J. Geragos, Esq.
14 Attorneys for Plaintiffs
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

1. SUMMARY OF ARGUMENT.....4

2. INTRODUCTION.....5

3. STATEMENT OF FACTS6

4. ARGUMENT..... 9

 A. VACATING OR MODIFYING THE PROTECTIVE ORDER IS
 PROPER IN LIGHT OF THE GOOD CAUSE SHOWN HEREIN. 9

 B. IN THE ALTERNATIVE THE COURT SHOULD EXERCISE ITS
 DISCRETION AND MODIFY THE PROTECTIVE ORDER11

5. CONCLUSION.....12

TABLE OF AUTHORITIES

CASES:

(1.) *Association of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.*, (2008) 168 Cal. App. 4th 535, 546 11

(2.) *Beckman Industries v. International Insurance Co.*, 966 F.2d 470, 475 (9th Cir.1992) 10

(3.) *Intel Corp. v. VIA Technologies, Inc.*, 198 F.R.D. 525, 528 (N.D. Cal. 2000) . . 9

(4.) *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 427-428 (9th Cir. 2011) 11

(5.) *Osband v. Woodford*, 290 F.2d 1036, 1039 (9th Cir. 2002) 11

(6.) *Pansy v. Borough of Stroudsburg*, 23 F.3d772, 789-790 (3rd Cir. 1994). . . .9

(7.) *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990) 11

STATUTES

Fed. R. Civ. P. 26(c) 11

MEMORANDUM OF POINTS AND AUTHORITIES

1. SUMMARY OF ARGUMENT

Plaintiff Joan Shelley became aware that her daughter, JoAnn Hobson's, name was removed from the National Crime Information Center's Missing Person File (NCIC) by the San Joaquin County Sheriff's Office in contravention of protocol and law. California State Senator Cathleen Galgiani is the author of SB 1066, Chapter 437, Statutes of 2014, which amended several code sections regarding missing and unidentified persons. This request to vacate or in the alternative to modify the Stipulated Protective order is to allow potential witnesses, Sen. Galgiani and her legislative staff access to information in this matter, as well as for the following reasons:

1. To allow Plaintiffs to properly investigate their claims against Defendant;
2. To allow potential witnesses and the public access to all information, including but not limited to, discovery responses, deposition transcripts and documents produced in this case;
3. To allow California State Senator Cathleen Galgiani (Sen. Galgiani) and her legislative staff to better understand the process and procedure of local law enforcement agencies in the deletion of missing persons from the National Crime Information Center Missing Person File; and
4. To allow Sen. Galgiani and her legislative staff to read and review certain claimed protected documents to assist in creating or advising regarding further legislation that rectifies deficiencies in reporting missing persons to both state and federal agencies.

There will be no harm for such request to vacate or augment the Stipulated Protective Order since the health, welfare, and safety of the citizens of California outweigh any prejudice to the Defendant. More telling, the request will assist with other families dealing with search and recovery of missing children and persons.

1 **2. INTRODUCTION**

2 This is an action for an egregious violation of substantive due process
3 regarding the parent's right to control a deceased child's remains. A child at the
4 age of sixteen, JoAnn Hobson went missing on August 28, 1985, and her mother,
5 Joan Shelley, started the search for her daughter in 1985 that ended tragically. The
6 search for JoAnn Hobson ended in February 2012, when Ms. Shelley became
7 aware that her daughter was found in a well, a victim of the Speed Freak Killers.
8 The convicted Speed Freak Killers are Wesley Shermantine and Loren Herzog.

9 The crime of taking and ultimately harming a child is an unimaginable act,
10 but the removal of JoAnn Hobson's name from the National Crime Information
11 Center (NCIC) Missing Person File by the San Joaquin County Sheriff's Office for
12 no valid reason, and without following protocol, is simply unbearable. The
13 removal of a name from the NCIC Missing Person File prevents the search and
14 recovery of those individuals.

15 At all times, Plaintiff Shelley believed her child, JoAnn Hobson, was a
16 missing person, and that all critical information regarding her child was indexed
17 with the National Crime Information Center (NCIC) Missing Person File to allow
18 local and federal law enforcement to communicate to each other. The NCIC is a
19 computerized index for access to state and federal law enforcement and other
20 justice agencies. The information is critical to such local and federal agencies in
21 both the location of fugitives and missing persons, and such information is
22 protected by encrypting safeguards and other safety protocols. The NCIC is
23 operated by the Federal Bureau of Investigation (FBI) and the FBI acquires,
24 collects, classifies, preserves and exchanges such information with authorized
25 agencies.

26 ///

27 ///

28 ///

1 The Public Record Request of November 5, 2014, evidences that the San
2 Joaquin County Sheriff's Office removed missing persons from NCIC Missing
3 Person File on or about September 10, 2010, including JoAnn Hobson's name.
4 (Declaration. of Sen. Galgiani ¶9 Ex. 2.)

5
6 **3. STATEMENT OF FACTS**

7 The convicted Speed Freak Killers are Wesley Shermantine, Jr. (hereinafter
8 referred to as "Shermantine") and Loren Joseph Herzog (hereinafter referred to as
9 "Herzog"). California Investigators believe this lethal pair may have killed as
10 many as twenty (20) or more people and disposed the victims' bodies in mine
11 shafts, remote hillsides, and buried some victims underneath a trailer park in the
12 San Joaquin Valley, California. They received the "Speed Freak" moniker due to
13 their methamphetamine abuse. Shermantine is on death row in San Quentin
14 Correctional Facility, and Herzog's conviction was overturned in 2004, he was
15 paroled in 2010 and committed suicide in 2012 while on parole.

16 In or about 2010, Plaintiff Joan Shelley asked for the assistance from then
17 Assemblywoman Cathleen Galgiani regarding her daughter, JoAnn Hobson's
18 disappearance. Thereafter, on or about September 2010, Shermantine, through his
19 sister, Barbara Jackson, stated that there were more unrecovered victims on Flood
20 Road. On or about September 7, 2010, this critical information was provided to
21 Sheriff Steve Moore of the San Joaquin Sheriff's Office by Sen. Galgiani.
22 (Declaration. of Sen. Galgiani ¶4.)

23 Unbeknownst, to Joan Shelley or to then Assemblywoman Galgiani, an
24 employee of the San Joaquin County Sheriff's Office removed from the State and
25 Federal database the name of JoAnn Hobson, and an undetermined number of
26 additional victims **three (3) days** after Sen. Galgiani provided the letter from
27 Shermantine to San Joaquin County Sheriff's Office. In effect, victims were
28 removed from the state and federal missing persons systems, making their

1 identification impossible, and thwarting any further investigation affecting those
2 Missing Persons' cases. (Declaration. of Sen. Galgiani ¶8.)

3 According to a Public Records Request from Sen. Galgiani to the State of
4 California Department of Justice-Office of the Attorney General Kamala Harris the
5 following information was requested:

6 1. Any and all documents concerning requests by San Joaquin County
7 and/or the San Joaquin Sheriff's Office for Cancellation of Missing Persons
8 Records in or around 9/10/2010, to the present.

9 2. Violent Crime Information Center submitted documents, whether
10 digital or written correspondence, e-mails, notes, and reports, between any
11 unit to include, but not be limited to, the Violent Crime Information Center,
12 The Missing and Unidentified Persons Unit, the California Department of
13 Justice Bureau of Forensic Services and San Joaquin County Sheriff Steve
14 Moore, including any person working at the San Joaquin County Sheriff's
15 Department from September 1, 2010 to the Present regarding any case
16 closing, deletion, removal, unlisting, or any change to remove information,
17 (including February, 2012), concerning any missing persons to include but
18 not limited to the following individual missing persons from San Joaquin
19 County from the year 1980 to 1999:

20 Cyndi Vanderheiden
21 Tracy Dianne Melton
22 JoAnn Hobson
23 Kimberly Ann Billy
24 Phillip Lloyd Cabot Martin
25 Gina Garcia
26 Jose Guadalupe Cortes/Cortez
27 Silvia Dittus
28 Jose Luis Felix Fragosa
Pastor Martinez
Benjamin Lopez, Jr.
Steven Mark Dadasovich
Jose Esauro Dominguez
James Kenneth Patterson
Edward Louis Winans

(Decl. of Sen. Galgiani ¶9, Ex. 2)

1 In response to such request the Office of Attorney General provided two
2 email communications between San Joaquin Deputy Sheriff Chanda Bassett and
3 State of California Department of Justice employee Kaycee Leonard which clearly
4 articulates that on September 10, 2010, the San Joaquin County Sheriff's Office
5 requested that several cold cases and older cases be removed. (Decl. of Galgiani
6 ¶10, Ex.3).

7 The protocol is simple, that all missing persons files should be kept active
8 until the entire body is recovered. The information contained in the NCIC system
9 is protected administrative and encrypted data to safeguard such valuable
10 information. The way that the NCIC missing persons database is maintained is a
11 significant public interest. (Declaration of Allen Fox ¶4).

12 More telling, law enforcement officers and related agencies must follow a
13 required process in order to remove missing persons from the NCIC. This affords
14 law enforcement and related agencies with oversight to ensure that missing persons
15 are not removed from the NCIC without recovery of that missing person.

16 Specifically, in order for personnel to remove or modify an entry in the
17 NCIC missing persons list, a law enforcement officer must instruct the person
18 responsible for modifying the database at the reporting agency (the "ORI") to
19 remove or modify the entry. Failure to follow the rules and guidelines could result
20 in de-certification of a particular ORI. (Decl. of Fox ¶6).

21 In March 2012, the Reno Police Department was investigating the missing
22 person case of Terri Ann Fourcher, who was last seen in Reno, Nevada on August
23 10, 1996. At one point, the investigation regarding the missing person, Ms.
24 Fourcher led to the possibility that she may have been a victim of the Speed Freak
25 Killers. The San Joaquin County Sheriff's Office was uncooperative and not
26 forthcoming regarding the Speed Freak Killers case, and denied information and
27 access to the Reno Police Detective Allan Fox. (Decl. of Fox ¶9).

28 ///

1 In 2012, another law enforcement agency, the City of Hayward Police
2 Department sought assistance with locating the recovery of a missing child
3 allegedly abducted and killed by the Speed Freak Killers. One of the key
4 investigators for the San Joaquin Sheriff's Office, Det. Bassett, abjectly failed to
5 cooperate with the Hayward Police Department's investigation and stonewalled its
6 efforts. (Declaration of Kevin Atkins ¶¶9,10).

7
8 **4. ARGUMENT**

9 **A. VACATING OR MODIFYING THE PROTECTIVE ORDER IS**
10 **PROPER IN LIGHT OF THE GOOD CAUSE SHOWN HEREIN**

11 In this matter, *good cause* exists for vacating or at least modifying the
12 Stipulated Protective Order. Courts have allowed modification simply for “good
13 cause shown.” *Pansy v. Borough of Stroudsburg*, 23 F.3d772, 789-790 (3rd Cir.
14 1994). In determining whether “good cause” exists for vacating or modifying a
15 protective order, the court considers factors such as: the extent of reliance on the
16 order, the public and private interests affected by the order, any new information
17 bearing on the order, and the burden the order creates. *Id.* at 790; *see also Intel*
18 *Corp. v. VIA Technologies, Inc.*, 198 F.R.D. 525, 528 (N.D. Cal. 2000) (holding
19 that a court will allow modification of a protective order if the party requesting the
20 modification can demonstrate how the protective order will prejudice the party’s
21 case).

22
23 Here, good cause justifies vacating or in the alternative modifying the
24 protective order because there is no current criminal investigation, evidence in this
25 matter addresses significant public interest regarding the maintenance and removal
26 of missing persons entries from the NCIC Missing Person File.

27 Moreover, the Plaintiff's daughter's name and other material information
28 was removed from the NCIC Missing Person File within days *after* Sen. Galgiani

1 provided the San Joaquin County Sheriff's Office with information regarding the
2 location of Ms. Hobson's remains. The Ninth Circuit strongly favors modification
3 of a protective order to meet the reasonable needs of the parties in pending
4 litigation. *Beckman Industries v. International Insurance Co.*, 966 F.2d 470, 475
5 (9th Cir. 1992).

6 Plaintiff seeks to vacate or in the alternative modify the order for the
7 following: (1) To allow witnesses and the public access to all information
8 including but not limited to discovery responses, deposition transcripts and
9 documents produced in this case since there is no ongoing criminal investigation
10 regarding JoAnn Hobson, and (2) To allow California State Senator Cathleen
11 Galgiani and her legislative staff to understand the process and procedure of local
12 law enforcement agencies in the removal of missing persons from the NCIC.

13 Simply put, preventing Plaintiffs from doing so will greatly prejudice them
14 because Plaintiffs need to reveal to third parties the contents of the depositions and
15 documents in order to properly investigate their claims against Defendant.
16 Currently, Plaintiffs are limited in their ability to obtain information as to the
17 customary practice of the San Joaquin Sheriff Office in determining when to
18 remove the name of missing persons from the NCIC Missing Persons Index.
19

20 Particularly, Plaintiffs would like to obtain information about the customary
21 practice to determine whether concealing critical evidence of missing persons is
22 customary, especially in light of the fact that Plaintiff's daughter, JoAnn Hobson,
23 was removed from NCIC Missing Person Index. Furthermore, since DNA
24 evidence was destroyed in accordance with CA Penal Code §14250, when missing
25 persons are taken off the State and Federal missing person's list, it is in the
26 public's interest to allow Sen. Galgiani access to the depositions in order to
27 advance the process by which law enforcement agencies remove the names of
28 missing persons from lists such as the NCIC. (*See Association of Irrigated*

1 *Residents v. San Joaquin Valley Unified Air Pollution Control Dist.*, (2008) 168
2 Cal. App. 4th 535, 546.)

3 The public has a right to information about missing persons and has a right
4 to know whether people in positions of power are carelessly or intentionally
5 removing such information from the archives. (See *In re Roman Catholic*
6 *Archbishop of Portland in Oregon*, 661 F.3d 417, 427- 428 (9th Cir. 2011) (finding
7 that the public has a weighty interest in public safety, in identifying abusers,
8 particularly those occupying positions of power and trust). Thus, such request is
9 reasonable in the context of this case.

10 In providing access to information from this case to Sen. Galgiani and her
11 legislative staff, they could analyze the current issue of deletion of missing persons
12 from the NCIC Missing Person File, and can assist, advise, or create further
13 legislation that rectifies deficiencies in reporting and removal of missing persons to
14 both state and federal databases and the NCIC Missing Person File.

15
16 **B. IN THE ALTERNATIVE THE COURT SHOULD EXERCISE ITS**
17 **DISCRETION AND MODIFY THE PROTECTIVE ORDER**

18 Although Federal *Rule of Civil Procedure* Rule 26(c) does not refer to
19 modification of a protective order, case law recognizes that a protective order may
20 be modified for good cause. *Osband v. Woodford*, 290 F.2d 1036, 1039 (9th Cir.
21 2002) (holding that a party subject to a protective order is generally free to return
22 to the issuing court to seek a modification of the order). This includes protective
23 orders arising from a stipulation by the parties. *United Nuclear Corp. v. Cranford*
24 *Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990). Here, good cause exists at least for
25 the modification of the protective order.

26 ///

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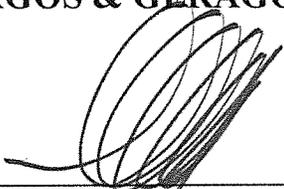
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1 **5. CONCLUSION.**

2 For the foregoing reasons, Plaintiffs respectfully request that this Court
3 GRANT Plaintiff's Motion to Vacate or in the Alternative to Modify the Stipulated
4 Protective Order.

5
6 Dated: March 6, 2015

**HALL HEATT & CONNELLY
GERAGOS & GERAGOS**

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10 By: 
11 Mark J. Geragos, Esq.
12 Attorneys for Plaintiffs
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**DECLARATION
OF
MARK CONNELLY**

DECLARATION OF MARK CONNELLY

I, Mark Connely, hereby declare as follows:

1. I am an attorney licensed to practice before all Courts of the State of California, and I am admitted to the United States District Courts for the Northern, Eastern and Central Districts of California, the Ninth Circuit Court of Appeals and the United States Supreme Court. I am a principal of Hall, Hieatt and Connely, LLP, counsel of record for Plaintiffs, in the above-entitled action.

2. On January 12, 2015, I sent counsel for defendant, Mark Berry of Mayall Hurley, P.C., a detailed letter requesting his agreement to vacate/modify the protective order in this case and provide documents, depositions and information to Sen. Galgiani. (A true and correct copy of the letter is attached hereto as Exhibit 1.)

3. On January 29, 2015, during a deposition in this case, Mr. Berry informed me that he would not stipulate or agree on behalf of his clients to vacate or modify the protective order or allow Sen. Galgiani access to such documents or information.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration was signed on March 4, 2015 in San Luis Obispo, California.

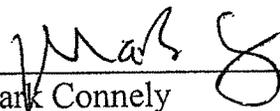

Mark Connely

EXHIBIT 1

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January 12, 2015

Mark E. Berry, Esq.
Mayall Hurley, P.C.
2453 Grand Canal Boulevard, Second Floor
Stockton, CA 95207-8253

Re: Joan Shelley, et al. vs. County of San Joaquin
Case No. 2:13-cv-00266-MCE-DAD
Meet and Confer re: Amendment to Stipulation and Protective Order

Dear Mr. Berry:

Pursuant to Federal Rules of Civil Procedure, Local Rule 251 and other applicable rules, this letter shall serve as plaintiff's good faith attempt to meet and confer with regard to expanding and/or augmenting the attached Stipulation and Protective Order entered on September 24, 2014 (the "Protective Order").

Specifically, plaintiff seeks to expand and/or augment the Protective Order to allow the opening of the Protective Order in the public interest to allow for the depositions of [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] to be viewed and reviewed by Sen. Galgiani's legislation and legal committees in order to understand, and to assist in the process and procedures for deleting names from the missing person files from the Missing and Unidentified Persons Unit, at the California Department of Justice Bureau of Forensic Services and the Violent Crime Information Center. It is imperative that the Protective Order be expanded in this way in order to understand the process for the deletion of names from the missing person registry and its relations with local and federal agencies. It is our preference to effectuate this through a new Stipulation and Order to be filed with your cooperation.

We hope that you will agree to the above-referenced proposal for changes to the Protective Order, and we would like to provide you with a new stipulation to effectuate the changes so that we can file it with the Court as soon as possible. In the event that you will not agree to our proposal, we will have no choice but to file a motion to expand and/or augment the existing Protective Order as soon as possible.

Ex 1

Mark E. Berry, Esq.

Re: Joan Shelley, et al. vs. County of San Joaquin

January 12, 2015

Page 2

Please contact me upon your receipt of this correspondence to confirm whether you are amendable to signing a new stipulation and order to reflect the expansion as set forth herein. I look forward to hearing from you.

Very truly yours,
HALL HEATT & CONNELLY, LLP



MARK CONNELLY

MBC/jem

Ex 1

**DECLARATION
OF
SEN.
CATHLEEN GALGIANI**

1 5. By request, the then Acting California Governor Abel Maldonado
2 approved funding for several reward funds as requested to generate investigative
3 leads regarding potential other victims of the Speed Freak Killers.

4 6. On or about April 1, 2011, I read an article in the Stockton Record, a
5 local newspaper, regarding a letter written and sent by convicted Speed Freak
6 Killer Wesley Shermantine to Joan Shelley, mother of murder victim JoAnn
7 Hobson, regarding Mr. Shermantine's convicted co-defendant Loren Herzog's
8 involvement in JoAnn Hobson's murder. After reviewing the newspaper article, I
9 contacted Joan Shelley and informed her of the approved \$50,000.00 reward for
10 her daughter, and I began the process to have JoAnn Hobson added to the
11 California Attorney General's Missing Persons database.

12 7. In 2014, to address inconsistencies and outdated language across
13 various sections of California statutes, I sponsored California Senate Bill No. 1066.
14 Senate Bill 1066, which amended various sections of the Education Code, Family
15 Code, Government Code, and repealed certain sections of the Penal Code, relating
16 to missing persons. SB 1066 was enacted as California State law on
17 September 18, 2014, after unanimously passing on the Senate and Assembly
18 floors.

19 8. In 2014, I became aware that on or about September 10, 2010, days
20 after I informed Sheriff Moore of Speed Freak Killer, Wesley Shermantine's
21 admission, and his written directions for the location of other missing persons, that
22 someone at the San Joaquin County Sheriff's Office cancelled from the State and
23 Federal Criminal database the information for missing victims of JoAnn Hobson,
24 and an undetermined number of additional victims without lawful or proper
25 justification. In effect, these victims were removed from the State and Federal
26 missing persons systems making their identification impossible.

27 ///

28 ///

1 9. In following-up on missing persons and in pursuit of information and
2 documentation related to missing persons and details surrounding the removal,
3 deletion and un-listing of individuals from the San Joaquin County Sheriff's
4 Office, including Speed Freak Killers' victim, JoAnn Hobson, on November 5,
5 2014 I forwarded a Public Records Request pursuant to Government Code section
6 6250, et seq. to the California Department of Justice, Office of the Attorney
7 General Kamala Harris ("Public Records Request"). A true and correct copy of the
8 Public Records Request is attached hereto as Exhibit "2."

9 10. In response to my Public Records Request, I received responding
10 correspondence from the Department of Justice ("DOJ"), Office of the Attorney
11 General Kamala D. Harris dated November 14, 2014. The November 14, 2014
12 DOJ response largely stated objections to the request, and attached emails dated
13 March 14, 2012 between Kaycee Leonard, an employee of the DOJ and Detective
14 Chanda Bassett of the San Joaquin County Sheriff's Office regarding requests that
15 several cold cases and older cases be cancelled from the missing persons database
16 based on actions of the office of the San Joaquin County Sheriff's Department. A
17 true and correct copy of the November 14, 2014 correspondence from the DOJ
18 Office of the Attorney General Kamala D. Harris and the emails attached to that
19 correspondence dated March 14, 2012 is attached hereto as Exhibit "3."

20 11. I am concerned with the process and procedures relating the deletion
21 of missing persons name from the NCIC Missing Person File and the public safety,
22 health and safety of the citizens of California.

23 ///

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EXHIBIT 2

STATE CAPITOL
ROOM 4082
SACRAMENTO, CA 95814
TEL (916) 651-4005
FAX (916) 323-2277

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FAX (209) 948-7993

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SUITE 5800
MODESTO, CA 95354
TEL (209) 576-6273
FAX (209) 576-6277

California State Senate

SENATOR
CATHLEEN GALGIANI
FIFTH SENATE DISTRICT



STANDING COMMITTEES

AGRICULTURE
CHAIR

BUSINESS, PROFESSIONS &
ECONOMIC DEVELOPMENT

GOVERNMENTAL
ORGANIZATION

TRANSPORTATION &
HOUSING

November 5, 2014

State of California Department of Justice
Office of the Attorney General Kamala Harris
Public Records Coordinator
PO Box 944255-2550
Sacramento, CA 95814

Re: Public Records Request – Government Code 6250 et seq.

To Whom It May Concern:

In accordance with California Government Code 6250 et seq. I am requesting the following information from the California Department of Justice:

- 1) Any and all documents concerning requests by San Joaquin County and/or the San Joaquin Sheriff's Office for Cancellation of Missing Persons Records in or around 9/10/2010, to the present.
- 2) Violent Crime Information Center submitted documents, whether digital or written, correspondence, e-mails, notes, and reports, between any unit to include, but not be limited to, the Violent Crime Information Center, The Missing and Unidentified Persons Unit, the California Department of Justice Bureau of Forensic Services and San Joaquin County Sheriff Steve Moore, including any person working at the San Joaquin County Sheriff's Department from September 1, 2010 to the Present regarding any case closing, deletion, removal, unlisting, or any change to remove information, (including February, 2012), concerning any missing persons to include but not be limited to the following Individual missing persons from San Joaquin County from the year 1980 to 1999:

Cyndi Vanderheiden
 Tracy Dianne Melton
 Jo Ann Hobson
 Kimberly Ann Billy
 Phillip Lloyd Cabot Martin
 Gina Garcia
 Jose Guadalupe Cortes/Cortez
 Silvia Dittus
 Jose Luis Felix Fragosa



State of California Department of Justice
Office of the Attorney General Kamala Harris
Public Records Coordinator
Page 2

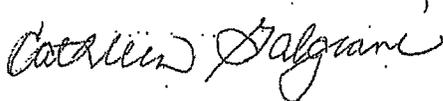
Pastor Martinez
Benjamin Lopez Jr.
Steven Mark Dadasovich
Jose Esauro Dominguez
James Kenneth Patterson
Edward Louis Winans

It is noted this request is not for any investigative information considered exempt. Instead it requests any and all information regarding the closing or removal of missing persons' cases from the Violent Crime Information System, and consequently Federal systems that are not in accordance with California Department of Justice and/or Federal Guidelines. This is a matter of public interest that outweighs a public entity's interest in confidentiality.

My office has been conducting searches for information regarding missing persons from San Joaquin County since 2010 which cannot be located. My office has had previous contact with California Department of Justice personnel regarding this dilemma. Most victims, and their families are constituents of my office and many have expressed concern. One of my constituents is currently a plaintiff in a Federal Civil matter relating to these cases. Evidence of practices outside the California or Federal guidelines for listings of missing persons cannot be considered as investigative information exempt from dissemination.

This request is intended to be considered as an expedient request from the office of a State Senator, and provided with due diligence and consideration.

Sincerely,



Cathleen Galgiani
Senator, District 5

Cg:cg

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2014 NOV -6 AM 10:49

DEPARTMENT OF JUSTICE
SACRAMENTO OFFICE

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10:49
OFFICE

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD ON DOTTED LINE

EXHIBIT 3

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



4949 BROADWAY, D214
SACRAMENTO, CA.95820
Telephone: (916) 227-1174
E-Mail Address: Linda.Schweig@doj.ca.gov

November 14, 2014

Senator Cathleen Galgiani
California State Capitol
Room 4082
Sacramento, CA 95814

Re: PRA Request Dated November 5, 2014

Dear Senator Galgiani:

This letter responds to your correspondence dated November 5, 2014, received by the Attorney General's Office on November 6, 2014, in which you sought records pursuant to the Public Records Act as set forth in Government Code section 6250 et seq.

Specifically, you requested:

- "1) Any and all documents concerning requests by San Joaquin County and/or the San Joaquin Sheriff's Office for Cancellation of Missing Persons Records in or around 9/10/2010, to the present.
- 2) Violent Crime Information Center submitted documents, whether digital or written, correspondence, e-mails, notes, and reports, between any unit to include, but not be limited to, the Violent Crime Information Center, The Missing and Unidentified Persons Unit, the California Department of Justice Bureau of Forensic Services and San Joaquin County Sheriff Steve Moore, including any person working at the San Joaquin County Sheriff's Department from September 1, 2010 to the Present regarding any case closing, deletion, removal, unlisting, or any change to remove information, (including February, 2012), concerning any missing persons to include but not be limited to the following individual missing persons from San Joaquin County from the year 1980 to 1999:

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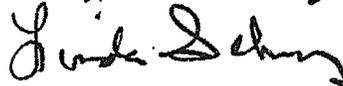
Cathleen Galgiani
November 14, 2014
Page 2

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Pastor Martinez
Benjamin Lopez Jr.
Steven Mark Dadasovich
Jose Esauro Dominguez
James Kenneth Patterson
Edward Louis Winans"

The Violent Crime Information Center within the Department of Justice (DOJ) maintains an automated computer system with active file information about missing persons, including information about children and adults. The system was established to assist law enforcement agencies in responding to reports of missing persons. (Pen. Code, § 14200.) The information is not generally available to the public and therefore is exempt from disclosure pursuant to the PRA. (Pen. Code, § 14200 *et seq.*; Gov. Code, § 6254, subd. (k), incorporating confidentiality provisions found elsewhere in law.) Furthermore, because the data in this system is collected for investigatory purposes, it is also exempt from disclosure under, subdivision (f) of section 6254, which expressly exempts investigatory and security files of the Attorney General. (See, *Dick Williams v. Superior Court* (1993) 5 Cal.4th 337, 354.) Investigative records do not lose their exempt status due to a failure to prosecute, or the close of an investigation. (*Id.* at p. 355). The Legislation has, however, designated some limited information that may be provided to non-law enforcement entities. (See Pen. Code, § 14201 [quarterly bulletins to public schools], § 14201.5 [posters to cooperating news media] and § 14201.6 [internet directory].) As provided for by law, the Attorney General has discretion to determine the extent of information and the priority of cases to be included in the internet directory which is accessible to the public at: <http://oag.ca.gov/missing>. (Pen. Code, § 14201.6.) If available, the following types of information are generally provided: name (first, middle, last), nickname, gender, hair color, eye color, height, weight, date of birth, race, date last seen, agency, and report type (i.e., parental abduction, runaway, etc.)

Enclosed are documents responsive to your request.

Sincerely,



LINDA SCHWEIG
Department of Justice Administrator II

For KAMALA D. HARRIS
Attorney General

Kaycee Leonard - RE: MP Joann Hobson

From: "Bassett, Chanda" <CBassett@sjgov.org>
To: Kaycee Leonard <Kaycee.Leonard@doj.ca.gov>
Date: 3/14/2012 3:28 PM
Subject: RE: MP Joann Hobson

Kaycee,

Unfortunately, I did not receive a message from Erin; however, I am very familiar with several of our cases that were re-entered under DOJ's ORI and not-ours. We didn't request to have the entry cancelled; there were other people working up here at the time that thought differently about our long term missing persons than I do (but that explanation is for another day).

Yes, please list under our ORI. I have a hole list of MP cases that were re-entered under your ORI and we can have them all changed back to this ORI once I get my hands on the list (buried on my desk at the moment).

If you are going to re-enter Joann's information there are some corrections that I would like changed as well that is possible. Let me know and I can forward those to you as well.

Thanks and sorry for the confusion,

Chanda

From: Kaycee Leonard [mailto:Kaycee.Leonard@doj.ca.gov]
Sent: Wednesday, March 14, 2012 2:53 PM
To: Bassett, Chanda
Cc: Erin Brooks
Subject: MP Joann Hobson

Hi Chanda,

I believe my manager Erin Brooks left you a message the other day regarding Joann Hobson's MP record. Just wanted to give you the head's up and get on the same page to prevent any confusion or possible complications. A few days ago we were contacted by Assembly Member Galgiani's Legislative Coordinator Melissa Whitaker. Whitaker was asking why Joann Hobson's record comes up in Sacramento County when searching by county on the AG's missing persons public searchable website <http://oag.ca.gov/missing> since she is missing from Stockton. If you simply search for a list of missing persons in Sac County Joann's name will be listed there, however the website states she was last seen in Stockton which is accurate. The reason for this is because on 9-10-2010 your agency requested several cold/older cases canceled. This is not something that should normally be practiced and DOJ advises against it. All MP records should be kept active until a full body is recovered. Even if it is a partial remains case the record should remain active until the entire body is recovered. The miscellaneous field can be modified to indicate a partial remains case or a homicide case without body recovery for validation/audit purposes. Because your agency insisted on the cancellations, we (DOJ) re-entered the cases under our ORI so that they would remain active in case of recovery. The website is changed to reflect that the case is under our ORI. Once the website is modified and because DOJ is located in

Sacramento, the website automatically changes to Sacramento when searched by county only.

If you would like the case entered under your ORI please let me know. We can handle the re-entry for you and we will cancel it from our ORI. There are also dentals so it is best that we do the entry. I believe this is the best way to handle it. Vanderhelden's case was among those that were canceled and re-entered upon your agency's request. I'm sure there are several more, but those two immediately come to mind. Due to the high profile nature of these cases I believe this is the best way to handle it. Please let me know as soon as possible. I also think it is important to spread the word about the importance of not canceling records because they are too old, are a partial recovery, or it is a homicide/legally deceased case with no body recovery.

Thanks,
Kaycee

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

From: "Bassett, Chanda" <CBassett@sjgov.org>
To: Kaycee Leonard <Kaycee.Leonard@doj.ca.gov>
Date: 3/16/2012 8:12 AM
Subject: RE: MP Joann Hobson-is now under San Joaquin's ORI

Kaycee,

Thanks so much! I am sorry I haven't had a chance to send the information re: the corrections.

Other entries that may also be high profile regarding this Shermanline case that have been switched to DOJ's ORI are:

Kimberly Billy, DOB: 09/24/65, FCN: 4709314830395

Phillip Martin, DOB: 01/28/46, FCN: 4700303700194

Tracy Melton, DOB: 04/11/66, FCN: 4709815700130

Please switch these back to our ORI to avoid any additional inquiries from the public. etc.

Thanks again for the assistance!

-Chanda

**DECLARATION
OF
ALLAN FOX**

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DECLARATION OF ALLAN DUANE FOX

I, Allan Duane Fox, hereby declare as follows:

1. I am over eighteen years of age. The matters set forth herein are within my own personal knowledge, and if called upon as a witness, I could and would competently testify thereto.

2. I am currently employed by the Reno Police Department in Reno, Nevada as a Police Detective since I was hired in 1988.

3. I am currently assigned to Intelligence and my current duties and assignments as a Detective for the Reno Police Department, include the handling of investigation regarding Homeland Security Threats and Cold Case files, including homicides. I have been involved as a law enforcement officer in more than 100 cases involving interstate missing persons, and have worked with a number of law enforcement agencies in other States.

4. As part of my duties as a Reno Police Detective, I am readily familiar with the policies and procedures involved in interfacing with the National Crime Information Center missing person file (NCIC). The NCIC is a computerized index of missing persons for access to state and federal law enforcement and other justice agencies. The information contained in the NCIC system is critical to local and federal agencies in assisting investigations in locating fugitives and in attempting to locate missing persons. The information contained in the NCIC system is protected administrative and encrypted data to safeguard such valuable information. The way that the NCIC missing persons database is maintained is a significant public interest.

5. The NCIC system and rules for data entry and modification dictate that missing persons remain on the missing persons list unless and until a full body is recovered, the missing person is located or the case is otherwise solved.

6. I am aware of the protocol that in order to remove missing persons from the NCIC list, there is a required process that affords oversight by law enforcement officers to ensure that the rules are properly followed and that a missing person is not to removed

1 from the list absent an allowed reason. Specifically, in order for personnel to remove or
2 modify an entry in the NCIC missing persons list, a law enforcement officer must instruct
3 the person responsible for modifying the database at the reporting agency (the "ORI") to
4 remove or modify entry. Failure to follow the rules and guidelines could result in de-
5 certification of a particular ORI.

6 7. In March 2012, while I was investigating the missing person case of Terri
7 Ann Fourcher, who was last seen in my jurisdiction in Reno, Nevada on August 10, 1996,
8 I discovered that Ms. Fourcher might be a victim of the Speed Freak Killers. I discovered
9 that the investigating law enforcement agency for the Speed Freak Killers case was the
10 San Joaquin County Sheriff's Department, headed by Sheriff Steve Moore. I learned that
11 the detective in charge of the investigation was Chanda Bassett.

12 8. I interviewed a former cellmate of Loren Herzog, one of the convicted Speed
13 Freak Killers, twice. The informant told me that Mr. Herzog confessed to him that he
14 murdered victims in Reno, Nevada, and that Mr. Herzog confessed to stabbing Ms.
15 Fourcher to death. The informant provided me with specific, credible information that led
16 me to believe that Mr. Herzog may have murdered Ms. Fourcher.

17 9. In the Spring of 2012, I contacted Detective Bassett of the San Joaquin
18 Sheriff Department to discuss the Speed Freak Killers case, and what I had learned from
19 Mr. Herzog's former cellmate. Ms. Bassett was immediately dismissive, and she met me
20 with passive denial concerning the information I had gathered, and was gathering.
21 Despite my having uncovered what appeared to be valuable, relevant evidence related to
22 the Speed Freak Killers case, Detective Bassett was not forthcoming regarding
23 information about the case. I suspected, and continue to suspect that information leading
24 to the resolution of Ms. Fourcher's missing persons case might rest with the information
25 contained in the case file in San Joaquin County.

26 10. As I had received conflicting information from witnesses and San Joaquin
27 County Detective Bassett, I continued my investigation into the Fourcher case and
28 sought to obtain evidence and information in San Joaquin County. In one instance, I

1 followed-up on a lead provided by Wesley Shermantine, the other convicted Speed Freak
2 Killer, and enlisted the services of a “cadaver dog,” a canine that is trained to locate a
3 buried or hidden human body. Based on Mr. Shermantine’s information, the cadaver dog
4 appeared to have discovered what may have been human remains in the location
5 described by Mr. Shermantine. The fact that the San Joaquin Sheriff’s Office did not
6 know about this site disturbed me and left my impression of their investigative skills
7 waning. I found the site after talking with only two witnesses. The fact that a burn pit was
8 found there corroborated the witnesses’ credibility. The San Joaquin Sheriff’s Office
9 excavated the pit two days after I found it.

10 11. Thereafter, Sheriff Moore phoned Steve Pitts, the Chief of Police in Reno,
11 Nevada to complain about the investigation. When Chief Pitts refused to return Sheriff
12 Moore’s call, Sheriff Moore repeatedly called Michele Anderson at Reno City Hall to
13 complain to Chief Pitts. In response, Chief Pitts instructed me to continue my
14 investigation as I saw fit to do.

15 12. While I attempted to further my investigation, I met with Sheriff Moore in
16 June 2012 at the San Joaquin Sheriff’s Office. During my meeting with Sheriff Moore
17 and other attendees, Sheriff Moore expressed anger that I was investigating the Speed
18 Freak Killer case in connection to the Fourcher case, that I was pursuing leads in San
19 Joaquin County. The meeting ended with rigid cordiality, and I left with no confidence in
20 the San Joaquin County Sheriff’s Office.

21
22 I declare under penalty of perjury under the laws of the United States that the
23 foregoing is true and correct. This declaration was signed on March 5, 2015 in Reno,
24 Nevada.



25
26 Allan Duane Fox

**DECLARATION
OF
KEVIN ATKINS**

1 7. I was investigating the disappearance of Michaela Garecht, a nine (9)
2 year old girl who was abducted outside of a grocery store in Hayward California
3 on November 19, 1988. Wesley Shermantine, one of the so-called Speed Freak
4 Killers wrote a letter to *The Stockton Record* after his partner in crime, Loren
5 Herzog, committed suicide in January 2012, in which he stated that Herzog was
6 responsible for Michaela's abduction. Moreover, Shermantine said a composite
7 sketch based on a description from the child who was with Michaela in the parking
8 lot when she was abducted, "looked like Herzog."

9 8. My first contact with the San Joaquin County Sheriff's Office was a
10 phone conversation with Deputy Sheriff Chanda Bassett, the lead detective in the
11 Speed Freak Killers case, in January 2012. Det. Bassett expressed no interest with
12 my investigation, nor offered any assistance whatsoever.

13 9. Det. Bassett stonewalled my efforts and would not provide me with
14 any information regarding evidence found in the dig of the well in Linden where
15 other remains of bodies were found associated with the Speed Freak Killers. In a
16 subsequent phone conversation, she stated to me in a whisper that "[she] can't do
17 anything without "say-so."

18 10. In my investigation in the Garecht case, I learned that a number of
19 pairs of shoes were removed as evidence from the excavation at the well in Linden,
20 California in San Joaquin County. In trying to solve my missing persons case, I
21 asked if the San Joaquin County Sheriff's Office recovered shoes that I described
22 to Det. Bassett as belonging to Michaela Garecht. Ms. Bassett informed me that
23 she had evidence of something similar, but she refused to give me access to the
24 shoes, nor would she provide me with copies or photographs of recovered shoes.

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1 11. My two (2) visits to the San Joaquin Sheriff's Office were not helpful,
2 and I did not receive any cooperation from Det. Bassett or anyone else at the
3 department. It became apparent that further attempts at seeking cooperation in my
4 missing persons investigation from San Joaquin County Sheriff's personnel would
5 be a waste of time. Further, Det. Bassett could not tell how many body parts were
6 located.

7 I declare under penalty of perjury under the laws of the United States that
8 the foregoing is true and correct. This declaration was signed on March 4, 2015 in
9 Brentwood, California.

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11  _____

12 Kevin Atkins
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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 302 West Colorado Blvd., Pasadena, California 91105.

On March 9 2015, I served the foregoing document described as, PLAINTIFF'S NOTICE OF MOTION AND MOTION TO VACATE THE STIPULATED PROTECTIVE ORDER on the parties in this action by serving:

Mark Emmett Berry
Mayall Hurley Knutsen Smith and Green
2453 Grand Canal Boulevard
2nd Floor
Stockton, CA 95207-8253

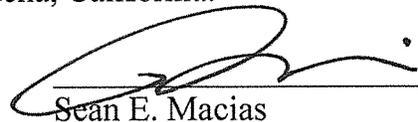
(X) By Envelope - by placing () the original (X) a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

(X) By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

()By Personal Service: I caused such envelope to be delivered by hand to the offices of the addressee(s).

(X) FEDERAL I declare under penalty of perjury under the laws of the United States that the above is true and correct. I further declare that I am employed in the office of a member of the California Bar who is admitted to this Court at whose direction this service was made.

Executed on March 9, 2015 at Pasadena, California.


Sean E. Macias