

S213066
4th Dist. No. E054516

SUPREME COURT
FILED

FEB 14 2014

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA** Frank A. McGuire Clerk

Deputy

**B. H. A MINOR, BY AND THROUGH HIS GUARDIAN AD LITEM,
LAURI HANSON,**

Plaintiff, Petitioner,

vs.

**COUNTY OF SAN BERNARDINO, CITY OF YUCAIPA, K.
SWANSON, JEFF BOHNER, LOUIS KELLY SHARPLES II,**

Defendants, Respondents.

Appeal from the Superior Court For the County of San Bernardino
Case No.: CIVDS 913403
Hon. Donald R. Alvarez, Judge

MOTION FOR JUDICIAL NOTICE

LYNBERG & WATKINS, APC
NORMAN J. WATKINS (State Bar No. 87327)
SHANNON L. GUSTAFSON (State Bar No. 228856)
PANCY LIN MISA (State Bar No. 239684)
1100 Town & Country Road, Suite 1450
Orange, California 92868
(714) 937-1010 • FAX: (714) 937-1003
Attorneys for Defendants, Respondents,
**COUNTY OF SAN BERNARDINO; SERGEANT JEFFREY
BOHNER, DEPUTY KIMBERLY SWANSON, and
CITY OF YUCAIPA**

Pursuant to rule 8.252(a) of the California Rules of Court, *Cal. Evid. Code* § 452, and *Cal. Evid. Code* § 459, Defendants move for judicial notice of the following:

1. Portions of the legislative history of the enactment of the Child Abuse and Neglect Reporting Act (“CANRA”), Senate Bill 781, Chapter 1071, Statutes of 1980 (1977-1978 Reg. Sess.), a true and correct copy of which is attached hereto as Exhibit “1”

2. Plaintiff’s government tort claim against San Bernardino County dated March 9, 2009, a true and correct copy of which is attached hereto as Exhibit “2”

Defendants request judicial notice of the legislative history materials pursuant to *Cal. Evid. Code* §§ 452(a), (b), and (c), permitting courts to take judicial notice of the “law[s] of any state of the United States,” “legislative enactments,” and “official acts of the legislative...department[]...of any state....” These materials are relevant to the legislative intent of the *Penal Code* provisions at issue in this case.

Defendants also request judicial notice of Plaintiff’s government tort claim against San Bernardino County dated March 9, 2009, pursuant to *Cal. Evid. Code* § 452(c), permitting courts to take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of ... any state of the United States.” These materials are relevant to Defendants’ argument in their Answer Brief on the Merits regarding whether Plaintiff’s claim is properly before this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

This motion seeks judicial notice of portions of the legislative history of the enactment of the Child Abuse and Neglect Reporting Act (“CANRA”), Senate Bill 781, Chapter 1071, Statutes of 1980 (1977-1978 Reg. Sess.). Specifically, in their Answer Brief on the Merits, Defendants cite to testimony by Deputy Attorney General Michael Gates from a Public Hearing on Child Abuse Reporting which occurred at the time of the enactment of CANRA.

Judicial notice is the appropriate procedure for bringing the portions of the legislative history cited by Defendants before this Court. *See Cal. Evid. Code* §§ 452 (a), (b), and (c). Courts have taken judicial notice of reports and transcripts of hearing of legislative committees which preceded the enactment of a statute. *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376; *Hoescht Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519, fn.5. These materials are relevant to the legislative intent of the *Penal Code* provisions at issue in this case, and Defendants’ arguments in support of their proffered construction of those *Penal Code* provisions. Different portions of these same materials were also cited to and relied upon by Plaintiff in his Opening Brief on the Merits.

This motion also seeks judicial notice of Plaintiff’s government tort claim against San Bernardino County dated March 9, 2009. Judicial notice is also the appropriate procedure for bringing this material before the Court. *See Cal. Evid. Code* § 452(c); *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513 (records, reports, and orders of administrative agencies are “official acts” of which a court may take judicial notice); *Fall River, etc. v. Superior Court*, 206 Cal.App.3d

431, 434 (1988); *Crow v. State* (1990) 222 Cal.App.3d 192, 199-200 (where the court took judicial notice of tort claims and their contents); *Fowler v. Howell* (1996) 42 Cal. App. 4th 1746, 1752-1753 (where the court took judicial notice of the records of a governmental agency to determine whether a tort claim was filed). Plaintiff's government tort claim form is relevant to Defendants' argument in their Answer Brief on the Merits regarding whether Plaintiff's claim is properly before this Court.

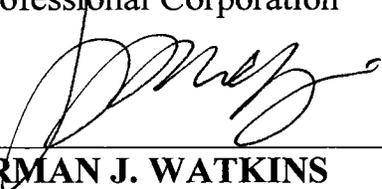
These materials were not previously presented to the trial court by Defendants for judicial notice. However, they are judicially noticeable for the reasons stated above. These materials do not relate specifically to proceedings occurring after the judgment that is the subject of the appeal. However, they are relevant to the issues before this Court.

Based on the foregoing legal authority, and for the foregoing reasons, Defendants respectfully request this Court grant this motion for judicial notice.

DATED: February 13, 2014

Respectfully submitted,
LYNBERG & WATKINS
A Professional Corporation

By:



NORMAN J. WATKINS
SHANNON L. GUSTAFSON
PANCY LIN MISA
Attorneys for Defendants/Respondents
COUNTY OF SAN BERNARDINO;
SERGEANT JEFFREY BOHNER, DEPUTY
KIMBERLY SWANSON, and CITY OF
YUCAIPA

DECLARATION OF PANCY LIN MISA

I, Pancy Lin Misa, declare as follows:

1. I am an attorney at law duly licensed to practice before this court and am an associate in the Law Firm of Lynberg & Watkins, a Professional Corporation, attorneys of record Defendants/Respondents COUNTY OF SAN BERNARDINO; SERGEANT JEFFREY BOHNER, DEPUTY KIMBERLY SWANSON, and CITY OF YUCAIPA. I have personal knowledge of the following facts and, if called as a witness, I could and would testify competently thereto.

2. Attached hereto as Exhibit "1" is a true and correct copy of the relevant portions of the legislative history of the enactment of the Child Abuse and Neglect Reporting Act ("CANRA"), Senate Bill 781, Chapter 1071, Statutes of 1980 (1977-1978 Reg. Sess.), obtained by the Legislative Intent Service.

3. Attached hereto as Exhibit "2" is a true and correct copy of Plaintiff's government tort claim against San Bernardino County dated March 9, 2009.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of February 2014, at Orange, California.

By: 

PANCY LIN MISA
Declarant

ORDER

IT IS SO ORDERED.

CHIEF JUSTICE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action; my business is 1100 Town & Country Road, Suite 1450, Orange, California 92868, (714) 937-1010.

On February 13, 2014, I served the foregoing document described as **MOTION FOR JUDICIAL NOTICE** on the interested parties by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Christopher J. Keane, Esq. THE KEANE LAW FIRM, P.C. 548 Market Street, Suite 23851 San Francisco, CA 94104 (Attorneys for Plaintiff Brayden Hanson, a minor, by and through his Guardian ad Litem, Lauri Hanson)	Stuart B. Esner, Esq. Andrew N. Chang, Esq. ESNER, CHANG & BOYER 234 East Colorado Boulevard Suite 750 Pasadena, California 91101 (Attorneys for Plaintiff Brayden Hanson, a minor, by and through his Guardian ad Litem, Lauri Hanson)
Hon. Donald R. Alvarez San Bernardino County Superior Court 303 West Third Street Dept S32 San Bernardino, CA 92415 (Trial Judge)	Clerk's Office California Supreme Court 350 McAllister Street San Francisco, CA 94102-3600 (8 paper copies)
Clerk's Office California Court of Appeal Fourth Appellate District, Division Two 3389 Twelfth Street Riverside, CA 92501	

///
///

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 13, 2014, at Orange, California.

A handwritten signature in black ink that reads "Christine Harris". The signature is written in a cursive style with a large initial "C".

CHRISTINE HARRIS

EXHIBIT “1”



LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 781 of 1980. Senate Bill 781 was approved by the Legislature and was enacted as Chapter 1071 of the Statutes of 1980.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 781 of 1980. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - SENATE BILL 781 OF 1980:

1. All versions of Senate Bill 781 (Rains-1980);
2. Procedural history of Senate Bill 781 from the 1979-80 *Senate Final History*;
3. Analysis of Senate Bill 781 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 781 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
5. Third Reading analysis of Senate Bill 781 prepared by the Senate Republican Caucus;

6. Third Reading analysis of Senate Bill 781 prepared by the Senate Democratic Caucus;
7. Three analyses of Senate Bill 781 prepared for the Assembly Committee on Criminal Justice;
8. Analysis of Senate Bill 781 prepared for the Assembly Committee on Ways and Means;
9. Material from the legislative bill file of the Assembly Committee on Ways and Means on Senate Bill 781;
10. Legislative Counsel's Rule 26.5 analysis of Senate Bill 781;
11. Conference Committee Report No. 015310 on Senate Bill 781 prepared by the Assembly Office of Research;
12. Post-enrollment documents regarding Senate Bill 781;
13. Material from the file of the Legislative Representative of the State Bar of California on Senate Bill 781 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 14. Material from the legislative bill file of the Department of Finance on Senate Bill 781;
15. Excerpt regarding Senate Bill 781 from the 1980 *Summary Digest of Statutes Enacted and Resolutions Adopted* prepared by Legislative Counsel;
16. *Child Abuse Reporting*, a hearing held by the Assembly Committee on Criminal Justice, November 21, 1978;
17. *Opinions of the Attorney General*, as follows:
 - a. Volume 57, 1974;
 - b. Volume 58, 1975.

EXHIBIT B - ASSEMBLY BILL 3431 OF 1978 (PREDECESSOR BILL):

1. All versions of Assembly Bill 3431 (Ellis-1978);
2. Procedural history of Assembly Bill 3431 from the 1977-78 *Assembly Final History*;
3. Two analyses of Assembly Bill 3431 prepared for the Assembly Committee on Criminal Justice;
4. Third Reading analysis of Assembly Bill 3431 prepared by the Assembly Office of Research;
5. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 3431;
6. Two analyses of Assembly Bill 3431 prepared for the Senate Committee on Judiciary;
7. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 3431 as follows:
 - a. Previously Obtained Material,
 - + b. Updated Collection of Material;

8. Material from the legislative bill file of Assembly member Ellis on Senate Bill 3431.
9. Material from the subject file of the Assembly Committee on Criminal Justice on Assembly Bill 3431.

EXHIBIT C - SENATE BILL 1614 OF 1978 (PREDECESSOR BILL):

1. All versions of Senate Bill 1614 (Rains-1978);
2. Procedural history of Senate Bill 1614 from the 1977-78 *Senate Final History*;
3. Analysis of Senate Bill 1614 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1614;
5. Analysis of Senate Bill 1614 prepared by the Legislative Analyst;
6. Material from the legislative bill file of the Senate Committee on Finance on Senate Bill 1614 as follows:
 - a. Previously Obtained Material,
 - + b. Updated Collection of Material;
7. Third Reading analysis of Senate Bill 1614 prepared by the Senate Democratic Caucus;
8. Third Reading analysis of Senate Bill 1614 prepared by the Senate Republican Caucus;
9. Two analyses of Senate Bill 1614 prepared for the Assembly Committee on Criminal Justice;
10. Material from the legislative bill file of the Assembly Committee on Criminal Justice;
11. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1614 as follows:
 - a. Previously Obtained Material,
 - + b. Updated Collection of Material.
12. Material from the legislative bill file of the Department of Finance on Senate Bill 1614.

EXHIBIT D - COMPETITOR BILLS:

1. All versions of Assembly Bill 176 (Ellis-1979);
2. Procedural history of Assembly Bill 176 from the 1979-80 *Assembly Final History*;
3. All versions of Assembly Bill 781 (Egeland-1980);
4. Procedural history of Assembly Bill 781 from the 1979-80 *Assembly Final History*;

5. All versions of Assembly Bill 1773 (Hart-1980);
6. Procedural history of Assembly Bill 1773 from the 1979-80 *Assembly Final History*.

+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of December, 2013 at Woodland, California.



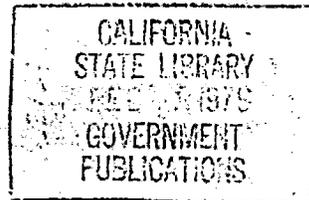
JENNY S. LILLGE

L500
C748
1978
no. 2
c. 2

CHILD ABUSE REPORTING

HEARING
ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

Los Angeles
November 21, 1978



(800) 666-1917

LEGISLATIVE INTENT SERVICE



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 COMMITTEE SECRETARY

California Legislature

Assembly Committee ON Criminal Justice

KENNETH L. MADDY
 CHAIRMAN

HEARING

CHILD ABUSE REPORTING

Los Angeles, California
 November 21, 1978

PARTICIPANTS IN ORDER OF APPEARANCE	Page
Assemblyman Kenneth L. Maddy, Chairman Assembly Committee on Criminal Justice	1
Michael Gates, Deputy Attorney General, Department of Justice	2
June Sherwood, Director, Crime Prevention Unit, Department of Justice	27
John Woods, Bureau of Identification, Department of Justice	35
Assemblyman Michael Roos	43
Cheryl Macon, Chief, Child Abuse Office Department of Social Services	46
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Patrick Earl, Editor, "Uncommon Sense"	56
Jean Matusinka, Interagency Child Abuse and Neglect Council	58
Keith Walley, California Hospital Association	59
James Apthorp, M.D., American Academy of Pediatrics	61
Martin Weeks, Juvenile Section Division Chief, Los Angeles County Counsel	63

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ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE

Interim Hearing

CHILD ABUSE REPORTING

November 21, 1978
Los Angeles, California

CHAIRMAN KENNETH MADDY: The Assembly Committee on Criminal Justice will begin. Other Members of the Committee will join us as the hearing progresses.

We are here today on the subject of Child Abuse Reporting which was Senate Bill 1614 by Senator Rains. We had other measures that were before us last year on the same subject. Senate Bill 1614 was a measure that reformed California's child abuse reporting laws and codified a Supreme Court decision which held a physician may be held civilly liable for foreseeable damage to a child as a result of his negligent failure to report a suspected case of child abuse. This bill did go through the Senate and came to our Committee. There were several issues raised at the time of our hearing, and the result was the determination that we should have an interim study, and Senator Rains, of course, has intentions of introducing his bill again.

Some of the issues that we will be concerned with today are what types of conduct should be reported? Who should be responsible for such reporting? What agency, law enforcement versus social welfare, should maintain such reports? What kind of access should a person have to reports on their own conduct? And, what provision should be made for purging stale and inaccurate reports?

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LEGISLATIVE INTENT SERVICE



We have information up here for those who desire it. We also have a list of witnesses, and we will try to follow the agenda before us.

Mr. Michael Gates, Deputy Attorney General, Department of Justice. Do you have the rest of your Department with you?

MICHAEL GATES, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE:

Right.

CHAIRMAN MADDY: June Sherwood, Director, Crime Prevention Unit, Department of Justice; John Woods, Bureau of Identification, Department of Justice.

MR. GATES: Thank you, Mr. Chairman. I would just like to give a brief history of how the Department of Justice became involved in attempting to redraft, restructure the Child Abuse Reporting Law in the State of California. As you are aware, this law of child abuse reporting was enacted about 1965 and since that time by process of accretion over the years, almost every year, we have had an amendment to that reporting law and it has been expanded to include other categories of persons that are designated to report.

About three or four years ago I was designated to chair a committee to develop a child abuse reporting form and prescribe it to be used statewide by medical personnel. In this committee it was an appointed task force by the Attorney General consisting of every segment of governmental agencies and private agencies that are involved in child abuse and the reporting thereof. We had doctors, psychiatrists, probation officers, social workers and



it out of our regular criminal history identification records where you pull out 288s and 286s.

CHAIRMAN MADDY: All right, so out of the 70,000, 800 were sent to police, and 7,500 were sent to your office. Is that correct? Is that what you are saying?

MR. GATES: Right.

CHAIRMAN MADDY: All right. And what you want to see happen is that all 70,000 are sent to police, and all 70,000 are reported to you?

MR. GATES: Right. In other words, there may be even more than that.

CHAIRMAN MADDY: Does this bill require that the police investigate all 70,000?

MR. GATES: Well, it doesn't even require that now. It provides, however.....

CHAIRMAN MADDY: Tell me what you want.

MR. GATES: I want alternative reporting in the sense that either agency, if the police gets the report first, we provide that they immediately advise D.P.S.S., and vice versa. If D.P.S.S. gets it, they immediately advise the police.

CHAIRMAN MADDY: What do you want them to do once they are advised? Do you want someone to report or someone to investigate it?

MR. GATES: Someone to investigate it.

CHAIRMAN MADDY: And then after those individuals investigate, you want a follow-up report sent to the Department of Justice to let you know about it, is that correct?



pected cases of child abuse and then you hold on to that and wait to determine whether or not those cases are founded or unfounded?

MR. WOODS: That's true.

MR. RUTLAND: So that is really not the case?

MR. GATES: Let me address that. We're talking about ascertaining whether or not that report is founded or unfounded. Obviously, if the report is generated from a doctor to a welfare agency to the police to the Department of Justice, there is going to be a period where while the follow-up investigation is going on, there is no way to determine whether it is founded or unfounded by us. We keep it in a separate pending file.

MR. RUTLAND: My understanding was that you didn't even receive anything until a determination was made.

MR. GATES: Okay, let me explain this. If in fact it is determined on the spot, if you get a report by a neighbor and the police respond or the welfare responds and they find out that the report was totally erroneous and that there was a satisfactory explanation for the noises they heard, or whatever, and there is no child abuse there, it is apparent then that you are not going to have it reported. That's what that says. In other words, if it could be determined immediately that it is unfounded, they won't report, but if they can't determine immediately and there is further investigation, then you report it and you get a status report follow-up and then purge the file accordingly.

MR. RUTLAND: So, the Department itself doesn't do any actual investigation?

MR. GATES: No.



EXHIBIT “2”



HANSON

March 19, 2009

County of San Bernardino
Board of Supervisors
Office of the Chairman
385 North Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0010

County of San Bernardino
Board of Supervisors
Office of the Clerk
385 North Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0010

County of San Bernardino
Risk Management Division
222 West Hospitality Lane, 3rd Floor
San Bernardino, CA 92415-0016

County of San Bernardino
Department of Sheriff-Coroner
Bureau of Administration
655 East Third Street
San Bernardino, CA 92415-0061

Deputy K. Swanson
County of San Bernardino
Department of Sheriff-Coroner
655 East Third Street
San Bernardino, CA 92415-0061

Deputy Jeff Bohner
County of San Bernardino
Department of Sheriff-Coroner
655 East Third Street
San Bernardino, CA 92415-0061

County of San Bernardino
Office of County Counsel – Attention Phebe W. Chu, Esq.
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0010

Page Two
Hanson Tort Claim Respondents
March 19, 2009

Re: Our client/claimant: Brayden Hanson
Subject: Government tort claim notice

Dear Sirs/Madams:

This firm represents Brayden Hanson, a minor.

Please find enclosed a government tort claim notice submitted pursuant to California Government Code § 910 *et seq.*, and on the form requested by the County of San Bernardino, along with certificate of service. The claim is signed and being submitted by the mother of Brayden Hanson, whose name is Lauri Hanson.

Feel free to contact the undersigned with any questions. Please direct all further communication concerning this claim to the undersigned.

Sincerely,

THE KEANE LAW FIRM

Christopher J. Keane

CJK/ms
Enclosure
SENT BY CERTIFIED MAIL & FEDERAL EXPRESS

1 4. (continued)

2 Sharples resided in an apartment in Yucaipa with his then-girlfriend, Cassidy Morgan, and their 16
3 month-old child, Louis Cainan Cody Sharples. At approximately noon on October 18, 2008, Sharples
4 was in the apartment alone with his children, Brayden Hanson and Louis Cainan Cody Sharples.
5 Sharples was the adult intended to care for both minor children until Morgan returned from her job at a
6 fast-food restaurant. At approximately 2:00 p.m., Morgan received a telephone call from Sharples at her
7 place of employment, the Wienerschnitzel Restaurant. Sharples told her to "Get home now!" Morgan
8 reportedly left her place of employment and, upon arriving at the apartment, she found Brayden
9 unconscious on the floor. Sharples, the father, had not yet called 911. In fact, Sharples had to obtain
10 Morgan's work number through 411 before he even attempted to reach her. Upon arriving at the
11 apartment, Morgan ran to Brayden and tried to wake him up, while yelling at Sharples to call 911.
12 Morgan stated that she saw Brayden lying on the floor in front of one of the couches and there was
13 vomit on the couch. Morgan met the paramedics out on the street, and while the paramedics
14 attended to Brayden, Sharples sat on the couch. Morgan called Lauri Hanson, and Lauri Hanson stated
15 to Morgan that she would meet them at the hospital.

16
17 Brayden was transported to Loma Linda University Medical Center. He was diagnosed at Loma Linda
18 Medical Center with including but perhaps not limited to the following injuries: right parietal scalp
19 contusion, left subdural hematoma, cerebral edema and subfalcine herniation, all of which resulted from
20 the traumatic brain injury inflicted on him by his father, Louis Sharples, Jr. on October 18, 2008. MRI
21 confirmed that he suffered severe neuronal loss and axonal injury, with left frontoparietal hypoxic
22 ischemic injury. Additionally, studies reportedly confirmed that Brayden had also demonstrated
23 bruising on his buttocks and inner thighs consistent with fingerprints, as well as bruising and swelling on
24 his nose. These injuries were inflicted on Brayden by Louis Sharples, Jr. and occurred when Louis
25 Sharples, Jr. was the adult in charge of the safety of Brayden.

26
27 This was not the first time that Brayden Hanson was injured by his father, Louis Sharples, Jr. For
28 example, Lauri Hanson reported that she witnessed suspicious bruising on Brayden after one of the first

1 weekend visits after the court order was initiated in 2008. At that time, Brayden had a bruise on his
2 head and bitemark on his back. Sharples claimed that this occurred because Brayden hit his head on a
3 coffee table and that his 16-month-old half-sibling bit Brayden on the back. The next time that Lauri
4 Hanson noted injuries was when Brayden returned from a visit with Sharples that took place the
5 weekend of September 20-22, 2008. Brayden was returned on September 22, 2008, with very
6 suspicious bruises and injuries. Upon Brayden's return, and at the request of Lauri Hanson, Christy
7 Kinney, who was Lauri's previous guardian and the person with whom Lauri and Brayden lived, placed
8 a telephone call on September 22, 2008 at or near 2214 hours, to the to the San Bernardino County
9 Sheriff's Department to report the concerns that Brayden Hanson was a child who had been abused and
10 injured while under the care of Louis Sharples, Jr., as indicated in the Uniform Crime Report prepared
11 by K. Swanson in connection with her response to the child abuse report made by Christy Kinney. After
12 the call was placed, a deputy sheriff from the County of San Bernardino Sheriff Department, whose first
13 name starts with the initial "K", whose last name is "Swanson" and whose employee number appears as
14 "S3378", came to the residence of Kinney, Lauri and Brayden Hanson at or around on September 22,
15 2008, as indicated in the Uniform Crime Report prepared by K. Swanson in connection her response to
16 the child abuse report made by Christy Kinney. The case number assigned to K. Swanson's response to
17 the call by Kinney was 140604245, and a copy of the report is attached to this claim for reference.
18 These injuries were photographed, and they reveal, at a minimum, that he had suspicious bruising on
19 both sides of his forehead and suspicious lacerations and suspicious bruising near his right eye, along
20 with suspicious bruising elsewhere on his body. K. Swanson wrote the following synopsis onto the
21 report: "Brayden is Kinney's grandson. Over the weekend, Brayden was at visitation with his father,
22 Louis Sharples. When Brayden returned from visitation, Kinney discovered Brayden had a cut and
23 bruising above his right eye. He also had small bruises, which appeared to be old, on his upper right
24 arm and on his back. Kinney contacted Sharples, who told her Brayden had fallen while at
25 Wienerschnitzel and bumped his head. Kinney and her daughter, Lauri Hanson, are in an ongoing
26 custody dispute with Sharples. Kinney requested documentation of the incident. Case for information
27 only at this time and forward to station files." On its face, the report purports to have been typed on
28

1 September 25, 2008, and was reviewed by Jeff Bohner on September 26, 2008. The disposition of the
2 child abuse report by Christy Kinney was "Case Cleared by Exceptional Means".

3
4 Deputy Sheriff K. Swanson, Deputy Sheriff Jeff Bohner and Does 1-100, failed to investigate the
5 suspicious visible physical injuries and child abuse of Brayden Hanson which Christy Kinney reported
6 to them on September 22, 2008. Further, Deputy Sheriff K. Swanson, Deputy Sheriff Jeff Bohner and
7 Does 1-100, failed to report and cross-report the visible physical injuries and child abuse of Brayden
8 Hanson which Christy Kinney reported to them and put them on notice of on September 22, 2008 to the
9 District Attorney, the Department of Justice and to the County of San Bernardino Human
10 Services/Department of Children's Services (e.g. the applicable child protective agency which would
11 investigate the allegations of child abuse). Deputy Sheriff Swanson, Deputy Sheriff Bohner, Does 1-
12 100, the County of San Bernardino and the County of San Bernardino Sheriff's Department, despite
13 their duties as mandatory reporters of child abuse pursuant to California's Child Abuse and Neglect
14 Reporting Act (art. 2.5, §§ 11164-11174.3), were negligent and negligent per se in failing to investigate,
15 report and cross-report the child abuse of Brayden Hanson of which they were informed on September
16 22, 2008, by Christy Kinney pursuant to the phone call she made, as set forth above, and which was
17 further witnessed in person by K. Swanson on the same date, and which was made known to Jeff Bohner
18 on or after September 22, 2008 and before September 25, 2008.

19
20 The aforementioned Act created several mandatory duties which were breached by Swanson, Bohner,
21 Does 1-100, the County of San Bernardino and the County of San Bernardino Sheriff's Department. An
22 explanation of the legal basis for the liability of these persons and entities is set forth in including but
23 perhaps not limited to the reported decisions: Alejo v City of Alhambra, 75 Cal App 4th 1180, and
24 Landeros v Flood, 17 Cal 3d 399 (1976). Section 11166, subdivision (a) of the Child Abuse and Neglect
25 Reporting Act creates such a mandatory duty, as this statute provides in relevant part any "employee of a
26 child protective agency . . . who has knowledge of or observes a child, in his or her professional
27 capacity, or within the scope of his or her employment, whom he or she knows or reasonably suspects
28 has been the victim of child abuse shall report the known or suspected instance of child abuse to a child

1 protective agency immediately or as soon as practically possible by telephone and shall prepare and send
2 a written report thereof within 36 hours of receiving the information concerning the incident."

3 "Reasonable suspicion" for purposes of the statute means "it is objectively reasonable for a person to
4 entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing,
5 when appropriate, on his or her training or experience, to suspect child abuse." (Ibid.) A police
6 department is a "child protective agency" for purposes of this statute. (§ 11165.9.) Section 11166,
7 subdivision (a) imposes two mandatory duties on a police officer who receives an account of child
8 abuse. First, the statute imposes a duty to investigate. Although section 11166, subdivision (a) does not
9 use the term "investigate," it clearly envisions some investigation in order for an officer to determine
10 whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the
11 county welfare department and the district attorney under section 11166, subdivision (i) and the
12 Department of Justice under section 11169, subdivision (a). The latter statute provides in relevant part:

13 "A child protective agency shall forward to the Department of Justice a report in writing of every case it
14 investigates of known or suspected child abuse which is determined not to be unfounded . . . A child
15 protective agency shall not forward a report to the Department of Justice unless it has conducted an
16 active investigation and determined that the report is not unfounded, as defined in Section 11165.12."

17 An "unfounded" report is one "which is determined by a child protective agency investigator to be false,
18 to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined
19 in Section 11165.6." (§ 11165.12, subd. (a).) "Child abuse" is defined in section 11165.6 as "a physical
20 injury which is inflicted by other than accidental means on a child by another person." The statute also
21 imposes a duty to take further action when an objectively reasonable person in the same situation would
22 suspect child abuse. Further action would entail reporting the "known or suspected instance of child
23 abuse to a child protective agency immediately or as soon as practically possible by telephone" and
24 preparing and sending "a written report thereof within 36 hours of receiving the information concerning
25 the incident." (§ 11166, subd. (a).) The duty to investigate and report child abuse is mandatory under

26 section 11166, subdivision (a), as a reasonable person in the named government entities, employees and
27 agents (Swanson, Bohner, Does 1-100, County of San Bernardino and County of San Bernardino Sheriff
28 Department) would have suspected such abuse of Brayden Hanson.

1
2 The Act contains an elaborate system for reporting and cross-reporting known and suspected cases of
3 child abuse for the purpose of "protect[ing] children from abuse." (§ 11164, subd. (a).) This Legislative
4 scheme is summarized in Planned Parenthood Affiliates v. Van de Kamp (1986) 181 Cal.App.3d 245,
5 257-260. The whole system depends on professionals such as sheriff departments who initially receive
6 reports of child abuse to investigate and, where warranted, report those accounts to the appropriate
7 agencies. If these professionals, including the police, simply ignore those reports, the Legislature's
8 entire scheme of child abuse prevention is thwarted. An officer is required to investigate and report an
9 account of child abuse when "it is objectively reasonable for a person to entertain a suspicion, based
10 upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or
11 her training or experience, to suspect child abuse." (§ 11166, subd. (a).) Given these statutory guidelines
12 and the training in child abuse investigation afforded police officers (§ 13517) there was a mandatory
13 duty owed by Swanson, Bohner, Does 1-100, County of San Bernardino and County of San Bernardino
14 Sheriff Department to comply with the investigation and reporting requirements of section 11166,
15 subdivision (a), and the other statutes set forth above.

16
17 The failure of Swanson, Bohner, Does 1-100, County of San Bernardino and County of San Bernardino
18 Sheriff Department to comply with the investigation and reporting requirements of section 11166,
19 subdivision (a), and other statutes as set forth above, proximately, legally and directly caused injury and
20 damage to Brayden Hanson as set forth in this claim notice. But for the aforementioned failures of
21 Swanson, Bohner, Does 1-100, the County of San Bernardino and the County of San Bernardino
22 Sheriff's Department, the applicable child welfare workers (e.g. including but perhaps not limited to
23 Leann Ashlock, Human Services/Department of Children's Services, 1504 S. Gifford Avenue, San
24 Bernardino, CA 92415 (909) 386-1300) would have investigated the child abuse and injuries, would
25 have discovered that the injuries inflicted on Brayden Hanson were inconsistent with the account
26 provided by Louis Sharples, Jr., and further, coupled, with the prior history of injury to Brayden Hanson
27 of which Ms. Aslock and her Department were aware, would have responded, intervened and protected
28 Brayden Hanson from the injuries and damages caused to Brayden Hanson on October 18, 2008, with

1 appropriate petitions, actions and court orders, as permitted by law and in accordance with Department
2 regulations between September 22, 2008 and October 18, 2008. Child welfare workers responding to a
3 child abuse report are governed by statutory standards. Welfare & Institutions Code section 16501,
4 subdivision (f) provides when a county welfare department receives a report of child abuse under section
5 11166 it "shall respond to any report of imminent danger to a child immediately and all other reports
6 within 10 calendar days." In Brayden's case, the subsequent beating took place on October 18, 2008,
7 which was thirty (30) days after Christy Kinney's report of child abuse on September 22, 2008. Thus,
8 the county welfare department and Ms. Ashlock would have had ample time to respond and provide
9 Brayden with protection from further abuse had Deputy Swanson, Deputy Bohner, Does 1-100, County
10 of San Bernardino and County of San Bernardino Sheriff's Department, reported the facts to the
11 applicable child welfare workers (e.g. including but perhaps not limited to Leann Ashlock, Human
12 Services/Department of Children's Services (DCS), 1504 S. Gifford Avenue, San Bernardino, CA 92415
13 (909) 386-1300) which were related by Christy Kinney.

14
15 Further, in this case, the criminal acts of Louis Sharples, Jr., which he committed on Brayden Hanson on
16 October 18, 2008, were and/or should have been foreseeable to Deputy Swanson, Deputy Bohner, Does
17 1-100, County of San Bernardino and County of San Bernardino Sheriff's Department, at the time of the
18 report of child abuse and injuries on September 22, 2008. As the *Landeros* court noted, child abuse is
19 generally not an isolated, atypical event "but part of an environmental mosaic of repeated beatings and
20 abuse that will not only continue but will become more severe unless there is appropriate medicolegal
21 intervention." (Id. at p. 412) In this case, the applicable child welfare workers (e.g. including but
22 perhaps not limited to Leann Ashlock, Human Services/Department of Children's Services, 1504 S.
23 Gifford Avenue, San Bernardino, CA 92415 (909) 386-1300) had previous contact with Sharples in July
24 2008, when she investigated a referral which resulted when Sharples refused to return Brayden to Lauri
25 Hanson after a visit. Sharples had picked up Brayden for what was to be a week-long visit on July 1,
26 2008. Brayden was free of any injuries at the time he was picked up except for healing bruise on his
27 shoulder that had occurred when he fell from the back porch. That information was corroborated by
28 Christy Kinney. Sharples made the police report the next day, July 2, 2008, stating that Brayden had

1 scratches on his neck that had been there when he picked Brayden up from Lauri Hanson. Lauri
2 Hanson denied to Ashlock that Brayden had marks on his neck when he was picked up, and showed
3 Ashlock recent photographs taken soon before he left showing no injuries. Ms. Hanson began trying to
4 speak to Sharples and Brayden on July 3, 2008, but her calls and attempts to see Brayden at Sharples'
5 home were unheeded.

6
7 Ashlock spoke with Detective Robin Real of the San Bernardino Sheriff's Department, who had
8 photographs of the scratches. Ms. Real stated that she investigated the facts regarding that incident and
9 she found that Brayden had been alone with Sharples for about 4 hours after Sharples picked him up and
10 before Sharples made any report. It was surmised that Sharples inflicted those injuries non-accidentally,
11 either out of anger or as part of a plan to take the child from the mother, possibly due to concerns about
12 child support.

13
14 Lauri Hanson's request of law enforcement (e.g. San Bernardino Sheriff's Department) were not
15 productive during this time, either. She was informed that "we saw a baby there and he looked fine".
16 Lauri Hanson stated that there were three (3) baby boys in the home of a similar age inquired as to
17 which baby the deputies had seen. They could not answer her and did not intervene further to check on
18 Brayden's welfare at that time.

19
20 Lauri Hanson went to family court but was unable to set an emergency hearing, instead receiving a
21 scheduled hearing set for August 6, 2008. At that hearing, Lauri Hanson expressed that she was
22 uncomfortable with the visitation arrangement based on how Brayden had been treated and injured at his
23 father's house and that he cried and said "no daddy house" when she prepared him for visits. Lauri
24 Hanson expressed that ever since Brayden was kept from her for nearly one month, Brayden expressed
25 fear and anxiety over the prospects of visiting with Sharples. The parents were ordered into mediation
26 but the court order was kept at every weekend and one two-hour midweek visit. Brayden came back
27 from one of the first weekend visits with a bruise on his head and bite on his back. Sharples explained
28

1 the injury by stating that Brayden fell and hit his head on the coffee table, and that his 16 month old
2 child had bitten him.

3
4 At a court hearing on September 18, 2008, Lauri Hanson expressed concern , but the judge upheld the
5 previous visitation agreement. On September 22, 2008, when Brayden was returned from Sharples, the
6 aforementioned child abuse was reported to the aforementioned people. On September 25, 2008, Lauri
7 Hanson went to the San Bernardino court to obtain forms to request a hearing to explain her concerns to
8 the court. The clerk erroneously told her that nothing could be done until the police report was filed
9 and a disposition made by law enforcement. This was clearly erroneous information, but Lauri Hanson
10 was unaware of what else to do at that time. Then, despite the aforementioned court order, Lauri
11 Hanson kept Brayden from Sharples for the next two (2) weeks but Sharples began to get agitated about
12 her not allowing him to have Brayden for visits. Brayden visited with Sharples the weekend of October
13 10-12, 2008, and came back without overt injuries apparent to Lauri Hanson. Then, the following week,
14 Lauri Hanson dropped Brayden off with Sharples on Fruday, October 17, 2008. The following day,
15 Brayden sustained the aforementioned traumatic brain injuries related to the abusive head trauma
16 inflicted on him by Sharples.

17
18 As can be seen from the facts and history set forth above, Lauri Hanson did everything in her power to
19 protect her son, Brayden Hanson, but Deputies Swanson, Bohner, Does 1-100, County of San
20 Bernardino and County of San Bernardino Sheriff's Department clearly let her and Brayden down and
21 violated mandatory duties owed to Brayden Hanson. Even when Brayden Hanson had obvious
22 bruising and injury to his face Deputy Swanson, despite being a mandated report, failed to investigate,
23 failed to report to the district attorney or Department of Justice, and failed to make a cross-report to
24 Department of Children's Services (DCS) - which would have initiated intervention and investigation
25 by Department of Children's Services (DCS), and prevented the further child abuse and damage
26 inflicted on October 18, 2008, by Sharples. Ms. Hanson's concerns and Brayden Hanson's welfare were
27 ignored. By virtue of court order, she was forced to allow the child to visit with Sharples. Her hands
28 were tied. She tried to protect Brayden but was not given support by those who had the power to stop the

1 abuse from happening, such as Deputies Swanson, Bohner, Does 1-100, County of San Bernardino and
2 County of San Bernardino Sheriff's Department.

3
4 Claimant/Plaintiff herein alleges also that the County of San Bernardino, County of San Bernardino
5 Sheriff's Department and Does 1-100 also negligently trained, supervised and retained Deputies
6 Swanson, Bohner and Does 1-100. Further, that Deputies Swanson, Bohner, Does 1-100, County of San
7 Bernardino and County of San Bernardino Sheriff's Department are jointly and severally liable to
8 Plaintiff, along with the City of Yucaipa, pursuant to Government Code § 895.2. The City of Yucaipa,
9 the County of San Bernardino and the County of San Bernardino Sheriff's Department entered into a
10 contract (including but perhaps not limited to contract number 94-526) in 1990, and which contract was
11 subsequently amended eighteen (18) times, including in 2008, for the provision of law enforcement
12 services in the City of Yucaipa to be provided by the County of San Bernardino the County of San
13 Bernardino Sheriff's Department. Upon information and belief, the provision of law enforcement
14 services by Deputies Swanson, Bohner, Does 1-100, County of San Bernardino and County of San
15 Bernardino Sheriff's Department to Brayden Hanson on September 22, 2008, and other dates, was
16 provided pursuant to that contract and the applicable amendment in 2008.

17
18 Also, in addition to and/or in the alternative, if one of the facts as set forth above (e.g. that Deputy
19 Swanson, Deputy Bohner and/or Does 1-100 did not fail to cross-report the events of September 22,
20 2008, to the Department of Human Service/Children's Services) turns out to be contrary to the
21 representation of LeAnn Ashlock and Fran Viero, as set forth above, then Claimant/Plaintiff herein
22 provides notice that he will then allege that the County of San Bernardino and the County of San
23 Bernardino Department of Human Services, LeAnn Ashlock, Fran Viero and Does 1-100 are liable to
24 Plaintiff for the same allegations set forth above regarding failure to investigate and report where there
25 was reasonable cause to suspect child abuse of Brayden Hanson, because if Deputy Swanson and
26 Deputy Bohner did cross-report to the applicable Department of Human Services/Children's Services,
27 then they would also owe a duty to investigate and report child abuse under section 11166, subdivision
28 (a), as a reasonable person in the named government entities, employees and agents (Ashlock, Viero,

1 Swanson, Bohner, Does 1-100, County of San Bernardino and County of San Bernardino Sheriff
2 Department) would have suspected such abuse of Brayden Hanson.

3
4 Plaintiff also retains the right to seek punitive damages against public employees Deputies Swanson,
5 Bohner and Does 1-100 and/or in addition or in the alternative, Ashlock, Viero and Does 1-100.

6
7 The respondents/defendants, and each of them are liable to Plaintiff for damages as set forth above, and
8 pursuant to including but not limited to California Government Code §815.2, 815.4, 815.6, and
9 respondeat superior, contract and master-servant theories of liability. Further, the acts and omissions
10 complained of herein were operational and non-discretionary. Also, the true names and capacities of the
11 Defendants, DOES 1 through 100, whether individual, corporate, associate or otherwise, are unknown to
12 Plaintiffs at the time of filing this claim notice and claimant, therefore, provides notice to and of said
13 respondents/defendants by such fictitious names and will ask leave of court to amend his Complaint to
14 show their true names or capacities when the same have been ascertained. Claimant is informed and
15 believes, and therefore alleges, that each of the DOE Defendants is, in some manner, responsible for the
16 events and happenings herein set forth and proximately caused injury and damages to the Brayden
17 Hanson as herein alleged.

18
19 **5. continued**

20 reportedly made at 2:00 p.m.

21
22 **7. continued**

23 Lauri Hanson, 35671 Carter St., Yucaipa, CA 92398

24
25 Christy Kinney, 35671 Carter St., Yucaipa, CA 92398

26
27 Louis Sharples, Jr., 12784 California St., Apt. H, Yucaipa, CA 92399

28

- 1 Deputy K. Swanson, County of San Bernardino Sheriff's Department, 655 East Third St., San
2 Bernardino, CA 92415
3
4 Deputy Jeff Bohner, County of San Bernardino Sheriff's Department, 655 East Third St., San
5 Bernardino, CA 92415
6
7 Deputy Ann Menor, County of San Bernardino Sheriff's Department, 655 East Third St., San
8 Bernardino, CA 92415
9
10 Detective Darrin Taylor, County of San Bernardino Sheriff's Department, 655 East Third St., San
11 Bernardino, CA 92415
12
13 Does 1-100, County of San Bernardino Sheriff's Department, 655 East Third St., San Bernardino, CA
14 92415
15
16 Leann Ashlock, SSP1, County of San Bernardino Human Service/Department of Children's Services,
17 1504 S. Gifford Avenue, San Bernardino, CA 92415
18
19 Fran Viero, SSSP, County of San Bernardino Human Service/Department of Children's Services, 1504
20 S. Gifford Avenue, San Bernardino, CA 92415
21
22 Tracey Inman, SSP, County of San Bernardino Human Service/Department of Children's Services, 128
23 Carousel Mall, San Bernardino, CA 92415
24
25 Cecelia Joseph, SSSP, County of San Bernardino Human Service/Department of Children's Services,
26 ~~128 Carousel Mall, San Bernardino, CA 92415~~
27
28 Mark Massi, M.D., Loma Linda Medical Center, 11234 Anderson Street, Loma Linda, CA 92354

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Alex Zouros, M.D., 25455 Barton Rd., Ste. A-108, Loma Linda, CA 92354

Ashwal Michelson, M.D., 2195 Club Center Dr., Ste. A, San Bernardino, CA 92408

Patty Diaz, California Children's Services/San Bernardino County Office, 150 Carousel Mall, San Bernardino, CA 92415-0062

Keeper of records for the following entities:

Loma Linda Medical Center, 11234 Anderson Street, Loma Linda, CA 92354

Health Bridge, 393 S. Tustin Ave., Orange, CA 92506

California Children's Services/San Bernardino County Office, 150 Carousel Mall, San Bernardino, CA 92415-0062

All healthcare providers listed above as witnesses, and all other providers who have or will see Brayden Hanson at some time in the future.

City of Yucaipa, 34272 Yucaipa Blvd., Yucaipa, CA 92399

County of San Bernardino, 385 North Arrowhead Avenue, 2nd Floor, San Bernardino, CA 94133

County of San Bernardino Sheriff's Department, 655 East Third St., San Bernardino, CA 92415

County of San Bernardino Department of Human Services/Children's Services, 1504 S. Gifford Avenue, San Bernardino, CA 92415 and 128 Carousel Mall, San Bernardino, CA 92415

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County of San Bernardino, Office of County Counsel, 385 North Arrowhead Avenue, 4th Floor, San Bernardino, CA 94133

**CERTIFICATE OF PROOF OF SERVICE
BY EXPRESS SERVICE CARRIER & U.S. MAIL**

I, Christopher Keane, declare:

I am over the age of 18 years, am an active member of the State Bar of California and not a party to this action. My business address is 530 Jackson St., 2nd Floor, San Francisco, CA 94133, which is located in San Francisco, CA.

On March 19, 2009, I deposited the following documents 1) Government Tort Claim Notice of Brayden Hanson against County of San Bernardino, County of San Bernardino Sheriff Department, Deputy K. Swanson, Deputy Jeff Bohner and Does 1-100 with attached additional pages, and a copy of this declaration in a sealed envelope with postage and delivery fees paid or otherwise provided for, addressed to

County of San Bernardino
Board of Supervisors
Office of the Chairman
385 North Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0010

County of San Bernardino
Board of Supervisors
Office of the Clerk
385 North Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0010

County of San Bernardino
Risk Management Division
222 West Hospitality Lane, 3rd Floor
San Bernardino, CA 92415-0016

County of San Bernardino
Department of Sheriff-Coroner
Bureau of Administration
655 East Third Street
San Bernardino, CA 92415-0061

Deputy K. Swanson
County of San Bernardino

~~Department of Sheriff-Coroner~~
655 East Third Street
San Bernardino, CA 92415-0061

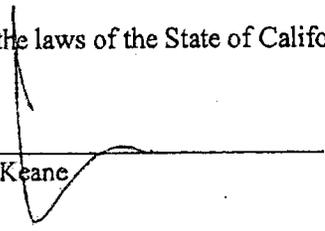
Deputy Jeff Bohner
County of San Bernardino
Department of Sheriff-Coroner
655 East Third Street
San Bernardino, CA 92415-0061

County of San Bernardino
Office of County Counsel – Attention Phebe W. Chu, Esq.
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0010

in a box or other facility regularly maintained by Federal Express, an express service carrier, in San Francisco, CA, as well as in a post office or mailbox regularly maintained by the United States Postal Service in San Francisco, CA.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 3/19/09



Christopher J. Keane

