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4th.Dist. No. E054516

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**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

SUPREME COURT
FILED

MAR 10 2014

**B.H., A MINOR, BY AND THROUGH
HIS GUARDIAN AD LITEM, L.H.,**
Plaintiff and Appellant,

Frank A. McGuire Clerk
Deputy

vs.

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

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
HON. DONALD R. ALVAREZ, JUDGE
SUP. CT. No. CIVDS 913403

MOTION FOR JUDICIAL NOTICE
(Filed with Reply Brief on Merits)

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MOTION FOR JUDICIAL NOTICE

(Filed with Reply Brief on Merits)

Pursuant to Evidence Code section 459 and Rule 8.252, California Rules of Court, plaintiff and appellant hereby moves the Court to take judicial notice of a true and correct copy 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.). These materials were obtained by counsel for plaintiff and appellant from Legislative Intent Service (“LIS”) of Woodland, California.¹ The documents are described and indicated under penalty of perjury to be true and correct copies of the originals in the declaration of Jenny S. Lillge, attorney for LIS. Plaintiff and Appellant hereby requests the Court to take judicial notice of these documents pursuant to Evidence Code section 459.

Plaintiff and appellant also requests that the Court take judicial notice of several regulations published by the California Attorney General entitled “Department of Justice Regulations for Child Abuse Reports Recordkeeping” and official administrative forms published by the California Department of Justice. These

¹As stated in Plaintiff’s first motion for judicial notice (filed with the Opening rief on the Merits), due to the volume of documents in the LIS collection authenticated by counsel for LIS (over 1000 pages) and the variety of subject matter and code sections discussed, at this time Plaintiff and Appellant has not asked the court to take judicial notice of the entire history, and will make it available to the Court if requested.

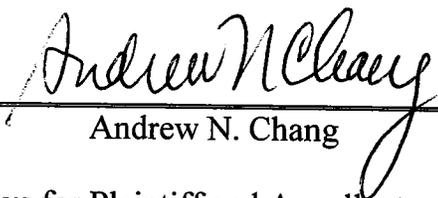
materials are referred to in the reply brief on the merits and are also attached to this motion.

This motion is based upon the declaration herein of Andrew N. Chang, the Declaration of Jenny S. Lillge, which is attached as Exhibit A and which authenticates the pertinent materials which are the subject of this motion, and upon the supporting memorandum of points and authorities.

Dated: March 4, 2014

THE KEANE LAW FIRM, P.C.
Christopher J. Keane

ESNER, CHANG & BOYER
Stuart B. Esner
Andrew N. Chang

By: 

Andrew N. Chang

Attorneys for Plaintiff and Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

In his reply brief on the merits, plaintiff and appellant has cited to the above-mentioned published material consisting of published portions of the legislative history related to the enactment of CANRA, supplied to counsel and authenticated by the Legislative Intent Service. This Court has deemed it appropriate to cite to published legislative material, without the necessity of a motion for judicial notice. (*Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 45 [“A request for judicial notice of published [legislative] material is unnecessary. Citation to the material is sufficient”]; *Stop Youth Addiction v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 571, fn. 9 [“Simple citations to such published materials would have sufficed”]; accord, *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440 fn. 18.)

The attached documents are published legislative material. Nevertheless, out of an abundance of caution, plaintiff and appellant moves this Court to take judicial notice of the pertinent pages of the material, along with a brief authenticating declaration, pursuant to Evidence Code section 459 and Court Rules 8.520(g) and 8.252.

The portions of legislative history attached are part of the complete legislative history of Senate Bill 781, Chapter 1071, Statutes of 1980 (1977–1978 Reg. Sess.). These documents were obtained from the Legislative Intent Service in

Woodland California (“LIS”) and submitted under the declaration of Jenny S. Lillge, as true and correct copies of the originals.²

Under Evidence Code section 459 appellate courts have the same right and power to take judicial notice as do the trial courts. “In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute.” (*Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927.)

Documents supplied by LIS have consistently been utilized by this Court, either when proffered by the litigants or on the Court’s own motion, and LIS has often been mentioned in appellate opinions as the source of the documents. (See, e.g., *People v. Sanchez* (2001) 24 Cal.4th 983, 992, fn.4; *People v. Brown* (1993) 6 Cal.4th 322, 334.)

The declaration of a Legislative Intent Service attorney to the effect that the copies provided are true and correct copies of the originals is sufficient to authenticate the materials. (*Whaley v. Sony Computer America, Inc.* (2004) 121 Cal.App.4th 479, 487.)

² The trial court was asked to take judicial notice of a portion of the legislative history that was authenticated by Ms. Lillge of the LIS. (See AA 676-679.) The trial court’s order granting summary judgment was silent concerning the request for judicial notice but did state it was granting summary judgment “after full consideration of the evidence.” (AA 789.) The Court of Appeal was also requested to take judicial notice of a portion of the legislative history, and the Court of Appeal’s opinion is also silent as to the request.

Courts have taken judicial notice of reports and transcripts of hearings of legislative committees which preceded the enactment of a statute. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 376; *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519, fn. 5; *Maggio v. Agricultural Labor Relations Bd.* (1987) 194 Cal.App.3d 1329, 1333; accord, *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 32, 36 [providing comprehensive list of legislative history materials that are properly judicially noticed, including Assembly Committee reports and transcripts of committee hearings].)

Further, the documents are relevant. The type of published legislative document submitted herewith is routinely considered by the reviewing courts of this State when considering the background and purpose of specific bills and statutes:

Youngblood v. Gates (1988) 200 Cal.App.3d 1302, 1340 [transcript of a public hearing of the Assembly Interim Committee on Criminal Procedure “are the type of material this division has readily consulted in the past.”];

In re Joshua S (2008) 42 Cal.4th 945, 956 [testimony before the Senate Committee on the Judiciary];

Murphy v. Kenneth Cole Productions (2007) 40 Cal.4th 1094, 1109 [transcripts of Industrial Welfare Commission hearings];

Harris v. Pricewaterhousecoopers, LLP (2006) 39 Cal.4th 1220, 1230-1 [testimony before the Assembly Judiciary Committee];

Microsoft Corporation v. Franchise Tax Board (2006) 39 Cal.4th 750, 760 [drafting history includes testimony before subcommittee];

Grafton Partners v. Superior Court (2005) 36 Cal.4th 944, 955 [testimony before the California Constitution Revision Commission];

People v. Jeffers (1987) 43 Cal.3d 984, 997 [law's provisions "should be construed in light of the major areas of concern expressed at the legislative hearings"];

Similarly here, the attached legislative materials shed considerable light on the circumstances leading to the passage of CANRA (Stats 1980 ch 1071) and its purposes.

As for the regulations and official administrative forms which are referred to and discussed in the merits reply brief, and attached hereto, judicial notice is also proper. (Evid.Code, § 451, subd. (b); *Sheyko v. Saenz* (2003) 112 Cal.App.4th 675, 693 [regulations and administrative forms which are published by a state agency].) As for the County's rejection of plaintiff's tort claim, dated April 2, 2009, attached hereto as Exhibit 3, judicial notice is also proper. (Evid. Code, sec. 452(c); *Crow v. State of California* (1990) 222 Cal.App.3d 192, 199-200.)

CONCLUSION

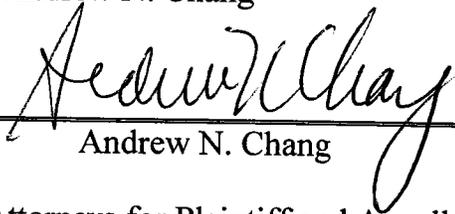
For the foregoing reasons, in the event the Court deems judicial notice is necessary in order to allow the parties to cite to published material such as that attached hereto, plaintiff and appellant respectfully requests the Court grant his motion for judicial notice.

Dated: March 4, 2014

THE KEANE LAW FIRM, P.C.
Christopher J. Keane

ESNER, CHANG & BOYER
Stuart B. Esner
Andrew N. Chang

By: _____


Andrew N. Chang

Attorneys for Plaintiff and Appellant

DECLARATION OF ANDREW N. CHANG

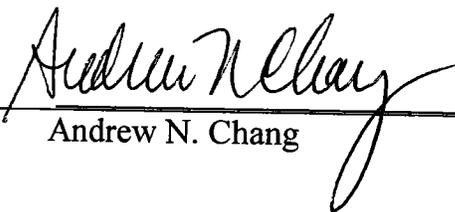
I, Andrew N. Chang, declare as follows:

1. I am an attorney licensed to practice law in the State of California and a partner with Esner, Chang & Boyer, which is co-counsel on appeal for Plaintiff and Appellant B. H. in this action.

2. I have personal knowledge of the facts set forth in this declaration and if called upon to do so I could and would competently testify thereto.

3. The attached Declaration of Jenny S. Lillge, counsel for the Legislative Intent Service, is a true and correct copy of the original Declaration submitted to the trial court and a copy of which was also submitted to the Court of Appeal below.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on March 6, 2014, at Walnut Creek, California.



Andrew N. Chang



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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 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 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 and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service. In compiling this collection, the staff of Legislative Intent Service 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;
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. Legislative Counsel's Rule 26.5 analysis of Senate Bill 781;
10. Conference Committee Report No. 015310 analysis of Senate Bill 781 prepared by the Assembly Office of Research;
11. Post-enrollment documents regarding Senate Bill 781;
12. Material from the file of the Legislative Representative of the State Bar of California on Senate Bill 781;
13. Material from the file of the Department of Finance on Senate Bill 781;
14. Excerpt regarding Senate Bill 781 from the 1980 Summary Digest of Statutes Enacted and Resolutions Adopted prepared by Legislative Counsel;
15. Child Abuse Reporting, a hearing held by the Assembly Committee on Criminal Justice, November 21, 1978;
16. 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. Two analyses of Assembly Bill 3431 prepared for the Senate Committee on Judiciary;
6. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 3431;
7. Material from the legislative bill file of Assembly Member Ellis on Senate Bill 3431.
8. Material from the legislative bill file of the Assembly Committee on Criminal Justice on Assembly Bill 3431.

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

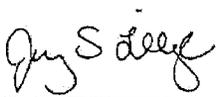
1. All versions of Senate Bill 1614 (Rains-1978);
2. Procedural history of Senate Bill 1614 from the 1977-78 Senate Final History;
3. Analysis of Senate Bill 1614 prepared for the Senate Committee on Judiciary;

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;
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 Republican Caucus 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-1979);
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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of December, 2010 at Woodland, California.



JENNY S. LILLGE

EXHIBIT 1

JUNE SHERWOOD: Members of the panel, thank you for the opportunity to offer some comments on S.B. 1614. The Attorney General's Crime Prevention Unit, has been actively working in child abuse in the various local communities throughout the State of California for the past several years. Our work in this field addresses first, the training and educating of mandated reporters and local law enforcement on the reporting law and on the indices and recognition of suspected child abuse and neglect. Second, the encouragement of local team building and interagency cooperation in the handling of child abuse. Third, surveying and evaluation of local community resources for the treatment of troubled families, that is the abused and the abusers. Fourth, the development of in depth community awareness, and awareness of the need for additional resource development at the local level. Based on our years of research and experience we have come to the following conclusions: first, as Mr. Gates mentioned there is serious under reporting throughout California. This may be caused by a variety of factors including the fact that there appears to be confusion on the part of some social service agencies surrounding the necessity to report to the Department of Justice Child Abuse Index. Referred cases of mental, emotional and neglect cases. Usually, these cases are usually handled by a social service agency. Secondly, some law enforcement agencies do not forward all cases of reported suspected child abuse, not only those under criminal investigation. Third, there is widespread confusion among the counseling and treatment mandated reporters as well as the professional help and education mandated reporters concerning the law and their reporting responsibilities. We have found paren-

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thetically that teachers and school nurses in our experience have the best record in terms of reporting. Finally, child protective social service agencies in the social service field in some counties may not forward physical abuse reports unless in their judgment reached the stage of imminent danger. Because of the recidivism and escalatory nature of child abuse, that is as you know, it tends to happen over and over again. This particular event and it escalates in seriousness from minor to more serious abuses, and often unfortunately sometimes death, but because of the recidivism and escalatory nature of child abuse this under reporting interferes with early intervention and prevention by a community team approach. A team that involves law enforcement, health, school professionals and so forth. The purpose obviously of the child abuse index is to have a record of past events so that alert can be made and will effect the decision making and allow early intervention and prevention by teams. This is not only true due to insufficient staff and treatment resources but also because of the migratory pattern of the abusing family. The abusing family typically moves from jurisdiction to jurisdiction and therefore cannot come to the attention, the past history cannot come to the attention of the local law enforcement, local social worker, local other team members unless there has been a report to the state file. Many suspected cases are lost in the cracks because of that. Parenthetically, the second general conclusion in addition to these conclusions about reporting which is not related to the law is that from our experience there is no county in this state where there are adequate treatment resources. I'll throw that out for your consideration although

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that has nothing to do with the reporting law. To document the necessity for better interagency cooperation and identification and reporting one can cite the experience of Los Angeles County USC Medical Center. After adopting a hospital team approach called the suspected child abuse and neglect team. This is a team approach that has been adopted by several hospitals. That team is composed of a medical doctor, a registered nurse and a medical social worker. In 1974 previous to the creation of the SCAN team in L.A. County, USC identified forty-nine cases.

In the following year a hundred and forty-nine cases were identified, a two hundred plus increase in their identification of child abuse cases in that hospital. Turning to our personal experience the experience of the crime prevention unit to cite some information resulting from a pilot program we have been conducting for nine months our crime prevention unit has been developing and testing a community based child abuse prevention model known as the Pomona project in cooperation as our partners with the Pomona Police Department, the City of Pomona and the Pomona office of Los Angeles County Department of Public Social Services. As a result of in-service training of all police personnel and mandated reporter professions practicing in the City of Pomona we have found the following results. One, reports of suspected child abuse through the police department has been increased three hundred percent. Two, reports of suspected child abuse through the Pomona Office of DPSS have increased approximately twenty-five percent. Three, closer and more positive interagency working relationships have improved markedly and resulted in a five major interagency procedural change involving

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reduction of paperwork and more easily identifiable interagency contact networks. Our experience of this increased reporting in Pomona is that while it obviously results in greater work loads for under staffed agencies and could result in reporter frustration from an apparent lack of response should that happen. This additional reporting can be constructively addressed as evidenced by the Pomona project where we have seen first, inter-agency cooperation developing community-wide shared information on resource availability.

Second, citizen involvement to identify and develop additional resources needs from the private sector of the community. This has happened.

And, three, the increased cooperation and communication between law enforcement social service personnel and mandated reporters as well as community volunteers has minimized the burn out factor and the frustration and has made it possible for the system to respond to the increased workload. Moreover to argue against more effective reporting procedures which will inform all child protective service agencies and insure more complete statewide suspected child abuse files is to argue I guess on the basis that it will result in taking valuable time of case-workers of child protective agencies which flies in the face of our primary responsibility for the protection of the child and weakens the informed decision making possible to the agencies by knowledge of prior history and through inter-agency cooperation. Next I would like to comment briefly on the provisions of S.B. 1614 as contained in Section 11166, subsections E and F requiring immediate reporting by telephone and written reports within



thirty-six hours by county welfare or county probation to the law enforcement agency having jurisdiction over the case and the requiring of the same procedure from law enforcement agencies to county welfare. These provisions, as Mr. Gates has indicated, clarify the present reporting procedure in order to insure, first that all parties who have investigatory and decision making responsibilities in the handling of child abuse cases as defined in the legislation child protection service agencies which are police or county sheriff's department, county welfare department or county probation department. That these agencies will be made aware of suspected cases requiring such investigation and decision making and second that the local law enforcement agency having jurisdiction will be a party to such an investigation and decision making. As noted above we have found that in some cases law enforcement agencies have not been immediately notified. This later situation may have occurred as a result of what appears to be an effort on the part of some people involved in child abuse matters to reserve the handling of child abuse as the exclusive province of social service workers. Mr. Gates quoted from the federal provisions. Those holding this view argue that child abuse is not a crime but a non-criminal problem best handled by treatment, and believe that other government agencies such as police, prosecutors and courts should come into the situation only when the social service worker makes the judgment that they are needed. We in the Attorney General's Office strongly oppose any effort to allow single specialized groups to presume to make all the judgments necessary to protect the safety of children in child abuse cases.

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Such an approach is parochial and short sighted and fails to take into account the interest of society in general and of the child in particular. In our experience, however, this approach that I have described does not characterize in our experience the attitude of the majority of social service professionals in this state, by no means.

One of the most distinguished and knowledgeable leaders in the social worker field is Mrs. Helen Boardman, who headed the family service unit of the Children's Hospital in Los Angeles for many years who has been an authority in the social work field and with respect to child abuse and who has written and testified extensively on the vital and unique importance of the law enforcement role in the handling of child abuse.

Intervention involving infringement on the fundamental right of parents to control and raise their own children is justified only by a paramount social interest: the protection of the safety and well being of the child. Such intervention may involve a broad range of possible actions, including counseling and treatment, the filing of criminal charges or the removal of the child from control should not be made solely by any single agency limited to a specialized field of expertise, but ideally should be made by a team approach of the various disciplines with responsibility for the protection of children.

Regardless of what one calls it, for example, the willful injuring of a child by a parent or guardian is a physical assault by one human being on another and, as such, it is clearly a crime and necessitates the involvement of those agencies of government responsible for dealing with crimes.



It is clear that it may not be appropriate in any instant case to respond with traditional crime and punishment approaches. However, since the immediate protection of the child is the paramount concern and since early intervention is vital due to the recidivist and escalatory nature of the crime of child abuse, law enforcement must be involved in decision-making along with the other disciplines.

Indeed, the nature of law enforcement's role and training brings unique qualifications to the handling of child abuse cases, and which must be part of interagency decision making, particularly in the initial response. In order to set clearly on record the need for such law enforcement involvement, may I conclude with a few comments on the functions and unique role of law enforcement and on some perceived misconceptions regarding same.

Under California child abuse reporting statutes and law, police play a central role in crisis intervention and in initial investigation and handling of child abuse cases with the following functions:

1. Protection of the child
2. Collection of evidence and investigation; and
3. Determination, with other agencies, of resources available in the community.

There are many practical and compelling factors which uniquely qualify law enforcement for its role in child abuse handling:

1. Police are the only 24-hour field service child protective agency with investigatory and arrest authority - and almost always the only round-the-clock branch of

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government that can provide immediate response. The police are the only agency empowered to take a child into immediate protective custody and, therefore, the only one which can ensure immediate medical treatment.

2. By the nature of their role in the community and their powers, the police are the primary responders to family crisis situations.
3. Police have the perceived authority and status which induces cooperation.
4. Compared to other involved disciplines, police are better trained to ensure constitutional rights and due process procedures in the investigation of cases.
5. Police officers on the scene collect all evidence that may "make or break" a case, and such thorough collection and preservation of evidence is important whether or not criminal prosecution is pursued.
6. Moreover, police response is immediate within a time frame of 3 - 30 minutes, whereas, because of public social worker heavy caseload and limited staff, their time response varies from within 2 hours to 2 days. Effective intervention and prevention (as well, obviously, as the immediate protection of the child) is not compatible with a two-day response.

The attitudes of some concerning the police role in child abuse cases have resulted in part from certain common misperceptions regarding police involvement. These include:



1. The misperception that the requirement of reporting is inhibited by the police role. This is invalid since the law provides for alternative reporting of suspected cases.
2. The misperception that judicial remedies in child abuse cases are drastic and rigid. This again, is invalid since only 5 cases out of 6,500 result in prison on an approximate average.
3. The misperception that law enforcement attitudes and procedures are inflexible and are uniformly characterized by a "hard line law and order" stance. This is not true of California local law enforcement which our experience testifies to be open and flexible in seeking new and progressive ways of problem resolution. While we all have observed instances of heavy handedness and excessively punitive attitudes, this is not the general rule and depends on the quality of training, which is generally good in this state. Further, there is a general new emphasis on crime prevention among California law enforcement agencies, as opposed to the traditional re-active stance.

From our experience in working with law enforcement there can be identified several outstanding examples of high professionalism, sensitivity, and expertise in handling of child abuse, such as L.A.P.D., L.A.S.O., San Diego Police Department, San Jose Police Department, Hayward Police Department, Oceanside Police Department, Pomona Police Department and many others where considerable special training and a framework of interagency cooperation

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characterizes their efforts. These agencies recognize the need for an interdisciplinary approach. The San Diego and Hayward Police Departments, for example, have a formalized team procedure whereby assigned social workers respond together on all calls to suspected child abuse.

A summary of law enforcement's recognition of the importance of interagency cooperation in child abuse decision making is to be found in the child abuse "training key" of the International Association of Chiefs of Police from which I quote:

"The various government agencies that handle portions of child abuse cases must work together. Each agency has a separate but overlapping responsibility. The contributions of all of them are extremely important. Cooperative action and good inter-agency communications are essential ingredients that must be developed for the successful handling of child abuse and neglect."

And, as I indicated in encouraging and assisting the development of team approaches in local communities throughout California has certainly demonstrated that.

I thank you very much.

CHAIRMAN MADDY: Thank you very much, Mrs. Sherwood. Mr. Woods, Bureau of Identification, Department of Justice.

JOHN WOODS: I am the manager of Special Operations of the Bureau of Identification, and part of my responsibility includes the supervision of our child abuse suspect file. That file has been in existence since 1965 and it is more or less a pointer system to correlate previous, prior reported child abuse suspects.

All of the information that comes into our file comes from police reports of crimes and incidents. We have a cross-index

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system of names that are derived from the reports that come in, and to date we have approximately 176,000 names in our file.

It is important to note that we have a pending system which means that only founded, well-founded cases reach our file, and those cases which are unfounded do not go into the file. I can explain that a little bit further by saying that the pending file is for twenty days. When we receive a report, it goes into the pending file. At the end of twenty days, if we haven't received a follow-up report from the original agency, then we notify the agency either by writing or by telephone that we would like a status report. And it remains in the pending file until we can get a follow-up report that said that it is a well-founded report and that they are investigating it further. If there is, as I said, an unfounded report, those are thrown away, they don't get into the file, and index cards are not created from those reports.

In terms of numbers, there are approximately half of the reports that are founded are also unfounded. By that I mean we get about 8,000 reports a year and there are about 4,000 additional reports that are unfounded reports, 12,000 reports in all.

I would like to give you a few highlights of what we've found by looking at the file and basically the things that Mike Gage and Mrs. Sherwood have said are well-supported by looking at the statistics out of our file. Perhaps the most dramatic thing to look at is the fact that we are very under-reported. There are maybe two things that I can bring to your attention here. We have a letter that came from the Chairman of the San Diego Chapter of the American Academy of Pediatrics, in which he cites some 1977

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statistics, among which is that in San Diego they had 4,834 reports for the year 1977, calendar year. Yet, our statistics show that there are only 640 reports that reached our office.

If you take a look at a comparison between the Department of Health statistics and the statistics out of our file, as Mr. Gates previously mentioned there are about 72,000 child abuse reports in the statistics compiled by the Department of Health, and we have about 7,300 reports that reached us during 1977.

MR. RUTLAND: We reviewed your policy to determine whether or not your reports are accurate and you relied upon other agencies. That report is no longer accurate. I understand you just accepted the reports and perhaps every five years you update them. Do you check back with the other departments, or from whom you received them and ask if the facts are accurate?

MR. WOODS: No. That is not the way it works. It works on the pending file basis that I mentioned before. Until we get a follow-up report that says, yes, in fact, this happened and it is a case of child abuse, until we get that kind of follow-up report, nothing goes into our index.

MR. RUTLAND: Wait a second. I thought you weren't supposed to even receive a report unless it is founded.

MR. WOODS: No. We get reports of suspected child abuse, that is suspected and then they do an investigation, and then it's that follow-up investigation report which is the determining factor of whether in fact names in that report get into the file.

MR. RUTLAND: After an investigation if the case is proved to be unfounded, no reports have to be filed with the Department of Justice. What you're saying is that you in fact do receive sus-

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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.

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CHAIRMAN MADDY: And you do receive suspected cases of child abuse?

MR. GATES: That is correct. There isn't even anything in the statute right now that even requires us to purge the records of unfounded reports. We put it in the legislation in response to those concerns.

CHAIRMAN MADDY: Yes. I understand that. I was under the impression that you didn't receive anything unless there had been an investigation and it had been determined that this is a case of child abuse.

MR. GATES: Well, I suppose what it is, is our file, the same index, the permanent index, is treated separately and apart from a pending index which is just transitory in terms of it it is founded or unfounded, then it will go into the permanent index.

CHAIRMAN MADDY: Why is that necessary? Why do you have to have the pending files?

MR. GATES: You may have an investigation by the police that may go on two or three months, and in the interim

CHAIRMAN MADDY: And, in the interim what difference does it make that you don't have that report until you can determine in fact whether or not it is valid? Why do you have to have a pending file?

MR. GATES: Because if a report is made and it is being investigated by the police, let's say, you may have two or three months in there before a complaint is even filed. In the meantime, that person could be involved in another reported case again.

CHAIRMAN MADDY: I know, I understand all that, but what, I mean is you don't do anything with that pending file. It just



takes up space.

MR. GATES: Well, no, you have the pending file if in fact a month later the same parent abuses the same child.

CHAIRMAN MADDY: There will be another report and there will be another investigation and another determination, right?

MR. GATES: No. No. From the pending file if in fact we get another additional report, we can report back that we have a previous report in our pending file to go back to the agency.

CHAIRMAN MADDY: So what you are saying is that that will be where the family have moved from one place to another.

MR. GATES: Could be, or could be while they are on bail.

CHAIRMAN MADDY: I understand what you are saying.

MR. WOODS: There is a practical reason for that, too, and that is each one of these reports will generate an average of maybe three names that go into a cross-index file. Rather than put the cards in there and then have to go into their file and pull them all out again. If we do get an unfounded report, we hold it until we make sure the report is unfounded.

CHAIRMAN MADDY: And I am saying why not wait until there is a determination and then put it in there.

MR. GATES: That is what we do from the pending to the index.

MR. WOODS: I mentioned to you that we have this very dramatic under-reporting. There are some highlights in the statistics that I would like to hit on that could be the result of this under-reporting. For instance, one thing that Mike Gates mentioned earlier, our statistics show that about 5 to 6 percent of the victims report as opposed to 90 to 95 percent of the people

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report the incident -- reported by other than the victims and a number of those are under the age of four. I would like to pull out a statistic on that. We're running probably 40 to 50 percent of the victims are under the age of four, and obviously they are of an age where they won't be reporting their own cases. That's one reason why we need to get better reporting and why we think that 1614 is going to improve that reporting.

CHAIRMAN MADDY: How long do investigations take? Is an investigation done as quickly as possible because of the nature of the act and the possibility that the child may be harmed?

MR. WOODS: The answer is yes. Our pending files are 20 day files so we anticipate receiving a follow-up report within 20 days.

CHAIRMAN MADDY: I imagine sometimes there are extended cases, but in the most part you say it is about 20 days?

MR. WOODS: I believe so. At least that is the way we set-up the pending file and we expect to receive some kind of a follow-up report, at least the first follow-up report in any investigation within that 20 day period.

CHAIRMAN MADDY: And if you don't receive that you just hold the pending until you do receive something?

MR. WOODS: We notify the reporting agency that we want a follow-up report.

Okay, perhaps another statistic that is worthy of note has to do with the inquiries that are made into our file. We are getting about 15 percent of the requests that come in with names so that about 85 percent of the names that come in don't have any record in our file. I think that that could very easily be the result of under-reporting. If we had accurate reporting and if we



were getting 40,000 to 50,000 cases a year, we would certainly be having a better hit rate on these.

I think probably I would like to answer your question specifically, sir. You were asking about the prosecution of cases that we, and the possibilities of prosecution, as I recall. I really can't give you an answer as to the feasibility or the chances of a person being prosecuted. I can give you the dispositions of cases in a 300 case sample that we had in our file.

CHAIRMAN MADDY: The point I was making was that we were talking about the magnitude of the problem, and we're talking about the fact that so many of these cases are not reported to the A.G.'s Office so that you could monitor them or maintain your statistics or to follow-up on them, and only 800 are sent to police. Perhaps what I was asking is just how serious a problem do we have. We talk about 70,000 reported cases, are those the types of cases that if we take a more effective reporting system and add all of the things that we are asking, or the proponents of this legislation are asking to be added to the law, are we going to significantly deal with cases under those? Are those 70,000 cases significant? Are those cases ones we should prosecute? Are those cases worth it in the sense that whatever kind of a balancing act we have to go through as Legislators in determining what happens when you add 70,000 more reported cases to the A.G.'s Office; 70,000 more investigations to law enforcement. Is that a significant enough problem to do all of that? That is what I am asking.

MR. WOODS: Right. Perhaps the only way I can answer that is to describe the cases that we have right now and the suspects

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in the cases of the reporting. We found that 52 percent of the reported suspects in child abuse have prior criminal records, criminal history records.

CHAIRMAN MADDY: M.D.S.O's? Sexual abusers? Child abusers?

MR. WOODS: I can't pinpoint the criminal record.

CHAIRMAN MADDY: Criminal record?

MR. WOODS: Criminal record. It's a criminal record, 52 percent. For those child abusers who have two or more cases on file, 33 percent of them were arrested the first time for their first child abuse report. Thirty-seven percent of them were arrested their second time that that child abuse report came into our office. I can give you the dispositions of the cases of those arrests. That is the input I can give you on the severity of the case.

CHAIRMAN MADDY: Mr. Roos.

ASSEMBLYMAN ROOS: I understand the need perhaps to get physicians for instance to report more rapidly and more consistently the cases that they see that fall into this category. I am not sure I see or understand why we need a repository of data on this. It was my understanding that most child abuse cases happen within the home and certainly the kind of corrective action that we would like to see happen is not so much punishment but certainly a restructuring of that family unit from the standpoint of their not committing that again.

MR. GATES: Perhaps I can express that.

ASSEMBLYMAN ROOS: Okay, so I don't understand the need for the data base.

MR. GATES: What you have by an investigating agency that

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EXHIBIT 2

**CHILD WELFARE SERVICES PROGRAM
GENERAL REQUIREMENTS**

31-002 (Cont.)

Regulations

31-002 DEFINITIONS (Continued)

31-002

- (r) (1) "Recruitment" means activity to find and develop resources which are necessary but do not exist, or which exist but must be expanded.
- (2) "Referral to community agency" means informing another service agency that a child and/or that child's family desires or requires that agency's services; and assisting the child and/or family to avail themselves of such services.
- (3) "Relinquishment of a Child" means the action of a relinquishing parent who signs a relinquishment document in which he or she surrenders custody, control and any responsibility for the care and support of the child to the Department or any licensed public or private adoption agency pursuant to Family Code Section 8700.
- (4) "Representative" means a person authorized by a party to a grievance review, or by specified administrative review hearing participants, to act for and represent that party or participant in any and all aspects of a grievance procedure or administrative review hearing.
- (5) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including step-parents, step-siblings, and all relatives whose status is preceded by the words "step", "great", "great-great", or "grand", or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. For the purposes of preferential consideration for placement of a child, "relative" means an adult who is a grandparent, aunt, uncle, or sibling of the child.
- (6) "Respite care" means the provision of prearranged child care when a parent(s)/guardian(s) or foster parent(s) is absent or incapacitated, and a determination has been made that temporary in-home or out-of-home care is in the child's best interest. Respite care services are offered as part of a case plan to allow a temporary respite of parental duties, so that a parent(s)/guardian(s) or foster parent(s) is able to fulfill other responsibilities necessary to improve or maintain the parenting function. Respite care services do not exceed 72 hours per session. These services are not provided for the purpose of routine, on-going child day care.
- (7) "Risk assessment" means documented information collected from the child(ren), caregiver, and/or collateral support persons that evaluates the protective capacity of the caregiver, any likelihood for future maltreatment, the age and vulnerability of a child or children, while including objective values of different cultures that will not result in a disparity of treatment services provided to all families receiving child welfare services.
- (s) (1) "Safety assessment" means documented information collected from the child(ren), caregiver, and/or collateral support persons that evaluates and determines whether there are present dangers and/or imminent threats of serious harm/maltreatment to a child or children, while including objective values of different cultures that will not result in a disparity of treatment services provided to all families receiving child welfare services.

EXHIBIT 3

DEPARTMENT OF RISK MANAGEMENT



COUNTY OF SAN BERNARDINO

West Hospitality Lane, Third Floor • San Bernardino, CA 92415-0016

(909) 386-8711 – Workers' Compensation

(909) 386-8670 – Liability

(909) 386-8677 – Safety

(909) 386-8948 – Administration

Laurie Milhiser
Director of Risk Management

April 02, 2009

Christopher Keane
Keane Law Firm
530 Jackson St. 2nd FL
San Francisco, CA 94133

RE: Claimant..... Brayden A. Hanson
Date of Loss..... 10/18/2008
Amount of Claim..... Undetermined
Our File..... 103254

Notice is hereby given that the claim which you presented to the County of San Bernardino on March 20, 2009 was rejected on April 2, 2009.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Hueston Whiteside
Liability Claims Rep II
DEPARTMENT OF RISK MANAGEMENT
(909)386-8633

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss:

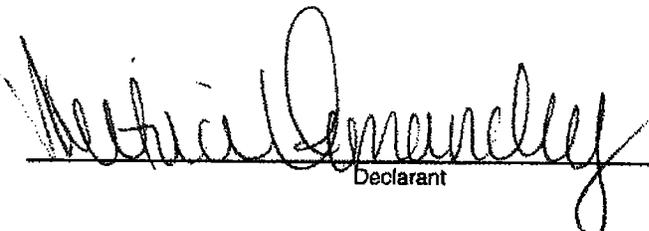
I, the undersigned, declare:

I am employed in the County of San Bernardino, State of California; I am over the age of 18 years and not a party to this action; my business address is 222 West Hospitality Lane, Third Floor, San Bernardino, California, 92415-0016. I am familiar with this office's practice for collection and processing of documents for mailing with the United States Postal Service. The documents are deposited with the United States Postal Service on the same day in the ordinary course of business. On the date written below, I served the document named below on the parties indicated by placing a true copy thereof enclosed in a sealed envelope for collection and mailing from 222 West Hospitality Lane, Third Floor, San Bernardino, Ca. following ordinary business practice, addressed as follows, and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on April 2, 2009, at San Bernardino, California.

DOCUMENT: BSWARa

PARTIES SERVED:

Christopher Keane
Keane Law Firm
530 Jackson St. 2nd FL
San Francisco, CA 94133



Declarant

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California and over the age of eighteen years. I am not a party to the within action. My business address is 234 East Colorado Boulevard, Suite 750, Pasadena, California 91101.

I am readily familiar with the practice of Esner, Chang & Boyer for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. I served the document(s) listed below by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Date Served: March 5, 2014

Document Served: Motion for Judicial Notice

Parties Served:

Norman J. Watkins, Esq.
Shannon L. Gustafson, Esq.
Lynberg & Watkins
1100 Town & Country Road, Suite 1450
Orange, CA 92868
(Attorneys for Defendants County of San Bernardino; Sergeant Jeffrey Bohner, Deputy Kimberly Swanson, and City of Yucaipa)

Christopher J. Keane, Esq.
The Keane Law Firm, P.C.
548 Market Street, #23851
San Francisco, CA 94104
(Attorneys for Plaintiff Brayden Hanson, a minor, by and through his Guardian ad Litem, Lauri Hanson)

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Pasadena, California.

Executed on March 5, 2014, at Pasadena, California.

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



Carol Miyake