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SUPERIOR COURT
COUNTY OF STANISLAUS

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8 Attorneys for Subpoenaed Party

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF STANISLAUS

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 vs.

16 SCOTT LEE PETERSON,

17 Defendant

Case No. 1056770

MEMORANDUM OF POINTS AND
AUTHORITIES IN REPLY TO MOTION
TO QUASH; DECLARATION OF
MARGARET W. BAUMGARTNER AND
INSPECTOR JOE TOOMEY IN
SUPPORT OF SAME

FILED BY FAX

Hearing Date: July 9, 2003

Time: 8:30 a.m.

Place: Dept. 2

21 I. THE MOTION IS NOT UNTIMELY

22
23 The San Francisco Police Department filed the motion to quash in this matter in an
24 expeditious manner. The initial order that Inspector Pera appear at a hearing on shortened time
25 was issued without notice to the Police Department. The Department therefore did not have an
26 opportunity to object to the timing of the subpoena.
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1 Furthermore, the defense cites no statute or case that states a motion to quash is untimely
2 when filed within 20 days of receipt of a subpoena. Because the subpoenaed party did not
3 receive the subpoena until the day before the day set for compliance, there was no time in which
4 to file a motion to quash prior to the initial response date. When the City Attorney's office
5 telephoned Mr. McAllister about the timing of the response to the subpoena, Mr. McAllister
6 indicated that the file was not needed for the June 6 hearing. (Baumgartner Decl'r ¶ 2.) He
7 agreed to put the matter over until a subsequent hearing. (Baumgartner Decl'r ¶ 2.)

8 **II. THE POLICE DEPARTMENT DID NOT WAIVE ANY OBJECTIONS.**

9 The defense argues that the San Francisco Police Department waived any objection to
10 revealing every document in the file by telephoning the Modesto Police Department to discuss
11 the matter. This argument fails for two reasons. First, the San Francisco Police Inspectors never
12 revealed any secret or confidential information from the Hernandez file to the Modesto Police
13 Department. (Toomey Decl'r ¶ 3.) Rather, long before Ms. Peterson's body was found, the San
14 Francisco Police Department simply in an abundance of caution, telephoned Modesto to see if
15 there were any evidentiary links between the cases. There were none. The Police Departments
16 discussed only public information about the case. (Toomey Decl'r ¶ 3.)

17 Moreover, even if the SFPD revealed non-public information to the Modesto Police
18 Department, such interaction between two investigating agencies does not result in a waiver.
19 "Especially in criminal investigations, agencies of government . . . often work together and share
20 information. Interagency information sharing should not automatically constitute a waiver of the
21 official information privilege." *Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1048).
22 Here, any disclosure was designed to determine whether there were any evidentiary lead that
23 could be useful. But there were not.

24 **III. THE DEFENSE HAS FAILED TO MAKE A SHOWING THAT WOULD
25 REQUIRE AN IN CAMERA HEARING**

26 Lastly, the defense misconstrues the overbroad and burdensome objection. The defense
27 has subpoenaed the entire file, which contains a wide variety of documents, yet has failed to set
28

1 forth the issue to which these documents would be relevant. Obviously, some of the documents
2 would have no relevance whatsoever to the defense case in this matter.

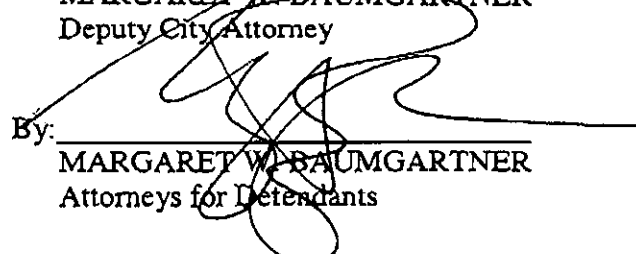
3 In contrast, the City has shown that the file is confidential and would interfere with an
4 ongoing homicide investigation. Because the defense has failed to request information with
5 specificity, and failed to make a showing of materiality, there is nothing against which to weigh
6 the need for confidentiality. Until the defense does so, there is no purpose in conducting an *in*
7 *camera* hearing.

8 **CONCLUSION**

9 For the foregoing reasons, the court should grant the motion to quash the subpoena in its
10 entirety.

11
12 Dated: July 7, 2003

13 DENNIS J. HERRERA
14 City Attorney
15 MARIAM MORLEY
16 Chief Attorney - Public Protection Unit
17 MARGARET W. BAUMGARTNER
18 Deputy City Attorney

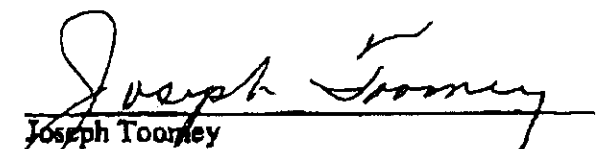
19 By: 
20 MARGARET W. BAUMGARTNER
21 Attorneys for Defendants
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Declaration of Inspector Joseph Toomey

1. I am employed as an inspector in the San Francisco Police Department. I am assigned to the homicide investigation of Evelyn Hernandez.
2. In early January 2003, I telephoned the Modesto Police Department regarding the disappearance of Laci Peterson. I called in an abundance of caution, to ensure that if in the future there was any link to the cases, I would have a point of contact. I did not at that time, nor do I now, believe that the two cases are linked.
3. During my conversation with the Modesto detective, I did not reveal any secret or confidential information about the case. I did not share with the Modesto detective the results of the autopsy report. I limited the discussion to matters that were already public.
4. At the time that I telephoned Modesto, Laci Peterson's body had not been found.
5. By speaking to the Modesto investigator I did not intend to waive any privilege attached to the San Francisco Police Department homicide investigation.

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

DATED: July 7, 2003

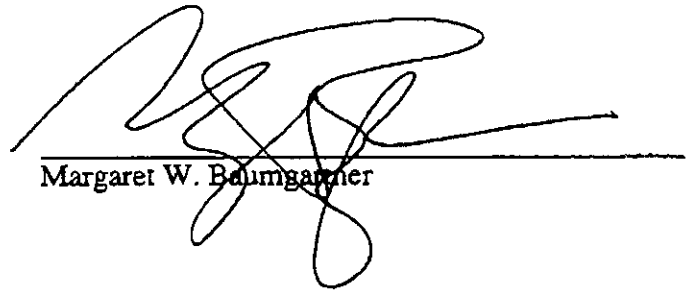

Joseph Toomey

Declaration of Margaret W. Baumgartner

1. I am a Deputy City Attorney with the San Francisco City Attorney's Office. I am assigned to this matter. I have personal knowledge of the facts contained herein. If called upon to testify, I could and would testify competently hereto.
2. The San Francisco Police Department first contacted me on June 6, 2003 regarding a subpoena with a response due on June 6. I immediately telephoned the subpoenaing attorney to indicate that it was impossible to respond on June 6. I spoke with Mr. McAllister on or about June 6 regarding the matter. He stated the matter could be put over until the next hearing date near the end of June. I informed him at the time that I was uncertain as to what the San Francisco Police Department intended to do about the matter.
3. I telephone Mr. McAllister on June 16, 2003 to discuss the scheduling of the hearing date, as my client and I were going to be on vacation at the end of June. The person answering the telephone told me that Mr. McAllister was out of town until Thursday, June 19. I then telephoned the District Attorney's office, who informed me that another hearing had been scheduled for July 9. I therefore set the hearing on the motion to quash on that date.

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

DATED: July 7, 2003



Margaret W. Baumgartner

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PROOF OF SERVICE

I, CATHERINE PEARSON, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 375, San Francisco, CA 94102.

On July 7, 2003, I served the attached:

**MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO MOTION
TO QUASH; DECLARATION OF MARGARET W. BAUMGARTNER AND
INSPECTOR JOE TOOMEY IN SUPPORT OF SAME**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Mark J. Geragos
Geragos & Geragos
39th Floor
350 S. Grand Avenue
Los Angeles, CA 90071-3480
Facsimile (213) 625-1600

Kirk W. McAllister
McAllister & McAllister, Inc.
1012 11th Street, Suite 100
Modesto, CA 95354
Facsimile (209) 575-0240

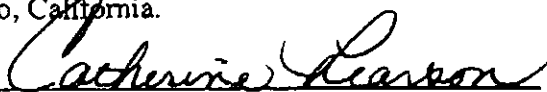
Rick Disatso, DDA
Stanislaus County District Attorney
1100 I Street, Room 200
Modesto, CA 95353
Facsimile (209) 525-5545

and served the named document in the manner indicated below:

- BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, City Hall, Room 375, San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal Service that same day.
- BY FACSIMILE:** I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was (415) 554-4757. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

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

Executed July 7, 2003, at San Francisco, California.


Catherine Pearson