IN AND FOR THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

STATE OF CALIFORNIA, PLAINTIFF,	) No. **NM-366245**
vs.	) DEFENDANT'S AFFIDAVIT OF PREJUDICE; Appearance of fairness, due process.
Al Cintra-Leite, Defendant, pro se.	) Recusal of LISA NOVAK.

STATE OF CALIFORNIA)
) **ss.**
COUNTY OF SAN MATEO)

COMES NOW, Defendant hereto, to enter his objections and declaration of prejudice **against judge LISA NOVAK** (hereinafter "judge") **having anything** whatsoever to do in matters involving Defendant's case above captioned. Defendant above named has complained to the FBI and to Superior Court (Exhibit A hereto [1]) for false arrest and imprisonment, assault, and other violations. All attachments hereto are incorporated by this reference as if fully restated herein. ***Any and all emphasis*** employed herein may be construed to have been added.

Judge LISA NOVAK engaged in precisely that conduct deemed wholly unacceptable under standards of due process rightfully afforded the Defendant. Such gross misconduct alone warrants recusal under this affidavit, but must be added to a long list of derelictions rightfully

[1] Defendant's 8/31/07 filings of **1)** 18 USC § 4 complaint to the FBI and **2)** his Superior Court petition for the empanelment of a Grand Jury to investigate certain violations of Cal. penal code provisions on 8/22/07 when Defendant was molested, arrested, and held for bail without cause.

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attributed to NOVAK under the above captioned case, her disdain and indifference for Rule and statute now lying bare for investigation. This proves NOVAK likely to engage in further misconduct to cover the tracks complained of herein and in criminal complaints now on file with authorities. This shows Defendant's rights to fairness to reside in peril for as long as such be the dominion of a presiding officer such as NOVAK.

A party claiming an appearance of fairness doctrine violation has the burden of showing it. *Lake Forest Part v. Hearing Board*, 76 Wn.App. 212, 217 (1994). This state's appearance of fairness doctrine is similar to the constitutional requirement of an unbiased tribunal mentioned above. But it goes farther than the impartiality requirement in that it not only requires an impartial decision maker to be fair, but requires the decision maker to also *appear* to be fair. See *Offutt v. US*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice"); *Medina v. California*, 505 US 437, 464 (1992)(Blackmun, dissent)("In matters of ethics, appearance and reality often converge as one.). [2]

Appearances of bias are damaging to the public's confidence in our legal system. *State v. Madry*, 8 Wn.App. 61, 70 (1972). The key question is how the proceeding appears to a reasonably prudent and disinterested person. *Brister v. Tacoma City Council*, 27 Wn. App. 474, 487, (1980); *Chicago, Minn., St. Paul & Pacific RR v. State Human Rights Comm'n*, 87 Wn.2d 802, 810 (1976); *Swift v. Island County*, 87 Wn.2d 348, 361 (1976).

Even when a possible conflict of interest or bias doesn't actually occur, but **appears** to occur, it is enough to trigger this doctrine. *Narrowsview-Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 420 (1974); *Buell v. Bremerton*, 80 Wn.2d 518, 523 (1972). Adjudicators must be

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[2] See also *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923) ("[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)(noting the importance of "preserv[ing] both the appearance and reality of fairness," which "`generat[es] the feeling, so important to a popular government, that justice has been done'") (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)). *Litkey v. US*, 510 US 540, 565 (1994))"; *Press-Enterprise Co. v. Superior Ct.*, 487 US 1, 9, 13 (1986); *Vasquez v. Hillery*, 474 US 254, 271 (1986); *Globe Newspaper Co. v. Superior Ct.*, 457 US 596, 606 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 US 555, 595 (1980); *Marshall v. Jerrico*, 446 US 238, 242 (1980); *Estes v. Texas*, 381 US 532, 543 (1965) ("A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . [T]o perform its high function in the best way, "justice must satisfy the appearance of justice." *Offutt v. US*, 348 U.S. 11, 14."); *Kentucky v. Stincer*, 482 US 730, 751 (1987) (dissent); *Greenholtz v. Inmates of Nebraska Penal Complex*, 442 US 1 (1979) (dissent).

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"free of entangling influences." *Buell* at 523. And again, the mere possibility, rather than actuality, of a conflict of interest or bias is enough show a violation. *Id.* at 524.

Presiding officer's failure to recuse when obliged to do so violates cannons of judicial conduct. (See *In re Scott*, 52 Cal.3d 968 (1991), 277 Cal.Rptr. 201, 802 P.2d 985, 91 CDOS 450, 91 Daily Journal DAR 700).

Defendant has clearly identified and detailed extreme prejudice in the form of violations of Rule as well as statute, and has complained for NOVAK's arrest, prosecution, and life imprisonment, and this surely disposes of any such appearance. The deprivations visited upon the Defendant by NOVAK are starkly manifest, and Defendant has addressed these to those able to sanction her for such.

The appearance of fairness is lost, as it relates to the involvement of NOVAK in this case, and this assures Defendant that his due process rights are those to another judge in this case.

VERIFICATION.

I, Al Cintra-Leite, do hereby declare under penalties of perjury that the exhibits attached hereto are accurately represented herein, and that the foregoing statements and claims are true and correct to the best of my knowledge, gained from examination of the record in this case, of court rules, and of applicable statutes. Executed this 31st day of the month of August, 2007.

_____

Al Cintra-Leite, Affiant

The above affirmation was subscribed and duly sworn to before me, this 31st day of August, 2007 by Al Cintra-Leite.

I, _____, am a Notary under license from the State of California whose Commission expires _____, and be it known by my hand and my Seal as follows:

_____

Notary signature

Presented by:

_____

Dated:_____

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UNITED STATES OF AMERICA

FEDERAL BUREAU OF INVESTIGATION

Palo Alto FBI, 2479 E. Bayshore Blvd.
Palo Alto, CA 94303
(650) 251-9520

Al Cintra-Leite, Complainants,	) No. [please assign file no. and advise]
	) **Re:** San Mateo Cnty. Courts, #NM-366245,
	) 1050 Mission Rd., So.San Francisco.
	)
vs.	) INFORMATION: 18 U.S.C. §§ 241, 242.
	)
	) VERIFIED CRIMINAL COMPLAINT
	) of felonies, filed pursuant to 18 U.S.C.
LISA NOVAK (San Mateo County judge),	) § 4 Misprision of felony.
OLIVERAS (cnty. sheriff's deputy #804), and	)
GRASTY (cnty. sheriff's deputy #814),	) Incident occurred on 8/22/07.
DEFENDANTS.	)

I. INTRODUCTION.

1.1 COMES NOW, Complainant above named (hereinafter singular "Complainant"), seeking to comply with 18 U.S.C. § 4 (Misprision of felony) and to avoid a violation of 18 U.S.C. § 3 (Accessory after the fact), by reporting the commission of felonies which offend federal criminal statutes, namely 18 U.S.C. §§ 241 and 242. Complainant stands as witness and victim to the conduct complained of.

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"**Civil Rights Program -**

The Federal Bureau of Investigation takes a very aggressive approach to investigations regarding violations of Civil Rights. The primary areas of investigations are listed below:

1. Color of Law (Excessive Force and/or Misconduct)
2. Hate Crimes: Racial, Religious
3. Housing Discrimination
4. Violence against Reproductive Health Clinics
5. Involuntary Servitude and Slavery

All states have a primary responsibility to investigate civil rights violations occurring in their jurisdictions. A Federal civil rights investigation can occur concurrently or may occur as a "backstop" to a local investigation. Investigations may be initiated by receipt of information from sources such as: victim complaints; sources other than victim; requests from the United States Department of Justice (DOJ); legitimate news media reports; law enforcement agencies; or Congressional inquiries.

A valid complaint will initiate an investigation, however the extent of the investigation will depend on specific circumstances. The goal of the San Francisco FBI is to investigate all credible Civil Rights complaints thoroughly and fairly."

See - **http://sanfrancisco.fbi.gov/sfcriminal.htm -**

1.2 Complainant's attachments hereto (**Exhibit 1**) are incorporated by this reference as if fully restated herein. All paragraphs of this Complaint shall be deemed incorporated into each such paragraph by this reference as if fully restated therein. All acts complained of occurred in San Mateo County, CA, in August of 2007. ***Any and all emphasis*** employed herein may be construed to have been added.

18 USC § 3282 Offenses not capital.- Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information ***is instituted within five years next after such offense shall have been committed***.

1.3 Defendants hereto have conspired and are conspiring to deprive Complainant of liberty in a contrivance alleging mental incompetence, a determination which would result in confinement for undetermined durations when in fact he is clearly in possession of his full capacities and is being singled out for his stern belief that the law protects him from other abuses visited upon him by the employees of the County of San Mateo, a municipal corporation.

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1.4 The Defendants' pursuit of this unconscionable end for no other reason than for their dislike of the Complainant exposes them to be a danger to the community. "Left unchallenged they would prey upon the harmless." (Pres. William Clinton, Holocaust Museum commemoration ceremonies).

1.5 It is Complainant's intent to cause the arrest and prosecution of the Defendants for the crimes alleged herein, lest they be free to again and without cause abscond with the Complainant.

II. ADJUDICATIVE FACTS, PARTIES & OVERT ACTS.

2.1 **Adjudicative facts**: On August 22, 2007, Complainant attended a scheduled hearing in San Mateo County Court at 1050 Mission Rd., So. San Francisco, CA., case #NM-366245 whereat Defendant NOVAK presided as judge, and Defendants OLIVERAS and GASTY served as security personnel, San Mateo Sheriff's deputies #804 and #814 respectively. Exhibits attached hereto are as follows:

> **Ex.1 hereto**: Complainant's petition and request to San Mateo Superior Court to empanel a Grand Jury w/criminal complaint for the violations of state penal statutes to which the conduct complained amounts. **Exhibits to <u>that</u> complaint** are as follows:
>
> > **Exhibit A** to state complaint: Tape recording (audio cassette) of the subject hearing of August 22, 2007 whereat Complainant was arrested without cause.
> >
> > **Exhibit B** to state complaint: Receipt for bail which was posted by Complainant's friend.
> >
> > **Exhibit C** Competence evaluation (dated 8/20/07) written for the Complainant by his doctor, Dr. Richard Patel, Phd. MD..

2.2 See Complainant's state complaint (¶¶ 2.2 - 2.10) for a detailed account of the hearing at which Complainant was arrested without cause in a conspiracy contrived by the Defendants hereto.

2.3 Under the guise of allegations of mental incompetence for which the Defendants have seen <u>no manifestation of such</u> in any past conduct of the Complainant, nor at the subject 8/22/07 hearing. The conduct complained of is merely Defendants' contrivance to accomplish

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the false imprisonment of the Complainant until he simply chooses to leave town, a mode of conduct fully examined and deemed to be a plain violation of his rights to liberty, to reside, to travel, and to enjoy private facilities in San Mateo County which are open to the public. (See *U.S. v. Guest*, 383 U.S. 745 (1966), 18 USC § 241 violation occurred when police from one city sought to arbitrarily impede and discourage citizens of Athens, GA from visiting). The violation needn't be based on race. See *Id.*. (See also, See *U.S. v. Lanier*, 520 U.S. 259 (1997); *Archie, et al., v. Lanier*, No.94-5836 (CA6 1996), constitutional rights are violated when state judge repeatedly rapes a number of women in chambers, 18 USC § 242 conviction).

2.4 Complainant was falsely arrested (physically escorted out of court) on a prior occasion (hearing of 7/25/07) by NOVAK in the same case, over absolutely nothing, and he is certain that any further attempts to recuse NOVAK will result in more imprisonment and humiliation under invalid allegations of mental incompetence. Presiding officer's failure to recuse when obliged to do so violates cannons of judicial conduct. (See *In re Scott*, 52 Cal.3d 968 (1991), 277 Cal.Rptr. 201, 802 P.2d 985, 91 CDOS 450, 91 Daily Journal DAR 700).

2.5 Upon Complainant's filing of this 18 USC § 4 Misprision complaint onto the record in NOVAK's [court] the FBI will see her refuse to allow his case to go to another judge, a sane judge, and this is surely evidence of the proclivities and motivation Complainant has alleged, and it is patently another violation of Complainant's constitutional rights, which will precipitate another complaint of this fashion against those who choose to join her. The FBI has this forewarning and can attend to watch first hand how rights are trampled by a professional.

2.6 The appearance of fairness doctrine goes farther than the impartiality requirement in that it not only requires an impartial decision maker to be fair, but requires the decision maker to also *appear* to be fair. See *Offutt v. US*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice"); *Medina v. California*, 505 US 437, 464 (1992) (Blackmun, dissent)("In matters of ethics, appearance and reality often converge as one.). [1] Defendant NOVAK will

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[1] See also *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923) ("[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)(noting the importance of "preserv[ing] both the appearance and reality of fairness," which "'generat[es] the feeling, so important to a popular government, that justice has been done'") (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)). *Litkey v. US*, 510 US 540, 565 (1994))"; *Press-Enterprise Co. v.*

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ignore this fundamental tenet of law and will likely have the Complainant arrested for being so irrational as to think the Supreme Court means anything, in CA courts.

III. VIOLATIONS OF FEDERAL STATUTES.

3.1 Complainant's documentation (attached) shows Defendants NOVAK, OLIVERAS, and GASTY to have used their [respect]ive offices to contrive and execute multiple arrests without probable cause with the intent to wrongfully and unlawfully deprive the Complainant of rights which are unquestionably his. Names of these Defendants will be discerned and conveyed in the near future.

3.2 This conspiracy and contrivance is underway at present and has damaged Complainant and unduly threatens his liberty and property in a Herculean fashion, yet is borne of a sprint to molest the Complainant until he is convinced he must leave California to secure his safety.

3.3 These crimes on the part of the Defendants and each of them are clearly proven by the facts and the exhibits attached hereto. The conduct complained of clearly fits into statutory language as well as the statute of limitations for the prosecution of such. All acts complained of herein were committed knowingly, intentionally, willfully, and with criminal intent to acquire property not rightfully owed by the Complainant, even if they have to falsely imprison him. Crimes complained of are as follows:

Counts I and II: Conspiracy against rights and Deprivation of rights.

3.4 Defendants NOVAK, OLIVERAS, and GASTY are acting without probable cause in a scheme to deprive Complainant of his liberty for undetermined durations, falsely alleging incompetence despite abundant proof to the contrary. This contrivance constitutes a substantial threat to Complainant's health and future, and is borne of a groundless *animus malus* against

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Superior Ct., 487 US 1, 9, 13 (1986); *Vasquez v. Hillery*, 474 US 254, 271 (1986); *Globe Newspaper Co. v. Superior Ct.*, 457 US 596, 606 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 US 555, 595 (1980); *Marshall v. Jerrico*, 446 US 238, 242 (1980); *Estes v. Texas*, 381 US 532, 543 (1965) ("A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . [T]o perform its high function in the best way, "justice must satisfy the appearance of justice." *Offutt v. US*, 348 U.S. 11, 14."); *Kentucky v. Stincer*, 482 US 730, 751 (1987) (dissent); *Greenholtz v. Inmates of Nebraska Penal Complex*, 442 US 1 (1979) (dissent).

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Complainant harbored by Defendants for anyone possessive of confidence in the system and in the written law. This contrivance implemented by the Defendants therefore constitutes a violation of 18 USC § 241 Conspiracy against rights.

3.5 On August 22, 2007, Defendants NOVAK, OLIVERAS, and GASTY deprived Complainant of his liberty and rights to equal protection by arresting him without cause in a scheme to deter him from remaining in California. This false arrest of the Complainant therefore constitutes a plain violation of 18 USC § 242 Deprivation of rights.

3.6 As the recipient of this Complaint conveying allegations and proof of federal felonies, you are duty bound to act to cause the arrest and confinement of those complained of. Failure to do so constitutes a violation of at least two federal criminal statutes.

> 18 USC § 3 Accessory after the fact. ***Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.***
>
> Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

> 18 USC § 4 Misprision of felony. ***Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same*** to some judge or other person in civil or military authority under the United States, ***shall be fined under this title or imprisoned not more than three years, or both.***

3.7 Complainant seeks remedy in the form of the prosecution of the Defendants to the full extent of the law for the crimes proven hereby.

IV. CONCLUSION & VERIFICATION.

4.1 Complainant (undersigned) bring this criminal complaint in good faith and as required by law, and **he believes** in full that the allegations of lawlessness on the part of the Defendants above named are true and correct, and that they constitute the crimes alleged herein.

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4.2 I, Al Cintra-Leite, do hereby declare under penalties of perjury (28 USC § 1746) that the statements and allegations made herein are true and correct to the very best of my individual knowledge, and that no material falsity is believed to exist, nor has any been made or uttered in relation to any fact or records relied upon in support of my allegations. Executed this 31st day of the month of August, 2007.

_____
Al Centra-Leite, Affiant/Complainant

4.3 The above affirmation was subscribed and duly sworn to before me this 31st day of the month of August, 2007, by Al Cintra-Leite.

4.4 I, _____, am a Notary under license from the State of California whose Commission expires _____, and be it known by my hand and my Seal as follows:

_____
Notary signature

Dated:_____

Presented by:

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Al Cintra-Leite
1923-A El Camino Real
San Mateo, California 94403

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Exhibit 1:

See **Ex.1**, Complainant's petition to San Mateo Superior Court for the empanelling of a Grand Jury w/criminal complaint for violations of CA state law.

Exhibit: 1

IN SUPERIOR COURT OF CALIFORNIA

IN AND FOR SAN MATEO COUNTY

Al Cintra-Leite, Complainant/Petitioner,	) No._____
	) PETITION and DEMAND for the
	) empanelment of a Grand Jury.
vs.	)
	) CPC § 904.
LISA NOVAK, OLIVERAS, GASTY, DEFENDANTS.	)

I. PETITION, VENUE, & JURISDICTION.

1.1 COMES NOW, Complainant above named, seeking the empanelment of a Grand Jury for the purposes of investigating and indicting the above named Defendants for the overtly criminal misconduct complained of in the attached criminal complaint which is incorporated by this reference as if fully restated herein. ***Any and all emphasis*** employed herein may be construed to have been added.

1.2 All acts complained of occurred within the political boundaries of San Mateo County in August of 2007. This Court has jurisdiction and venue is proper.

> CPC § 904. ***Every superior court***, whenever in its opinion the public interest so requires, ***shall make and file with the jury commissioner an order directing a grand jury to be drawn***. The order shall designate the number of grand jurors to be drawn, which may not be less than 29 nor more than 40 in counties having a population exceeding four million and not less than 25 nor more than 30 in other counties.

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1.3 Complainant charges that the conduct complained, a proclivity to arrest individual without cause, is of great public concern and interest in that nobody would suspect for one moment that their reliance upon the law and upon the appearance of fairness doctrine could lead to imprisonment, search, seizure, and being forced to strip naked for strangers in the employ of the County of San Mateo. This unjustifiable risk to the liberty, property, and privacy of all who find themselves in San Mateo County courts is of immense public concern.

1.4 The lack of probable cause coupled with the instantaneous arrest, confinement, and coercion of the Complainant, and the ensuing demand for bail by Defendant NOVAK, constitute high crimes in relation to individuals, and this action is nothing the Complainant takes lightly; hardly. To visit the ramifications of arrest and confinement upon one who's offended nothing and who has merely sought to bring the subject court into compliance with California law and with firmly established standards of due process is repugnant to the U.S. and California state Constitutions, and is abhorrent to all with which the Complainant shares this tale. (See CJC § 1).

1.5 Complainant has attached an affidavit (citizen's criminal complaint) which details the conduct complained of in relation to California penal statutes which impose sanctions as severe as life with the possibility of parole. In said affidavit Complainant has provided a plethora of authorities which frame his right to allocution in regards to contempt allegations, and the attached tape recording of the proceedings (3 minutes) proves he received none of what has been firmly established as his due process rights when facing such allegations.

II. CONCLUSION.

2.1 It is Complainant's intent to cause the indictment and prosecution of these named Defendants, and of any other individual for which prosecution is deemed appropriate by this Court, and to cause the maximum sentence allowed by statute to be imposed upon them.

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2.2 Complainant brings this Petition and its supporting evidence **in good faith** and sees himself far closer to compliance with the law than those complained of. **Complainant honestly believes** he has framed his allegations more than reasonably under the law, and he believes the named Defendants to be deserving of all sanctions for which he has petitioned.

Dated:_____

Presented by:

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IN SUPERIOR COURT OF CALIFORNIA

IN AND FOR SAN MATEO COUNTY

Al Cintra-Leite, Complainant,	) No.
	) **Re**: San Mateo Cnty. Court #NM-366245.
	) VERIFIED CRIMINAL COMPLAINT
	) and § 904 demand for the empanelment
vs.	) of a Grand Jury.
	)
LISA NOVAK, OLIVERAS, GASTY, DEFENDANTS.	) Incident occurred on 8/22/07.

I. INTRODUCTION & PARTIES.

1.1 I, Al Cintra-Leite, the above named and undersigned Complainant (hereinafter "Complainant" or "I"), understand that I have the right of complaining to a prosecuting authority rather than signing this affidavit, but I elect to use this method to start criminal proceedings. I understand that the following are some but not all of the consequences of my signing a criminal complaint: (1) the defendants may be arrested and placed in custody; (2) the arrest if proved false may result in a lawsuit against me; (3) if I have sworn falsely I may be prosecuted for perjury; (4) this charge will be prosecuted even though I might change my mind; (5) witnesses and complainant will be required to appear in court on the trial date regardless of inconvenience, school, job, etc.

1.2 The attached affidavit of fact and other exhibits are incorporated by this reference as if fully restated herein. Defendants to this criminal complaint are as follows:

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Defendant LISA NOVAK is the judge who presided over Complainant's 8/22/07 hearing which resulted in the assault and false imprisonment of the Complainant without cause or lawful authority. (Inquire to prosecution for personal info).

Defendants OLIVERAS #804 and GASTY #814 are county sheriff's deputies (San Mateo County badge) who were present in court on 8/22/07 and performed Complainant's false arrest in Defendant NOVAK's court. (Inquire to sheriff for personal info).

1.3 The following is a true statement and accounting of the events that led to the filing of this complaint. I have not consulted with a prosecuting authority concerning this incident because they in fact will be named in my next complaint for bringing false charges against me. ***Any and all emphasis*** employed herein may be construed to have been added.

II. FACTS & EXHIBITS.

2.1 Complainant's exhibits (A through C) attached here to are incorporated by this reference as if fully restated herein, and are as follows:

Exhibit A: Tape recording (audio cassette) of the subject hearing of August 22, 2007 whereat Complainant was arrested without cause.

Exhibit B: Receipt for bail which was posted by Complainant's friend.

Exhibit C: Competence evaluation (dated 8/20/07) written for the Complainant by his doctor, Dr. Richard Patel, Phd. MD..

The subject hearing:

2.2 On August 22, 2007 I went to San Mateo county court located at Northern Court, 1050 Mission Road, South San Francisco, CA, and showed up for my hearing in front of Defendant NOVAK. I was there only a couple of minutes when she called my name and I stood up and she said, "Good morning sir, the court is in receipt of two letters from the appointed doctors in this case Dr. Anna Harriet Sever and Dr. Robert Sardy, uh, both of the Doctors indicate that you failed to contact them and make appointments in order to conduct the 1367 evaluations which were ordered by this court on our last court appearance July 25th; do you have an explanation why you failed to appear or make contact with those medical personnel?"

2.3 I replied, "Yeah, do you have an explanation why you haven't recused yourself?"

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2.4 Defendant NOVAK replied, "At this time the defendant is remanded, and we're going to again order that the defendant be evaluated...criminal.. proceedings were previously suspended pursuant to 1367-68 of the Penal Code and we will continue the matter for receipt of doctors reports...."

2.5 I then said "You haven't given me a hearing according to 1367-1368 of the penal code"... she interrupted and said "September 12th"... so I interrupted her and said "what was your reasons for saying that I'm mentally incompetent?"

2.6 To this NOVAK replied, "it's on September 12th, September 12th at 9:00 a.m."....When she said "the defendant is remanded" and six deputies, including OLIVERAS and GASTY, grabbed me and put me in handcuffs locked around my waist and shackles on my ankles . . . as she said "September 12th at 9:00 a.m.." (See **Ex.A**, tape recording of the subject hearing, three minutes long, case #NM-366245).

2.7 They were already pulling me out of the courtroom and they pulled me down the hall and put me into a holding tank where they told me to cooperate with the processing or they wouldn't process me and I would not be able to bail out but would just sit in the holding cell till I rotted, so under threat duress and coercion I cooperated and sat in the holding cell for about two hours until about 11:30 a.m. when two men in uniforms took me out of the holding cell and put me in a van with three other prisoners and took us to Redwood City.

2.8 Then they put me back into a holding tank and refused to house me or give me any food or water or toilet paper, the toilet and sink water weren't working anyway, but I had to defecate into a toilet that wouldn't flush and I had to use an old paper bag that was lying on the floor as toilet paper, and there were other guys in the cell too, at first just the one guy who was in the holding cell at court but then they put four other guys in with us and there wasn't enough room for us all to be able to sit on the bench so some guys had to sit on the floor or stand, but what I was wondering was if I was a threat to the safety of others then why was I locked up with anyone else?

2.9 My friends bailed me out at approx. about 9:45 p.m. the same day (8/22/07, **Ex.B**) after less than thirteen hours in jail. No doctor saw me and no attempt was made to segregate me and/or evaluate me, so what was the point in locking me up? If I was a threat to others why was I

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locked up with other people and if I was a threat to myself, unable to care for myself or a flight risk, why was I allowed to bail out?

2.10 The two doctors SHE named at the subject hearing are two that I had never been made aware of in any way, shape or form; this was my lawful excuse for not having seen them but she never asked to hear it. In my opinion NOVAK and all who condone this conduct have no business near a child and they have no place in situations involving the public, much less my case in that court.

III. AUTHORITIES RELATING TO CONTEMPT & ALLOCUTION.

3.1 These authorities are ample proof that the Complainant had a right to a hearing of his lawful excuse as an opportunity to purge the alleged contempt, to allocute or to provide evidence and testimony that shows him to lack intent.

3.2 A statute providing that a person who is released on bail or recognizance on condition that he will appear personally at a specified time and place and who fails without sufficient excuse to so appear shall be punished by a fine or imprisonment creates a substantive offense, independent of contempt, and therefore in proceedings under it, the rights to a formal charge, assistance of counsel, and a jury trial must be accorded. [1]

3.3 It has been suggested that the determination of the procedure used where an attorney fails to attend court depends on the nature of his explanation for the absence: where the explanation is clearly inadequate, the need to maintain the authority of the court predominates and the offense is to be treated as a direct contempt; where, however, there is a good faith excuse, the predominant consideration is the enhancement of procedural due process for the alleged contemnor, and the offense is to be treated as an indirect contempt. [2]

3.4 An attorney's failure to appear at the time set for trial of a case in which he was the only counsel representing his client was a direct contempt, where the attorney's only excuse was the fact that he had been asleep and had a bad cold. *Lyons v. Superior Court of Los Angeles County*, 43 Cal.2d 755, 278 P.2d 681, cert den 350 US 876, 100 L.Ed. 774, 76 S.Ct. 121.

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[1] See *Sclamo v. Commonwealth*, 352 Mass 576, 227 NE.2d 518.

[2] See *Re Yengo*, 84 NJ 111, 417 A.2d 533, 13 ALR.4th 102, cert den 449 US 1124, 67 L.Ed. 2d 110, 101 S.Ct. 941.

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3.5 A denial of intent to defy the authority of the court has been held to entitle the alleged contemnor to discharge. [3] But it has also been said that a disavowal of intention to commit a contempt of court may tend to excuse, but cannot justify, the act. [4] In a case involving contempt by publication, if a defendant in his verified answer denies any contemptuous intent, he must be discharged unless the language used, without the aid of innuendoes, is clear and not susceptible of a construction consistent with innocent intent. *La Grange v. State*, 238 Ind 689, 153 NE.2d 593, 69 ALR2d 668. A sincere and bona fide denial of intention may serve to mitigate the punishment. (See *Ex parte Bowles*, 164 Md. 318, 165 A. 169).

3.6 Attorneys frequently claim that their absence or lateness in appearing for a trial or hearing was the result of unawareness that their case had been scheduled for the time in question, or a good-faith belief that they were not obligated to appear at that time. Depending on the particular circumstances, such excuse may be accepted, resulting in a holding that the attorney had been improperly convicted of contempt, [5] or may be rejected, resulting in the affirmance of a finding of contempt. [6]

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[3] An alleged contempt, consisting in an assault upon a grand juror by a person whom the grand jury had indicted, has been held purged by the filing of a verified answer stating that the altercation resulted solely from a personal matter between the alleged contemnor, and the grand juror which had no connection with the grand jury, and also stating that the alleged contemnor did not intend by his conduct to defy the authority of the court. *Dossett v. State*, 226 Ind 142, 78 NE.2d 435.

[4] See *People v. Rosenthal*, 370 Ill 244, 18 NE.2d 450, 125 ALR 1271.

[5] See *Re Adams* (CA5 Tex) 505 F.2d 949 (appointed counsel for an indigent defendant who failed to attend a hearing allegedly because he had not seen the notice of the hearing date was not properly cited for contempt where he had never before missed a court appearance); *Sykes v United States*, 144 App.DC. 53, 444 F.2d 928 (attorney testified that he had failed to appear due to a lapse of memory, confusion over two alternative dates considered for the trial, and preoccupation with another case); *Re Brown* (Dist.Col.App.) 320 A.2d 92 (attorney's tardiness allegedly due to his misunderstanding of the time the judge had set for the resumption of trial after a recess); *People v McNeil* (1st Dist) 42 Ill.App.3d 1036, 1 Ill.Dec. 791, 356 NE.2d 1073 (defense attorney who failed to appear for a scheduled trial because he had assigned the case to an associate, who had been directed to another courtroom by mistake and so arrived late); *People v Matish*, 384 Mich 568, 184 NW.2d 915 (a public defender who failed to appear for his client's trial but arranged for another attorney to take his place); *Re West*, 21 NC.App. 302, 204 SE.2d 244 (lack of evidence in the record to support the conclusion that the attorney was in fact representing the defendant in that case or knew that the case was scheduled for trial).

[6] See *Re Stanley* (3rd Dist) 114 Cal.App.3d 588, 170 Cal.Rptr. 755 (attorney's failure to inquire about new trial date was a violation of his professional responsibility to keep informed of required dates and times for court appearances); *Re Thompson* (Dist.Col.App) 419 A.2d 993 (defense attorney failed to appear for his client's mental observation hearing on three successive dates; court noted that the attorney had not sought continuance until the day of the hearing); *People v. Henry*, 25 Mich.App. 45, 181 NW.2d 64 (claimed inadvertence in failing to keep informed of trial dates was not justifiable excuse); *Vincent v. Vincent*, 108 NJ.Eq. 136, 154 A. 328; *Kellar v. Eighth Judicial Dist. Court*, 86 Nev 445, 470 P.2d 434.

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3.7 Contempt judgment was abuse of discretion where appellant, public defender, claimed he had not heard trial judge announce 8:30 a.m. starting time and assumed from past experience that trial would start at 9:00 a.m., appellant had apologized to judge, there was no evidence that tardiness was intentional, and there was no proof of judge's prior warnings. *Sewell v State* (Fla.App.D1) 443 So.2d 164.

3.8 The Federal Rules of Civil Procedure make it a contempt to fail, without adequate excuse, to obey a subpoena. [7] Consequently, a person cannot be found in contempt if he has "adequate excuse" for disobeying subpoena, and he must be given an opportunity to present his defense. [8]

3.9 Under the Federal Rules of Criminal Procedure, [9] noncompliance with a subpoena is similarly deemed contempt of court; however, before a person can be found in contempt, it must be shown that he had the ability to comply with the subpoena. [10]

3.10 Another statute provides that failure to comply with a federal court's subpoena served personally in a foreign country may result in contempt proceedings. [11] Failure to obey such a subpoena may be excused for reasons of health. [12]

3.11 A judgment or order in contempt should state the amount that is in arrears so that the obligor spouse may pay the sum and purge the contempt, [13] and a defendant should not be committed in order to enforce payment of a larger sum than appears to be owing. [14] A spouse who has been properly committed for contempt can be purged of the contempt only by showing compliance with the decree, or a legal excuse for noncompliance. [15] Under the inherent power of

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[7] See FRCP 45(f).

[8] See *Fremont Energy Corp. v. Seattle Post Intelligencer* (CA9) 688 F.2d 1285, 34 FR.Serv.2d 1663; *Fisher v. Marubeni Cotton Corp.* (CA8) 526 F.2d 1338, 21 FR.Serv.2d 1148.

[9] See FRCrP 17(g).

[10] See *United States v. Cederquist* (CA9) 641 F.2d 1347.

[11] See 28 USC § 1784.

[12] See *United States v. Lansky* (CA5) 496 F.2d 1063, reh den (CA5) 502 F.2d 1168, where defendant residing in a foreign country, who was subpoenaed to appear before a federal grand jury (under 28 USCS § 1783 which authorizes the issuance of a subpoena to a national or resident of the United States who is in a foreign country), had his conviction of contempt for failure to comply with a subpoena served on him abroad reversed where he was advised by a physician not to undertake the trip to the United States because of danger to his health.

[13] See *Ginsberg v. Ginsberg* (Fla.App.D3) 122 So 2d 30; *Stanton v. Stanton*, 223 Ga 664, 157 SE.2d 453; *Adams v. Adams*, 80 NJ.Eq. 175, 83 A 190.

[14] See *State ex rel. Hewson v. Hewson*, 129 Or. 612, 277 P. 1012, 63 ALR 1216.

[15] See *Bradshaw v. Bradshaw*, 23 Tenn.App. 359, 133 SW.2d 617.

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a divorce court to enforce orders in a civil contempt proceeding, a contemnor who has been sentenced for a definite term may be purged of contempt during the term of imprisonment or may elect to serve out the fixed term. [16]

3.12 Prejudicial error occurred in prosecution for bail jumping where state had burden of proving that defendant purposely failed, without lawful excuse, to appear at time and date scheduled for trial, but instruction erroneously imputed to defendant (in effect, a conclusive presumption) any knowledge or notice on part of defendant's attorney regarding trial date. *State v. Blackbird* (1980, Mont) 609 P.2d 708.

3.13 Trial court's instructions improperly took away issue of lawful excuse in prosecution for first-degree bail jumping where State had burden of establishing lack of excuse beyond reasonable doubt, and where instruction in face of implausible testimony by defendant, that "as a matter of law the defendant had not introduced evidence concerning a lawful excuse for his failure to appear," impermissibly relieved State of its burden by in effect directing verdict for State, thus ignoring jury's perogative to acquit against evidence (sometimes referred to as the jury's pardon or veto power). *State v. Primrose* (1982) 32 Wash.App. 1, 645 P.2d 714. The State has the burden of proving the lack of a lawful excuse.

> "We conclude that a defendant charged with non-support of a child ***may be required to present sufficient evidence of a lawful excuse for his failure to provide child support to make the defense one of the issues in the case, with the burden then shifting to the state to prove beyond a reasonable doubt the lack of a lawful excuse***. The defendant's initial burden of coming forward with evidence of a lawful excuse "alleviates the state's difficulty in" disproving all possible lawful excuses, ***thereby making it reasonable to require the state to disprove the defense asserted***. *See Paige*, 256 NW.2d at 304 (noting that once defendant came forward with evidence of permit to possess pistol, it was reasonable to require state to prove invalidity of permit or violation of its terms because "the state's difficulty in 'proving a negative' is alleviated")."

See *Minnesota v. Burg*, No.K199517 (Minn.App. Nicollet Cnty., 2001). The opportunity to respond is essential to a finding of contempt. (See *Groppi v. Leslie*, 404 U.S. 496, 507 (1972)).

> "Our decisions [418 U.S. 498] establish that summary punishment need not always be imposed during trial if it is to be permitted at all. In proper circumstances, particularly where the offender is a lawyer representing a client on trial, it may be postponed until the conclusion of the proceedings. *Sacher v. United States*, 343 U.S. 1 (1952); cf. *Mayberry*

[16] See *Keller v. Keller*, 52 Wash.2d 84, 323 P2d 231.

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v. *Pennsylvania*, 400 U.S. 455, 463 (1971). But *Sacher* noted that "[s]ummary punishment always, and rightly, is regarded with disfavor. . . ." 343 U.S. at 8.

> [W]e have stated time and again that reasonable ***notice of a charge and an opportunity to be heard in defense before punishment*** is imposed are "***basic in our system of jurisprudence***."

Groppi v. Leslie, 404 U.S. 496, 502 (1972), quoting *In re Oliver*, 333 U.S. 257, 273 (1948). Even where summary punishment for contempt is imposed during trial, "***the contemnor has normally been given an opportunity to speak in his own behalf in the nature of a right of allocution***." *Groppi v. Leslie*, *supra*, at 504 (and cases cited therein). [footnote omitted]"

See *Taylor v. Hayes*, 418 U.S. 488, 497-98 (1974).

3.14 When a contemnor is to be summarily held in criminal contempt at the end of trial, the person should be given "an opportunity to speak in his own behalf in the nature of right of allocution." (See *Groppi v. Leslie*, 404 U.S. 496, 504 (1972); *Taylor v. Hayes*, 418 U.S. 488, 498 (1974); *Weiss v. Burr*, 484 F.2d 973 (CA9 1973)).

> "Furthermore, none of the other Supreme Court decisions cited by petitioner clearly establishes the existence of such a due process right of allocution. See *Taylor v. Hayes*, 418 U.S. 488 (1974) (***invalidating summary contempt conviction*** of attorney on due process grounds in a case where ***contempt was adjudicated and punishment imposed after the close of court proceedings and contemnor was not afforded notice or an opportunity to respond*** to contempt charges); *Groppi v. Leslie*, 404 U.S. 496 (1972) (holding state legislature had imposed the punishment of legislative contempt ***in violation of due process because it failed to provide contemnor with notice or an opportunity to respond***); *Schwab v. Berggren*, 143 U.S. 442 (1892) (common law practice of allocution not applicable in appellate court); *United States v. Ball*, 140 U.S. 118 (1891) (holding that order that defendant be executed by hanging was not an appealable final judgment triggering time limit for filing appeal, in part, because it did not appear that at the time of entry of order the defendant was asked why sentence should not be pronounced against him)." [17]

3.15 Presiding officer's failure to recuse when obliged to do so violates cannons of judicial conduct. (See *In re Scott* (1991) 52 Cal.3d 968, 277 Cal.Rptr. 201, 802 P.2d 985, 91 CDOS 450, 91 Daily Journal DAR 700).

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[17] See *Green v. French*, 143 F.3d 865 (CA4 1998).

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IV. VIOLATIONS OF CRIMINAL STATUTES.

4.1 All acts complained of shall be deemed to have been committed under color of official right, and committed knowingly, intentionally, and willfully, and with full and prior knowledge of the law and the facts applicable, relevant, and germane to the incident complained of. All paragraphs in this complaint shall be deemed to have been incorporated into each other paragraph. Allegations of violations of California criminal statutes are as follows:

COUNT I:

> CPC § 209(a).- ***Any person who seizes, confines***, inveigles, entices, decoys, abducts, conceals, ***kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act***, is guilty of a felony, and ***upon conviction thereof***, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or ***shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm***.

4.2 Without cause and without a lawful basis, Defendants NOVAK, OLIVERAS and GASTY acted in concert to take the person of the Complainant by use of physical force to a location from which demands for ransom emanated as a condition of Complainant's release. This unlawful use of force to remove Complainant to confinement, coupled with the Defendants' demand for ransom or otherwise extort money from Complainant, therefore constitutes a violation of CPC § 209(a) Kidnapping for ransom.

COUNT II:

> CPC § 211.- Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

4.3 In the course of kidnapping the Complainant, Defendants took or caused to be taken from the Complainant all property found on his person at his 8/22/07 hearing, against his will and under threat of force which includes firearms. Defendants' taking of Complainant's property in the commission of a felony therefore constitutes a plain violation of CPC § 211 Robbery.

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COUNT III:

CPC § 236.- False imprisonment is the unlawful violation of the personal liberty of another.

4.4 Without lawful authority or cause to order the arrest of the Complainant, Defendants NOVAK, OLIVERAS and GASTY acted to deprive the Complainant of his liberty, forcing him into a cage under threat of physical harm and bodily force. This unlawful confinement of the Complainant constitutes a plain violation of CPC § 236 False imprisonment.

COUNT IV:

CPC § 242.- A battery is any willful and unlawful use of force or violence upon the person of another.

4.5 Without lawful authority Defendants NOVAK, OLIVERAS and GASTY willfully and unlawfully and by threat of force and injury constrained and confined the Complainant for a period of several hours. This act constitutes a plain violation of CPC § 242 Battery.

COUNT V:

CPC § 518.- Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

4.6 Under threatened use of force which induced fear in the Complainant, Defendants NOVAK, OLIVERAS and GASTY demanded and obtained money from the Complainant's friend as a condition to Complainant's release from unlawful confinement. This wrongful taking through threats of forced false imprisonment constitutes a plain violation of CPC § 518 Extortion.

V. DEMAND FOR EMPANELMENT OF GRAND JURY.

5.1 Complainant has proven probable cause for his allegations of criminal misconduct against the Defendants, their conduct demeaning California's courts to a mere hate group status. Absent a firm finding that Complainant's arrest for contempt, for either saying that he had a lawful excuse or for asking NOVAK to articulate the grounds for her failure to recuse herself,

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was justified and satisfies Complainant's due process rights, Defendants NOVAK, OLIVERAS and GASTY must be deemed to be utterly without lawful authority when absconding with the Complainant and demanding money for his release which had to be paid by an acquaintance of the Complainant.

5.2 How are the crimes alleged invalid, how exactly does these Defendants' conduct not meet the essential elements of the statutes under which Complainant has sought charges? In the absence of cogent rebuttal of Complainant's allegations of felonious misconduct under California statutes, can he be rightfully accused of being, or rightfully deemed outright, to be "incompetent"? No; Defendants are guilty.

5.3 Complainant sees just cause and substantial public interest in empanelling a Grand Jury as wholly justified, and he hereby requests that such take place at the earliest possible convenience.

VI. CONCLUSION.

6.1 Complainant's authorities and evidence on the record require either that the Plaintiff (State of California) prove Complainant's due process rights exclude rights to purge contempt or allocution, prove he had no lawful excuse, or act as the law requires and move to cause criminal charges of the kind alleged herein to be brought against Defendants NOVAK, OLIVERAS and GASTY in the mere service of the Public's best interest. The People of California will either see these Defendants stripped of their offices, their benefits, their liberty and their pensions, or they will watch as their servants ignore the law, placing their fellows in crime above the law of the People.

6.2 If the provisions allegedly violated are to mean anything, if the Declaration of Rights in California's Constitution is to mean anything, this Court must provide remedies for constitutional and statutory violations. These remedies should include injunctions, compensatory and penal sanctions, the tools courts traditionally have used to bring about compliance by allowing through its judgment the distraint provided for by such laws as are within any

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respective subject matter jurisdiction. [18] Defendants hereto are hereby placed on notice of their 5th Amendment rights against incriminating themselves; no other notice will be provided.

VII. VERIFICATION.

7.1 I, Al Cintra-Leite, Complainant hereto, do hereby declare under penalties of perjury under the laws of the state of California that the foregoing accounting of facts are true and correct to the best of my knowledge. I hereby declare that the exhibits attached hereto are true and correct, they are authentic, and they have not knowingly been misrepresented in any way.

7.2 **I believe** Defendants have violated California state law as alleged above, and it is my intent herewith to seek criminal charges against Defendants and each of them for the purposes of having them sanctioned to the full extent of the law. Executed this 31st day of August, 2007.

Signed: _____

Al Cintra-Leite, Affiant/Complainant

7.3 The above affirmation was SUBSCRIBED and duly SWORN to before me this 31st day of August, 2007, by Al Cintra-Leite.

7.4 I, _____, am a Notary under license from the State of California whose Commission expires _____, and be it known by my hand and my Seal as follows:

_____

Notary signature

Dated:_____

Presented by:

_____

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[18] See *Widgeon v, Eastern Shore Hospital*, 300 Md. 520, 479 A.2d 921 (1984); *Fenton v. Groveland Community Services District*, 135 Cal.App.3d 797, 185 Cal.Rrtr. 758 (1982).

Exhibit A:

Ex.A, Tape cassette recording of Complainant's 8/22/07 hearing with Defendant NOVAK in case #NM-366245.

Exhibit: A

Exhibit B:

Ex.B, Receipt for bail which was posted by Complainant's friend.

Exhibit: B

Exhibit C:

Ex.C, Competence evaluation (dated 8/20/07) written for the Complainant by his doctor, Dr. Richard Patel, Phd., M.D.

Exhibit: C

LAW OFFICE
OF
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Steven A. Chase
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San Mateo - Dismissed

15 November 2007

Morley Pitt
Office of the District Attorney
1050 Mission Road
South San Francisco, CA 94080

Re: People v. Alexander Cintra-Leite NM366245A

Dear Morley:

I represent the above named defendant. I have filed a motion to dismiss for lack of speedy trial which is to be heard on 30 November 2007 (I had sent notice to your office with a date of 11/29/2007, but the Clerk wouldn't file it for that date because it was only 14 days from today). I've enclosed a copy of the motion for your convenience, as I don't know how the filing system works in your office. Also, I put the wrong case number on the one I served on Kim Feldman.

The reason for this letter is to seek your approval of a dismissal of this case. Mr. Cintra-Leite can be a very difficult person when he feels that his rights have been trampled. He has filed and served numerous motions on the Clerk and your office. No one has bothered to answer any of these motions and they were made without my knowledge. Judge Novak really screwed the case up when she referred Al under 1367-1368 when he was in *pro per*, without appointing an attorney to speak with him as is required by 1368.1. Furthermore, she never stated her reasons for believing that he was mentally disordered or incompetent as is required by the statute. Everyone has trampled on his speedy trial rights because he filed a notarized declaration stating that he was not personally waiving any of his rights (see my motion and the court file).

The underlying case is a matter of overreaction on the part of the police officer who felt his authority was being threatened by Mr. Cintra-Leite. The officer states in the report that Al told him that he was drunk. Having spent time with Mr. Cintra-Leite, I can almost guarantee that he never said such a thing, nor would he have said such a thing. I'm sure that he was pushy with the officer and that the officer felt that arresting him was the easiest thing to do. I don't know why he was charged as he was, when the case looked at best like a 647(f), and nothing more. Al disputes that he was so intoxicated that he couldn't care for his own welfare.

I think that Al has spent a week in jail due to the time it took him to bail originally, as well as the time he spent in jail when Judge Novak illegally (in my opinion) raised his bail and remanded him into custody because he was pissing her off. He's more than served any time that might have been properly imposed in this case.

The strongest reason to dismiss the case is that Mr. Cintra-Leite's rights have been trampled by failing to set the case for trial within the time prescribed by law in light of his declaration that he was not waiving time. When Judge Buchwald relieved the PD at the 11 July pretrial without making a "Faretta" inquiry or ruling, he violated Al's rights and delayed the proceedings. That led to the incompetency referral and the rest of the problems that are rife in the file.

Please review the case and let me know your decision.

Very truly yours,

STEVEN A. CHASE
enc.
cc: Alexander Cintra-Leite

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Attorney for: Alexander Cintra-Leite

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff,** vs. **ALEXANDER CINTRA-LEITE,** **Defendant.**	**CASE NO. NM366345A** **MOTION TO DISMISS (SPEEDY TRIAL)** **DATE: 29 November 2007** **TIME: 9:00 A.M.** **DEPT: FELONY**

PROCEDURAL HISTORY

Defendant, Alexander Cintra-Leite first appeared in this action on 23 April 2007. He appeared without counsel. Defendant was not formally arraigned, and the docket indicates that formal arraignment was waived. No one ever asked Mr. Cintra-Leite if this was his wish (to waive formal arraignment). The docket indicates that he was arraigned and advised of certain rights. The docket is silent with regard to notification of the witnesses against him as is required in Penal Code §988. The matter was set for a pretrial conference on 10 May 2007, and was set for jury trial on 21 May 2007.

On 10 May 2007, the Private Defender's Office was relieved and the defendant was to retain counsel. The case was continued to 17 May 2007 for ID of counsel. On 17 May 2007, the defendant appeared before Kathleen McKenna, court commissioner, and the docket indicates that there was a stipulation that the matter could be heard by a judge *Pro Tempore*. Defendant disputes that he ever entered into such a stipulation. Again the docket indicates that the defendant was arraigned, but defendant disputes that allegation and affirmatively states that he was not given a list of the witnesses

against him at that time. The Private Defender was appointed. The docket indicates that time was waived, but defendant disputes that he ever personally waived time in the matter. The case was continued to 11 July 2007 for pretrial conference and set for jury trial on 30 July 2007.

On 11 July 2007, Mr. Cintra-Leite appeared for pretrial conference with his court appointed attorney, Steven A. Chase. The defendant expressed displeasure with the proceedings and with his counsel, and the Private Defender was relieved. The record is silent as to the issue of a time waiver at that point. For reasons that are not clear, the jury trial date was vacated and the matter was continued for arraignment on 25 July 2007. No "Faretta" hearing was held, and no further counsel was appointed for the defendant. The following documents were filed by the defendant:

1. Motion for Bill of Particlulars and Demand for Perfected Instrument;
2. Notice of Objection to Complaint;
3. Notice of Objection to Waiver of Rights and Demand for Recognition of Rights;
4. Motion to Compel Production;
5. Affidavit of Denial of Willfulness;
6. Notice for Production of Documents
7. Affidavit of Denial of Rights
8. Affidavit of Objection to Denial of Due Process of Law;
9. Affidavit of Denial of Understanding;
10. Motion for Curative Instruction; and
11. Proof of Service.

The next hearing was held on 25 July 2007 before the Hon. Lisa Novak. While the docket states that the defendant was arraigned, defendant disputes that a formal arraignment was had, and specifically states that he was not given a list of the witnesses against him. No time waiver was entered. The Court expressed its belief that the defendant was not competent and suspended criminal proceedings, appointing two doctors to examine the defendant. The court did not state its reasons for the decision that the defendant was not competent, and did not appoint an attorney to speak with the defendant and advise him. The case was continued to 22 August 2007 for receipt of the doctor's reports.

On 7 August 2007, the court received the following motions:

1. Motion to Set Arraignment Date
2. Motion for Change of Venue;
3. Motion for Stay of Execution Pending Appeal
4. Affidavit of Communism;
5. Notice of Challenge of Jurisdiction;
6. Mandatory Judicial Notice; and
7. Proof of Service.

On 22 August 2007, defendant appeared before Judge Novak, and she appointed the Private Defender to represent Mr. Cintra Leite, although no attorney was present on behalf of Mr. Cintra-Leite. Mr. Cintra-Leite was remanded to the custody of the sheriff for no stated reason, and a new increased bail was set without a hearing and without a stated cause. The case was continued until 12 September 2007 for receipt of doctors' reports.

Mr. Cintra-Leita posted bail on 27 August 2007.

On 12 September 2007, Mr. Cintra-Leite appeared with counsel, Steven Chase as his court appointed counsel. Judge Novak granted a challenge pursuant to Code of Civil Procedure §170.6, but denied defendant's challenges pursuant to Code of Civil Procedure §§170.1 and §170.3. The case was then set for receipt of doctors' reports on 18 October 2007 before the Hon. Elizabeth Lee. Mr. Cintra-Leite appeared with counsel Harvey Mittler who appeared specially for Steven Chase, and the case was continued to 2 November 2007 for receipt of doctor's report.

On 2 November 2007, defendant appeared with counsel Steven Chase, before Commissioner Joseph Allen. The docket of that date indicates that the defendant was again arraigned. However, this was not correct as no arraignment took place, the Court refused to arraign the defendant claiming that he had already been arraigned. The defendant refused to stipulation to have a commissioner hear his case, and the case was immediately transferred to Judge Lee.

Judge Lee denied the defendant's right to represent himself (Faretta motion) and found the defendant competent to go to trial. The case was continued for jury trial on 3 December 2007. The 3 December 2007 court date is 51 days after the time period that began on 11 July 2007 when the defendant's counsel was relieved, subtracting the days while the criminal proceedings were improperly

suspended by Judge Novak on her mistaken belief that the defendant was incompetent when he was merely difficult. The matter must be dismissed.

I.

JUDGE NOVAK'S REFERRAL OF THE DEFENDANT PURSUANT TO PENAL CODE §§1367 AND 1368 WAS IMPROPER AND VIOLATED THE PROCEDURE ESTABLISHED BY LAW. PENAL CODE §1368.1

Penal Code §1368.1, paragraph (a) states:

> (a) During the pendency of an action and prior to judgment in a case when the defendant has been charged with a misdemeanor or misdemeanors only, if the defendant's behavior or other evidence leads the judge to conclude that there is a reason to believe that the defendant is mentally disordered and as a result may be incompetent to stand trial, the judge **shall state his or her reasons in the record.** ...If the defendant is not represented by counsel, the court shall appoint counsel. At the request of the defendant or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the defendant and to form an opinion as to whether the defendant is mentally disordered at that time.
> (b) ....If counsel informs the court that he or she believes the defendant is not mentally disordered, the court may nevertheless order that the defendant be referred for evaluation and treatment in accordance with Section 4011.6."

Penal Code §4011.6 only applies to defendants who are in custody, and therefore does not apply to Mr. Cintra-Leite who was on bail. Judge Novak failed to appoint an attorney to speak with Mr. Cintra-Leite and failed to state her reasons on the record as to why she believed he was mentally disordered and therefore incompetent to stand trial. Judge Novak violated defendant's speedy trial rights by failing to appoint counsel who would have clearly seen that he was not incompetent to stand trial.

As noted above by the number of motions that the defendant has filed in this case (none of which have been answered by the prosecution), he is a person who has taken a pro-active role in his representation. The court has ignored his continued averment that he has never been arraigned, and has refused to properly arraign him. Pursuant to Penal Code §988, an arraignment

> "consists in reading the accusatory pleading to the defendant and delivering to the defendant a true copy thereof, and of the endorsements thereon, if any, including the list of witnesses, and asking the defendant whether the defendant pleads guilt or not guilty to the accusatory pleading; provided that where the accusatory pleading is a complaint charging a misdemeanor, a copy of the same need not be delivered to any defendant unless requested by the defendant."

Defendant challenges the court to look at the reporter's notes for all proceedings in which he has appeared to see where he has ever had the charges against him read to him; or where he has been given a list of witnesses.

This case has been pending for over seven months, and the defendant has made challenges to the jurisdiction of the court; whether the prosecuting attorney and judges before whom he appears have properly taken oaths as required by Business and Professions Code §6067; a specific objection to a waiver of rights; demanding all his rights at all time, and that he waives none of his rights at any time for any reason. He also filed a written request to be properly arraigned. He also filed a an objection to a denial of due process on his behalf. Defendant asks that the court take judicial notice of all motions on file in this action which were either filed on behalf of the defendant or which were "received" by the court and the clerk's office.

The defendant in this action has been denied the simple right to proceed to trial in a timely fashion. He was railroaded into a competency evaluation when he tried to assert his rights. He was denied a hearing to determine if he was capable of representing himself in this matter. His demands to the court and to the District Attorney's office have been ignored. Judge Novak failed to follow the procedures outlined in the Penal Code when she expressed a doubt as to the defendant's competence, and he is treated as a pariah instead of as a citizen by the court personnel before whom he has appeared, with few exceptions. This case has been a procedural nightmare where justice has been denied; rights trampled; and basic human dignity ignored. For all of the reasons cited herein, defendant demands that this case be dismissed.

Dated: 14 November 2007

STEVEN A. CHASE, Attorney for
Alexander Cintra-Leite

DECLARATION OF SERVICE

I, Steven A. Chase, state:

I am a citizen of the United States, over eighteen years of age, a resident of the County of San Mateo, State of California, and not a party to the within action; that my business address is:

421 Grand Avenue, Suite A, South San Francisco, California 94080-3635

That on this date, 14 November 2007, I served the
MOTION TO DISMISS (SPEEDY TRIAL)

by placing a true copy thereof in an envelope addressed to:

Kimberley Feldman
Office of the District Attorney
1050 Mission Road
South San Francisco, California 94080

and by then sealing and depositing said envelope, with postage thereon fully prepaid, in the United States Mail at South San Francisco, California. That there is delivery service by the United States Mail at the place so addressed on regular communication by the United States Mail between the place of mailing and the place so addressed.

Dated: 11-14-2007

STEVEN A. CHASE