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1 Jack Daniel, CBN 133498  
CENTRAL CALIFORNIA LEGAL SERVICES  
2 2014 TULARE STREET, #600  
FRESNO, CALIFORNIA 93721  
3 209/441-1611 (Fax) 441-7215  
Attorneys for Defendants  
4  
5  
6  
7

8 IN THE MUNICIPAL COURT OF THE CENTRAL VALLEY MUNICIPAL COURT  
JUDICIAL DISTRICT, COUNTY OF FRESNO, STATE OF CALIFORNIA  
9 FIREBAUGH DIVISION

10 HOUSING AUTHORITY OF THE COUNTY )  
OF FRESNO, CALIFORNIA, a public )  
11 body, corporate and politic, )

12 Plaintiff, )

13 vs. )

14 VICTORIA VALVERDE, )

15 Defendant. )

CASE NO. C96300004-9

BRIEF IN SUPPORT OF MOTION  
IN LIMINE

HEARING DATE: 04/23/96  
TIME: 8:30 A.M.

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16  
17 INTRODUCTION

18 This is an eviction case. Plaintiffs support their eviction based on evidence of  
19 juvenile records obtained by plaintiffs from law enforcement. Juvenile records are  
20 confidential. The plaintiffs have violated the defendants' rights in obtaining this  
21 evidence. Any continued use of it would also be a violation of those rights.

22 STATEMENT OF FACTS

23 Plaintiff initiated this eviction after two incidents involving law enforcement and  
24 the son of Victoria Valverde, who is a juvenile. No charges have been filed in the more  
25 recent case. The citation points to a violation of H & S Code 11359, possession of sale  
26 of marijuana. The underlying police reports indicate that a group of four juveniles were  
27 approached by the police. They scattered. The police found three individually wrapped  
28 containers of marijuana. The weight of all three packages together combined was

1 under an ounce. The incident occurred off the premises of the Housing Authority.

2 Plaintiff's employees did not see this incident. They heard about it, though they  
3 cannot say how they heard about it. They then went to the law enforcement office,  
4 asked for and got a copy of the report. That report included information on the  
5 Valverde boy and three other juveniles. Those juveniles have no connection with the  
6 Housing Authority. Shortly after receipt of the reports, plaintiff initiated the  
7 administrative eviction procedures which are a prerequisite to the filing of an unlawful  
8 detainer. To date, no criminal charges have been filed. Plaintiffs have no evidence of  
9 this incident other than that obtained through the release of the police report and the  
10 fruits thereof.

11 The other incident which is the basis for this eviction dates from 1994. It  
12 involves allegations of violations of P.C. 242. Plaintiffs obtained their information about  
13 this incident, at least in part, in a similar matter as outlined above.

14 At the time plaintiff obtained the documents, there was a standing order of the  
15 Superior Court which, in limited circumstances, purported to allow the release of  
16 juvenile police records. It is attached as Exhibit "A," and incorporated by reference.  
17 That Standing Order calls for release of juvenile records to housing authorities only upon  
18 receipt by of a declaration from the housing authority that the records will be used  
19 only for the purposes of eviction proceedings and that the incident occurred on the  
20 premises.

21 Plaintiffs did not file any declaration. Employees of the housing authority are  
22 aware of the procedure for filing a declaration (see declaration of Jack Daniel and  
23 attachments thereto, Exhibit "B," incorporated by reference). They released the reports  
24 to defendants without redacting the information concerning the juveniles other than the  
25 Valverde boy.

26 The Valverdes are residents of public housing owned by plaintiffs. As such, they  
27 have a right, under federal law, to continue their tenancy with plaintiff as long as they  
28 desire, absent good cause. The lease agreement and applicable federal law mandates

1 pay only a percentage of their income as rent. This amount is well below fair market  
2 value in the Valverdes' case.

3 The Valverdes seek to exclude all evidence of the juvenile's alleged criminal  
4 behavior from the trial. Such alleged criminal behavior is the sole reason for this  
5 eviction.

#### 6 ARGUMENT

##### 7 1. The Plaintiffs Violated the Standing 8 Order of this Court

9 We do not agree that the Standing Order of the Court is lawful. However,  
10 assuming *arguendo* that the Standing Order does comport with the law, the Plaintiffs  
11 violated that order. First, the Order requires that the plaintiff file a declaration  
12 (paragraph 4, "Attachment to Standing Order") before they receive any police report.  
13 They did not do so. Secondly, it is apparent that they could not have complied with  
14 the requisites of such a declaration. They would have been required to declare under  
15 penalty of perjury that the incident occurred on the premises of the housing authority.  
16 Because the incident occurred off the premises, they could not have done so.  
17 Nevertheless, they obtained the records in clear violation of the Standing Order.

##### 18 2. THE RELEASE OF THE POLICE REPORTS WAS 19 IMPERMISSIBLE, EVEN IF THEY HAD BEEN 20 RELEASED IN CONFORMITY WITH THE STANDING ORDER 21 BECAUSE THE STANDING ORDER IS VIOLATIVE OF THE LAW

22 The Standing Order purports to conform to the law regarding the release of  
23 juvenile records. It does not do so. Juvenile records are confidential. The California  
24 legislature has affirmed "its belief that juvenile court record, in general, should be  
25 confidential" and has narrowly tailored all exceptions to that rule, W & I Code §  
26 827(b))(1). The California Supreme Court recognized that confidentiality is an  
27 important part of the habilitation process and that juvenile records should not be  
28 released without the express approval of the Juvenile Court, T.N.G. v. Superior Court,  
(1971) 4 Cal.3d 767, 776-778. This express approval permits the court to make an  
individualized determination based on the facts of each case, the reason for the release,

1 and an assessment of the effect the release will have on the individual child.

2 The T.N.G. court held that all records, including those of detentions for a few  
3 hours, were subject to the confidentiality provisions. The T.N.G. court upheld a 5 year  
4 waiting period to seal those kinds of detentions because the juvenile court would not  
5 release such records to third parties. "The decision by the [T.N.G.] court that § 827  
6 does not permit the disclosure of information as to arrest or detention was one of its  
7 essential bases for its holding that § 781 was constitutional." Wescott v. Yuba (1980)  
8 104 Cal. App.3d 103, 107.

9 The standing order turns that policy on its head and allows for the release of any  
10 and all juvenile records without any individualized consideration by the court or notice  
11 to the juvenile. The Wescott court, with T.N.G. clearly in mind, stated that a third  
12 party is "required by the language of the statute to petition the juvenile court for an  
13 order permitting inspection," Wescott, supra, at 108-1 09. Again the "proper procedure  
14 is to petition the court to review the records in camera to determine which, if any, may  
15 be disclosed" to third parties, Lorenza Juanita P. v. Superior Court (1988) 197 Cal.  
16 App.3d 607, 611. See also the decision in Navaio Express v. Superior Court (1988)  
17 197 Cal. App.3d 981, 986, which also calls for an initial in camera inspection after a  
18 petition by the third party. The party seeking disclosure must show good cause, In re  
19 Maria V., (1985) 167 Cal. App.3d 1099, 1103.

20 All the case law holds that the standing order is improper. The cases make clear  
21 that a third party must petition the court, show good cause, and then the court can  
22 inspect the records in camera and release those records which the Court feels are  
23 appropriate for disclosure. Any other method of getting the records violates the law.

24 In addition, the Standing Order purports to legitimize dissemination of juvenile  
25 records to governmental landlords for the purposes of evictions. There is no similar  
26 provision for dissemination to private landlords. Thus, the Order provides less rights  
27 to a class of people (public housing tenants) than it does to other, similarly situated,

28 ///

1 tenants in private housing. The Order also allows for no procedural due process notice  
2 nor hearing for the juvenile or her family before the release. As argued below, this  
3 violates the constitutional guarantees of equal protection and due process.

4 The Courts have felt strongly enough about the dissemination of juvenile records  
5 as to prohibit release of such records even by people who obtained them legally, In re  
6 Tiffany G., (1994) 29 Cal.App.4th 443, 5 Cal.Rptr. 8. Here the records and information  
7 ere obtained illegally, further use of them is clearly illegal.

a The plaintiffs have violated the Standing Order and W & I Code Sec 827 et sea.;  
9 their seeking and obtaining of the police records was clearly illegal.

10 **3. THE PLAINTIFFS' ACTIONS IN THIS CASE**  
11 **ALSO VIOLATED DEFENDANT'S RIGHTS UNDER**  
12 **THE CALIFORNIA CONSTITUTIONAL RIGHT TO PRIVACY**

13 The confidentiality for minors is greater than the cases discussed above. None  
14 of them were litigated in the context of California's constitutional right to privacy and  
15 the rights to due process and equal protection

16 The right to privacy, standing alone, makes the seeking out and procuring of the  
17 police record illegal. In conjunction with the confidentiality provisions of W & I Code  
18 Sec 827 et sea., our case becomes even more compelling.

19 The Supreme Court has informed us as to what the elements of a violation of the  
20 constitutional right to privacy are in Hill v. NCAA, (1994) 7 Cal. 4th 1, 35 - 37. Those  
21 elements are: (1) A legally protected privacy interest, (2) a reasonable expectation of  
22 privacy, and (3) a serious invasion of privacy interest. All three clearly exist here.

23 The confidentiality of juvenile police records is clearly a legally protected privacy  
24 interested as established by W & I Code § 827 et sea., and the case law interpreting  
25 it (see discussion above in Section 2). As the Supreme Court has noted:

26 A particular class of information is private when well established social norms  
27 recognize the need to maximize individual control over its dissemination and use  
28 to prevent unjustified embarrassment or indignity. Such norms create a threshold  
reasonable expectation of privacy in the data at issue. As the ballot argument  
observes, the California constitutional right of privacy 'prevents government and  
business interests from [ 1 ] collecting and stockpiling unnecessary information  
about us and from [2] misusing information gathered for one purpose in order to

1           serve other purposes or to embarrass us. Hill, *supra* at 35.

2   The plaintiff has engaged in both of the activities prohibited by the privacy right. It has  
3   “collected and stockpiled” unnecessary information. For example, it now has in its files  
4   not only information about an juvenile detention (where no charges have been filed) in  
5   which the Valverde juvenile was mentioned, but also information about the other  
6   juveniles.     Plaintiff has also clearly misused the information. At this point, the only  
7   legitimate use of the information is for the state to determine whether to file charges  
8   and what charges to file. It would be legitimate (and highly likely) for the filing district  
9   attorney to review this police report, for example, and refer the case to informal  
10  probation with a charge of simple possession (given the extremely small amount of  
11  marijuana allegedly involved here (under an ounce for four co-defendants).

12           In fact, the plaintiff in this case has usurped the legitimate authority of the D.A.  
13  and made the decision that this case involves “possession for sale of a narcotic.” We  
14  find it doubtful that any such charge will be filed. In any case, it should emanate from  
15  the district attorney, not plaintiff. Although misuse is not a required part of the first  
16  element, it is present here. The first element is clearly present.

17           The second element is that there be a reasonable expectation of privacy. The  
18  Supreme Court in Hill set out several factors for determining whether there was a  
19  reasonable expectation of privacy. All the factors call for this Court to make a finding  
20  that such an expectation exists.

21           One such factor is the circumstances surrounding the invasion of privacy, Hill,  
22  supra at 36.     Among the circumstances that the Hill Court noted might lead to a  
23  diminished expectation of privacy were advance notice of the invasion (as in sobriety  
24  checkpoints). No such circumstance exists here.

25           In addition, The Hill Court remarked that “customs, practices, and physical  
26

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27       ' "Possession for sale of a narcotic...off premises" is the  
28       only lease provision that plaintiffs can possibly charge this  
      incident violates.

1 settings surrounding particular activities may create or inhibit reasonable expectations  
2 of privacy.” ~~Hill, supra at 36~~, they found the atmosphere of a collegiate  
3 locker room diminished the expectation of privacy. Nudity was commonly expected in  
4 such a setting (though the Court still found that there was a reasonable expectation of  
5 privacy in that case). Again no such circumstance exists here. Unlike the athlete  
6 plaintiffs in Hill, the Valverdes had never been notified that they would be stripped bare  
7 of their statutory and constitutional rights. The Valverdes had a right to expect that  
a juvenile records would be kept confidential.

9 Finally, the Hill Court spoke of the presence or absence of opportunities to  
10 consent voluntarily to activities impacting privacy interests obviously affects the  
11 expectations of the participant. The athlete plaintiffs in Hill were voluntary participants  
12 in athletics. The schools were not only voluntarily engaged in sports, they were part  
13 of the membership of the organization which insisted on the invasion of privacy, the  
14 N C A A .

15 No such consent or voluntariness exists here. Unlike participation in  
16 intercollegiate sports, which is voluntary and not an indispensable need, the provision  
17 of decent housing by a parent is required by law and an indispensable need.

18 The Valverdes clearly have a reasonable expectation that the plaintiffs would not  
19 snoop into and obtain records of their child’s detention; the second element is met.

20c The final element for a privacy case is that a serious invasion of privacy interest  
21 occur:

22 Actionable invasions of privacy must be sufficiently serious in their nature,  
23 scope, and actual or potential impact to constitute an egregious breach of the  
social norms underlying the privacy right. Hill, supra at 37.

24 The Court found, for example, that observed urination and retention of a sample was  
25 such a serious invasion. We have an even more serious invasion here. Plaintiffs have  
26 invaded records of a kind that have been always been considered confidential. The  
27 legislature and the Courts have considered the confidentiality of juvenile records to be  
28 so important that they have declared that they outweigh other constitutional claims.

1 If charges are filed and a trial were held, for instance, the public would not be admitted,  
2 despite the Sixth Amendments guarantees of a public trial. The press would not be  
3 able to report the names of the juveniles despite the First Amendment.' Despite the  
4 right to a fair trial, Defendants cannot get the records of juvenile co-defendants without  
5 approval of the minor or the court, *Wescott, supra*.

6 The consequences are also extremely serious. No one could argue that the ability  
7 to participate in intercollegiate sports is as important as the right to have decent shelter  
a for a family.

9 The plaintiffs clearly have a *prima facie* case that the evidence to be used against  
10 them was obtained illegally under the California constitutional right to privacy. We  
11 leave to defendants to raise any possible defenses and reserve the right to assert any  
12 rebuttal to those defenses in our reply brief and at oral argument. What is clear here  
13 is that plaintiffs have violated the applicable standing orders of the Superior Court, state  
14 statutes, and state and federal constitutional provisions in order to get the evidence  
15 they have already used against the Valverdes in the administrative hearing and that they  
16 plan to use again in the trial of this case.

17 **4. ANY USE OF THIS EVIDENCE WILL**  
18 **VIOLATE DEFENDANTS' RIGHTS TO EQUAL PROTECTION, DUE PROCESS,**  
**AND THE UNIFORM APPLICATION OF LAWS**

19 The Valverde juvenile is similarly situated to juveniles whose criminal conduct is  
20 litigated in Juvenile Court. Indeed, he is similarly situated in this case to himself when  
21 and if his charges are filed and prosecuted in Juvenile Court. He is also similarly  
22 situated to juveniles who have been detained, released and not charged but who live  
23 in residences owned by private landlords.

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24  
25 <sup>2</sup>It is ironic, indeed that the filing of this complaint by  
26 plaintiffs has made public information that the Courts of  
27 this jurisdiction keep confidential. If a charge is filed in  
28 this case, those proceedings will be conducted  
confidentially. Here, when we do not even know if the D.A.  
**will** decide if the evidence is sufficient to justify filing  
charges, the trial and record is open to the public.

1 In the Juvenile Court, the Valverdes would be afforded the right to  
2 confidentiality. The media would have limited, if any access. The public would have  
3 no access. All the litigants would be under bounds of confidentiality.

4 If the Valverdes lived in non-governmentally controlled housing, their private  
5 landlord would have no right to access to juvenile records. As noted above, the  
6 Standing Order allows governments that control housing to obtain data about juveniles  
7 which would not be released to private landlords. It would be strange indeed if tenants  
8 and juveniles were afforded less protection when the government is their landlord, given  
9 that the normal rule is that the federal and state Constitutions limit the power of the  
10 state more strictly than they do that of private actors (on those rare occasions when  
11 constitutional restrictions apply to private actors at all).

12 There is no reason that this evidence should be admitted in this Court. The  
13 Valverdes cannot be stripped of their rights just because the Housing Authority has  
14 chosen to evict them and illegally obtain evidence in the course of that eviction. Given  
15 that there is no sufficient reason to support this disparate treatment, it violates the  
16 Valverdes rights to equal protection as guaranteed them by the Fourteenth Amendment  
17 to the U.S. Constitution and Article 1, Sec 7 and Article IV, 16 of the California  
18 Constitution, Pvler v. Doe, (1982) 457 U.S. 202; People v. Glaze, (1980) 27 Cal.3d  
19 859. Every person has an equal right in litigation with every other and a

20 discrimination that is merely arbitrary in its nature is a constitutional violation, Pavne  
21 v. Superior Court, (1976) 17 Cal.3d 908, 132 Cal.Rptr. 405. The procedures of the  
22 courts must operate to afford all similar situated persons like modes of procedure Daiah  
23 v. Shaffer (1936) 23 Cal.App.2d 449. There is no logical reason for the courts to  
24 protect confidentiality on 10th Street in Fresno and to violate in any other Court.  
25 Similarly, there is no reason to afford less protection to public housing tenants than to  
26 private tenants. The laws requiring juvenile confidentiality are of a general nature. As  
27 such, they must operate equally on all persons on which they operate at al, People v.  
28 Ventura Refinina Co., (1928) 204 Cal. 286, reh. den. 204 Cal 296. Where only a few

1 are afforded the protection of the law and some are not, the operation of the law  
2 destroys the uniformity of the law and renders the conduct unconstitutional, Ex parte  
3 Clancy (1891) 90 Cal. 553.

4 This is particularly true in this case because the right involved here is  
5 fundamental and embedded in the California constitutional guarantees to privacy. With  
6 such a fundamental right involved, only a compelling state interest can justify the  
7 diverse treatment of similarly situated classes, Skinner v. Oklahoma, (1942) 316 U.S.  
8 535.

9 In addition, the garnering of juvenile records, whether done pursuant to the Standing  
10 Order or not, violates the Valverdes rights to procedural due process. As argued above,  
11 the Valverdes have a clearly established right to privacy. The plaintiffs, a governmental  
12 entity, have stripped them of this without any notice, right to be heard, or chance to  
13 appeal. In order to comply with due process, a proceeding must give the parties  
14 adequate means to assert their rights, People v. Broad, (1932) 216 Cal 1, *cert den.* 287  
15 U.S. 661. The Valverdes were entitled to a notice that plaintiffs planned to take the  
16 action they did, Randone v. Appellate Dept. of Superior Court (1971) 5 Cal.3d 536,  
17 *cert den.* 407 U.S. 924. In addition to notice, the Valverdes were entitled to a hearing  
18 about the issue of whether the juvenile reports should have been released. There can  
19 be no compromise on the footing of convenience or expediency when the minimal  
20 requirement of a hearing has been neglected, Re Lambert (1901) 134 Cal. 413.

21 Plaintiffs have trampled the Valverdes constitutional rights in this case. Their  
22 conduct is clearly illegal.

23 **5. SINCE THE EVIDENCE WAS ILLEGALLY OBTAINED**  
24 **AND BECAUSE FURTHER DISSEMINATION OF IT IS**  
**ALSO ILLEGAL, THE COURT SHOULD RULE IT INADMISSIBLE**

25 **A. The Court should find the evidence inadmissible**  
26 **because it was illegally obtained by plaintiffs**

27 Although the exclusionary rule does not automatically apply to non-criminal  
28 proceedings, it should apply here. The use of evidence obtained by deceitful means on

1 part of others (even those not employed by the agency is impermissible, Redner v.  
2 Workmen's Compensation Appeals Board (1971) 5 Cal. 3d 83, 94-97, 95 Cal. Rptr.  
3 447, 485 P.2d 799. The inadmissibility is even clearer where, as here, the agency  
4 seeking to use the evidence is the party that obtained it illegally. "An agency is barred  
5 from using evidence obtained by entrapment and other evidence 'inconsistent with the  
6 dignity of its proceedings and the fair administration of justice.'" Pattv v. Board of  
7 Medical Examiners (1973) 9 Cal. 3d 356, 364-365, 107 Cal. Rptr. 473, 508 P.2d 1121

8 Although the criminal rules of evidence do not apply as a body to non-criminal  
9 trials, selected rules may be held applicable. The most important rule is probably the  
10 exclusionary rule. It does not apply in every trial but may be applied in selected cases.  
11 In fact, even prior to Mapp v. Ohio (1961) 367 U.S. 643, when there was no  
12 exclusionary rule recognized in California law; the California courts ruled that, in certain  
13 circumstances, illegally obtained evidence should not be admitted in civil trials, Kohn  
14 v. Superior Court (1936) 12 Cal.App.2d 459; 55 P.2d 1186.

15 The decision whether to apply it should rest on (1) how nearly the purposes of  
16 the trial approach the goals of criminal law enforcement, (2) the social cost of extending  
17 the exclusionary rule to the case in question, and (3) whether applying the rule in the  
18 case in question would tend to deter unlawful conduct by investigators, as the rule is  
19 intended to deter unlawful conduct by the police when they investigate criminal activity,  
20 Emslie v. State Bar (1974) 11 Cal. 3d 210, 226-229, 113 Cal. Rptr. 175, 520 P.2d  
21 991 I.

22 All three of the Emslie factors argue for inadmissibility. The trial in this case, as  
23 will be argued below, very closely approaches the goals of a criminal trial, i.e.  
24 punishment and forfeiture for an alleged criminal act. The social cost is minimal. At  
25 most, we are requesting that plaintiffs petition the Juvenile Court, so that the experts  
26 in the nature of juvenile proceedings can have a say in the release of the information  
27 (and so that the laws and constitution can be obeyed). Finally, a ruling of  
28 inadmissibility will clearly deter the actors who obtained the evidence illegally. The

1 deterrent effect is clearly the ultimate purpose for excluding evidence, Elkins v. U.S.  
2 (1960) 364 U.S. 206, 217. That purpose must be served here. Plaintiffs must be  
3 deterred from repeating their illegal behavior by this Court's ruling that the evidence is  
4 inadmissible.

5 An illustrative case is Dvson v. State Personnel Board, 213 Cal. App. 3d 711,  
6 719; 262 Cal. Rptr. 112. There the evidence seized in this case was in no way the  
7 independent product of police work. As here, the search was initiated on the basis of  
8 allegations of criminal misconduct made to the agency. It was directed by and the  
9 evidence was seized and held by the agency. The agency introduced it in evidence in  
10 the administrative disciplinary hearing. The Court ruled the evidence inadmissible,  
11 Dvson at 719.

12 **B. In addition, the Court should rule that the  
13 evidence is inadmissible because this case  
14 is a forfeiture and quasi-criminal in nature**

15 Even though this Court should rule the disputed evidence inadmissible in any civil  
16 case, it should do so particularly in this one, which involves a forfeiture of the  
17 Valverde's lease.

18 There can be no mistake that this is a suit for forfeiture. It is an attempt by the  
19 government to terminate a tenancy that otherwise would run the life of the tenant This  
20 is no plain vanilla lease, either. It is a federally subsidized and regulated lease which,  
21 under federal law, cannot be terminated absent good cause. It thus in theory extends  
22 in perpetuity. If the Valverdes are evicted they stand little chance of getting another  
23 subsidized tenancy, particularly since plaintiffs are practically the sole provider of such  
24 housing in Fresno County and because an eviction for good cause permits plaintiff to  
25 deny subsequent applications for subsidized housing by the Valverdes. Besides, no  
26 applications for any such subsidized housing and there is a waiting list of several years.  
(See declaration of Debra Delgado-Smith, Exhibit "C", incorporated by reference).

27 The loss of this tenancy is a penalty of thousands of dollars. In contrast, the  
28 criminal case, if it is filed, will likely be filed as possession of marijuana in an amount

1 under an ounce. The maximum penalty for such an offense is a small fine or diversion.  
2 Where the civil remedy being sought by the government is so much greater than the  
3 civil penalty, it is clear that the case is a forfeiture and thus *quasi-criminal* in nature,  
4 One 1958 Plymouth Sedan v. Commonwealth (1965) 350 U.S. 702, 700-703; 85 S.Ct.  
5 1246, 1250-1 251. The California Courts have followed the same line of reasoning,  
6 People v. Moore, (1968) 69 Cal. 2d 674, 680; 72 Cal.Rptr. 800.

7 Even absent the disparity, where the civil penalty standing alone is so great in  
8 value, there is a quasi-criminal proceeding. Wherever there is “payment to a sovereign  
9 as punishment for some [criminal] offense” there is a punishment for purposes of  
10 double jeopardy considerations, U.S. v. Halper, 490 U.S. 435 (1989). Since a  
11 punishment can be enforced by a government only through quasi-criminal proceedings,  
12 it follows that any payment to a sovereign must also be quasi-criminal in nature. The  
13 forfeiture of the lease and its attendant subsidies in this case are such a payment.

14 As the Court pointed out, the law had for some time been that “proceedings  
15 instituted for the purpose of declaring a forfeiture of a man’s property by reason of an  
16 offense committed by him, though they may be civil in form, are in their nature  
17 criminal.” One 1958 Plymouth Sedan, *supra* at 697, citing Boyd v. United States, 116  
18 u. s. 616 (1886).

19 If this Court agrees that this is a forfeiture action, then it must rule that the  
20 illegally obtained evidence is inadmissible:

21 “...[since] suits for penalties and forfeitures, incurred by the commission of  
22 offenses against the law, are of this quasi-criminal nature, we think that they are  
23 within the reason of criminal proceedings for all purposes of the fourth  
24 amendment of the constitution, and of that portion of the fifth amendment that  
25 declares no person shall be compelled in any criminal case to be a witness  
26 against himself,” Boyd v. U.S. (1886) 116 U.S. 616, 634.

25 Defendants may argue that they have violated a mere procedural requirement -  
26 that they would have received the reports had they filed their declaration or petitioned  
27 the court. The Boyd Court has already summarily rejected that argument:

28 ' / /

1 It may be that it is the obnoxious thing in its mildest and least repulsive form; but  
2 illegitimate and unconstitutional practices get their first footing in that way,  
3 namely, by silent approaches and slight deviations from legal modes of  
4 procedures. This can only be obviated by adhering to the rule that constitutional  
5 provisions for the security of person and property should be liberally construed.”  
6 Boyd at 635.

7 This Court must follow the lead of the Boyd ruling and declare the  
8 evidence obtained by plaintiff as inadmissible.

9 **C. THE COURT SHOULD RULE THE EVIDENCE INADMISSIBLE  
10 BECAUSE THE CONTINUED USE AND  
11 DISSEMINATION OF IT IS A VIOLATION OF LAW**

12 In normal suppression cases, the Court finds itself in something of a dilemma.  
13 The judge must rule on how to correct a past wrong, often knowing that if they  
14 suppress the evidence a guilty defendant will go free. That dilemma does not present  
15 itself here.


16 First, we are not just facing a wrong committed in the past. Any use of the  
17 confidential information by the plaintiffs will continue to violate the Valverdes’ rights.  
18 As noted above, dissemination of juvenile material, even if obtained legally, is a  
19 violation of the law, In re Tiffany G., (194) 29 Cal.App.4th 443, 35 Cal.Rptr. 8. The  
20 same is true under the privacy right. The Court should not allow continued violations  
21 of the law.

22 Also, the Valverde juvenile has not even been charged with the drug violation.  
23 The criminal courts await him and, in fact, this motion will have no bearing on whether  
24 or not evidence can be used against him in that case, should charges be filed.

25 **6. CONCLUSION**

26 For all the reasons stated above, this Court should rule that all of the evidence  
27 of the juvenile crimes should be ruled inadmissible. Inasmuch as this is the sole  
28 evidence to support the eviction, the Court should dismiss this action.

April 3, 1996

  
\_\_\_\_\_  
Jack Daniel  
Defendants’ Attorney

**FILED**

MAR 11 1994

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF FRESNO  
SITTING AS THE JUVENILE COURT

FRESNO COUNTY CLERK  
By T. M. DEPUTY

**AMENDMENT TO STANDING ORDER ON CONFIDENTIALITY OF JUVENILE RECORDS**

The Fresno County Juvenile Court's Standing Order on Confidentiality of Juvenile Records filed on September 8, 1993, is hereby amended by adding a new subsection J to section Iii (RELEASE OF DOCUMENTS), which reads as follows:


J. The documents referenced below may be released to those agencies or individuals as specified herein.

1. CPS is **authorized** to disclose to the parties and their actual or **prospective** counsel at a dependency court detention **hearing** such documents as CPS deems to be appropriate **as** part of its prima facie statement including, but not limited to, the identity of **all** persons who **reported** any **allegation** of child abuse or neglect (**see** Penal Code §11167, subd. (d)). If CPS chooses to **delete** the identification of the reporting party or parties, and a party to the dependency proceeding wants the identification disclosed, then that party may request that the Court order such disclosure. The Court shall not issue such an order except for good cause **shown** and only after an in camera review with CPS and/or its **attorney** of record having an opportunity to be heard.
2. In cases w-here a minor who has been taken into custody by **CPS** is abducted, then CPS may provide to the Child Abduction **Unit** of the District Attorney's office the following documents and information:
  - a. **Copies** of any law enforcement reports which brought the **matter** to the **attention** of CPS;
  - b. Copies of the juvenile dependency petition concerning that minor;
  - c. Copies of all minute orders or other **Court** orders which **show** the Juvenile **Court's** jurisdiction over the minor, any knowledge of this jurisdiction by the suspected child abductor(s), and/or any appearance before the Court by the suspected child abductor(s);
  - d. Copies of any warrants or body attachments for the child or suspected child abductor(s);
  - e. **Any** addresses, telephone numbers, or **other** identifying information which could assist the District Attorney's office in locating the child or suspected child abductor(s).

3. Whenever a law enforcement agency has prepared a report referencing one or more juveniles involved in an incident related to-school activity or attendance that occurred at any time within the scone of Education Code section 48900, the agency may release that report to a school official or other person authorized to act on behalf of the school, provided that the requesting person declares under penalty of perjury that the information in the report will be used exclusively for purposes of possible suspension, expulsion, or other disciplinary action against one or more minors referenced in the report and/or for seeking restitution under Education Code section 48904.
  
4. Whenever a law enforcement agency has prepared a report referencing one or more juveniles involved in an incident occurring on any premises owned or operated by a local public housing authority, the agency may release that report to an official or other person authorized to act on behalf of the local public housing authority, provided that the requesting person declares under penalty of perjury that the information in the report will be used exclusively for purposes of possible evictionproceedrngs pursuant to 24 Code of Federal Regulations section 966.4 (1) and/or for seeking restitution.
  
5. Whenever a juvenile has been assessed a fine or otherwise has been ordered by the Juvenile Court to pay monies to the County, and that juvenile is 90 or more days delinquent in such payment, then the County Clerk's Office is authorized to release to the Revenue Reimbursement Division (RRD) of the Auditor-Controller/Treasurer-Tax Collector's Office the social security nusber, delinquent fine amount, address, telephone number, and such other identifying information as is reasonably necessary for RRD to attempt to collect said delinquent monies.

IT IS SO ORDERED.

DATED: 3-9-94

  
 \_\_\_\_\_  
 Hon. Lawrence Jones, Presiding Judge  
 Fresno County Juvenile Court

DATED: 3-10-94

  
 \_\_\_\_\_  
 Hon. Lawrence O'Neill, Presiding Judge  
 Fresno County Superior Court

DECLARATION

My name is Jack Daniel and I declare the following:

1. I am an attorney for Central California Legal Services, on a regular basis, represents clients who are housed in public housing operated by the plaintiffs in this case.

2. I have written the director of the Housing Authority, Robert Wilson, a letter outlining our concerns about the Authority's abuse of the Standing Order and stating that our experience revealed that the employees of the Authority were not obeying the Standing Order. I copied that letter to the Authority's regular counsel, Sarah Wolfe.

3. Mr. Wilson called me back after receipt of that letter. He informed me that the Authority was aware of the Order and its requirement of a declaration, that they normally followed that Order, although on one occasion they had not done so. Mr. Wilson was not specific as to which occasion that was.

4. In another case for which I am the supervising lawyer, the Housing Authority has filed a declaration in their efforts to get juvenile records. A true copy of that declaration is attached with the client's name redacted. This copy was obtained from the Authority.

I declare the above to be true under penalty of perjury.

April 3, 1996

  
\_\_\_\_\_  
Jack Daniel

DECLARATION FOR THE RECEIPT OF  
CONFIDENTIAL JUVENILE INFORMATION

I, BRENDA HORSTMEIR, request that  
(Print Only)

information concerning a  traffic accident or  crime incident <sup>RES. BURGLAR</sup>  
contained in  Fresno Police Department  Fresno Sheriff's  
Department  Other \_\_\_\_\_ Case No. \_\_\_\_\_  
be released to me. I acknowledge that the information  
released to me is CONFIDENTIAL, in that it contains information  
concerning one or more juveniles.

I acknowledge that: 1) the information is being released to me  
pursuant to a Fresno County Juvenile Court Standing Order; and 2)  
my use of this information and the persons to whom I may disclose  
this information is restricted by that Order; and 3) that ANY  
VIOLATION OF ITS RESTRICTIONS IS A VIOLATION OF AN ORDER OF A  
SUPERIOR COURT JUDGE, WHICH MAY SUBJECT ME TO PROSECUTION FOR  
CONTEMPT OF COURT under California Penal Code Section 166. Section  
IIIG of the Standing Order provides in pertinent part as follows:

"G. . .The information is to be released only for purposes of  
assisting the person or entity in obtaining reimbursement for  
injuries or damages caused by the conduct of the minor(e). The  
person to whom the information is released shall agree in writing  
that the person will not disclose any of the released information to  
any person other than their attorney, insurance adjuster or other  
person legally representing the person's or entity's interest in  
recovering damages resulting from the incident. The person to whom  
the information is released shall also agree in writing that the  
information will be used by them for no purpose other than as stated  
above..."

By my signature, hereon, I acknowledge that I have read the  
above and understand its contents and agree not to make any use or  
disclosure of any of the information provided to me other than as  
allowed by the juvenile court as stated herein.

I declare under penalty of perjury that I, or a person or  
entity I am authorized to represent, was damaged by or a victim of  
the conduct of minor(s) who is the subject of the above listed law  
enforcement report. I (or the person or entity I represent) further  
declare that I have suffered injury or damages as a result of the  
conduct of said minor(s) and will use the information provided me  
only for the purpose of obtaining reimbursement for the injury or  
damage suffered by me.

Executed on 1 Feb. 12 1996 at Fresno, California.  
Brenda Horstmeir, Declarant  
(Signature)

Released by  
A.P. Martin C136

1 JACK DANIEL, #133498  
2 THEDA SAFFO, #157947  
3 CENTRAL CALIFORNIA LEGAL SERVICES, INC.  
4 2014 Tulare Street, Suite 600  
5 Fresno, California 93721  
6 Telephone: (209) 441-1611

7 Attorneys for Defendants, VICTORIA VALVERDE

8  
9 IN THE MUNICIPAL COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF FRESNO

11 \*\*\*\*

12 HOUSING AUTHORITY OF THE COUNTY ) Case No. C96-300004-9  
13 OF FRESNO, CALIFORNIA, a public )  
14 body, corporate and politic, )  
15 )  
16 Plaintiff, )  
17 -vs- )  
18 )  
19 VICTORIA VALVERDE, )  
20 et al. )  
21 )  
22 Defendants. )

23 I, DEBRA DELGADO SMITH, declare as follows:

24 1. I am a paralegal in the office of Central California  
25 Legal Services, Inc., located at 2014 Tulare Street, Suite 600,  
26 Fresno, California, and was Defendant, Victoria Valverde's,  
27 initial legal representative in the above-entitled action. I have  
28 personal knowledge of the matters stated herein, and if called as  
a witness, could testify competently thereto.

2. I reviewed Defendant, Victoria Valverde's, file at  
the Housing Authorities office in Firebaugh, California, in  
October 1995. At that time, I noted the following police reports

EXHIBIT 2 of 4

1 in the file, naming Defendant, Victoria Valverde's son, Joshua  
2 Valverde, as allegedly being present at the scene:

- 3 a 8/8/94 Firebaugh Police Dept. CR 940668 (Exhibit C-1);
- 4 b: a/9/94 Firebaugh Police Dept. CR 940673 (Exhibit C-2);
- 5 c. 7/25/95 Fresno Co. Sheriff's Dept. Report 95-24665  
(Exhibit C-3);
- 6 d. 9/20/95 Firebaugh Police Dept. CR 950737 (Exhibit C-4),

7 and requested copies of same from the Housing Authority. I also  
8 requested a copy of Joshua Valverde's Firebaugh Police Department  
9 "rap sheet" , dated 9/6/95 (Exhibit C-5).

10 3. Upon reviewing said file, at no time did I note the  
11 existence of a written declaration, pursuant to the Amendment to  
12 the Standing Order on the Confidentiality on Juvenile Records, by  
13 the proper agents of the Housing Authorities to the Firebaugh  
14 Police Department or to the Fresno County Sheriff's Department.

15 4. Joshua Valverde's name was incorrectly listed on one  
16 report, namely, Firebaugh Police Department CR 940673. Firebaugh  
17 Police Department Officer Elsa Lopez, stated to me that she  
18 mistakenly identified "Involved-9" on said report as Josh  
19 Valverde, when it was actually another child with the initials  
20 A.C..

21 5. This same report appears to have been sent to the  
22 Housing Authority by Rod Lake, Firebaugh Chief of Police, before  
23 the report was duly finished by the reporting officer, Elsa Lopez.  
24 This is further evidence of the routine dispatch of police reports  
25 from the police departments to the Housing Authority prior to  
26 receipt of a proper request and declaration from the Housing  
27 Authority.

28 6. On October 19, 1995, I faxed and mailed a memorandum  
(Exhibit C-6) to Ms. Lopez requesting that she correct said report

1 and mail a corrected copy to the Housing Authority and myself.

2 7. On October 19, 1995, I faxed and mailed a letter to  
3 Dora Redondo requesting that she strike this incident from the 30-  
4 Day Notice (Exhibit C-7). I also objected to the report at the  
5 Formal Hearing on November 23, 1995.

6 8. On November 16, 1995, I received a corrected copy of  
7 Firebaugh Police Department CR 940673 from Dora Redondo of the  
8 Housing Authority (Exhibit C-8).

9 9. In reviewing copies of the above-mentioned police  
10 reports, I noted that many children's names were listed on the  
11 police reports who are not parties to this action nor are they  
12 clients of Central California Legal Services, Inc.. This is  
13 confidential information which was released to me by the Housing  
14 Authority, however, I have not requested nor have I been  
15 authorized by these children's parents to review their files.  
16 This is a violation of the Amendment to the Standing Order on the  
17 Confidentiality on Juvenile Records, and Welfare and Institutions  
18 Code 8827 (See Exhibits A-E).

19 10. On November 23, 1995, I represented Defendant,  
20 Victoria Valverde at a Formal Hearing versus the Housing Authority  
21 to rebut the pending eviction against her. I objected on the  
22 record to the entire proceedings on several grounds, including the  
23 fact that the Housing Authorities, along with the Firebaugh Police  
24 Department and the Fresno County Sheriff's Department, was in  
25 violation of the Amendment to the Standing Order on the  
26 Confidentiality on Juvenile Records, in that the Amendment  
27 requires that police reports involving juveniles may only be sent  
28 to the Housing Authorities for purposes of eviction proceedings

and that the Housing Authorities are required to submit a declaration for same. Neither procedure was followed in this case.

11. If Defendant, Victoria Valverde, loses her unit in public housing, she will most likely not be allowed to apply again. If she is allowed to apply again, it is our understanding that she would be put on a waiting list for an undetermined amount of time, depending on several factors, including vacancy rates and number of individuals in Defendant's family.

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

Dated this 2nd day of April, 1996, in Fresno, California.

*Debra Delgado Smith*  
DEBRA DELGADO SMITH  
Paralegal

/ALVERDE.DEC

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