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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 15 2001

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8 RIVERSIDE SUPERIOR COURT
9 IN AND FOR THE COUNTY OF RIVERSIDE

10 PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: HEM014371

11 Plaintiff,)

12 vs.)

13 KEITH HENSON,)

14 Defendant.)

15 NOTICE OF MOTION AND MOTION TO
16 DISQUALIFY OFFICE OF THE
17 RIVERSIDE COUNTY DISTRICT
18 ATTORNEY ON THE BASIS THAT A
19 CONFLICT OF INTEREST EXISTS THAT
20 WOULD RENDER IT UNLIKELY THAT
21 THE DEFENDANT WOULD RECEIVE A
22 FAIR TRIAL; POINTS AND
23 AUTHORITIES; AFFIDAVITS IN
24 SUPPORT

25 Notice is hereby given that Keith Henson, defendant in the above-entitled action and
hereinafter "Defendant", by and through his attorney, will, on April 9, 2001, at 8:30 a.m., in
Department H-2 of the Riverside County Consolidated Courts, Hemet Branch, located at 880 N.
State Street in Hemet, California, move the Court to disqualify the Office of the Riverside
County District Attorney, entirely, from prosecuting the Defendant's case herein.

The Defendant asserts that this motion is necessary because a conflict of interest exists
that would render it unlikely that the defendant would receive a fair trial, as set forth in Penal
Code section 1424 and the cases that have applied this statute.

1 This motion is based on this notice of motion, the affidavits attached to the motion, the
2 court record herein, and such matters as may be presented at the hearing on this motion. Since
3 this motion must be supported by affidavits, the Defendant has provided one or more affidavits,
4 all of which are to be used for the sole purpose of supporting this motion and are intended for no
5 other use whatsoever.

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7 **BACKGROUND OVERVIEW**

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9 Scientology has long tried to silence and ruin the Defendant because of his persistent,
10 conspicuous, and unequivocal criticism of what he sincerely believes to be Scientology's
11 unlawful and inappropriate activities. This current misdemeanor case, which is based solely on
12 the information provided by career Scientologists and their agents that they are in fear due to
13 Defendant's actions, continues this Scientology tradition of attacking detractors, and is
14 commonly known as the fair game doctrine. It appears to Defendant that the Riverside County
15 District Attorney has given, and continues to give, preferential treatment to the powerful
16 Scientology machine and its agents, thereby resulting in a conflict of interest which makes it
17 likely that the Defendant cannot receive a fair trial.

18
19 **FACTUAL BASIS FOR DISQUALIFYING THE ENTIRE PROSECUTORIAL**
20 **STAFF OF THE RIVERSIDE COUNTY DISTRICT ATTORNEY**

21
22 Defendant cites the following facts in support of his motion to disqualify the entire
23 prosecutorial staff of the Riverside County District Attorney's Office:

24 1. The District Attorney has filed a motion in limine with the court in this case to prevent
25 the Defendant from introducing evidence of the Fair Game Doctrine because the practice, to the

1 extent it ever existed, was terminated in 1972 or 1974; the practice is an internal matter; that such
2 evidence is not relevant; and, that such evidence is precluded by Evidence Code section 352.
3 This doctrine authorizes Scientologists to destroy a detractor with the blessing of the church.
4 Defendant's opposition to this case, as well as the affidavits filed concurrently herewith, clearly
5 show that none of the DA's assertions about the fair game doctrine can be taken seriously, and
6 that the Office of the District Attorney is, in essence, an agent of Scientology's attack on the
7 Defendant. We ask the court to take judicial notice of the five California cases cited in
8 Defendant's opposition to the People's Motion in Limine on the issue of Fair Game to show that
9 courts have clearly taken evidence on this doctrine and found this practice to be alive and well
10 after its alleged demise in 1972 or 1974; namely, Hart v. Cult Awareness Network, 13
11 Cal.App.4th 777, 16 Cal.Rptr. 705 (1993), Allard v. Church of Scientology, 58 Cal.App.3d 439,
12 129 Cal.Rptr. 797 (1976), Scientology v. Armstrong, 232 Cal.App.3d 1060, 283 Cal.Rptr. 917
13 (1991); Scientology v. Wollersheim, 42 Cal.App.4th 628, 49 Cal.Rptr.2d 620 (1996);
14 Wollersherm v. Church of Scientology, 212 Cal.App.3d 872, 260 Cal.Rptr. 331 (1989). One can
15 only take from the People's motion that the District Attorney did not research the issue and/or
16 Scientology wrote the brief for the District Attorney. This issue of fair game goes to the heart of
17 the Defendant's case in showing the motive of prosecution witnesses to lie and fabricate
18 evidence. The District Attorney argues that this issue of whether all of the "victims", who are
19 believed to be high-ranking, career Scientologists, have a motive to lie under the Fair Game
20 Doctrine, is not relevant pursuant to Evidence Code 350. This is preposterous, and shows that
21 the District Attorney is blind to a quest for truth in this case and is instead looking merely for
22 victory for Scientology. Although this motion is not signed by Grover Trask, it is "submitted" to
23 the court by him. Finally, Scientology has chased the Defendant through 7 or 8 other lawsuits of
24 various kinds in an attempt, in the Defendant's mind, to destroy his good name and cause him
25

1 financial ruin. These are completely consistent with the classic elements of the ongoing fair
2 game doctrine.

3 2. People who seem to know Grover Trask on a first-name basis have apparently written
4 at least two letters to Grover Trask when the prosecution of the Defendant did not appear to be
5 proceeding as desired by Scientology. The Defendant and his attorney have seen these letters,
6 but have not been allowed to get copies of these letters.

7 3. On August 3, 2000 Deputy Greer was assigned to interview the Defendant. Defendant
8 said to Deputy Greer: "For historical kind of problems, do you want to tape it." The "it" referred
9 to was the interview. Deputy Greer then stated, "I don't see any need to. Unless you feel more
10 comfortable if I taped it." Defendant then said, "I got a tape recorder. If you want to I can tape
11 it and leave you with the tape." Deputy Greer responded, "No that's fine. That's fine I'll just
12 take some notes and you know because there is an investigation I just need to let you know that
13 you are not under arrest. This is a total volunteer interview." Defendant then stated, "Sure." At
14 this point, Deputy Greer then proceeded with the interview of Defendant, and the interview was
15 recorded by some person or entity other than the Defendant. I can't imagine that Deputy Greer
16 didn't know this interview was being taped when he expressly said all he would do is take notes.
17 A copy of this transcript is in the possession of the DA and the attorney for Defendant and can be
18 produced if the court so requests.

19 4. A critical issue in this case is the People's attempt to authenticate certain alleged
20 Internet postings by the Defendant. When the prosecutor assigned to the case found out that the
21 Defendant would not stipulate to authentication, as is his right under the United States
22 Constitution and the California Constitution, a Scientology attorney, within days, tried to get the
23 Defendant to authenticate these very postings in a Scientology deposition of the Defendant in the
24 Defendant's pending chapter 13 bankruptcy. A transcript of Defendant's testimony was then
25 given to the prosecuting attorney and presented to the Defendant's attorney as proof of

1 authentication. This is clear evidence of the power of the Scientology machine and the dubious
2 way in which the district attorney was willing to gain an advantage regarding the authentication
3 of certain documents by such tactics. A copy of the relevant pages of this transcript is in the
4 possession of the district attorney and the attorney for the Defendant and can be produced if so
5 requested by the court.

6 5. At the last hearing in Judge Walker's court, Judge Walker informed the parties that he
7 knew one of the People's witnesses in this case and, that despite this fact, he believed he could
8 continue on this case. The Defendant had no objection to Judge Walker remaining on the case.
9 After the prosecuting attorney assigned to this case checked with someone higher up in the
10 district attorney's office, the district attorney required Judge Walker to recuse himself. The
11 district attorney will require the Judge to recuse himself when he and the Defendant see no
12 problem. However, the same district attorney claims that motive to lie is not relevant on the
13 issue of the Fair Game Doctrine.

14 6. Defendant and others have tried to get the district attorney to investigate Scientology's
15 involvement regarding the deaths of Ashlee Shaner and Stacy Meyer. Apparently when
16 Scientologists or their influential agents contact Grover Trask, Scientology is able to get results
17 in prosecuting the Defendant, even when law enforcement initially sees no evidence of a crime.
18 Defendant is now being prosecuted on 40-year-old hearsay in a book, the Defendant's patent for
19 a 747 to deliver a nuclear payload on Golden Era, and the glaring fact that all victims are high-
20 ranking, career Scientologists who are in "fear", even though other Scientologists are following
21 the Defendant and trying to keep him from seeing his friends. When the Defendant and others
22 try to have Scientology investigated for two deaths that have occurred in the in this area,
23 apparently the district attorney won't follow the recommendations of the highway patrol or assist
24 Deputy Greer to conduct a further investigation.

25

1 7. Defendant mentioned to the prosecutor and/or law enforcement that two of the alleged
2 witnesses for the People, both of whom are Scientology investigators, are believed to have tried
3 to run over him in a parking lot. The Defendant was told that nothing could be done about it.

4 8. The court case print herein has an entry for 9/01/00 as follows: "Release with: Letter
5 from DA to Appear." Defendant never received any notice from the DA to appear, nor has he
6 been able to get a copy of any such letter. If it exists, he didn't get. By pure luck he found out
7 about his arraignment. Defendant believes that he was not notified of his arraignment through
8 normal channels so that a failure to appear would issue. To the extent that this entry might
9 indicate that the Defendant was released that day, it would be inaccurate.

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11 POINTS AND AUTHORITIES

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13 Penal Code section 1424(a)(1) provides in part that the notice of motion to disqualify the
14 district attorney shall contain a statement of the facts setting forth the grounds for the claimed
15 disqualification, the legal authorities relied upon by the moving party, and be supported by
16 affidavits of witnesses who are competent to testify to the facts set forth in the affidavits.

17 The standard for granting the motion is stated in Penal Code section 1424(a)(1) as
18 follows: "The motion may not be granted unless the evidence shows that a conflict of interest
19 exists that would render it unlikely that the defendant would receive a fair trial."

20 In *People v. Merritt*, 19 Cal.App. 4th 1573, 24 Cal.Rptr.2d 177 (1993), the court confirmed
21 that the term "conflict" within the meaning of Penal Code section 1424 as "evidence of a
22 reasonable possibility that the district attorney's office may not be able to exercise its
23 discretionary function in an evenhanded manner."

24 The Merritt court, citing *People v. Hamilton* (1989) 48 Ca.3d 1142, 1156; 259 Cal.Rptr.
25 701, as does the Defendant, that to recuse an entire prosecutorial office is a serious step, and

1 there must be a showing that such a step is necessary to assure a fair trial. The Merritt case, also
2 citing People v. Hernandez, stated that disqualification of an entire staff is disfavored absent a
3 substantial reason related to the administration of justice.

4 Finally, the Merritt case states that when it appears that misconduct has been committed
5 by the district attorney, then the burden shifts to the district attorney to show that sanctions are
6 not warranted because the defendant has not been prejudiced by the misconduct.

7 People v. Neely, 70 Cal.App.4th 767, 775; 82 Cal.Rptr.2d 886 (1999), show that a district
8 attorney can stay on the case when professionalism and due regard for the appearance of
9 propriety might dictate otherwise. The Neely court seems to indicate that in order for an entire
10 district attorney office to be disqualified, conduct which is unseemly or which reduces the
11 public's confidence in the impartiality and integrity of the criminal justice system is not enough.
12 The standard is "likelihood of unfairness."

13 Defendant believes that there is ample evidence in this case for the court to recuse the
14 entire prosecutorial staff in light of the standards set forth above, and he believes that it is
15 unlikely that he can receive a fair trial.

16
17 ARGUMENT

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19 The facts set forth above demonstrate that the district attorney has been influenced by
20 Scientology to prosecute the Defendant and to take whatever means necessary to ensure that the
21 Defendant cannot introduce evidence of how he has been, and is being, victimized by
22 Scientology's fair game doctrine and practices. The district attorney starts by categorically
23 stating that the doctrine does not exist. This flies in the face of the attached affidavits and the 5
24 California cases cited. We have not bothered to cite cases from such states as Florida. The
25 District Attorney goes so far as to say it is not relevant whether the People's witnesses are lying

1 evidence on the issue of disqualification.

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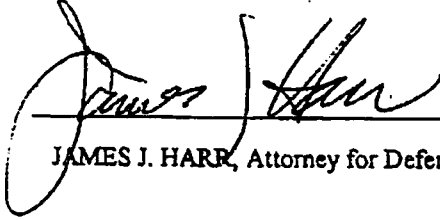
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Respectfully submitted this 12th day of March, 2001 in Hemet, California.

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JAMES J. HARR, Attorney for Defendant

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