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IN THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ERIK GALEN MENENDEZ and JOSEPH LYLE MENENDEZ Defendants.	No.: BA068880 Dept: NW-S Date: April 11, 2025 Time: 9:30 a.m.

DEFENDANTS' REPLY TO PEOPLE'S MOTION TO WITHDRAW MOTION REQUESTING 1172.1 RECALL OF SENTENCE & RESENTENCING HEARING

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INTRODUCTION: OF POLITICS AND PRESS CONFERENCES

In 1990, defendants Erik and Lyle Menendez were arrested and charged with special circumstance murder in the 1989 shooting deaths of their parents, Jose and Kitty Menendez. Erik and Lyle were 18 and 21 years old respectively at the time. There were two trials.

At both trials their defense was the same. They admitted shooting their parents. But the crime was manslaughter, not murder, based on a lifetime of sexual abuse. In addition to their own graphic testimony about the sexual abuse, they offered compelling corroborative evidence to support the claim including:

- **Diane Vandermolen.** When he was only eight years old, Lyle pleaded for help from his teenage cousin Diane who was visiting for the summer. Eight year old Lyle asked if he could sleep in her bedroom. He said he was "afraid" of sleeping in his own room because "he and his dad had been touching each other . . . in his genital area." When Diane told Kitty about the molestation, she (Kitty) "forcefully" dragged Lyle away by the arm.
- **The Hallway Rule.** Numerous family witnesses testified about the chilling "hallway rule" rule in the Menendez household, enforced by Kitty Menendez. When Jose was in one of the bedrooms with either Erik or Lyle, no-one was allowed to walk down the hallway past the bedroom doors. No-one. Not even to use the bathroom at the end of the hall.
- **Andy Cano.** According to Erik and Lyle's cousin Andy Cano, when Erik was 12 or 13 years old, he swore his cousin Andy to secrecy, and then asked if Andy's father ever "massage[d]" his "dick." 13-year-old Erik wanted to know if this was normal for fathers to give such massages.
- **Lyle's 9th Grade Essay**. When he was in ninth grade, Lyle wrote an essay for school. But he picked a most unusual topic for the essay, at least a for a ninth grade boy. He wrote an essay about a father put on death row for killing the man who had just "sexually molested . . . his son."

Their first trial resulted in two juries hung almost evenly between convicting of murder and manslaughter. At a second trial, many of the trial court's procedural and evidentiary rulings changed and Erik and Lyle were convicted of murder and sentenced to life without parole.

Since their arrest, 35 years have passed. The Soviet Union collapsed. Los Angeles was roiled by the Rodney King riots. Amazon started as a website that sold only books.

Germany was unified. Gay marriage was legalized and Pluto was declared to be not a planet. The iPhone was introduced. And after a small company was founded in a garage in Menlo Park, California, the world learned to "Google" things, rather than search for them.

The Twin Towers fell. The United States elected its first African American president, Barrack Obama. The curse of the bambino was broken, when the Boston Red Sox ended their nearly century-long streak without a World Series win. Osama Bin Laden was killed. The world went through the Covid crisis.

35 years have passed. The world has changed and so have Erik and Lyle.

Erik and Lyle are now 54 and 57 years old respectively. On October 24, 2024 -- and based largely on Erik and Lyle's extraordinary record of rehabilitation and service in that 35-year period -- the District Attorney filed a detailed 56-page "People's Motion Requesting 1172.1 Recall of Sentence & Resentencing Hearing" ("Resentencing Motion") authored by assistant district attorneys Nancy Theberge and Brock Lunsford. In that motion, the District Attorney also noted that (1) nearly 30 extended family members had attended a meeting with the District Attorney's office to "express[] their strong support of Erik and Lyle Menendez being resentenced" and "collectively confirm that the men were sexually abused by Jose Menendez when they were young children" and (2) "a single family member" opposed resentencing but "declined to meet" with the District Attorney's office, instead making his views known through "his attorney[] [Kathleen Cady's] public statements and statements to the Press." (Resentencing Motion 52-53.)

Weeks after the filing, however, the sitting District Attorney (George Gascon) was defeated in the November 5, 2024 election by his opponent, Nathan Hochman. Mr. Hochman has now moved to withdraw the resentencing motion made by his former political opponent.

But courts have placed limits on a District Attorney's ability to withdraw a request for resentencing. Thus, in the controlling case of *People v. Vaesau* (2023) 94 Cal.App.5th 132 the Court of Appeal addressed the very situation we have here -- an

attempt by a newly elected District Attorney to withdraw a pending request for resentencing made by his political opponent. *Vaesau* holds that a District Attorney's office could *not* "withdraw its recommendation . . . due to a change in the political winds." (*Id.* at p. 152.) Instead, the District Attorney must "identif[y] a legitimate basis for withdrawing the resentencing request." (Id. at p. 139.) So the question here is whether the record shows the decision to withdraw the request for resentencing motion was based on a "legitimate reason" or, instead, "a change in the political winds."

As more fully discussed below, and to his credit, the newly elected District Attorney certainly said all the right things. In press interview after interview, both print media and televised, Mr. Hochman repeated the refrain that before making any decisions in the Menendez brothers case he would "have to do the hard work" of coming up to speed in the case, read the many thousands of pages of trial transcripts, read the confidential prison files, and speak to the victims' family members.

But the newly elected District Attorney's actions told something of a different story. As also discussed more fully below, within days of taking office -- and well before he had even begun the "hard work" of coming up to speed on the case -- the newly elected District Attorney fired one of the lawyers who filed the original resentenicng motion, transferred the other and appointed Kathleen Cady – the private attorney representing the lone family member *opposed* to resentencing -- as head of the District Attorney's Department of Victim Services. By all appearances, although the "hard work" of coming up to speed in the Menendez case had not yet begun, hard decisions as to the personnel involved in, and direction of, the Menendez case seemed already to have been made.

But were these decisions based on proper "legitimate reasons" or simply "a change in the political winds?" On February 21, 2025 the new District Attorney held a press conference to announce that he would be opposing Erik and Lyle's pending habeas petition. On March 10, 2025 he held a second press conference to announce that he would be moving to withdraw the prior District Attorney's request for resentencing.

Several days after that, he did a national interview with ABC reporter Matt Gutman about the Menendez case. (*See* https://abcnews.go.com/GMA/News/video/la-district-attorney-defends-ruling-menendez-brothers-bars-119979409.)

In the March 10, 2025 motion to withdraw, the District Attorney properly recognized that under *Vaesau*, withdrawal may not be based on a "change in the political winds." (Motion to Withdraw 69.) But March 10 Motion to Withdraw was not political; instead, it was based on the new District Attorney's "personal[] participat[ion] in a thorough and complete review" of the original request for resentencing. (*Ibid.*) According to the written motion, withdrawal is proper because the original resentencing request (1) failed to consider whether Erik and Lyle had "complete insight and acceptance of responsibility" into the crime and (2) missed significant in-custody rule violations. (Motion to Withdraw 70, 83.)

This reply follows. As discussed below, the Motion to Withdraw contains serious factual and legal errors. The suggestion that there is a lack of insight here justifying withdrawal of the request to resentence ignores Erik and Lyle's consistent taking of responsibility and expressions of remorse over decades in prison, the facts of the primary case on which the current District Attorney himself relies (the Sirhan Sirhan case) and relevant case law. And in arguing that the original request to recall the sentence somehow failed to consider relevant violations of prison rules, the District Attorney improperly relies either on allegations which, after an appeal and a hearing, the CDCR itself elected *not* to punish, or on such utterly innocuous conduct as speaking too long on the telephone more than two decades ago, improperly trying to get a new pair of sneakers 15 years ago or possession of a typewriter and stationary 27 years ago -- minor incidents which are not only decades old but which quite literally have nothing to do with public safety. As reliance on these types of incidents show, the District Attorney's newly minted concerns are makeweight; they do not justify withdrawal of the previously filed motion to recall the sentence.

But before discussing whether under *Vaesau* these new justifications permit

withdrawal of the original resentencing request, there is a fundamental irony in the District Attorney's position which deserves comment. As noted, the District Attorney now alleges that Erik and Lyle have shown an insufficient insight into the crime.

In considering this claim it is important to recall that although there was much the parties disagreed about through the course of years of litigation and two separate trials, until now there was at least one point on which both sides completely agreed. Both the prosecution and the defense recognized that the question of sexual abuse was the centerpiece of the whole case. Every party in court knew this. Full stop.

After all, Erik and Lyle had admitted shooting their parents. Thus only question for jurors was their mental state at the time. And the question of whether Erik and Lyle had been sexually abused since they were children was central to the state of mind inquiry.

The trial prosecutor was certainly aware of how critical the question of sexual abuse was to the case. That is why during closing arguments at the second trial he argued the "abuse [allegations] in this case [were] a total fabrication," there was "no way of corroborating" the allegations, the "abuse never happened," "[t]here is no corroboration of sexual abuse," the "allegation[s] of physical and sexual abuse are not corroborated" and Jose Menendez was "restrained and forgiving," not the "kind of man that would be abusing his sons." (RT 50868, 50869, 50881, 51378, 51469, 51472.) There would, of course, be no reason to make these arguments if sexual abuse had not been at the center of the case.

Just like the prosecutor, the respective defense lawyers for Erik and Lyle were equally aware of how important the question of sexual abuse was to the case. In contrast to the prosecutor, however, defense counsel urged jurors to find that the sexual abuse occurred. By way of example only, Erik's counsel argued in closing that Jose Menendez molested Erik "from the time he was six until the time he was 18," the sexual abuse was why "you cannot convict my client of murder," Andy Cano's testimony confirmed the molestation, the hallway-rule testimony confirmed the molestation and Erik was molested

beginning at age six. (RT 51652, 51734, 51737, 51762-51764.) Similarly, also by way of example only, Lyle's counsel argued that Lyle was also molested when he was a child, the sexual abuse explained his fear, Lyle wanted to avoid referencing the sexual abuse and the shooting occurred because Jose was sexually abusing his sons. (RT 52123-52124, 52125, 52129-52130, 52211.)

In his rebuttal argument the prosecutor recognized yet again that the question of sexual abuse was the linchpin of the defense. Although he continued to disagree with the defense as to whether the abuse occurred, the trial prosecutor recognized not only that "the allegations in this case are premised upon . . . sexual abuse" but that sexual abuse was "what this case is all about:"

> This was inevitable. It's inevitable from the type of defense that was chosen in this case, because it was, as I indicated to you, an abuse excuse. . . .
>
> This was clear from day one that this is what this case is all about.

(RT 52214, 52217.)

But now, more than three decades later, the new District Attorney who has done the "hard work" of coming up to speed on the case tells a very different story. Ignoring the positions taken both by defense counsel and the trial prosecutors themselves, the new District Attorney observes that jurors were "never asked to render a verdict on sexual abuse" and maintains that "sexual abuse was not their defense at trial." (Motion to Withdraw 3.) The irony, of course, is that it is this same District Attorney who alleges that it is Erik and Lyle who lack proper insight.

The merits of the insight argument will be discussed below. But it is time to be candid. The District Attorney may in its wisdom maintain that eight year old Lyle was lying to his cousin Diane when he told her his father was molesting him. He may maintain that numerous family witnesses were lying about the strict "hallway rule" enforced in the Menendez home. He may maintain that cousin Andy was lying when he testified that 13-year old Erik asked him whether it was normal for fathers to massage

their son's penis. He may maintain there is nothing unusual about a ninth grade boy writing an essay about a father put on death row for killing the man who molested his son. That is the District Attorney's prerogative in an adversary system. But there should be -- indeed, on this record there can be -- no dispute as to whether sexual abuse was the central question at trial in this case. Of course it was; as the trial prosecutor conceded at trial, sexual abuse was "what this case is all about."

STATEMENT OF FACTS

A. The Original Motion To Recall The Sentence.

The District Attorney's original motion to recall the sentence was prepared by assistant district attorneys Nancy Theberge and Brock Lunsford. (Resentencing Motion 56.) In that motion they properly noted that in section 1172.1, subdivision (a)(5), the Legislature set forth guidelines for courts to consider in the resentencing calculus. These include (1) "the disciplinary record and record of rehabilitation of the defendant while incarcerated," (2) whether the defendant "was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense,"[1] (3) whether "age [and] time served . . . have reduced the defendant's risk for future violence" and (4) whether "circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice." Evidence of changed circumstances includes "evidence that undermines the integrity of the underlying conviction or sentence." Finally, subdivision (a)(5) mandates that resentencing courts consider whether the defendant was a victim of sexual abuse:

> The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect,

[1] Section 1016.7 defines "youth" as "any person under 26 years of age on the date the offense was committed."

> exploitation, or sexual violence . . . prior to or at the time of the commission of the offense . . . .

The original request for resentencing analyzed these factors in some detail. Thus, in a 28-page section of the request, the District Attorney properly focused on the remarkable evidence of rehabilitation for both Erik and Lyle. (Resentencing Motion 20-48.) There is no need to repeat that evidence here; suffice it to say that after reviewing more than 30 years of custodial records, the District Attorney noted achievements in education, participation in (and founding of) numerous self-help and recovery programs and workshops, laudatory reports from correctional staff, decades of exceptional work history, and -- at the end of the day -- felony risk-assessment scores of 1 (the lowest possible score) and raw security risk scores of 0 (the lowest possible score). (Respondent's Motion 21, 44.) All accomplished when defendants were under a sentence of life without possibility of parole, with no hope that such conduct could somehow inure to their benefit. As the District Attorney properly concluded after reviewing Erik's in-prison conduct, Erik "has proven himself to be an incredible asset to his prison community." (Resentencing Motion 22.) He has "excelled in the work environment." (*Id.* at 40.) He "has been highly productive in the learning environment." (*Id.* at 22.) He has been a "leader and a facilitator" in prison programming. (*Id.* at 23.)

The District Attorney's conclusion was similar as to Lyle. Lyle "has established an overwhelming record of rehabilitation." (*Id.* at 43.) "It is important to note that Lyle Menendez has not been involved in a single fight in the 30 years he has been incarcerated" and CDCR had to move him to a different prison yard in 1997 "because he wouldn't fight back when attacked." (*Id.* at 44.) "Lyle Menendez has excelled in the academic environment;" he graduated from U. C. Irvine, "was on the Dean's list every semester," and "was nominated for the National Merit Society in 2023." (*Ibid.*) Based on the programs he participated in (and founded), he "has proven himself to be an incredible asset to his prison community." (*Id.* at 45.) He has "created four new programs within the Prison system to assist and better his fellow inmates' quality of life." (*Id.* at 46.)

The District Attorney also discussed the two very different age-related factors a sentencing court must consider under subdivision (a)(5): (1) age at the time of the crime and (2) age at the time of the resentencing. He noted not only that Erik and Lyle were 18 and 21 at the time of the crime respectively, but the changes in our current understanding of brain development based on decades of scientific research "since this sentence was imposed." Based on these factors, their "youth at the time of the crime is a highly mitigating factor, the import of which was not fully understood or considered at the time of the initial charging and sentencing . . . ." (*Id.* at 17.) And on the other side of the age calculus, because Erik and Lyle are now 54 and 57 respectively, both have "a reduced risk for future violence." (*Id.* at 15.)

As noted above, the District Attorney recognized that subdivision (a)(5) also requires the sentencing court to consider whether defendants were sexually abused as children. (*Id.* at 14.) Relying primarily on the original probation report, the District Attorney concluded that "the childhood abuse and trauma incurred by both defendants in this case is sufficient to invoke court consideration under sections 1170, subds. (b)(6) & (b)(6)(A)." (*Id.* at 20.)

B. The Election And the "Hard Work" Of Coming Up To Speed On The Case.

George Gascon was the elected District Attorney when the request to resentence was filed. In the election of November 5, 2024, Nathan Hochman defeated Mr. Gascon and became the new District Attorney.

On November 6, 2024 -- the day after the election -- Mr. Hochman told KTLA Channel 5 that he would have "to do the hard work" of reviewing "thousands of pages of confidential prison files, . . . thousands of trial transcripts from months-long trials, and you have to speak to the prosecutors, law enforcement and the defense counsel . . . and the victims' families." (11/6/24 Interview with Nathan Hochman, attached as Exhibit A.) On November 15, during a televised interview with Channel 12 Action News, Mr. Hochman repeated that before deciding whether to support the pending resentencing

motion, he would have to "do the hard work to make that decision" and this would include "reviewing thousands of pages of confidential prison records that I don't have access to at this point [and] thousand of pages of trial transcripts from two months long trials. You have to review thoroughly the facts and the law." (https://www.actionnews now.com/news/new-los-angeles-county-district-attorney-speaks-on-menendez-brothers-case-his-plans-to-eliminate/article_bcc41178-a3e7-11ef-9972-af0ba11ad5fb.html at :24-:42.) The admirable mantra of "doing the hard work" before making a decision was something that was repeated again and again. (*See e.g.* Court TV Interview, 12/21/24, http://www.youtube.com/watch?v=vDpefE0Ur6s at 4:52-4:54, 6:05-6:07 ["We're going to do a thorough review of the facts and the law. . . . I will put the hard work in to look at the facts and the law . . . ."]; News Nation interview, 12/23/24, http://www.youtube.com/watch?v=tyyqYpXcPDk at 4:13-4:16 ["You know I'm not going to speculate . . . . I'm going to do the work, I'm going to do the full analysis."]; News Nation Interview, 11/8/25, https://www.youtube.com/watch?v=BySc3r01gqA&list=PLaxLV79malocqk4JRarIy4hFHUsidWKX8&index=3 at 3:39-3:40 ["You got to do the hard work."].)

C. Within Days Of His Election -- And Before Doing The "Hard Work" To Come Up To Speed On The Case -- The Newly Elected District Attorney Fires Nancy Theberge, Transfers Brock Lunsford And Appoints Kathleen Cady As Head Of Victim Services..

As noted above, the District Attorney's original request for resentencing was signed by Nancy Theberge and Brock Lunsford. It turns out that signing the resentencing request would effectively end their respective careers in the District Attorney's office.

Mr. Hochman was sworn into his role as District Attorney on December 3, 2024. Staff changes were quick. Only three days later Ms. Theberge was fired from the District Attorney's office entirely, transferred to the County Alternate Public Defender's Office. (*See* Letter of December 10, 2024, attached as Exhibit B; Claim for Damages, attached as Exhibit C.)

Mr. Lunsford's exile was not far behind. Although he had spent 24 years as a

lawyer with the District Attorney's Office, had never received a poor performance review and was a supervisor in the office, by December 14, 2024 he had been stripped of all supervisory responsibilities and transferred to the Norwalk courthouse as a calendar attorney. (*See* Claim for Damages, attached as Exhibit J.)[2]

Ten days after he was sworn in as District Attorney, in a December 13, 2024 interview with Deadline Magazine, Mr. Hochman was asked about the Menendez brothers case. Mr. Hochman said he had just begun reviewing the many thousands of pages of material in the case and was not yet "up to speed." (*See* Transcript of December 13, 2024 Interview, attached as Exhibit D.) Given that he had just been sworn in, this response was entirely fair.

But although he had just begun to review material in the case, Mr. Hochman had already fired Ms. Theberge, and transferred Mr. Lunsford. Similarly, in that same interview -- and again before he had come up to speed on the case -- Mr. Hochman publically announced his view that any suggestion the Menendez brothers trials centered on the question of childhood sexual abuse was "absolutely wrong." (*See* Exhibit D.) And he admitted that although he remained willing to speak with counsel for Erik and Lyle, he had *already* "spoken to [Kathleen Cady]" the lawyer for the only family member *opposing* resentencing. (*Ibid.*)

Indeed he had. On December 24, 2024, and as one of his first appointments after winning the election, Mr. Hochman appointed Ms. Cady as Director of the District

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[2] The transfer to Norwalk appears to be an example of what is known as "freeway therapy," which has a long history in Los Angeles County, recognized in both cases and media. It is a "form of punishment" involving assignments which involve a long commute. (*See Fanfassian v. City of Los Angeles* (2016) 2016 WL 6777809, at *4. *Accord Devitt v. Los Angeles County Department of Animal Care and Control* (2017) 2017 WL 2570661, at *3; *Bressler v. City Of Los Angeles* (2009) 2009 WL 200242, at *11.) Attorneys in the District Attorney's office can be "denied promotions, banished to far-flung offices in what is known as 'freeway therapy,' stripped of important cases or relegated to mundane demoralizing duties." (*See* https:// theavtimes.com/2019/09/04/ prosecutor-gets-300k-over-alleged- harassment-by-superior/ attached as Exhibit E.)

Attorney's Department of Victim Services, effective January 6, 2025. (*See* http://www.metnews. com/articles/ 2024/cady_122624.htm, attached as Exhibit F.)

On March 10, 2025 the District Attorney moved to withdraw the request for resentencing. The 28-page section of the District Attorney's original request for resentencing -- discussing rehabilitation, educational, programming and work related achievements during Erik and Lyle's more than 30 years in prison -- is covered in three sentences on page 83 of the Motion to Withdraw. And although the Motion to Withdraw expresses concern about whether 54-year old Erik and 57-year old Lyle now "pose an unreasonable risk of a danger to the community," the motion makes no reference to the fact that both Erik and Lyle have the lowest possible felony risk-assessment scores (they each scored a 1) and the lowest possible raw security risk scores (they each scored a 0).

ARGUMENT

I. THE MOTION TO WITHDRAW SHOULD BE DENIED BECAUSE THE NEWLY MINTED REASONS NOW OFFERED TO JUSTIFY WITHDRAWING THE REQUEST FOR RESENTENCING ARE EITHER PATENTLY MERITLESS, OR WERE PROPERLY CONSIDERED AND REJECTED BY THE PRIOR DISTRICT ATTORNEY, OR BOTH.

As noted above, the new District Attorney correctly recognizes that under *Vaesau* withdrawal may not be based on a "change in the political winds." (Motion to Withdraw 69.) According to the new District Attorney, his "personal[] participat[ion] in a thorough and complete review" revealed legitimate, non-political reasons for withdrawing the resentencing request: it turns out the prior District Attorney blundered and missed two very key points which are addressed in sections V and VI of the Motion to Withdraw. Erik and Lyle will discuss each of the newly asserted reasons for withdrawing the motion to resentence.

A. The Asserted "Lack Of Insight" Into The Crime.

In section V of its motion to withdraw, the new District Attorney alleges that the

initial sentencing motion was flawed "because the motion failed to consider Erik and Lyle's lack of complete insight into and acceptance of responsibility for their crimes." (Motion to Withdraw 70.) Analogizing to parole suitability, he notes the relationship between a defendant's insight into his or her crime of commitment and whether the defendant poses a current danger to society. (*Id.* at 71.) The District Attorney repeatedly argues that the Governor's decision to deny parole to Sirhan Sirhan provides a useful template for analyzing the relationship between a defendant's insight into (and attitude towards) his commitment offense and the question of whether the defendant is dangerous. (Motion to Withdraw 6-7, 71, 82, 83.) The District Attorney explains the relevance of the Sirhan Sirhan case to this case:

> The comparisons between Sirhan Sirhan and the Menendez brothers' cases are instructive for the Court in ascertaining whether the failure of the Menendez brothers to exhibit full insight into their crimes overcomes various pro-resentencing factors . . . .

(*Id.* at 82.)

The parties have some common ground on this issue. Erik and Lyle agree that -- as the Second District Court of Appeal has recognized -- a defendant's "lack of insight into his crime and failure to take responsibility for it may constitute some evidence that he currently poses an unreasonable danger to society." (*In re Jackson* (2011) 193 Cal.App.4th 1376, 1389.) And they agree that the Sirhan Sirhan case -- relied on again and again by the new District Attorney -- is a useful case for analyzing the relationship between insight, taking responsibility and current dangerousness.

But that is where the common ground ends. As discussed below, the District Attorney's "insight analysis" has not only missed the whole point of Governor Newsom's approach in the Sirhan case, but ignores decades of published case law.

1. The Sirhan decision.

The motion to withdraw filed by the new District Attorney is accompanied by 19

exhibits. Yet although the District Attorney repeatedly relies on the Governor's decision to deny parole in the Sirhan case, he does not provide a copy of that decision as an exhibit for the Court's review. That omission is remedied here. (*See* Exhibit G.) As an examination of that decision shows, the new District Attorney's discussion of the Sirhan case is curiously incomplete. In fact, as the text of the Governor's actual decision shows -- and contrary to the District Attorney's position -- with respect to insight into the crime and current dangerousness, the Sirhan case is the polar opposite of this case.

Sirhan was convicted of murder in the 1968 assassination of Robert Kennedy. After his arrest, he admitted the killing to police. (Exhibit G at 3.) At his 1969 trial, he admitted the killing, both in his testimony and in outbursts during trial. (*Id.* at 4.) In Parole Board hearings in 1979 and 1985, he again admitted the killing. (*Ibid.*)

But then, as Governor Newsom noted in ultimately denying parole, Sirhan began a years-long period of increasing denials, ultimately resulting in a claim of complete innocence of the crime. Thus, in a 1989 Parole Board hearing, Sirhan said he could no longer recall the "details of the crimes." (Exhibit G at 5.) In a 1990 hearing he repeated that he had no memory of the shooting. (*Ibid.*) In 1997, Sirhan said "he did not commit the crime[] and was innocent." (*Ibid.*) In 2001, Sirhan said he "doubted that he committed the crime[]." (*Ibid.*) At a 2011 parole hearing, Sirhan said he could not recall "using his gun." (*Ibid.*) At a 2016 parole hearing he said "he was innocent" and "legally speaking, I'm not guilty of anything." (*Ibid.*) Finally, in 2021, Sirhan told a "Board psychologist that he was innocent of the crime[]." (*Ibid.*)

In relying on the Sirhan case, the new District Attorney does not discuss any of these facts. (Motion to Withdraw 6, 7, 82, 83.) Instead, the District Attorney provides Exhibit 18, a carefully curated chart regarding the Sirhan case which omits any reference at all to Sirhan's near quarter-century history of claiming innocence. (Motion to Withdraw, Exhibit 18.)

But in denying parole, Governor Newsom did *not* ignore this history. Instead, he properly noted "Mr. Sirhan's implausible and unsupported denials of responsibility" and

concluded that Sirhan's "discussions of his crimes" suggested he was still a threat to public safety. (Exhibit G at 6.) The Governor also noted Sirhan's connections to political violence on his behalf; when Sirhan was told about terrorists who kidnapped 10 hostages to demand his release from prison (and ultimately killed three of the hostages), Sirhan's reaction was to "laughingly dismiss[] the incident." (*Ibid.*) Although the new District Attorney repeatedly relies on the Sirhan case in its motion to withdraw, these facts (and the Governor's rationale) seem simply to have been missed.

Erik and Lyle quite agree with the District Attorney that the Sirhan case properly illustrates the relationship between a defendant's insight into his crime and whether the defendant is currently dangerousness. Despite initially admitting the shooting, and over the course of nearly a quarter century (from 1997 through 2021), Sirhan not only refused to accept any responsibility for the shooting, but he went even further, claiming he "did not commit the crime," "he was innocent," he was "not guilty of anything," and he "was innocent of the crime." And he then laughed at the murder of three innocents kidnapped by terrorists advocating for his release. On this record, the Governor properly concluded that Sirhan still posed a risk to public safety.

But this case stands in sharp contrast to Sirhan's case. It is certainly true that here, Erik and Lyle -- when they were 18 and 21 years old respectively -- lied to police after the shooting in an effort to avoid responsibility for the shooting of their parents. At both trials, however, they admitted the shooting, contending that because of a lifetime of sexual abuse the crime was not murder, but manslaughter. And from the day they were convicted, and as they matured in prison over the many years since trial, in both court filings and public interviews, they have both taken responsibility for the shooting and expressed deep remorse:

- "What we did was awful and I wish we could go back."[3]

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[3] *See, e.g.*, Interview with Barbara Walters, 6/28/96, https://www.youtube.com/ watch?v=LU6H8JOK0wM at 7:19-7:24 (Erik).

- "There's not a day that goes by that I don't think about what happened and wish I could take that moment back."[4]

- "I am the kid that did kill his parents, and no river of tears has changed that and no amount of regret has changed it."[5]

- "I completely regret — I don't think I want, in any way looking back, to be the judge and jury of my father's actions or my mother's . . . it's really, a regret every day, a regret every day, but at the same time you really, you know – I can't escape what happened anymore than I can escape sort of the memories of what happened to me."[6]

- "[Larry King]: Do you ever regret what you did?

  "[Erik] Immensely so, immensely so, not a day goes by when I don't wish I could undo this or I could bring them back. It's my unending regret and in a sense it's my real prison."[7]

- And according to correctional officer K, Meyer, "I have had conversations over the years with Mr. [Lyle] Menendez in which the crime for which he is incarcerated came up. I found him to be remorseful and thoughtful about it." (Exhibit I.)

In short, the new District Attorney is correct that the Sirhan case shows how a denial of responsibility can relate to current dangerousness. But as the Governor noted, and precisely because Sirhan repeatedly denied responsibility for the shooting, that case has no application here and cannot reasonably serve as the basis to withdraw the properly filed resentencing motion.

2. The District Attorney's "insight analysis" not only ignores the facts of the Sirhan case, but substantial case law as well.

Not surprisingly, case law confirms the relationship between taking responsibility

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[4] *Id.* at 9:12-9:19 (Erik).

[5] ABC News, January 4, 2017, https://abcnews.go.com/US/lyle-menendez-prison-life-separation-brother-erik-menendez/story?id=44405794 at 1:33-1:50 (Lyle).

[6] Today Show, 09/27/2017 Interview with Lyle Menendez and Megyn Kelly, https://ew.com/tv/2017/09/27/megyn-kelly-lyle-menendez-interview/.

[7] CNN Larry King Live, 1/21/2006, Interview with Erik Menendez, https://transcripts.cnn.com/show/lkl/date/2006-01-21/segment/01.

for a crime and current dangerousness on which Governor Newsom so directly focused in the Sirhan case. (*See, e.g., In re Palermo* (2009) 171 Cal.App.4th 1096.) There, defendant was charged with murder in the shooting death of his former girlfriend. He admitted the shooting, but claimed he was not guilty of murder, only manslaughter on a negligent homicide theory. (*Id.* at pp. 1100, 1103.) The jury rejected his claim and convicted of murder. During his years in prison defendant was a model prisoner, he obtained job skills, he engaged in programming with laudatory reports and he took college courses. (*Id.* at pp. 1103-1104.) At all points during his incarceration, although defendant took full responsibility for the actual shooting he continued to maintain he was guilty only of manslaughter, not murder. (*Id.* at pp. 1103-1104, 1112.) Ultimately, defendant was denied parole because of a "lack of insight into" the crime due to his "continued insistence" that the crime was manslaughter and not murder. (*Id.* at p. 1110.) The appellate court granted habeas relief, noting that in light of the many factors favoring parole, defendant's belief that the killing was manslaughter simply did not support a conclusion that he lacked insight into the crime and would therefore pose a current danger to the community. (*Id.* at p. 1112.)

The similarities between this case and *Palermo* are remarkable. Like *Palermo*, Erik and Lyle were charged with murder. Like *Palermo*, they admitted the shooting at trial but contended the offense should be manslaughter. Like *Palermo*, they were convicted of murder. Like *Palermo*, they both have remarkable in-custody records involving education, work and programming. Like *Palermo*, they continue to accept responsibility for the shootings and express remorse. And like *Palermo*, they continue to maintain that the offense should have been manslaughter, not murder. As *Palermo*

recognizes, in this identical situation defendants have not expressed some kind of insufficient insight into the crime.[8]

In various press conferences, press interviews and television appearances -- and again in the Motion to Withdraw -- the District Attorney repeatedly observes that both Erik and Lyle lied in the case in an attempt to avoid culpability. This is entirely true. But the District Attorney's observation misses the forest for the trees, ignoring that Erik and Lyle have both admitted shooting their parents. Indeed, as the District Attorney himself concedes in responding to the pending habeas petition, at the two trials in this case Erik and Lyle not only admitted shooting their parents, but they went further, admitting (1) using a fake name and address to purchase the guns used in the shooting, (2) picking up the shotgun shells from the crime scene, (3) trying to create an alibi, (4) hiding the shotguns and their clothes and (5) trying to mislead both police and their own family members and friends. (*In re Menendez*, BA068880-01, BA068880-02, People's Informal Reply 30-43, *citing* RT 14795-14796, 14799, 14810, 43529-43530, 43643, 43658-43660,

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[8] Where an inmate's version of the offense is physically impossible or highly implausible on its face, continued adherence to that theory may support an inference of current dangerousness. (*See In re McClendon* (2003) 113 Cal.App.4th 315 [petitioner entered wife's home uninvited wearing rubber gloves, carrying a loaded gun, a wrench and industrial acid, shot his wife in the head, bludgeoned her male companion and later claimed throughout parole proceedings that he "simply wanted to show his new gun to his estranged wife, and that the gloves, wrench, and industrial acid were brought for household chores;" held, defendant's attitude toward the offense supported an inference of current dangerousness].) But where an inmate's version of an offense is neither impossible, nor strains credulity, it does not justify a finding that he is currently dangerous. (*Palermo*, *supra*, 171 Cal.App.4th at p. 1112; *In re Jackson* (2011) 193 CA4th 1376, 1391.)

The objective record of jury deliberations over two separate trials in this case belies any suggestion that the manslaughter version of the offense -- based on a lifetime of sexual and physical abuse -- is either physically impossible or highly implausible. After all, the two juries to hear this case at the first trial split almost evenly between murder and manslaughter. (RT 26185.) And even after extremely probative evidence was excluded at the second trial, the jury deliberated 35 hours before two jurors were removed, and another 20 hours thereafter. (CT 13094-13107.)

43999-44000. 44006-44014, 44017-44018, 44179-44180, 45689-45690.)

From a rhetorical perspective, Erik and Lyle certainly understand the District Attorney's continued focus on falsehoods they told in the aftermath of the crime and even during their 1993 and 1996 trials. But the case law makes clear that this conduct is of relatively little relevance to the question of current dangerousness. Erik was 18 years old at the time of the crime. Lyle was 21. They lied and they tried to fabricate evidence. As our Supreme Court has long recognized, however, "the passage of time is highly probative to the determination" of current dangerousness and reliance on outdated information will not justify a finding of dangerousness. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1224.) The Second District Court of Appeal has reached the identical conclusion. (*In re Gaul* (2009) 170 Cal.App.4th 20, 39.)

The fact of the matter is that more than three decades have passed since the pre-trial and trial events on which the District Attorney now places so much reliance. This is precisely why the fact that an immature defendant may lie to police in the aftermath of a crime, or hide evidence, or even testify falsely at trial, does not indicate they lack insight or will be a danger to society decades and decades later when they mature. (*See, e.g., In re Swanigan* (2015) 240 Cal.App.4th 1 [20 year-old defendant convicted of first degree murder, lied to police after the crime, testified to a false alibi at trial, suborned perjury from an alibi witness; held, parole proper after 34 years of positive in-custody conduct]; *Palermo, supra*, 171 Cal.App.4th at p. 1102 [21 year-old defendant charged with killing of his ex-girlfriend, defendant "lied to his sister and police" and removed evidence from the crime scene to try and cover up the crime; held, parole proper after 20 years of positive in-custody conduct]; *Jackson, supra*, 193 Cal.App.4th 1376 [defendant charged with murder of his ex-girlfriend, defendant lies to police about his role and falsely accused a third party; held, parole proper after 25 years of positive in-custody conduct].)

These cases did not break new law. They simply reflect the common sense observations of both the United States and California Supreme Courts that the "distinctive attributes of youth" include a "lack of maturity and an under developed sense of

responsibility" and an inability "to extricate themselves from horrific, crime producing settings." (*Miller v. Alabama* (2012) 567 U.S. 460, 471; *People v. Franklin* (2016) 63 Cal.4th 261, 274.) So it is here; Erik and Lyle were 18 and 21 when they committed the crime, they are now 54 and 57 years old, and in the multiple decades since the crime, they have continued to admit their role in the shooting, express remorse for the harm they caused and make extraordinary strides in education, programming and rehabilitation while in prison.

And there may be a second irony at play here. In his inaugural speech as District Attorney, Mr. Hochman noted that his office would not ignore victims, but would instead serve as a champion for the voices of crime victims:

> We're going to make sure that victims understand that the DA's office is going to resume a role that it has had for decades as a champion of victims out there in our society.

(Nathan Hochman, 12/3/24 Inaugural Speech, https://www.youtube.com/watch?v=8ypxAhvXNDI&t=1454s at 24:01-24:14.)

As the District Attorney's original request for resentencing makes clear (and as the new District Attorney's motion to withdraw does not dispute), in October 2024 "nearly 30 extended family members . . . attended a meeting with the District Attorney's office to "express[] their strong support of Erik and Lyle Menendez being resentenced" and "collectively confirm that the men were sexually abused by Jose Menendez when they were young children." (Resentencing Motion 52.) Instead of "champion[ing]" the victims' family here, the Motion to Withdraw abandons them completely.

Erik and Lyle have now served 35 years in custody. The new District Attorney's position that withdrawal of the request for resentencing is justified due to insufficient insight into the crime ignores case law, the facts of the main authority in which the District Attorney relies, and Erik and Lyle's repeated taking of responsibility for the shooting and expressions of remorse. It places near-dispositive reliance on outdated, decades-old actions of an 18 and a 21 year-old, actions that have been eclipsed by

extraordinary in-custody rehabilitation efforts. And it ignores the pleas of 30 of the victims' family members, rendering hollow the new District Attorney's own claim that his office will be the "champion of victims out there in our society." The motion to withdraw the request for resentencing should be denied.[9]

B. The Asserted Inadequate Description Of The Prison Files.

Section VI of the Motion to Withdraw offers a second reason why withdrawal of the request for resentencing is proper. There, the District Attorney argues that the request was separately flawed because it failed to "sufficiently detail information contained within each inmate's prison files." (Motion to Withdraw 84.) The new District Attorney accurately notes that the original resentencing request advised the Court that (1) Erik's prison file showed eight rule violations and (2) Lyle's prison file showed five such violations. (Motion to Withdraw 84, 85 citing Resentencing Motion 20, 43.) According to the Motion to Withdraw, however, "Erik has been cited at least thirteen (13) times for violating prison rules" and "Lyle was cited for violating the prison rules, including failures to report for work, at least 19 times." (Motion to Withdraw 84, 85.) The District Attorney now argues that this inexplicable and alarming undercount justifies withdrawal of the resentencing motion.

It does nothing of the sort. As discussed below, this suggestion ignores the prison violation classification system and conflates serious rule violations (which may be

---

[9] The District Attorney accurately observes that a defendant's inadequate insight into a commitment crime may be relevant to whether the defendant poses a current danger to society. (Motion to Withdraw 71.) But it seems odd to express concern about current dangerousness as a reason to withdraw the resentencing request, but not discuss in some detail -- or at least mention -- the fact that according to the CDCR itself, both Erik and Lyle have felony risk-assessment scores of 1 (the lowest possible score) and *for a decade* have had a raw security risk scores of 0 (the lowest possible score). (Resentencing Motion 21, 44.) Yet aside from a passing reference to the fact that "predictive scores" were detailed in the original resentencing request, the current motion says nothing about these validated risk assessment scores.

relevant to an inquiry into current dangerousness) with outdated, technical violations that have nothing to do with this important inquiry. Moreover as also discussed below, the current District Attorney has relied on allegations which the prison itself investigated and elected not to punish after neither eyewitnesses nor video footage supported them.

1. The prison discipline system.

Title 15 of the California Code of Regulations ("CCR") governs the administration of prisons, including prisoner misconduct, which generally fall into three categories. The most serious rule violations (known as Rule Violation Reports, RVRs, or 115s) are defined and governed by CCR, Title 15, section 3323. These rule violations are sub-categorized by degrees of seriousness into Divisions A through Division F. (*Ibid.*) Division A represents the most serious violations, including murder, rape or escape, and result in forfeiting between 181 and 360 days of credit against a release date, possible placement in a Secured Housing Units ("SHU"), points added to classification scores use to determine housing, and possible criminal prosecution. (*Ibid.*) Division F represents the least serious violation, including such as gambling or refusal to work, and result in forfeiting up to 30 days of credit against a release date.

The second category of misconduct -- administrative violations -- are defined and governed by CCR, Title 15, section 3314. Although administrative violations are also reported in a RVR, administrative violations reflect less serious violations of CDCR rules and do not result in credit forfeiture, SHU placement, or points added to the inmate's classification score. (*Ibid.*) An administrative misconduct finding may result in loss of privileges, including access to yard time or other activities. (*Ibid.*) Examples of administrative misconduct include missing a work assignment, use of vulgar language, and failure to comply with grooming standards. (*Ibid.*)

The third and least serious category of misconduct is reflected in counseling chronos, reflected in CCR, Title 15, section 3312. Counseling chronos are sometimes referred to as "128s" because these rule violations are documented on CDCR Form 128.

(Declaration of Richard Subia, attached as Exhibit H, at para. 10.) A counseling chrono can be used to record any misconduct that does not amount to a serious rule violation or administrative misconduct. (*Ibid.*) The chrono merely records that the misbehavior was observed and reported to the inmate. (*Ibid.*) There are no disciplinary consequences from a counseling chrono. (*Ibid.*) Examples of misconduct warranting a counseling chrono include taking too much food from a cafeteria, taking too long to shower, or altering prison garments. (*Ibid.*)

The California Supreme Court has taken cognizance of these distinctions in the parole context and cautioned against denying parole based on administrative misconduct or counseling chronos. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1194, 1224 [defendant convicted of premeditated murder, Parole Board finds her a danger to public safety in part by relying on eight administrative misconduct RVRs and counseling chronos for being late to work; held, these administrative violations and counseling chronos "did not support a conclusion that petitioner poses a theat. to public safety."].) As one appellate court has put it, "[p]rison discipline, like any other parole unsuitability factor, supports a denial of parole only if it is rationally indicative of the inmate's current dangerousness. Not every breach of prison rules provides rational support for a finding of unsuitability." (*In re Perez* (2016) 7 Cal.App.5th 65, 94, citations omitted.)

2. Erik's prison disciplinary history.

The current Motion to Withdraw focuses on the number of violations without examining which (if any) are serious and which (if any) are recent enough to be relevant to assessing current dangerousness. As to Erik, it alleges that Erik has five rules violations which were not discussed in the original request for resentencing. (Motion to Withdraw 84.) But the District Attorney does not discuss what these five additional violations are or when they occurred.

With good reason. Four of these violations are either counseling chronos or administrative misconduct only, and none have occurred within the past two decades.

Three occurred 28 years ago, in 1997: (1) a 1997 counseling chrono for possessing a floppy disc with personal letters on it that officers found did not "contain anything that would jeopardize the safety or security of the institution," (2) a March 1997 counseling chrono for improperly kissing and hugging his female visitor and (3) a May 1997 administrative misconduct for again improperly kissing and hugging his fiancé during a visit. (Motion to Withdraw, Exhibit 16 at 1, 3, 7.) The fourth is more than 20 years old -- a March 2005 counseling chrono for talking too long on the telephone. (Motion to Withdraw, Exhibit 15 at 49.) The District Attorney cannot plausibly maintain that any of these minor violations are sufficient to show current dangerousness and justify withdrawing the resentencing motion.

In addition to these four technical rule violations the District Attorney calls the Court's attention to a 26 year-old RVR based on an incident occurring on January 17, 1999. Prison guard Cousins alleged that Erik had a female visitor and, during an argument, Erik (1) pulled her out of her chair, (2) pushed her and when she walked away and (3) "grabbed her by the back of the neck and pulled her back." (Exhibit 15 at 18, 25.) Erik denied this conduct, alleging that Cousins exaggerated. (*Ibid.*) A hearing was held.

The District Attorney's own documents show that Officers Hanley and Rocha were in the visiting room but would not corroborate Cousins, stating they did not see the incident. (*Id.* at 19.) Three inmates testified. Inmate Cruz "saw no problem between Menendez and his visitor." (*Ibid.*) Inmate Simms "saw them in a disagreement but no physical contact." (*Id.* at 20.) Inmate Perry "never saw him push or pull her." (*Ibid.*) For her part, the visitor herself (Ms. Sacomman) spoke with officers. Erik lifted her out of the chair, as if leading her somewhere but did *not* (as Cousins reported) "pull or drag [her] out of the chair." (*Ibid.*) She did *not* (as Cousins reported) walk away from him. (*Ibid.*) And Erik did *not* (as Cousins reported) put his hand on her. (*Ibid.*)

Hearing officer Cain then reviewed video footage with Cousins. In dramatic fashion, the District Attorney now claims this footage "demonstrated that Erik was the one lying." (Motion to Withdraw 84.)

It does not. In fact, after reviewing the video footage, Cousins himself admitted he "could not identify [on the video] either time when [Erik] grabbed [his] visitor by the back of the neck and pulled her backward." (*Ibid.*) Although neither his fellow guards, the inmates, Ms. Sacomman herself nor the video footage corroborated him, Cousins had a ready explanation, blaming this on "the angle of the camera and the clarity" and the fact that a third camera had "faulty wir[ing]." (*Ibid.*) And although the District Attorney quotes Officer Cain's conclusion that Erik "employed aggressive contact" with Ms. Sacomman, *he neglected to include the very next sentence of the report*:

> I cannot determine if you grabbed your visitor by the neck or not.

(*Ibid.*)

Perhaps even more unsettling, the District Attorney does not inform the Court that after the videotape was viewed, Erik's appeal was "partially granted." (*Id.* at 25, 26.) Indeed it was. As expert witness Subia explains "Erik's file reflects that he suffered no consequences or credits lost in relation to this incident. If the violation was sustained, his file would reflect lost credits. Furthermore, there are no additional documents related to the incident in Erik's Central File because, consistent with CDCR practices and regulations, documents related to a violation that has been dismissed are either removed from an inmate's record or updated reflecting the dismissal." (Exhibit H at para. 16.)

3. Lyle's prison disciplinary history.

As to Lyle, the Motion to Withdraw alleges that over the course of 35 years of incarceration, Lyle violated prison rules 19 times, not 5. (Motion to Withdraw 85.) Yet again, the District Attorney does not discuss what these additional violations are or when they occurred.

Yet again, for good reason. Of the additional 14 violations, 12 were counseling chronos only, the most recent of which was 15 years ago. (Motion to Withdraw, Exhibit 16 at 1, 16, 22, 23, 24, 26, 27, 29, 20, 31, 32, 33.) These 12 chronos included such

violations as refusing to turn on a light in his cell, excessive contact with a female visitor ("arms around waist and/or shoulders" and "head on shoulder") and an attempt to get new sneakers. (Motion to Withdraw, Exhibit 16 at 1, 29, 33.) The most recent of these 12 chronos was 15 years ago. (*Id.* at 33.) Both of the remaining two violations were administrative RVRs only, and nearly 30 years old: (1) a 1996 violation for refusing to leave his cell and (2) a 1997 violation for circumventing mail procedures and enabling other inmates to purchase certain clothing. (*Id.* at 2, 11.) As with Erik, the District Attorney's original decision not to include such outdated and inconsequential violations in the resentencing calculus was sound.

4. Summary.

In his declaration, Mr. Subia makes clear that "in order to protect staff, an inmate's dangerousness is among the most important considerations in running a prison. . . . [R]ules violations that do not rise to the level of an RVR are generally considered irrelevant to the inmate's institutional security or risk to public safety." (Exhibit H at para. 15.) Courts agree; as noted above, an inmate's rule violations "support[] a denial of parole only if [they are] rationally indicative of the inmate's current dangerousness." (*Perez, supra*, 7 Cal.App.5th at p. 94.) Here, as to Erik the new District Attorney identified five additional rule violations over 35 years, the most recent of which was more than two decades ago. As to Lyle, he identifies 14 violations, the most recent of which was 15 years ago.

Equally important, the case law makes clear that to be relevant as a factor in the resentencing calculus, the rule violations must be "rationally indicative of the inmate's current dangerousness." And the new District Attorney never explains how Erik's 1997 possession of a floppy disc with personal letters on it, his 1997 improper kissing of his fiancé, or his 2005 talking too long the telephone show he is currently dangerous. Nor does the District Attorney explain how violations like Lyle's 1996 refusal to turn on his cell light, his 2003 excessive contact with a female visitor ("arms around waist and/or

shoulders" and "head on shoulder") or his 2010 attempt to get new sneakers show he is currently dangerous.

In short, the District Attorney has succeeded in identifying minor rule violations, most of them decades old, which the authors of the original resentencing request elected not to reference. None of these outdated and minor violations "rationally" indicate current dangerousness and none present an even remotely legitimate justification to permit withdrawal of the original request for resentencing.[10]

CONCLUSION

The District Attorney's Motion to Withdraw should be denied.

DATED: March 31, 2025

Respectfully submitted,

CLIFF GARDNER

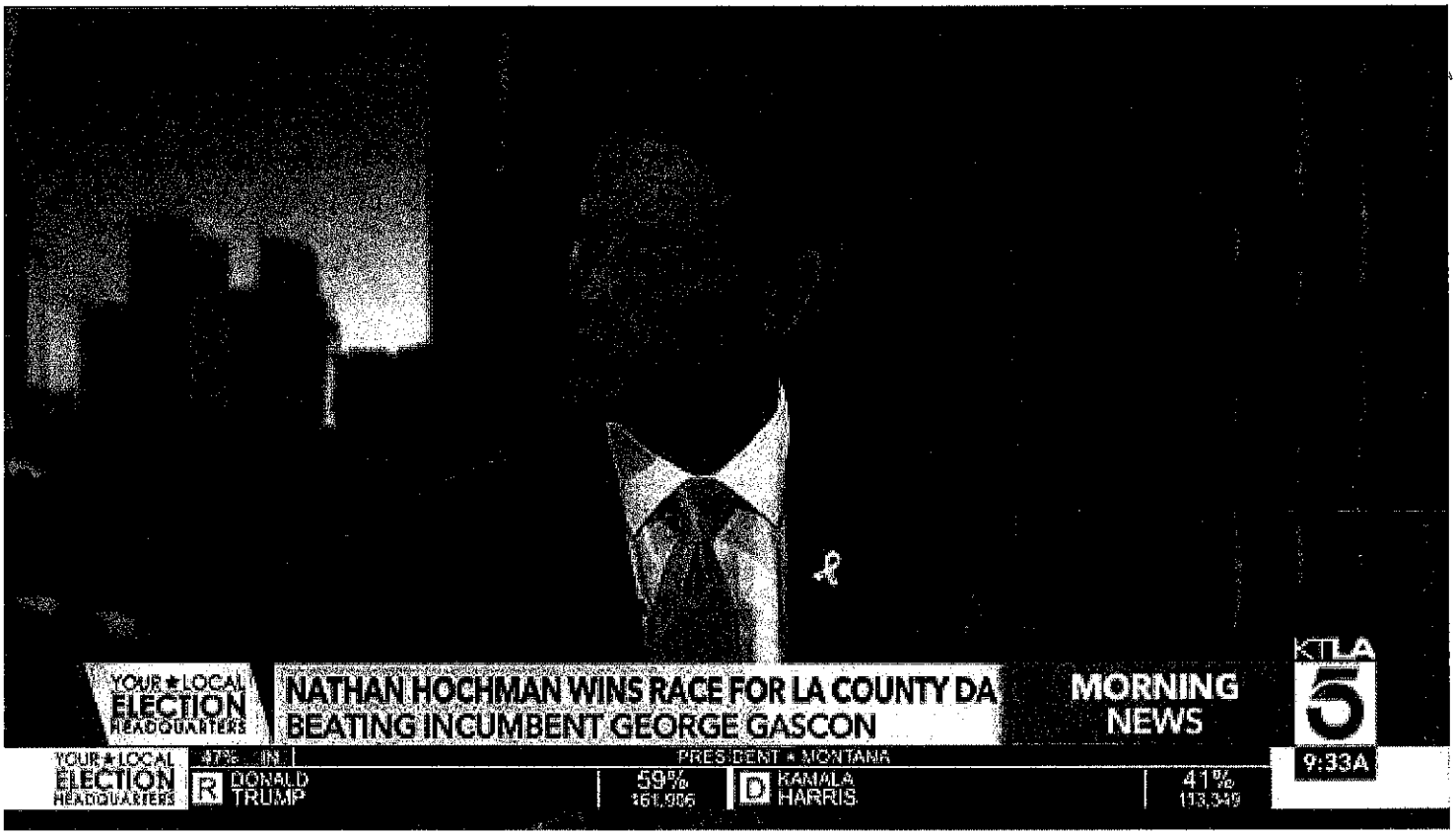
MARK GERAGOS
ALEXANDRA KAZARIAN

MICHAEL ROMANO
MILENA BLAKE

/s/ Cliff Gardner
Co-counsel for Defendants

[10] In its Motion to Withdraw, the new District Attorney properly recognizes that "on November 25, 2024 the Court indicated that it would proceed on its own resentencing motion" if the People were permitted to withdraw their request for resentencing. (Motion to Withdraw 86.) The District Attorney has indicated the state is ready to proceed on this alternative basis. (*Id.* at 2, 86.)

EXHIBIT A



ELECTION 2024

L.A. County District Attorney-elect Nathan Hochman discusses Menendez brothers' case

by: **Will Conybeare**
Posted: Nov 6, 2024 / 09:53 AM PST
Updated: Nov 6, 2024 / 10:25 AM PST

SHARE

After beating out incumbent George Gascón in the race for Los Angeles County District Attorney, Nathan Hochman will be the 44th person to assume the role when he takes office.

Among the many issues Hochman, 60, will inherit from the previous DA, none may be more high-profile than the Menendez brothers' murder case.

Gascón announced in October that he supported resentencing the brothers — who were both given life sentences in 1995 — in what some saw as a strategic move to get his name in the news while he was losing in preliminary polls.

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Others, including many Menendez family members, argue that the brothers have paid their dues for their crimes and are rehabilitated and ready to reintegrate into society.

In an exclusive sit-down interview with KTLA, Hochman outlined his plans for navigating the case.

"Here's my approach, whether it's the Menendez case or quite honestly any case: you have to do the hard work," he told KTLA on Wednesday morning. "You have to look, in that case, at thousands of pages of confidential prison files, you have to review thousands of trial transcripts from months-long trials, and you have to speak to the prosecutors, law enforcement and the defense counsel...and the victims' families."

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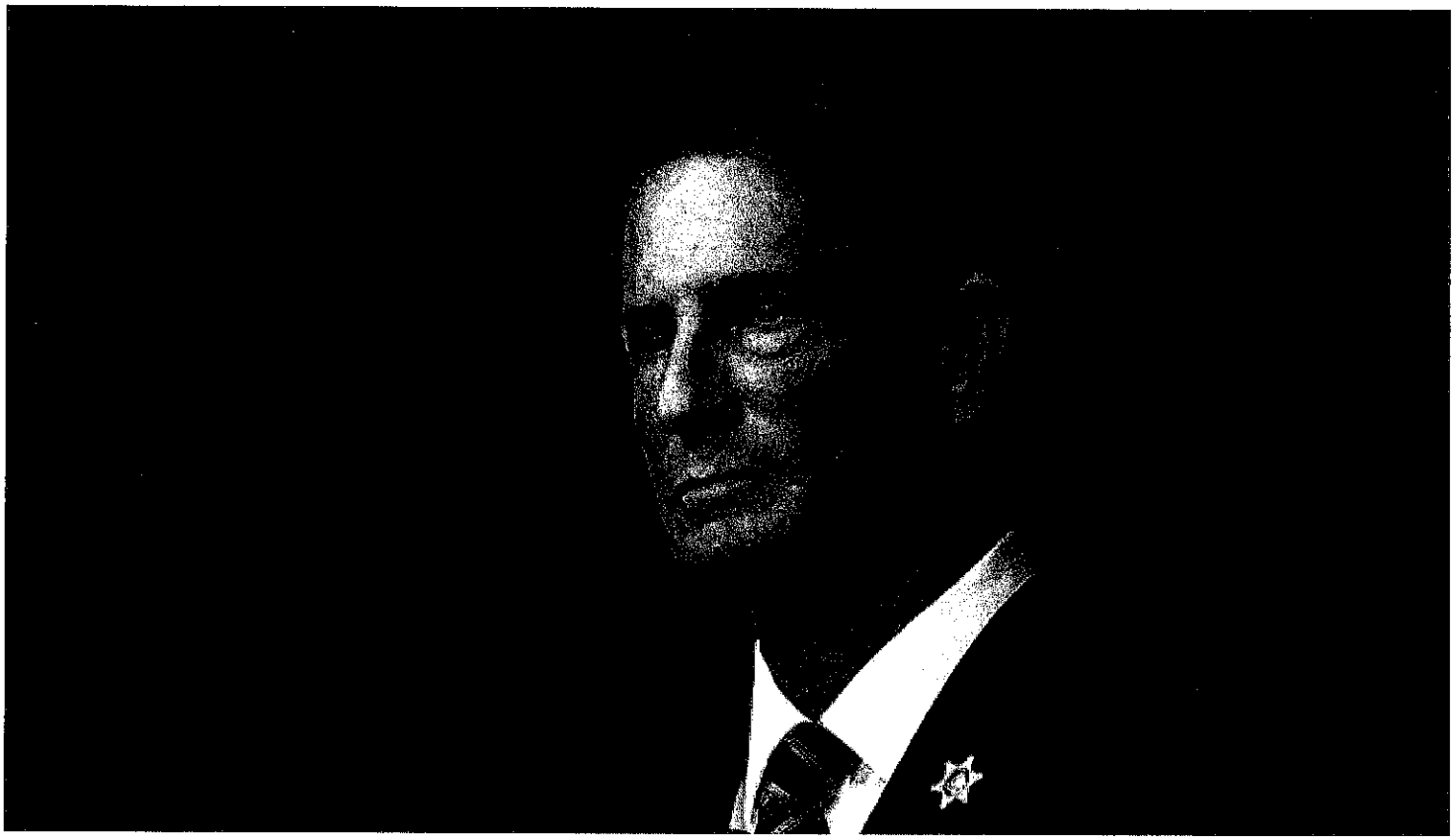
"Only then can you be in a position to determine whether resentencing is the remedy in this situation or whether what is asked for in the resentencing is the appropriate request," Hochman continued. "I'm not in that position now, but I can tell you if I do have to make that call, I will do the hard work to make the right decision."

The DA-elect will take office on Dec. 2, which is before the hearing to free the brothers.

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Nathan Hochman at the Los Angeles District Attorney candidates forum at Pacific Palms Resort. (Robert Gauthier/Los Angeles Times via Getty Images)

Hochman also spoke on his soon-to-be predecessor's "extreme pro-criminal policies" but did say that he was not critical of Gascón's focus on solving problems plaguing L.A. County, only the ways he wanted to go about doing so.

"[Gascón's] extreme pro-criminal policies weren't focused on the facts or the laws, but predetermined that certain crimes — like stealing under $950 if you're a juvenile or engaging in violent conduct as a gang member — were not going to be prosecuted no matter what the facts and the law are," he said. "I reject those extreme policies but I also reject the extreme mass incarceration policies that again, don't care about the facts or the law…they just want to put as many people in jail as possible."

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Instead, Hochman described his philosophy as "the hard work middle," stressing that each case needs to be looked at one-by-one

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"I will eliminate these pro-criminal extreme policies…and empower the 750 prosecutors George Gascón didn't even speak to," he said. "I am going to listen and learn from them [because] they bring collectively thousands of years of prosecutorial experience, and while I have 34 years, I understand the difference. So I will ask them what is working and we will continue it, and [I will ask] what's not working and their solutions to fix [those problems.]"

CONTENT CONTINUES BELOW SURVEY

WHAT DO YOU THINK?

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Lauren Lewis contributed to this report.

Suggest a Correction

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EXHIBIT B

COUNTY OF LOS ANGELES
DEPARTMENT OF HUMAN RESOURCES

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LISA M. GARRETT
DIRECTOR OF PERSONNEL

December 10, 2024

DELIVERED VIA EMAIL AND USPS FIRST CLASS MAIL

Nancy A. Theberge (e434325)
6022 Silva Street
Lakewood, CA 90713

Dear Ms. Theberge:

NOTICE OF INTERDEPARTMENTAL TRANSFER

Thank you for your dedicated service to the County of Los Angeles (County) and the Office of the District Attorney (Department or DA), where you have worked since November 16, 2021.

Pursuant to Civil Service Rule (CSR) 15 - Assignment, Interdepartmental Transfer, and Change of Classification, you are hereby further informed in writing of your interdepartmental transfer to the Los Angeles County Alternate Public Defender (APD). Your start date with the APD will be on Friday, December 20, 2024. This transfer was previously discussed with you on Friday, December 6, 2024.

Your newly assigned position of Deputy APD IV is of the same grade and rank as that of Deputy District Attorney IV, and it is similar to a prior-held item before you transferred to the DA when you were a Deputy Public Defender IV.

You are ordered to report on **Friday, December 20, 2024**, to APD as follows:

Jennifer "Jenny" Cheng
(310) 291-4192
Clara Shortridge Foltz CJC
210 West Temple Street, Suite 18-709
Los Angeles, CA 90012
Friday, December 20, 2024, at 9:00 a.m.

Prior to starting with the APD on Friday, December 20, 2024, County Policy requires that you be Live Scanned. A Live Scan appointment has been scheduled for you by the Department of Human Resources as follows:

Department of Human Resources
Thursday, December 12, 2024, at 1:30 p.m.
DHR 500 West Temple Street, Room 588
Los Angeles, CA 90012

Please note that you must return your DA identification badge and all other County properties (e.g., keys, electronic equipment, computers, etc.) issued to you by the Department no later than the close of business on Friday, December 20, 2024. You are requested to return these items to the following location:

Navjot Kaur, Administrative Services Director
County of Los Angeles Office of the District Attorney
Bureau of Administrative Services
Hall of Justice
211 W. Temple Street, Suite 200
Los Angeles, CA 90012
(213) 257-2774

Failure to return the identification badge and/or other County properties will compel the Department to initiate appropriate action to recover them.

CSR 15.04 affords an employee the opportunity to appeal an assignment, interdepartmental transfer or change in classification to the director of personnel. Further, you should be aware that "[a]n appeal shall not authorize the employee to refuse the assignment, transfer or change in classification pending completion of the appeal process".

If you have any questions, concerning this letter, please contact Rodney Collins at RCollins@hr.lacounty.gov or (213) 866-2359.

Sincerely,

LISA M. GARRETT
Director of Personnel

c: Department of Human Resources
Office of the District Attorney
Alternate Public Defender's Office
Chief Executive Office
County Counsel
Personnel File

EXHIBIT C

CLAIMS FOR DAMAGES TO PERSON OR PROPERTY

COUNTY OF LOS ANGELES

TIME STAMP
OFFICE USE ONLY

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
FILED
2025 FEB -3 A 9:32

INSTRUCTIONS:

1. Read claim thoroughly.
2. Fill out claim as indicated; attach additional information if necessary.
3. Please use one claim form for each claimant.
4. Return this original signed claim and any attachments supporting your claim. This form must be signed.

DELIVER OR U.S. MAIL TO:
EXECUTIVE OFFICER, BOARD OF SUPERVISORS, ATTENTION: CLAIMS
500 WEST TEMPLE STREET, ROOM 383,
KENNETH HAHN HALL OF ADMINISTRATION, LOS ANGELES, CA 90012
(213) 974-1440

1 ☐ Mr ☒ Ms ☐ Mrs. LAST NAME: Theberge | FIRST NAME: Nancy | M.I.:

2. ADDRESS OF CLAIMANT: [redacted]

CITY: [redacted] | STATE: [redacted] | ZIP CODE: [redacted]

HOME PHONE: [redacted] | ALTERNATE PHONE: [redacted]

3. CLAIMAINT'S BIRTHDATE: [redacted] | 4. CLAIMANT'S SOCIAL SECURITY NUMBER: [redacted]

5. ADDRESS TO WHICH CORRESPONDENCE SHOULD BE SENT:
11520 San Vincente Blvd
STREET | CITY | STATE | ZIP CODE
Los Angeles | CA | 90049

6. DATE AND TIME OF INCIDENT:
12/19/2024 12:00 am

7. WHERE DID DAMAGE OR INJURY OCCUR?
211 West Temple Suite 1200
STREET | CITY | STATE | ZIP CODE
Los Angeles | CA | 90012

8. DESCRIBE IN DETAIL HOW DAMAGE OR INJURY OCCURRED AND LIST DAMAGES (attach copies of receipts or repair estimates):
Please see attached letter.

9. WERE POLICE OR PARAMEDICS CALLED? YES ☐ NO ☒

(IF YES) AGENCY'S NAME _____ REPORT # _____

CHECK IF LIMITED CIVIL CASE ☐

TOTAL DAMAGES TO DATE: $5,000,000.00

TOTAL ESTIMATED PROSPECTIVE DAMAGES: $5,000,000.00

10. WHY DO YOU CLAIM COUNTY IS RESPONSIBLE?
Please see attached letter.

11. NAMES OF ANY COUNTY EMPLOYEES (AND THEIR DEPARTMENTS) INVOLVED IN INJURY OR DAMAGE (IF APPLICABLE):

NAME	DEPARTMENT
Nathan Hochman	District Attorney's Office
John Lewin	District Attorney's Office

12. WITNESS(ES) TO DAMAGES OR INJURY: LIST ALL PERSONS AND ADDRESSES OF PERSONS KNOWN TO HAVE INFORMATION.

NAME	PHONE
Lori Deary	(213) 974-3512
ADDRESS: 211 West Temple Suite 1200	
NAME: James Garrison	PHONE: (213) 974-3512
ADDRESS: 211 West Temple Suite 1200	

13. IF PHYSICIAN(S) WERE VISITED DUE TO INJURY, PROVIDE NAME, ADDRESS, PHONE NUMBER, AND DATE OF FIRST VISIT FOR EACH.

DATE OF FIRST VISIT	PHYSICIAN'S NAME	PHONE
STREET	CITY	STATE ZIP CODE
DATE OF FIRST VISIT	PHYSICIAN'S NAME	PHONE
STREET	CITY	STATE ZIP CODE

THIS CLAIM MUST BE *SIGNED*

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (PENAL CODE SECTION 72)

CLAIMS FOR DEATH, INJURY TO PERSON OR TO PERSONAL PROPERTY MUST BE FILED NOT LATER THAN 6 MONTHS AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)

ALL OTHER CLAIMS FOR DAMAGES MUST BE FILED NOT LATER THAN ONE YEAR AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)

14. PRINT OR TYPE NAME	DATE	15. SIGNATURE OF CLAIMANT OR PERSON FILING ON HIS/HER BEHALF GIVING RELATIONSHIP TO CLAIMANT	DATE
Carney Shegerian (For Nancy Theberge)			

Revised 11-2016

Shegerian & Associates

Phone: (310) 860-0770 | Fax: (310) 860-0771 | shegerianlaw.com

February 3, 2025

SENT VIA PERSONAL SERVICE AND CERTIFIED U.S. MAIL

Executive Officer Board of Supervisors
Attn: Claims
Los Angeles County Board of Supervisors
County of Los Angeles
500 West Temple Street, Room 383
Los Angeles, California 90012

211 West Temple Street
Suite 1200
Los Angeles, CA 90012

Re: ***Tort Claim Form for Nancy Theberge—Pursuant to California Government Code Section 910***

To whom it may concern:

Please be advised that my office has been retained to represent Nancy Theberge ("Theberge") in connection with her employment with the County of Los Angeles ("COLA") and the Los Angeles District Attorney's Office ("LACDA") (collectively "Entity Defendants". By this letter, we present the following claim for damages on her behalf in what is commonly referred to as a tort claim form.

INDIVIDUALS AND ENTITIES AGAINST WHOM CLAIMS ARE BROUGHT

The names of the public entities and public employees who caused Theberge injuries include but are not limited to: COLA; LACDA; Nathan Hochman and John Lewin.

Nancy Theberge, a 56-year-old female, began her career with Entity Defendant's in November 2021. Over the course of her tenure, Theberge demonstrated professionalism and dedication to the administration of justice. Despite her commitment to her role, Theberge became the target of unlawful discrimination based on her age (over 40) and gender (female). Theberge was also targeted because of her perceived political association with George Gascon, the current district attorney (Nathan Hochman) political opponent and because of her internal and external reports

on compliance with Penal Code Section 1172.1 by the County of Los Angeles and the Los Angeles District Attorney's office.

Theberge's Exemplary Employment

Theberge's most recent assignment with Entity Defendant was post-conviction litigation and discovery. Theberge was an exemplary employee throughout her employment with Entity Defendants. Theberge's most recent performance evaluation, given on October 24, 2024, stated she exceeded expectations in seven categories and met expectations in four categories. Throughout her employment, Theberge never received a poor performance review. Theberge was a supervisor with Entity Defendants and was noted for her "high level of professionalism" and "high level of professional skills".

Theberge's Political Affiliation

Theberge openly supported George Gascon as District Attorney and his reelection for that same office. Theberge supported and attempted to carry out to the best of her ability every lawful policy adopted by Gascon.

Discrimination and Retaliation

Theberge was subjected to discriminatory treatment within the District Attorney's Office due to her age and gender. Leadership in the office treated Theberge differently from younger, male colleagues, undermining her authority and professional standing.

Advocacy for Resentencing Under Penal Code Section 1172.1

California Penal Code Section 1172.1 was passed into law in 2022. The law allows a criminal defendant to be resentenced, if among other factors, continued incarceration is no longer in the interest of justice. As explained further below, Theberge reported both internally to Entity Defendants and externally to the California Courts that Eric and Lyle Menendez should be resentenced because their incarceration is no longer in the interest of justice and that to recommend against resentencing would be a violation of Penal Code Section 1172.1

Starting in the beginning of October 2024, Theberge attended meetings of the Executive Team concerning the motion for resentencing. Present at these meetings were Brock Lunsford, Nancy Theberge, George Gascon, the District Attorney at the time; Joseph Iniguez, Gascon's deputy, Head deputy Lori Deary (Theberge's supervisor), Director Stephanie Pearl Meyer and the Assistant Deputy DA James Garrison.

Theberge stated during these October 2024 meetings that failure to advocate resentencing would violate Penal Code Section 1172.1. While Gascon and Iniguez supported Lunsford's position, Lori Deary and James Garrison appeared displeased and said they disagreed with Lunsford and Theberge played a pivotal role as the primary author, in October 2024 of a motion filed in Los Angeles Superior Court, advocating for their resentencing. This memorandum, co-authored with Brock Lunsford, articulated the legal and procedural basis for resentencing. Theberge's position, based solely on her interpretation of the law, was met with resistance from the new leadership within the District Attorney's Office.

Retaliation for Theberge's Protected Classes and Activity

The District Attorney's Office retaliated against Theberge for at least three unlawful reasons:

1. Her report to George Gascon, the District Attorney at the time; Joseph Iniguez, Gascon's deputy, Head deputy Lori Deary (Theberge's supervisor), Director Stephanie Pearl Meyer and the Assistant Deputy DA James Garrison. in October 2024 and her motion to the superior court for the resentencing of Eric and Lyle Menendez under Penal Code section 1172.1 and her internal and external report(s) that there would be a violation of the statute if a contrary position was taken.

2. Nathan Hochman's belief that Theberge supported his political opponent, a violation of civil service rules and California statutes prohibiting political discrimination. This belief includes but is not limited to Theberge's October 2024 motion for resentencing.

3. Her age and gender and her opposition to gender and age discrimination.

In response to Theberge's internal and external reports on violations of the law, the District Attorney's Office transferred Theberge out of her position entirely, reassigning her to the Alternative Public Defender's Office. Theberge's assignment became effective December 19, 2024. In her new role, Theberge was placed at the bottom of the organizational hierarchy, a clear demotion that diminished her professional standing and opportunities for advancement. Theberge was treated worse than her male colleagues in that she was transferred out of the District Attorney's office entirely.

///

John Lewin was at all times relevant Acting as the Agent of Nathan Hochman

John Lewin is and was a Deputy District Attorney employed by Entity Defendants. Lewin, while acting within the course and scope of his employment with the District Attorney's Office, defamed Theberge. Lewin and Hochman acted in concert. Hochman either authorized Lewin's conduct and/or ratified it. On September 28, 2024, Hochman's website publicly listed John Lewin as a supporter and praised Lewin for "stand[ing] up and be individually counted."

On or around October 26, 2024, Lewin defamed Theberge by publicly stating that she had breached her duty of candor to the court in connection with the motion for the resentencing of Eric and Lyle Menendez. This baseless and inflammatory accusation falsely suggested that Theberge acted unethically and in violation of her professional responsibilities. Lewin further stated that Theberge was incompetent in her profession. These statements include but are not limited to the statements that Theberge had no interest in justice, wanted to let criminals out of jail and was dishonest in her filings with the Court. The charge of dishonestly to the Court is a statement of fact that Theberge violated the ethics of her professional and her responsibility as an officer of the Court.

On or around November 27, 2024, Lewin publicly stated that Theberge had no interest in prosecuting criminals and stated she had sold her soul for a "few extra nickels".

On more than one occasion, Lewin's defamatory statements caused significant harm to Theberge's reputation as an attorney, implying dishonesty and a lack of integrity in her legal work.

Further, after Lewin defamed Theberge, Hochman promoted Lewin and gave him a position in major crimes. This effectively ratified his defamatory conduct, further compounding the harm to Theberge's professional standing.

Harm to Theberge's Career and Reputation

As a result of the discrimination, retaliation, and defamation she endured, Theberge's career has been severely damaged. Her transfer to a subordinate position out of the District Attorney's office and to the Alternative Public Defender's Office represents a clear demotion, stripping her of the responsibilities and professional stature she held within the District Attorney's Office. Additionally, Lewin's defamatory statements have caused lasting harm to Theberge's reputation in the legal community, undermining her credibility and professional prospects.

Theberge was coerced to republish Defendant's defamatory statement to colleagues and family to refute the allegations and protect his professional reputation.

POTENTIAL LEGAL THEORIES/CLAIMS

Theberge anticipates bringing causes of action based on the following legal violations and theories: (1) Discrimination and harassment on the basis of gender and age; (2) Retaliation, including retaliation for complaining about discrimination or harassment; (3) Failure to prevent discrimination, harassment, or retaliation; (4) Violation of California Labor Code section 1102.5; (5) Violation of Labor Code sections 232.5; (6) (Violation of Labor Code Section 1101-1102); (7) Defamation; (8) Coerced Self Defamation; (9) Negligent Infliction of Emotional Distress; and (10) Intentional Infliction of Emotional Distress 11) Negligent Hiring, Supervision and Retention. Additional causes of action and/or theories of relief may be raised on the basis of the facts generally set forth above, as is permitted by *Blair v. Superior Court* (1990) 218 Cal.App.3d 221.

DAMAGES SOUGHT

Theberge seeks economic damages of over $250,000 and non-economic damages in an amount over $5,000,000.00 for total damages of over $5,000,000.00. Theberge also seeks interest, attorneys' fees, and costs, although the amounts of such interest, fees, and costs are not known at this time. The proper jurisdiction for litigation in this matter is Los Angeles County Superior Court, as an unlimited case.

NOTICE

Theberge's address is [redacted]. Our client requests that all notices concerning this claim be sent to us, her counsel of record,

Shegerian & Associates
11520 San Vicente Boulevard, Los Angeles, California 90049;
telephone: (310) 860-0770;
facsimile: (310) 860-0771.

Our e-mail addresses are as follows:

- Carney Shegerian, Esq., CShegerian@shegerianlaw.com;

- Mahru Madjidi, Esq., MMadjidi@shegerianlaw.com;
- Alex DiBona, Esq., ADibona@shegerianlaw.com;
- Justin W. Shegerian, Esq., JShegerian@shegerianlaw.com.

ACTING ON CLIENT'S BEHALF

Pursuant to Government Code section 910, our firm is "acting on behalf" of Theberge in submitting this demand. It is hereby signed by Alex DiBona on his behalf, pursuant to Government Code section 910.2.

Thank you for your review and consideration of the above.

Very truly yours,

SHEGERIAN & ASSOCIATES

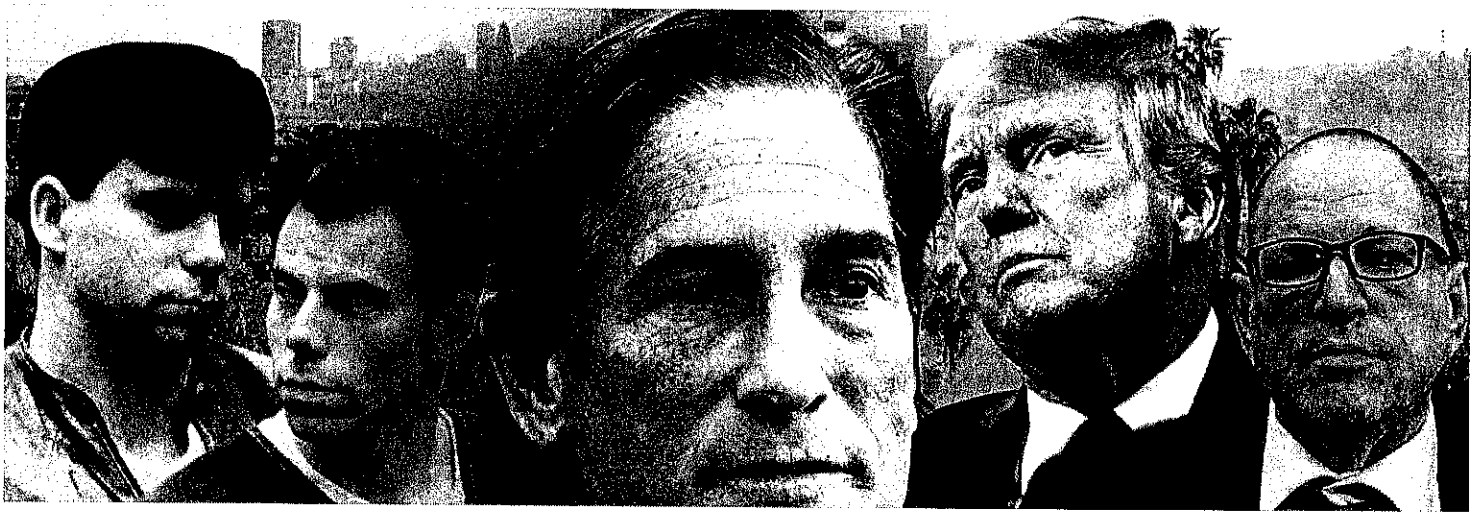
Alex DiBona

Alex DiBona, Esq.

EXHIBIT D

DEADLINE

TIP US



(L-R) The Menendez Brother, LA County DA Nathan Hochman, Donald Trump and Harvey Weinstein Getty Images

New L.A. D.A. Nathan Hochman Says Menendez Brothers Lawyer's "Narrative Is Absolutely Wrong"; Vows To Enforce Sanctuary Laws Against Trump Deportation Threats – The Deadline Q&A



By Dominic Patten

December 13, 2024 7:01am

EXCLUSIVE: Up on the top floor of downtown's Hall of Justice, the Los Angeles District Attorney's office has little of the grandeur that the rest of the nearly 100-year-old ornate building itself would suggest, as the newly sworn-in Nathan Hochman himself points out.

"I wondered why all the windows were facing upwards, why they had what looked like bars on them," the former U.S. Assistant Attorney General says. "I discovered this used to be the County jail before the building reopened in 2015," Hochman adds with a laugh, waving his arms around his own largely bare office not far from where now dead Charles Manson and still living Sirhan Sirhan were once incarcerated.

Just a few days into his term, after a landslide victory over one-termer George Gascón with support from Netflix's Ted Sarandos and Oscar nominated documentarian Rory Kennedy, ex-Republican Hochman makes no secret of the fact he's trying to settle in quickly, figuratively and literally. Yet, in a sprawling county larger and with a greater population than most states, no matter how fast he goes, time is not something Hochman has in abundance as a thirst for change, a need for safety, and anger at incumbents was what turned so many Angelenos against Gascón.

Among one of the matters ticking away in Hochman's inbox is the revived case of the Menendez brothers.

Convicted of first-degree murder in a second trial in 1996, and sentenced to life without parole, the now middle-aged brothers' case was brought back into the courts by Gascón earlier this year as new-ish evidence of sexual abuse by their father became known. In one of the most media driven towns on the planet, the siblings' 1989 murder of their parents in the family's Beverly Hills home was also back in the spotlight over the past year by well-watched shows on Peacock and Netflix.

In the dying days of his regime, with a hopeful eye on the polls, Gascón recommended resentencing and even backed a plea for clemency for the brothers before Gov. Gavin Newsom.

With now D.A. Hochman diving into the particulars of the case, that's now all on hold until a January 30 hearing for 54-year-old Erik and 56-year-old Lyle Menendez. A hearing that likely won't see the duo free immediately, but could certainly see the two out of prison in the next year.

At the same time as the Menendez case captures headlines and social media posts, Hochman faces other high-profile cases, a depleted staff, getting his own team in place, and Donald Trump's return to the White House with promises of mass deportations. Sitting in the casual conference area of his

personal office, the new D.A. discussed all this with me, as well as challenges he faces inside and outside the building and the county.

DEADLINE: How has the first week been in terms of learning the job and seeing what the full responsibilities of the job are?

NATHAN HOCHMAN: You know, I view the first week like I've used the first day, or even the anticipation the first day as an opportunity of a lifetime, I'll get a chance, and I've been now exploring it at its fullest extent, of working with some of the most diverse and talented lawyers in the legal profession, not just as prosecutors.

Part of that is I will be visiting the visiting the staff, visiting the prosecutors in the 15 different offices we have. I'll be talking with law enforcement, eventually talking with probation officers, talking to judges, even talking with public defenders and alternate public defenders. Look, the system is broken. The system I came into just wasn't working. This office wasn't working.

DEADLINE: How so?

HOCHMAN: It lost 20% of its workforce in recent years. People who just stopped believing in that the DA was on mission, and they'd just as soon leave or find some other jobs or retire. And now it's a sense of, I don't know if it's the word relief, as much as it's hope. You know, I find a sense of energy when I go talk to people that they just fired up to get going with the job.

DEADLINE: I hear you with that, but that's inside baseball to most. Regardless of where one stands on the political spectrum, there are a lot of people in LA County who can't get any real response from a 911 call, who see justice as being very selective. And to be honest, the extremes have overwhelmed real dialogue, and they feel they've been abandoned.

HOCHMAN: Unfortunately, it's not a shock that people feel that way, because the feeling is based in reality.

DEADLINE: Certainly, people whose families have suffered tragic or fatal consequences from crime, like Netflix co-CEO Ted Sarandos, one of your biggest supporters in the campaign, know that feeling strongly. Then what

do you, and I mean you, what do you do about that?

HOCHMAN: What I say to that is that part of striking the right balance is having the right set of procedures and the right D.A in place.

DEADLINE: Which is what?

HOCHMAN: If a DA came in and said, instead of decarceration, we're now going to emphasize mass incarceration again, If they said, we want to send a message to the criminal element that we're just going to put them in jail, literally, until we get the courts telling us we put too many people in jail. I'm telling you I reject that, I reject both extremes. I reject extreme policies. I come down in the middle. I call it the hard work middle, or the hard middle, because it requires you to do the work. Blanket policies are inherently reckless and lazy. The middle requires you look at each case, individually. That's what I'm going to do.

DEADLINE: Let's talk about a big individual case on your desk: the Menendez brothers.

HOCHMAN: I knew this was coming .

DEADLINE: I know you knew, because you yourself have spoken about the brothers and the renewed interest in their case for several months now as momentum has accelerated for a reexamination of their case - something your predecessor picked up on in the closing days of the campaign.

HOCHMAN: Yes .

DEADLINE: Even before the election, even as then DA Gascón pressed ahead with resentencing recommendations and more, you said you weren't going to make any promises. You said that when you got here, you're going to look at the files and you're going to look at the cases. Just before Thanksgiving, even before you took office, Judge Michael Jesic pushed a previously scheduled resentencing hearing to the end of January as a courtesy towards you and your office to give you the time to decide what you wanted to do. so where do things stand with the case of Erik and Lyle Menendez with you?

HOCHMAN: First of all, the courtesy by Judge Jesic is much appreciated,

much appreciated. We have begun the process. I have begun the process.

DEADLINE: What has that entailed?

HOCHMAN: I've gotten access now to more and more of the files that were confidential, the transcripts from the actual trials. We're looking through the testimony, as opposed to the highlights of testimony that people have been happy to share. We're looking at the law dealing with resentencing as well as the law dealing with the habeas situation. Do you know the difference?

DEADLINE: I do.

HOCHMAN: They're different. You know, there can be different results depending on which way the law actually plays out. Once I get up to speed on my end, I'm going to call Mark Geragos, invite him to come in and make any level presentation he wants. I'll make the same offer to any victim family member if they want a personal audience with me.

DEADLINE: A lot of the family have been quite vocal about seeing the brothers released after almost 30 years in prison, but it's no secret that family is divided.

HOCHMAN: Yes, I've spoken to the lawyer for the brother of Kitty Menendez, who has a different opinion than the rest of the family and filed different paperwork for it, you know?

Anyway, at the end of it, we'll make the call, because the resentencing law is somewhat unique for California, and it operates on much different principles than most people really understand. In other words, that once this process is triggered by a DA's motion, because the defense can't trigger it on its own, then the judge gets enormous amounts of discretion on what the judge wants to do. Still has to look at the interests of justice, rehabilitation, the gravity of the offense to begin with, different data points as the law has multiple factors, but it is still somewhat amorphous.

DEADLINE: This may seem pedantic, but do you think we'd be talking about the Menendez brothers now if Ryan Murphy and Netflix hadn't made a hit show about them?

HOCHMAN: That I don't know one or the other. You'll have to talk to my

predecessor about that. But here's where I like the attention. I like the attention in that, you know, if people are focused on criminal justice issues, that is a net positive for our society. If it's the Menendez case that got them interested, to at least start exploring these, these different types of issues, then that's good.

DEADLINE: On that note, there's a big difference between campaigning and holding the office, so with the knowledge of the reality out of there that many people in many different parts of the county feel, now that you are in the DA's chair, what are the biggest challenges you have set for yourself?

HOCHMAN: Initial challenges is getting the two main drivers of criminal justice and enforcement, back on track.

That's my own office. Start with that. I mean, I'm entering an office that, at one point voted 98% to support their boss's recall. That's almost unheard of.

So, these folks have been, again, enormously receptive to a newcomer, to someone who's basically said to them that the greatest asset of the DA's office is not the courtrooms, the cases or the computers, but the prosecutors themselves. To me, the mission of the DA is to maximize the greatest asset, which is that. So, I basically said: look, I have your back. You need training, you need resources, you need credit for the good work you've been doing. I can deliver on all that. Getting their trust back has been something that's been absolutely a Day One project, and we're well on the way. You then need to convert that over to law enforcement, because it's great to be able to prosecute the cases. But ultimately, the pipeline of getting cases to the DA's office is law enforcement.

DEADLINE: To that, one of the elements of the Menendez case is this notion that society has changed dramatically since the 1990s in our attitude and response to rape and sexual violence to men. There is a notion among some supporters of the brothers, that with the assaults they allegedly suffered from their father and the role that played in their shotgun killing of him and their mother, we would look at what happened differently today, with a possible different outcome. What's your perspective on that historical curve theory?

HOCHMAN: Well, the changing values in society, certainly the changing technology that helps you do a better job of truly understanding who's guilty

and who's not. I think it's a bit simplistic to say that society back in the '90s, didn't recognize sexual abuse of young boys or men. I think it did. I think there's plenty of cases that this office and offices across the state were bringing to the courts

DEADLINE: That's not the mantra you hear from Menendez lawyer Mark Garagos.

HOCHMAN: Mr. Geragos has been very happy to repeat that mantra, and the media has repeated Mr. Geragos' mantra. What I'm saying is that whether or not the mantra is actually true, is that no one's actually looked, that I'm aware, to see what types of cases, in the volume of cases that were brought where the victims were young boys or young men.

They make it seem like it never happened. I know for a fact it did.

That's part one of your question, which is the assumption that this was never prosecuted, so that the social mores at the time is that it couldn't happen. Second assumption of your question is that in the second trial, that the issue wasn't raised, because, again, that's Mr. Geragos mantra, which the media has repeated.

DEADLINE: It sounds like you view it as a battle on two fronts .

HOCHMAN: Do you know whether or not Erik Menendez testified in the second trial?

DEADLINE: Off the top of my head, I do not, I believe he did .

HOCHMAN: He did, for seven trial days.

Probably, if I had to guess, close to 40 hours of testimony where he went into great detail, as he did in the first trial. Incident by incident by incident, between the ages, I think of about six to 18 of what his father had done to him. Andy Cano, the cousin, he testified in the second trial for days, also about the sexual abuse that was experienced by Erik that he was aware of. So, the notion, again, the mantra, that sexual abuse wasn't explored in the second trial that the judge kept out all the evidence actually isn't true.

DEADLINE: So why do you think that has become so accepted then?

HOCHMAN: I mean, I've been doing this for 34 years, I've seen it. The media is in search of simple narratives, conflicting narratives, and so it adopted the Geragos narrative. Which was very smart, very creative. It's basically that the trial was all about sexual abuse, that their response was because of sexual abuse. It's that a conviction was only attained because the evidence of sexual abuse didn't occur in the second trial, but occurred in the first trial, and therefore that the underlying conviction is wrong and should be fixed. Very simple narrative. What makes it a little bit more complicated? And that's why the media would have to do additional work. No offense to your profession.

DEADLINE: That's okay, my profession is the enemy of the people in some circles, like yours is in some other circles, so your criticism is just fine. With that perspective you've outlined, how will you approach looking at this case?

HOCHMAN: Knowing the Geragos narrative is absolutely wrong, the issues that we'll be looking at for the trial will be whether or not the these two young men faced an immediate threat to their life? Why they got to that point? How they got to the point is irrelevant for the trial. For the convictions, maybe not irrelevant. By the way, certainly for resentencing, and it actually plays a different role in resentencing.

As I said, Erik Menendez was able to testify in great detail about all the sexual abuse he experienced. He was even able to testify about sexual abuse that Lyle experienced. He was even able to testify about the fact that Lyle purportedly confronted his father, their father, about this whole issue, which is why they had some level of fear that the father was going to kill them. All that was presented to the jury, and the jury still convicted them both of first-degree murder.

DEADLINE: Heading towards next month's resentencing hearing, what are you preparing right now?

HOCHMAN: Well, ultimately, the resentencing law allows rehabilitation to come into a mix, so it's not just whether or not the underlying crime was proven and sustained on appeal, and all that. You now are entering in the concept of rehabilitation and the interests of Justice on top of that. And you do this with a fairly vague standard that doesn't give judges particular guidance on how to evaluate all these factors only to figure out whether or

not someone is a threat to society, poses a danger to society, and otherwise has been rehabilitated, so and it's somewhat California unique in that respect.

So, we're going to go through all that evidence and weigh all the factors and ultimately come to the judge and say, to the judge, here's all the records. Here are your options. And make sure that whatever decision is ultimately made is the best-informed decision possible.

DEADLINE: On the surface, it seems like all your office does sometimes is manage high profile cases, the Danny Mastersons, Scientology and the like. Then there is the matter of Harvey Weinstein, who was successful in having his East Coast conviction tossed out on appeal and is now awaiting, depending on his health, a new trial next year. Weinstein is also trying to get his 2022 conviction here on sex crimes and the 16 year sentence it carried with it dismissed. So, my question is what will your office do if you have to face another Weinstein trial?

HOCHMAN: Again, I come from the world of doing the work in every case. So, even if something gets media attention, certainly we're going to make sure that we get that right. But we're going to make sure we get it right, even if there's no media attention.

With respect to Weinstein, it would depend on how they reversed it, assuming there is a reversal, which is a huge assumption, by the way.

DEADLINE: Point taken.

HOCHMAN: But if they reversed it based on saying that, I'll just make up a number. Let's say there was four different other bad acts that were let in, and they say two of them don't meet the legal standard. Two will be let in. Let's say they're requiring a new trial, assuming we then proceed to trial and there's no settlement. In the meantime, we would come up with a trial strategy that would now be in accord with the new rules set forth by the appellate court in that particular case. We would be very convinced, or we wouldn't bring the case, that we could win that case beyond a reasonable doubt.

DEADLINE: When it comes to doubt, and I say this to you with your past life in George W. Bush's DOJ, there is a lot of doubt, a lot of fear among the undocumented in LA that once Trump gets back in power, the wild dogs will be off the leash and they will be rounded up for his mass deportations, put in camps in the desert like Japanese Americans were in World War II. What do you say to those in this county who see a D.A. who served in a Republican administration, who, even though he ran as an Independent for D.A., ran unsuccessfully as a Republican for state Attorney General, and ask, will this guy protect us?

HOCHMAN: Here's what those people should know. They first should know a little history. History is a scarce resource on people's consideration. But we don't have to go back that far. I'll go seven years, 2017. The California Value Act, SB54 is a sanctuary state legislation. If you compare that sanctuary state legislation against, for instance, the sanctuary city ordinance had just passed, there's almost no difference. It's almost symbolic now. SB54 was challenged by the Trump administration in the courts back in 2018 or 2019 and when they challenged it, they lost.

Now, now we're going to go into a little bit more ancient history.

The LAPD has had a provision for years that says that it will not arrest someone on just an immigration violation, and it won't even ask them when they're being arrested, whether or not they're here legally or documented or undocumented, here legally or illegally. That provision is 40-plus years old at this point. 45 years old. So, the fears that people have, I get it. I get the understanding that if Donald Trump comes in and says, we're going to be doing massive deportation, how is he exactly going to do it? Is that going to involve local law enforcement giving up, the undocumented grandmother who's cleaning houses or whatnot, there's nothing to suggest that, that there's any law, state law that will allow local law enforcement to do that.

DEADLINE: I understand what you are saying, but let me ask again, can people, the undocumented, who work and live among us all over this county, in this City of Angels in all industries, can they look to you in these times, and amidst Trump's threats, for protection?

HOCHMAN: The answer is yes, I will protect all legal rights that immigrants have in this county to the fullest extent, full stop. I don't need to go beyond that statement.

I will uphold all the laws that are out there, including the ones that protect immigrants here in Los Angeles County, full stop. You know, if you're asking whether or not I will enforce the sanctuary state laws, I will enforce the sanctuary state law and now the sanctuary city laws.

Like I said, you can enforce the sanctuary city laws by just enforcing the sanctuary state laws, because they were mostly symbolic, they just repeated what was already done seven years ago, that the courts have already affirmed, and by saying that the courts have affirmed it. But make sure you understand what I'm saying is that on the same arguments that the Trump administration may or may not attack the current laws.

They've already been attacked here.

The Ninth Circuit has already weighed in. So, unless it somehow gets back to the U.S. Supreme Court to overturn the Ninth Circuit, the Ninth Circuit controls the Western federal states, including California. So, the sanctuary state law is the law of this state, and right now, at least there's no federal law that trumps it, which is a bad pun, I know.

DEADLINE: With that, and just days after taking over as DA of a county that is larger and more populated that most states, D.A. Hochman are you running for Governor in 2026?

HOCHMAN: [LAUGHS] I will be beyond thrilled if I could just do this job, hopefully, really, really well. So, no, I absolutely tell you I am not running for that job.

EXHIBIT E

CRIME

Prosecutor Gets $300K Over Alleged Harassment by Superior

by **Contributing Editor**
September 4, 2019

The Los Angeles County Board of Supervisors has authorized a $300,000 settlement for a prosecutor who says she was sexually harassed by her supervisor for more than 2 1/2 years.

Deputy District Attorney Karen Nishita, who complained about unwanted advances from prosecutor Edward Miller, will be paid from the Los Angeles County District Attorney's Office budget, the Orange County Register reported. No other details about the settlement were disclosed.

But a prosecutor who requested anonymity for fear of retaliation said the payment to Nishita does nothing to change the culture in the District Attorney's Office. She alleges District Attorney Jackie Lacey has protected sexual harassers in the office and retaliated against victims and whistleblowers who speak out.

"It provides no consolation to anyone, except for Jackie Lacey and Edward Miller, because she gets to avoid having all of this damaging information come out and he gets to keep his job," the prosecutor said. "Speaking out has consequences. It also reinforces the idea that this office, with women in leadership, is not interested in protecting women. Instead, the office is only interested in limiting its liability."

District Attorney's Office spokeswoman Jean Guccione has denied those allegations.

"No one in the District Attorney's Office has been or will be punished for reporting improper workplace conduct," she said Tuesday, when the supervisors approved Nishita's settlement. "We are committed to conducting thorough administrative investigations into each of these reported incidents and will take the appropriate action to ensure that we maintain a safe and professional work environment at all times."

However, a Southern California News Group review of emails, memos, lawsuits and confidential reports, as well as interviews with prosecutors, describe a troubling culture within the District Attorney's Office.

Several deputy district attorneys, who asked not to be identified to avoid retaliation, claimed whistleblowers who file complaints often are denied promotions, banished to far-flung offices in what is known as "freeway therapy," stripped of important cases or relegated to mundane, demoralizing duties.

They also complain that some prosecutors accused of sexual harassment have been allowed to keep their jobs or permitted to retire with hefty pensions.

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EXHIBIT F

Metropolitan News-Enterprise

Thursday, December 26, 2024

Page 1

Cady Named to Post in D.A.'s Office

By a MetNews Staff Writer

Kathleen Cady—who, over the past four years, during George Gascón's tenure as Los Angeles County district attorney, has been acting as a pro bono victims' rights counsel—on Tuesday was named director of the department's Bureau of Victim Services.

District Attorney Nathan Hochman noted that the appointment, to be effective Jan. 6, is "pending approval by County authorities."

Cady—who has been named by the METNEWS as one of six 2024 "persons of the year"—remarked:

"I'm very honored and excited."

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EXHIBIT G

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW

(Penal Code Section 3041.2)

SIRHAN SIRHAN, B-21014

First Degree Murder

AFFIRM: _____

MODIFY: _____

REVERSE: X

STATEMENT OF FACTS

On June 5, 1968, Senator Robert F. Kennedy, a candidate for president of the United States, was in Los Angeles for the California Democratic presidential primary election. That evening, Senator Kennedy was declared the winner of the election and celebrated with a large crowd of supporters at the Ambassador Hotel. While Senator Kennedy greeted hotel staff, Sirhan Sirhan shot him at close range. Mr. Sirhan also shot five bystanders, Elizabeth Evans, Ira Goldstein, Paul Schrade, Irwin Stroll, and William Weisel, all of whom survived their injuries. Senator Kennedy did not.

Mr. Sirhan was convicted by a jury of first degree murder and five counts of assault with a deadly weapon with intent to commit murder. On May 22, 1969, he was condemned to death. In 1972, following a change in California law, Mr. Sirhan's sentence was modified to life in prison with the possibility of parole.

In 1975, the Board of Parole Hearings ("Board") found Mr. Sirhan suitable for parole, but the Board rescinded his parole grant. The Board conducted fifteen subsequent hearings, and, at each one, found Mr. Sirhan unsuitable for parole. On August 27, 2021, the Board conducted Mr. Sirhan's sixteenth hearing and found him suitable for parole.

GOVERNING LAW

The California Constitution grants me the authority to review the proposed decisions of the Board. (Cal. Const. art. V, § 8, subd. (b).) I am given broad discretion to determine an inmate's suitability for parole and may affirm, reverse, modify, or refer back to the Board any grant of parole to a person convicted of murder serving an indeterminate life sentence. (*Id.*; Pen. Code, § 3041.2; see *In*

re Rosenkrantz (2002) 29 Cal.4th 616, 625-26; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1080, 1082, 1088.) I am authorized to identify and weigh all "factors relevant to predicting 'whether the inmate will be able to live in society without committing additional antisocial acts.'" (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06, quoting *In re Rosenkrantz, supra*, 29 Cal.4th at p. 655.)

When the Board proposes that an inmate convicted of murder be released on parole, I am authorized to conduct an independent, *de novo* review of the entire record, including "the facts of the offense, the inmate's progress during incarceration, and the insight he or she has achieved into past behavior," to determine the inmate's suitability for parole. (*In re Shaputis II* (2011) 53 Cal.4th 192, 221.)

My review is independent of the Board's authority, but it is guided by the same "essential" question: whether the inmate currently poses a risk to public safety. (Cal. Const. art. V, § 8, subd. (b); Pen. Code, § 3041.2; *In re Shaputis II, supra*, 53 Cal.4th at pp. 220-21.) In weighing this question, California law grants me the discretion "to be 'more stringent or cautious' in determining whether an [inmate] poses an unreasonable risk to public safety." (*In re Lawrence, supra*, 44 Cal.4th at p. 1204, quoting *In re Rosenkrantz, supra*, 29 Cal.4th at p. 686.)

The circumstances of the crime can provide evidence of current dangerousness when evidence in the inmate's pre- or post-incarceration history, or the inmate's current mental state, indicate that the crime remains probative of current dangerousness. (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.) Furthermore, the gravity of the crime has "continuing predictive value as to current dangerousness" where the inmate lacks insight into their conduct and refuses to accept responsibility for their role in a crime. (*In re Smith* (2009) 171 Cal.App.4th 1631, 1639; *cf. In re Twinn* (2010) 190 Cal.4th 447, 465 [because the inmate accepted responsibility for the crime and expressed complete remorse, the inmate's lack of insight was not probative of present dangerousness].) In rare cases, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness exists. (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.)

I am also required to give "great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner" when determining a youthful offender's suitability for parole. (Pen. Code, § 4801, subd. (c).) I further must afford special consideration to whether age, the amount of time served, and diminished physical condition reduce the inmate's risk of future violence. (See Feb. 10, 2014

order issued in *Coleman v. Brown*, Case No. 2:90-cv-0520 LKK-DAD (PC) (E.D. Cal.) and *Plata v. Brown*, Case No. C01-01351 TEH (N.D. Cal.).)

DECISION

Mr. Sirhan's assassination of Senator Kennedy is among the most notorious crimes in American history. Senator Kennedy's murder caused his family immeasurable suffering, including his pregnant wife, their ten children, and the extended Kennedy family. Mr. Sirhan shot Senator Kennedy in front of news cameras, which subjected the Kennedy family and American public to a ubiquitous video loop of Senator Kennedy's violent death and his wife's anguish at his side.

Mr. Sirhan's crimes also caused great harm to the American people. Senator Kennedy's assassination upended the 1968 presidential election, leaving millions in the United States and beyond mourning the promise of his candidacy. Compounding the grief of the Kennedy family and the American public, Mr. Sirhan killed Senator Kennedy during a dark season of political assassinations, just nine weeks after Dr. Martin Luther King, Jr.'s murder and four and a half years after the murder of Senator Kennedy's brother, President John F. Kennedy.

The gravity of Mr. Sirhan's crimes alone counsels against his release. But I have concluded that he is unsuitable for parole because he poses a current threat to public safety. After decades in prison, Mr. Sirhan has failed to address the deficiencies that led him to assassinate Senator Kennedy. Mr. Sirhan lacks the insight that would prevent him from making the same types of dangerous decisions he made in the past.

The most glaring evidence of Mr. Sirhan's deficient insight is his shifting narrative about his assassination of Senator Kennedy, and his current refusal to accept responsibility for his crimes.[1] As the following examples show, Mr. Sirhan has inconsistently described his role in the assassination of Senator Kennedy, claimed shifting memory lapses, minimized his participation in the crimes, and outright denied his guilt:

- While in police custody after his arrest in June 1968, Mr. Sirhan admitted that he assassinated Senator Kennedy in a recorded statement.

[1] The evidence that Mr. Sirhan shot and killed Senator Kennedy in an act of premeditated murder is overwhelming and irrefutable, and the claims of innocence by Mr. Sirhan and his advocates have been investigated and conclusively disproved.

- At his trial, which began in February 1969, Mr. Sirhan testified that he shot Senator Kennedy but was drunk and could not remember his actions. Later during his trial, when the jury was not present, Mr. Sirhan exclaimed, "I killed Robert Kennedy willfully, premeditatively, with twenty years of malice aforethought." He later said that he made this statement to get attention.

- Mr. Sirhan told the Board psychologist who evaluated him in 1972 that he "really didn't want to commit homicide" when he shot Senator Kennedy but merely wanted to "attract attention to the plight of his fellow countrymen[.]"

- At his 1979 parole hearing, Mr. Sirhan told the Board that he was drunk at the time of his crimes. He said, "I don't feel myself to be responsible beyond the first shot."

- At his 1985 parole hearing, Mr. Sirhan admitted to writing entries in his journals, found by police in his bedroom after the crimes, that repeated, "RFK must die. RFK must be killed. Robert F. Kennedy must be assassinated" and "Robert F. Kennedy must be assassinated before 5 June 68."[2] He wrote, "[m]y determination to eliminate R.F.K. is becoming more the more of an unshakable obsession." At the same 1985 parole hearing, Mr. Sirhan stated that "liquor [was] the main culprit" for his crimes.

- At his 1987 parole hearing, Mr. Sirhan admitted that he shot Senator Kennedy but denied shooting the other victims. He said that he committed the crimes in retaliation for Senator Kennedy's statements of support for the United States' military aid to Israel. At the same time, Mr. Sirhan claimed that his memories were vague. He told the Board that he suspected he had blocked the shooting from his memory for his self-preservation.

- In 1989, Mr. Sirhan told a reporter during a televised interview that he committed the assassination because Mr. Sirhan objected to Senator Kennedy's support for Israel. Mr. Sirhan said when he assassinated Senator Kennedy, he "extinguished a great star . . . a champion of all mankind. And it's hard for me to live with this experience myself . . . . But I'm a

[2] June 5, 1968 was the one-year anniversary of the beginning of the Arab-Israeli Six-Day War as well as the date of the California primary for the 1968 United States presidential election.

human being, and I have to adjust and carry on with my life. I never dreamed of ever offending the American system of government or frustrating the votes and the hopes of millions of Americans. And having done so, sir, I can't say anything but that I apologize for having done that."

- Later in 1989, at his parole hearing, Mr. Sirhan told the Board that he could not remember the details of the crimes.

- At his 1990 parole hearing, Mr. Sirhan claimed that he derived his knowledge about the facts of the assassination from accounts of the crimes that he had read, and that, while he remembered being at the Ambassador Hotel, he had no memories of killing Senator Kennedy.

- In 1997, Mr. Sirhan began reporting his belief that he did not commit the crimes and was innocent.

- In 2001, during a forensic evaluation, Mr. Sirhan said he felt distant from responsibility and guilt and that he doubted that he committed the crimes.

- At his 2011 parole hearing, Mr. Sirhan stated that he could recall being at the Ambassador Hotel but not using his gun.

- At his 2016 parole hearing, Mr. Sirhan said he did not remember the details of the crimes but believed he was innocent based on what he had read about the case in his attorney's briefs. He told the Board, "[l]egally speaking, I'm not guilty of anything."

- In 2021, Mr. Sirhan told a Board psychologist that he was innocent of the crimes and "was in the wrong spot at the wrong time," portraying himself as the victim.

The deficiencies in Mr. Sirhan's insight and his failure to accept responsibility for his crimes are well-documented beyond his own statements. In 2021, the Board psychologist who evaluated Mr. Sirhan reported that Mr. Sirhan "denied planning the crime and denied remembering committing any illegal act on the night in question." The psychologist noted, "[d]espite multiple attempts, Mr. Sirhan would not report his understanding of the facts of the crime, as he instead referenced others' reports." The psychologist observed that "Mr. Sirhan reported significant memory impairments" that were only present "when [Mr. Sirhan was]

discussing his history of engaging in antisocial and violent actions." While the psychologist found that Mr. Sirhan's "current cognitive abilities appear grossly intact," Mr. Sirhan's answers were "evasive," he appeared to be "engaging in significant impression management," and "overall, he was not believed to be a reliable source of information."

Mr. Sirhan's implausible and unsupported denials of responsibility and lack of credibility elevate his current risk level. They indicate that Mr. Sirhan, despite decades of incarceration and purported efforts in rehabilitation, has failed to address the deficiencies that led him to assassinate Senator Kennedy.

The record further demonstrates that Mr. Sirhan has not meaningfully disclaimed political violence—committed by him or in his name—nor shown that he appreciates the unique risks created by his commission of a political assassination. These gaps in Mr. Sirhan's insight have a close nexus to his current risk of inciting further political violence.

Mr. Sirhan's prior discussion of his crimes and connections to political violence illustrate the extent of his current threat to public safety. In 1973, for example, in an effort to secure Mr. Sirhan's release from prison, terrorists took ten hostages, three of whom were killed when the terrorists' demands were not met.[3] Following his parole denial in 1987, Mr. Sirhan twice invoked this incident, stating that the terrorists took hostages on his behalf and were helping him to escape from prison. In 2021, when the evaluating psychologist asked Mr. Sirhan about the assistance he received from terrorists, Mr. Sirhan laughingly dismissed the incident. He neither disclaimed the violence committed in his name nor renounced his prior acceptance of assistance from terrorist groups. Although these events occurred decades ago, Mr. Sirhan's inability to appreciate their current relevance reveals glaring gaps in insight.

Mr. Sirhan further demonstrated his deficient insight at his 2021 parole hearing. When a commissioner suggested that Mr. Sirhan would be "naive" not to expect public attention upon his release and calls for him to express his views on the Israeli-Palestinian conflict, Mr. Sirhan remarkably replied that he found that "hard

[3] The terrorist group seized the Saudi embassy in Khartoum, Sudan, capturing ten hostages including the U.S. Ambassador to Sudan Cleo A. Noel, the Saudi Arabian Ambassador to Sudan Sheikh Abdullah al Malhouk and his wife and children, the American chargé d'affaires George Curtis Moore, the Jordanian chargé d'affaires Adli al Nasser, and the Belgian chargé d'affaires Guy Eid. The terrorists demanded the release of Mr. Sirhan and other prisoners. When negotiations failed, the hostage-takers assassinated Ambassador Noel, Mr. Moore, and Mr. Eid.

to foresee." The commissioner questioned Mr. Sirhan about the possibility of being used as a lightning rod to foment violence. Mr. Sirhan rejected this possibility out of hand, and implausibly suggested that it was equally likely that he could be used as "a peacemaker and a contributor to . . . a friendly nonviolent way of resolving the issues." The Board found his professed intention not to be "a rebel or a troublemaker" sufficient to mitigate this risk factor.

I disagree. Not only has Mr. Sirhan failed to meaningfully disclaim political violence, he lacks the skills required to control his response to external triggers, which are critical for mitigating the public safety risk he poses. At his 2021 parole hearing, for example, the Board asked Mr. Sirhan to describe his internal mental processes for dealing with stressors. Mr. Sirhan's answers demonstrated that he does not understand these processes or their steps, from self-awareness to effective self-control. Despite his incomplete answers to their questions, the Board found that Mr. Sirhan's anger management skills are sufficient to manage the public safety challenges he would face on parole.

Here, too, I disagree. I am not persuaded that Mr. Sirhan understands the steps required to manage even quotidian interpersonal conflict, let alone the complex geopolitical hazards he must navigate in California and beyond if he is allowed to parole. Mr. Sirhan cannot be safely released because he has refused to acknowledge these risks and to develop the skills to mitigate them.

Finally, I am required by law to consider the additional factors that are legally relevant to Mr. Sirhan's suitability for parole. As explained below, I have weighed these factors and conclude they do not outweigh the substantial evidence of Mr. Sirhan's current dangerousness.

First, in the cases of inmates who commit their crimes when they are under 26 years old, as in Mr. Sirhan's case, I am required to review the record for evidence of factors relevant to their diminished culpability as youthful offenders and any subsequent growth and increased maturity. Mr. Sirhan was 24 years old when he assassinated Senator Kennedy. I have carefully examined the record for evidence of youthful offender factors. I acknowledge that, at the time of his crimes, Mr. Sirhan exhibited some of the hallmark features of youth, as set forth in the relevant statutes. I have also examined the record for evidence of Mr. Sirhan's subsequent growth in prison and increased maturity and rehabilitation. I acknowledge that Mr. Sirhan has made some efforts to improve himself in prison through self-help programming and other prosocial efforts.

While Mr. Sirhan has undoubtedly matured in some ways over the last 53 years, the record evidence shows that he has not internalized his rehabilitation programming sufficiently to reduce his risk for future dangerousness. The

psychologists who evaluated Mr. Sirhan in 2010, 2015, and 2020 rated him a low risk for future violence despite his deficits in insight. The psychologist who evaluated him in 2020, however, noted a concern about Mr. Sirhan's "treatment responsiveness" in the community because Mr. Sirhan continues to have problems with certain risk factors despite engaging in relevant programming. Consequently, even after according these youthful offender factors great weight, I conclude they are eclipsed by the strong evidence of Mr. Sirhan's current dangerousness.

Second, I have given special consideration to the Elderly Parole factors for inmates who are older than 60 and who have served more than 25 years in prison. Mr. Sirhan is 77 years old and has served 53 years. While the psychologist who evaluated Mr. Sirhan in 2021 found that Mr. Sirhan "has not had any significant problems with his advancing age," the commissioners at Mr. Sirhan's 2021 parole hearing determined that he is "significantly incapacitated . . . as far as committing additional crimes."

But Mr. Sirhan's risk of committing acts of interpersonal violence is not the most relevant indication of his current risk level. As explained above, Mr. Sirhan poses a risk to public safety because he lacks insight, as demonstrated by his refusal to accept responsibility for the assassination of Senator Kennedy, his failure to renounce political violence, and his lack of the requisite skills to manage complex external triggers. Thus, evidence of Mr. Sirhan's diminished physical strength does not mitigate the serious threat to public safety that he currently poses, including the risk that he may incite political violence should he be released on parole. Accordingly, his release is not consistent with public safety.

CONCLUSION

When considered as a whole, I find the evidence in the record demonstrates that Mr. Sirhan currently poses an unreasonable danger to society if released from prison. Despite his 53 years of incarceration, Mr. Sirhan has failed to develop the insight necessary to mitigate his current dangerousness and is unsuitable for parole. Consequently, I reverse the Board's decision to parole Mr. Sirhan.

Decision Date:
January 13, 2022

GAVIN NEWSOM
Governor, State of California

EXHIBIT H

DECLARATION RICHARD SUBIA

1. I was employed for 26 years by the California Department of Corrections and Rehabilitation (CDCR). I was originally hired by CDCR in 1986 as a Corrections Officer. I held many positions within CDCR, including Captain, Lieutenant, Warden, and eventually Director of the Division of Adult Institutions, until my retirement in 2012. By the end of my career at CDCR, I was responsible for administering operation of over 162,000 inmates in all 33 California adult prisons as well as all out of state contract facilities housing over 9,500 California offenders in private prisons. In addition, I was responsible for the management of over 20,000 employees.

2. In various administrative, managerial and supervisory capacities I held responsibility of making policy development, implementation, and modification decisions including but not limited to rule violations and discipline, appeals, investigations, safety, security, gang management, program/housing placements, and classification. I was also responsible for making and managing decisions involving employees including, but not limited to training, performance, investigations, discipline, labor negotiations and evaluating uses of force.

3. I was also responsible for managing and covering every aspect of inmate programming. Specifically, I have had over ten years of experience heading Classification Committees where inmate behavior, propensity for violence, central file review, and inmate risk were reviewed to determine appropriate housing and program placement.

4. I now run my own consulting firm, Subia Consulting Services, based in New Braunfels, TX.

5. I submit this declaration at the request of attorneys for Lyle and Erik Menendez to explain basic CDCR disciplinary procedures.

6. Prisoner misconduct is governed by the California Code of Regulations, Title 15 section 3000, et. seq., and generally fall into three categories: "serious" rules violations (also known as Rule Violation Reports, RVRs, or 115s); "administrative" misconduct; and "counseling chronos" (also known as 128s).

7. Serious rule violations (or RVRs) are defined in California Code of Regulations, Title 15 section 3323. An inmate who is found guilty of a serious rule violation will forfeit credits against his or her release date, may be placed in a Security Housing Unit (SHU), will have points added to their Classification Score, and may be referred to a District Attorney for criminal prosecution, depending on the seriousness of the violation. Serious rule violations are sometimes referred to as "115s" because these rule violations are documented on CDCR Form 115.

8. Serious rule violations range in degrees of seriousness and are categorized as Divisions, ranging from Division A-1 to Division F, by the California Code of Regulations, Title 15 section 3323. The most serious serious rule violations are categorized as Division A-1 offenses and result in credit forfeiture of 181-360 days, extended placement in SHU, and frequently trigger criminal prosecution. These violations include acts of murder, rape, and escape. The least serious serious rule violations are categorized as Division F offenses and result in credit forfeiture of 0-

30 days. These violations include gambling, refusal to perform assigned work duties, or misuse or alteration of state property.

9. Administrative misconduct is defined in California Code of Regulations, Title 15 section 3314. Although administrative misconduct is also reported in a Rule Violation Report (RVR), administrative misconduct reflects less serious violations of CDCR rules and cannot result in credit forfeiture, SHU placement, or points added to the inmate's Classification Score. An inmate found guilty of administrative misconduct may result in loss of privileges, including access to yard time or other activities. Examples of administrative misconduct are missing a work assignment, use of vulgar language, and failure to comply with grooming standards.

10. The third and least serious category of misconduct is reflected in counseling chronos. Counseling chronos are sometimes referred to as "128s" because these rule violations are documented on CDCR Form 128. A counseling chrono is used to record any misconduct that does not amount to a serious rule violation or administrative misconduct. The chrono merely records that the misbehavior was observed and reported to the inmate. There are no disciplinary consequences from a counseling chrono. Examples of misconduct warranting a counseling chono include taking too much food from a cafeteria, taking too long to shower, or altering prison garments.

11. An inmate's overall disciplinary record is tabulated in the inmate's Classification Score, which is governed by California Code of Regulations, Title 15 section 3375.4. Classification Scores are used to measure an inmate's institutional behavior over time and generally determine an inmate's housing placement, necessary level of security, and eligibility for programs, classes, and other privileges. Points are added to an inmate's Classification Score for serious rule violations, depending on the severity of violation, and points are subtracted from a Classification Score for extended periods of rule compliance, so a lower Classification Score reflects better institutional behavior.

12. Because misconduct that does not arise to a serious rules violation is not calculated as part of an inmate's Classification Score, such conduct is generally considered irrelevant to the inmate's institutional security or risk to public safety.

13. As a Correctional Officer, Warden, and Director of the Division of Adult Institutions, I was aware of inmate misconduct that did not amount to a serious rule violation, but I this misconduct carried minimal weight in inmate's housing placement, programming placement, risk to institutional or public safety, or suitability for release. This was the general approach taken by my colleagues throughout CDCR.

14. I have been advised that in a November 2024 Motion Requesting 1172.1 Recall of Sentence, the Los Angeles District Attorney reported that (1) Erik Menendez's prison file showed eight RVRs (Rule Violation Reports) and (2) Lyle Menendez's prison file showed five RVRs. I have also been advised that in a March 2025 filing the District Attorney notes that (1) "Erik has been cited at least thirteen (13) times for violating prison rules" and (2) "Lyle was cited for violating the prison rules, including failures to report for work, at least 19 times."

15. As the above discussion makes clear, there is a substantial difference between an RVR and any violation of prison rules, and even RVRs range in seriousness, as delineated by Division level. For obvious reasons, in order to protect staff, an inmate's dangerousness is among the most important considerations in running a prison. Yet as noted above, rules violations that do not rise to the level of an RVR are generally considered irrelevant to the inmate's institutional security or risk to public safety.

16. In addition, I have been advised that in his March 2025 filing, the District Attorney asserts that Erik Menendez suffered a rule violation for assaulting a female visitor in 1999. This is incorrect. I have reviewed Erik's prison Central File and the relevant documents related to this incident. In fact, this rules violation is not contained in the Official Prison Record which indicates that it was reversed. A July 7, 1999 memo states that the allegation that Erik assaulted a visitor was unsubstantiated. The dismissal of the violation is confirmed because Erik's file reflects that he suffered no consequences or credits lost in relation to this incident. If the violation was sustained, his file would reflect lost credits. Furthermore, there are no additional documents related to the incident in Erik's Central File because, consistent with CDCR practices and regulations, documents related to a violation that has been dismissed are either removed from an inmate's record or updated reflecting the dismissal.

DATED: 3-21-25

SIGNED: _____

RICHARD SUBIA

EXHIBIT I

State of California Department of Corrections and Rehabilitation

Memorandum

Date : **February 29, 2024**

To : **ALL CONCERNED**

Subject: **SUPPORT FOR RESENTENCING / COMMUTATION RE: LYLE MENENDEZ**

I am writing this letter in my capacity as a Correctional Officer at RJDCF, to support of the resentencing efforts on behalf of Lyle Menendez CDCR# K13758.

I supervised him for several years while in charge of the Facility E Gym where all the Green Space Project tools and materials are stored. Securing these materials is critical to the safety and security of the facility. Normally an inmate would not be authorized to assist with this process. It was determined by the Administration, based on his history with the Department and recommendations from staff, that Mr. Menendez exhibited a rare level of trustworthiness and ability to resist negative peer pressure. A position was created allowing Mr. Menendez to work directly with staff to secure potentially dangerous work tools and materials. I found him to be honest and reliable.

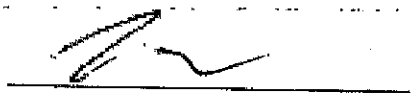
I want to mention something else I think is relevant to his character. My post in the Facility E Gym placed me in an environment where I was the only officer supervising a large number of inmates. The facility employs a large number of non-custody recreational and support staff. There is a history of staff assaults in corrections. Areas that are undermanned are particularly vulnerable to these incidents. Mr. Menendez spent a lot of his time in the GYM where the supply rooms are located for his work. Quite often a disgruntled inmate would be argumentative with one of the recreational support staff members. If inmate Menendez was closer to the situation than I was, he would leave where he was and place himself

physically between the disgruntled inmate and the staff member and attempt to mediate. His willingness to place himself in potential jeopardy to assist a staff member clearly shows his character and is greatly appreciated. It is also exceedingly rare in my observation.

It is beyond my capacity to give any opinion about his past. However, I have had conversations over the years with Mr. Menendez in which the crime for which he is incarcerated came up. I found him to be remorseful, and thoughtful about it. I remember most that he lamented the impact on his extended family, which is the victim's family. It is no surprise to me to have learned that many of the victim's family support his and his brother's resentencing.

I believe Lyle Menendez is deserving of a chance to reenter society where I am confident, he will be a productive member. I support the efforts to initiate resentencing for Lyle Menendez, as well as any effort to commute his sentence so that he may be afforded an opportunity to parole. I am willing if needed to appear on his behalf or to provide any additional information that may be helpful.

Sincerely,



K. Meyer

Badge # 87238

EXHIBIT J

CLAIMS FOR DAMAGES TO PERSON OR PROPERTY

COUNTY OF LOS ANGELES

TIME STAMP
OFFICE USE ONLY

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
FILED

2025 FEB -3 A 9:32

INSTRUCTIONS:

1. Read claim thoroughly.
2. Fill out claim as indicated; attach additional information if necessary.
3. Please use one claim form for each claimant.
4. Return this original signed claim and any attachments supporting your claim. This form must be signed.

DELIVER OR U.S. MAIL TO:
EXECUTIVE OFFICER, BOARD OF SUPERVISORS, ATTENTION: CLAIMS
500 WEST TEMPLE STREET, ROOM 383,
KENNETH HAHN HALL OF ADMINISTRATION, LOS ANGELES, CA 90012
(213) 974-1440

1 [X] Mr [ ] Ms [ ] Mrs — LAST NAME: Lunsford — FIRST NAME: Brock — M.I

2. ADDRESS OF CLAIMANT: [redacted]

CITY: [redacted] STATE: [redacted] ZIP CODE: [redacted]

HOME PHONE: [redacted] ALTERNATE PHONE: [redacted]

3. CLAIMANT'S BIRTHDATE: [redacted] 4. CLAIMANT'S SOCIAL SECURITY NUMBER: [redacted]

5. ADDRESS TO WHICH CORRESPONDENCE SHOULD BE SENT

STREET	CITY	STATE	ZIP CODE
11520 San Vincente Blvd	Los Angeles	CA	90049

6. DATE AND TIME OF INCIDENT: 12/14/2024 12:00 am

7. WHERE DID DAMAGE OR INJURY OCCUR?

STREET	CITY	STATE	ZIP CODE
211 West Temple Suite 1200	Los Angeles	CA	90012

8. DESCRIBE IN DETAIL HOW DAMAGE OR INJURY OCCURRED AND LIST DAMAGES (attach copies of receipts or repair estimates):

Please see attached letter.

9. WERE POLICE OR PARAMEDICS CALLED? YES [ ] NO [X]

(IF YES) AGENCY'S NAME _____ REPORT # _____

CHECK IF LIMITED CIVIL CASE [ ]

TOTAL DAMAGES TO DATE	TOTAL ESTIMATED PROSPECTIVE DAMAGES
$ 5,000,000.00	$ 5,000,000.00

10. WHY DO YOU CLAIM COUNTY IS RESPONSIBLE?

Please see attached letter.

11. NAMES OF ANY COUNTY EMPLOYEES (AND THEIR DEPARTMENTS) INVOLVED IN INJURY OR DAMAGE (IF APPLICABLE):

NAME	DEPARTMENT
Nathan Hochman	District Attorney's Office
John Lewin	District Attorney's Office

12. WITNESS(ES) TO DAMAGES OR INJURY: LIST ALL PERSONS AND ADDRESSES OF PERSONS KNOWN TO HAVE INFORMATION.

NAME	PHONE
Lori Deary	(213) 974-3512

ADDRESS: 211 West Temple Suite 1200

NAME	PHONE
James Garrison	(213) 974-3512

ADDRESS: 211 West Temple Suite 1200

13. IF PHYSICIAN(S) WERE VISITED DUE TO INJURY, PROVIDE NAME, ADDRESS, PHONE NUMBER, AND DATE OF FIRST VISIT FOR EACH:

DATE OF FIRST VISIT	PHYSICIAN'S NAME	PHONE

STREET _____ CITY _____ STATE _____ ZIP CODE _____

DATE OF FIRST VISIT	PHYSICIAN'S NAME	PHONE

STREET _____ CITY _____ STATE _____ ZIP CODE _____

THIS CLAIM MUST BE *SIGNED*

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (PENAL CODE SECTION 72)

CLAIMS FOR DEATH, INJURY TO PERSON OR TO PERSONAL PROPERTY MUST BE FILED NOT LATER THAN 6 MONTHS AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)

ALL OTHER CLAIMS FOR DAMAGES MUST BE FILED NOT LATER THAN ONE YEAR AFTER THE OCCURRENCE. (GOVERNMENT CODE SECTION 911.2)

14. PRINT OR TYPE NAME	DATE	15. SIGNATURE OF CLAIMANT OR PERSON FILING ON HIS/HER BEHALF GIVING RELATIONSHIP TO CLAIMANT	DATE
Carney Shegerian (For Brock Lunsford)			

Revised 11-2016

Shegerian & Associates

Phone: (310) 860-0770 | Fax: (310) 860-0771 | shegerianlaw.com

February 3, 2025

SENT VIA PERSONAL SERVICE AND CERTIFIED U.S. MAIL

Executive Officer Board of Supervisors
Attn: Claims
Los Angeles County Board of Supervisors
County of Los Angeles
500 West Temple Street, Room 383
Los Angeles, California 90012

211 West Temple Street
Suite 1200
Los Angeles, CA 90012

Re: *Tort Claim Form for Brock Lunsford—Pursuant to California Government Code Section 910*

To whom it may concern:

Please be advised that my office has been retained to represent Brock Lunsford ("Lunsford") in connection with his employment with the County of Los Angeles ("COLA") and the Los Angeles District Attorney's Office ("LACDA") (collectively "Entity Defendants"). By this letter, we present the following claim for damages on his behalf in what is commonly referred to as a tort claim form.

INDIVIDUALS AND ENTITIES AGAINST WHOM CLAIMS ARE BROUGHT

The names of the public entities and public employees who caused Lunsford injuries include but are not limited to: COLA; LACDA; Nathan Hochman and John Lewin.

FACTS SUPPORTING CLAIMS

Brock Lunsford began his distinguished career with the Entity Defendants in June 2000, dedicating over two decades to public service with the goal of fostering a safer and more just Los Angeles County. Rising through the ranks of the District Attorney's Office, Lunsford ultimately attained a supervisory position in the Resentencing Unit.

Despite his notable career achievements, Lunsford's professional trajectory has been derailed due to retaliation and defamation stemming both from his insistence that the County of Los Angeles comply with the law and his opposition to harassment and discrimination.

Lunsford Exemplary Employment

Lunsford most recent assignment with Entity Defendants was post-conviction litigation and discovery. Lunsford was an exemplary employee throughout his employment with Entity Defendants. Throughout his employment, Lunsford never received poor performance review.

Lunsford's Political Affiliation

Lunsford openly supported George Gascon as District Attorney and his reelection for that same office. Lunsford supported and attempted to carry out to the best of her ability every lawful policy adopted by Gascon.

Advocacy for Resentencing Under Penal Code Section 1172.1

California Penal Code Section 1172.1 was passed into law in 2022. The law allows a criminal defendant to be resentenced, if among other factors, continued incarceration is no longer in the interest of justice. As explained further below, Lunsford reported both internally to Entity Defendants and externally to the California Courts that Eric and Lyle Menendez should be resentenced because their incarceration is no longer in the interest of justice and that to recommend against resentencing would be a violation of Penal Code Section 1172.1

Lunsford, both in internal communications and court filings, expressed his belief that Eric and Lyle Menendez should be resentenced pursuant to Penal Code section 1172.1. He reasonably believed that any other position would violate the statute. Starting in the beginning of October 2024, Lunsford had meetings of the Executive Team concerning the motion for resentencing. Present at these meetings were Lunsford, Nancy Theberge, George Gascon, the District Attorney at the time; Joseph Iniguez, Gascon's deputy, Head deputy Lori Dery, Director Stephanie Pearl Meyer and the Assistant Deputy DA James Garrison. Lunsford stated during this October 2024 meeting that failure to advocate for resentencing would violate Penal Code Section 1172.1. While Gascon and Iniguez supported Lunsford's position, Lori Deary and James Garrison appeared displeased and said they disagreed with Lunsford and Theberge. Lunsford played a pivotal role as the primary author of a motion advocating for their resentencing. This memorandum, co-authored with Nancy Theberge,

articulated the legal and procedural basis for resentencing. Lunsford's position, based solely on his interpretation of the law, was met with resistance from leadership within the District Attorney's Office

Association with and Advocacy for Nancy Theberge

As a supervisor, Lunsford worked closely with Nancy Theberge, an attorney over 40 years old who is female. Leadership in the District Attorney's Office undermined Theberge in ways not experienced by male or younger employees. Lunsford believed that Theberge was discriminated against because of her age and gender. Recognizing this discriminatory treatment, Lunsford took action to support her. On multiple occasions, he opposed efforts by leadership to violate the chain of command, thereby engaging in protected activity by opposing age and gender discrimination. For example, on or around October 22, 2024, Head deputy Lori Dery, and the Assistant Deputy DA James Garrison attempted to circumvent the chain of command and under Nancy Theberge. Lunsford opposed and prevented this attempt, which he believed was an example of less favorable treatment towards a female and older employee.

Retaliation Against Lunsford

The District Attorney's Office retaliated against Lunsford for at least three unlawful reasons:

1. His report to George Gascon, the District Attorney at the time; Joseph Iniguez, Gascon's deputy, Head deputy Lori Deary, Director Stephanie Pearl Meyer and the Assistant Deputy DA James Garrison. in October 2024 and his motion to the superior court advocacy for the resentencing of Eric and Lyle Menendez under Penal Code section 1172.1 and his internal and external report(s) that there would be a violation of the statute if a contrary position was taken.

2. Nathan Hochman's belief that Lunsford supported his political opponent, a violation of civil service rules and California Statutes prohibiting political discrimination. This belief includes but is not limited to Lunsford's October 2024 motion for resentencing.

3. His association with Nancy Theberge as a female and an older employee and his opposition to the harassment and discrimination directed at her.

Following Hochman's election to District Attorney, Pearl, Deary and Garrison all supported and participated in the decision to demote Lunsford. Lunsford was stripped of all supervisory responsibilities, as of December 14, 2024, he has been reassigned as

a calendar attorney in Department T of the Norwalk Courthouse, a position he had held years earlier with no opportunities for promotion or advancement. This was in retaliation for the protected activities described above. In his new role, Lunsford is required to report to a less experienced attorney and must clear his schedule with other attorneys, a stark demotion from his prior ability to set his own schedule.

John Lewin was at all times relevant Acting as the Agent of Nathan Hochman

John Lewin is and was a Deputy District Attorney employed by Entity Defendants. Lewin, while acting within the course and scope of his employment with the District Attorney's Office, defamed Theberge. Lewin and Hochman acted in concert. Hochman either authorized Lewin's conduct and/or ratified it. On September 28, 2024, Hochman's website publicly listed John Lewin as a supporter and praised Lewin for "stand[ing] up and be individually counted."

On or around November 27, 2024, while acting within the course and scope of his employment with the District Attorney's Office, John Lewin defamed Lunsford by publicly referring to him as a "quisling," which means a Nazi collaborator. This statement is offensive on its face and has caused significant harm to Lunsford's professional reputation by imputing malice and incompetence to him. Lewin's statement stated outright that Lunsford is incompetent in his profession.

Hochman, after Lewin defamed Lunsford promoted Lewin, effectively ratified this defamatory conduct by promoting Lewin to a position with major crimes.

Lunsford was coerced to republish Defendant's defamatory statement to colleagues and family in order to refute the allegations and protect his professional reputation.

Harm to Lunsford's Career and Reputation

As a direct result of the retaliation and defamation, Lunsford's career has been irreparably harmed. He has been relegated to a position with no potential for advancement, his professional standing has been undermined, and his reputation has been damaged by the baseless and inflammatory statements of a colleague.

POTENTIAL LEGAL THEORIES/CLAIMS

Lunsford anticipates bringing causes of action based on the following legal violations and theories: (1) Associational discrimination and harassment on the basis of

gender and age; (2) Retaliation, including retaliation for complaining about discrimination or harassment; (3) Failure to prevent discrimination, harassment, or retaliation; (4) Violation of California Labor Code section 1102.5; (5) Violation of Labor Code sections 232.5; (7) Violation of Labor Code Section 1101-1102 (8) Defamation; (7) Coerced Self Defamation; (8) Negligent Infliction of Emotional Distress; (9) Intentional Infliction of Emotional Distress; and (10) Negligent hiring, supervision and retention. Additional causes of action and/or theories of relief may be raised on the basis of the facts generally set forth above, as is permitted by *Blair v. Superior Court* (1990) 218 Cal.App.3d 221.

DAMAGES SOUGHT

Lunsford seeks economic damages of over $250,000 and non-economic damages in an amount over $5,000,000.00 for total damages of over $5,000,000.00. Lunsford also seeks interest, attorneys' fees, and costs, although the amounts of such interest, fees, and costs are not known currently. The proper jurisdiction for litigation in this matter is Los Angeles County Superior Court, as an unlimited case.

NOTICE

Lunsford's address is [redacted] Our client requests that all notices concerning this claim be sent to us, his counsel of record,

Shegerian & Associates
11520 San Vicente Boulevard, Los Angeles, California 90049;
telephone: (310) 860-0770;
facsimile: (310) 860-0771.

Our e-mail addresses are as follows:

- Carney Shegerian, Esq., CShegerian@shegerianlaw.com;
- Mahru Madjidi, Esq., MMadjidi@shegerianlaw.com;
- Alex DiBona, Esq., ADibona@shegerianlaw.com;
- Justin W. Shegerian, Esq., JShegerian@shegerianlaw.com.

ACTING ON CLIENT'S BEHALF

Pursuant to Government Code section 910, our firm is "acting on behalf" of Lunsford in submitting this demand. It is hereby signed by Alex DiBona on his behalf, pursuant to Government Code section 910.2.

Thank you for your review and consideration of the above.

Very truly yours,

SHEGERIAN & ASSOCIATES

Alex DiBona

Alex DiBona, Esq.