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15 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN FRANCISCO**

17 **THE PEOPLE OF THE STATE OF CALIFORNIA**

18 **Plaintiff,**

19 **vs.**

20 **DAVID ROBERT DALEIDEN and**
21 **SANDRA SUSAN MERRITT,**
22 **Defendants.**

23 **Case No.: 17006621**

24 **DEFENDANT SANDRA SUSAN MERRITT'S**
25 **MOTION TO DISMISS AND**
26 **MEMORANDUM OF POINTS AND**
27 **AUTHORITIES IN SUPPORT**

28 **Hearing Date: August 24, 2017**
Time: 9:00 a.m.
Dept.: 9
Judge: Christopher C. Hite

29 **DEFENDANT SANDRA SUSAN MERRITT'S MOTION TO DISMISS**

30 SANDRA SUSAN MERRITT, Defendant, respectfully moves to dismiss Counts One through
31 Fourteen of the Criminal Complaint in the above-captioned matter, Case No. 17006621, based upon the
32 evidence and argument presented in the attached Memorandum of Points and Authorities.

33 Additionally, Ms. Merritt respectfully requests that her cash-bail of \$75,000 be exonerated
34 pursuant to Section 1008 of the California Penal Code.

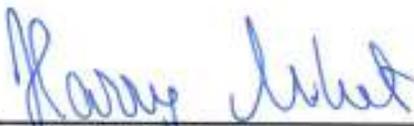
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Respectfully submitted

SANDRA SUSAN MERRITT,
By Counsel.

DATED: August 14, 2017

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 FACTUAL AND PROCEDURAL BACKGROUND

3 On March 28, 2017, the Honorable Judge Carol Yaggy authorized the issuance of a warrant for
4 Ms. Merritt's arrest, alleging that she violated California Penal Code Sections 632 (14 counts) and
5 182(a)(1).¹ Thereafter, Attorney General Xavier Becerra filed criminal complaints against Ms. Merritt and
6 Mr. Daleiden, and **separate case numbers were issued for each of them as defendants**: Ms. Merritt's
7 case number is 17006621, and Mr. Daleiden's case number is 2502505. At Ms. Merritt's bail hearing on
8 May 3, 2017, the Attorney General argued that the sheer number of charges against her, and the potential
9 penalty of eleven years of incarceration, warranted a high bail, despite Ms. Merritt's strong and
10 longstanding ties to the community, and despite the undisputed fact that she poses no flight risk. Ms.
11 Merritt posted the requested bail: \$75,000.

12 Co-Defendant Daleiden filed his Demurrer on May 3, 2017. Approximately three weeks later, on
13 May 26, 2017, Ms. Merritt filed her own Demurrer under her separate case number. As explained in Ms.
14 Merritt's Reply in Support of Her Demurrer to the Complaint, she did not merely adopt Mr. Daleiden's
15 pleadings. (*Id.* at 3, 1.3.) Rather, Ms. Merritt made arguments of law and fact as to the sufficiency of the
16 Complaint that were **unique to her Demurrer**. At the June 21, 2017 demurrer hearing, this Court
17 sustained Ms. Merritt's Demurrer, and accordingly, dismissed Counts One through Fourteen of the
18 Complaint. This Court further gave the Attorney General the opportunity to amend that Complaint within
19 ten (10) days.

20 On June 29, 2017, Ms. Merritt's counsel was sent, via a chain email, a copy of an Amended
21 Complaint which reflected **only Mr. Daleiden's case number**. The next day, **the Attorney General filed**
22 **that Amended Complaint only in Mr. Daleiden's case**. Upon a subsequent review of the Amended
23 Complaint filed in Mr. Daleiden's case, it appears devoid of the critical information that Ms. Merritt
24 demonstrated to be missing from the original Complaint against her, for which this Court sustained her
25 Demurrer for Counts One through Fourteen. The Amended Complaint filed against Mr. Daleiden is non-

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¹ All further statutory references are to the California Penal Code unless otherwise indicated.

1 responsive to Ms. Merritt’s requests for sufficient information to provide her with the required
2 constitutional notice of the charges.

3 On July 5, 2017, one of Ms. Merritt’s attorneys, Mr. Nic Cocis, replied to all of the Attorney
4 General’s employees in the email chain and requested a conformed copy of the Amended Complaint that
5 had been purportedly filed. *See Exhibit A*, attached hereto.² **Counsel for Ms. Merritt did not receive**
6 **any response.** Thereafter, at the July 17, 2017 hearing on the Amended Complaint, the Court inquired
7 into the Attorney General’s failure to file an amended complaint in Ms. Merritt’s case, and Ms. Merritt’s
8 counsel orally moved to dismiss the original Complaint against Ms. Merritt pursuant to Sections 1007 and
9 1008. (*See* July 17, 2017 Transcript of Proceedings (hereinafter, “Tr.”), at 5:22 to 7:21 (attached hereto,
10 as **Exhibit B**)). During that same hearing, this Court requested that Ms. Merritt file a written motion to
11 dismiss, so that the issues can be fully briefed by the parties in advance of the next hearing on August 24,
12 2017. (Tr. at 13:3:7.) Ms. Merritt now files her written motion to dismiss.

13 Indicating the level of state-wide (if not national) importance for the cases against Ms. Merritt and
14 Mr. Daleiden, Attorney General Becerra himself publicly announced the charges in a press release, dated
15 March 28, 2017. *See Exhibit C*, attached hereto.³ Ms. Merritt is named in that press release as a “co-
16 conspirator.” *Id.*

17 The Attorney General has vast resources at his disposal to pay appropriate attention to the cases
18 charged and filed by his office, and particularly to high-profile cases such as those pending against Ms.
19 Merritt and Mr. Daleiden: The Attorney General “oversee[s] more than 4,500” employees, including
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25 ² Exhibit A contains Mr. Cocis’ email dated 7-5-17, to Staci Caston (Staci.Caston@doj.ca.gov), courtesy copy to Deputy
Attorney General Johnette Jauron (Johnette.Jauron@doj.ca.gov).

26 ³ Exhibit C contains a webpage from the Attorney General’s official website: *Attorney General Xavier Becerra Announces*
27 *Charges Filed Against David Robert Daleiden for Criminal Invasion of Privacy*, STATE OF CALIFORNIA-DEPARTMENT OF
JUSTICE-OFFICE OF THE ATTORNEY GENERAL, <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-announces-charges-filed-against-david-robert>. (last visited August 7, 2017) (copy of unnumbered complaint attached to the
28 press release).

1 lawyers. *See Exhibit D*, attached hereto.⁴ Furthermore, the Department of Justice’s Budget for “Legal
2 Services” in 2016-17 was \$444 Million. *See Exhibit E*, attached hereto.⁵

3 **LAW AND ARGUMENT**

4 **THE ATTORNEY GENERAL’S FAILURE TO TIMELY FILE AN AMENDED COMPLAINT AGAINST MS.
5 MERRITT IS FATAL, AND REQUIRES DISMISSAL OF COUNTS ONE THROUGH FOURTEEN.**

6 It is undisputed that the Attorney General failed to timely file an amended complaint against Ms.
7 Merritt in her case, as required by Sections 1007⁶ and 1008,⁷ and as ordered by this Court upon its
8 sustaining of Ms. Merritt’s demurrer. As explained below, well-settled California law does not allow
9 mandatory time limits to be altered, absent a defendant’s intentional waiver or a forfeiture. The rationale
10 behind the well-settled rules is supported by the fundamental, constitutional rights afforded to criminal
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14 ⁴ Exhibit D is a webpage from the Attorney General’s website: *About the Office of the Attorney General*, STATE OF CALIFORNIA-
DEPARTMENT OF JUSTICE-OFFICE OF THE ATTORNEY GENERAL, <https://oag.ca.gov/office> (last visited August 7, 2017).

15 ⁵ Exhibit E contains a webpage from the California Legislature’s Legislative Analyst’s official website: *The 2017-18 Budget:
16 Department of Justice*, LEGISLATIVE ANALYST’S OFFICE, THE CALIFORNIA LEGISLATURE’S NONPARTISAN FISCAL AND POLICY
ADVISOR, <http://www.lao.ca.gov/Publications/Report/3543> (last visited August 7, 2017).

17 ⁶ Section 1007 provides:

18 Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the
19 demurrer to an indictment or information is overruled, the court must permit the defendant, at the defendant's
20 election, to plead, which the defendant must do forthwith, unless the court extends the time. If the demurrer
21 is sustained, the court must, if the defect can be remedied by amendment, permit the indictment or
22 information to be amended, either forthwith or within such time, not exceeding 10 days, as it may fix, or, if
23 the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new
information or the submission of the case to the same or another grand jury. **If the demurrer to a complaint
is sustained, the court must, if the defect can be remedied, permit the filing of an amended complaint
within such time not exceeding 10 days as it may fix. The orders made under this section shall be
entered in the docket or minutes of the court.**

23 Cal. Penal Code § 1007 (emphasis added).

24 ⁷ Section 1008 provides:

25 If the demurrer is sustained, and no amendment of the accusatory pleading is permitted, **or, in case an
26 amendment is permitted, no amendment is made or amended pleading is filed within the time fixed
therefor, the action shall be dismissed**, and, except as provided in Section 1010, **the court must order**, if
27 the defendant is in custody, that he be discharged **or if he has been admitted to bail, that his bail be
exonerated**, or, if money or other property has been deposited instead of bail for his appearance, that such
28 money or other property be refunded to him or to the person or persons found by the court to have deposited
such money or other property on his behalf.

28 Cal. Penal Code § 1008 (emphasis added).

1 defendants. Because the 10-day limit for filing an amended complaint imposed by Sections 1007 and 1008
2 is **mandatory**, and because Ms. Merritt has not waived but has timely objected to the Attorney General’s
3 failure to file an Amended Complaint within that limit, the first fourteen counts must be dismissed. Further,
4 under Section 1008, Ms. Merritt’s bail should be exonerated.

5 **A. The 10-Day Deadline Imposed by Section 1007 is Mandatory and Cannot Be Altered**
6 **Absent an Intentional Waiver by Defendant.**

7 California law requires strict compliance with the provisions of Sections 1007 and 1008, which
8 are mandatory (as opposed to “directory”), particularly when a defendant timely objects to the
9 government’s failure to adhere to the statutory requirements (as Ms. Merritt has done here), or when a
10 defendant does not otherwise intentionally and expressly waive her rights. The rationale for such strict
11 compliance lies with preserving the fundamental constitutional rights of proper notice of charges and
12 expedient due process.

13 In *Williams v. Superior Court*, 111 Cal. App. 4th Supp. 1 (Cal. App. Dep’t Super. Ct. 2003), the
14 Appellate Division of the Superior Court of San Mateo County (which falls within the jurisdiction of the
15 First District Court of Appeal), examined the nature of Section 1008’s requirement to dismiss a complaint
16 after a prosecutor misses Section 1007’s 10-day deadline to file an amended complaint. *Id.* at 6. Although
17 the trial court denied defendant’s motion to dismiss the untimely amended complaint, the Appellate
18 Division vacated the denial, *id.* at 9, finding that **the trial court “abused its discretion in allowing the**
19 **People 60 days within which to file an amended complaint after the petitioner’s second demurrer**
20 **was sustained.”** *Id.* at 7 (emphasis added). The court explained the distinction between mandatory and
21 directory statutes:

22 **Sections 1007 and 1008 constitute mandates.** Evidence Code section 11 declares that in
23 a statute the word “**shall**” means **mandatory** and “**may**” connotes **permissive**. ... “[T]he
24 lack of penalty or consequence for noncompliance with a statutory procedure is indicative
25 of a directory requirement.
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1 *Id.* at 6 (internal citations omitted) (second alteration in original) (emphasis added) (citing *People v.*
2 *Williams*, 77 Cal. App. 4th 436, 448, 451 (1999)).⁸ Under those principles, the *Williams v. Superior Court*
3 easily found that the 10-day time limit at issue here is mandatory:

4 Section 1008 uses “shall” in stating a case is to be dismissed because of failure to file an
5 amended complaint within the requisite time limit. **The penalty of dismissal is explicit.** A
6 demurrer’s purpose under section 1004 is dismissal of a pleading which lacks adequate
7 notice of the public offense charged The section 1007 time limit promotes a speedy
8 resolution of such issues. **The accusatory pleading is an indispensable part of the case.**
9 **If the People cannot file one that complies with due process and other statutory notice
elements, then prosecution should end by dismissal of the action so as to protect the
accused from improper prosecution.** (*Cf. Edwards v. Steele* (1979) 25 Cal.3d 406, 409–
410, 158 Cal.Rptr. 662, 599 P.2d 1365.) **We, therefore, conclude section 1008 is
mandatory.**

10 *Id.* (emphasis added). Because the deadline imposed by Section 1007 was mandatory, the trial court was
11 powerless to enlarge it absent an intentional waiver or agreement by defendant. *Id.* Accordingly, the trial
12 court’s enlargement of that deadline not only constituted abuse of discretion, but was serious enough to
13 warrant the exceedingly rare **mandamus intervention and corrective writ** by the higher court. *Id.* at 8.

14 In *Osman v. Appellate Div. of the Superior Court of Los Angeles County*, 134 Cal. App. 4th 32, 41
15 (2005), the Second District Court of Appeal agreed that Section 1007’s imposition of a definite 10-day
16 deadline, its use of the mandatory “shall” language, and Section 1008’s imposition of the sanction of
17 dismissal, were all indications that the deadline was mandatory and could not be extended in cases where
18 defendants object to such extensions. 134 Cal. App. 4th at 41 (“we recognize that because section
19 1008 involves a time limit, **the sanction of dismissal that it sets forth weighs in favor of concluding
20 the limit is mandatory rather than directory**”) (emphasis added). However, because the *Osman* court
21 deemed the dismissal remedy to be a disfavored right, it disagreed with *Williams v. Superior Court*’s
22 conclusion that the right could never be waived by a defendant. *Id.* The *Osman* court thus found that a
23 defendant’s failure to timely object to the trial court’s granting of 33 days for the filing of an amended
24 complaint constituted a knowing waiver of the dismissal remedy. *Id.* at 41-42.

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⁸ Evidence Code Section 11 provides that, “‘Shall’ is mandatory and ‘may’ is permissive.” Cal. Evid. Code § 11.

1 *Osman*, therefore, is of no help to the Attorney General in this case, because waiver is not an issue
2 here. Unlike in *Osman*, this Court imposed a 10-day deadline for amendment of the Complaint, which
3 was fully consistent with the deadline imposed by Section 1007. When the Attorney General failed to
4 meet that deadline by filing an Amended Complaint in Ms. Merritt’s case, Ms. Merritt timely objected.
5 Nothing in *Osman* or any other authority suggests that this Court or any other court has the power to
6 enlarge the 10-day deadline **over and above the objection of the defendant**. Thus, irrespective of
7 whether a waiver or forfeiture can occur, where (as here) no waiver or forfeiture has occurred, dismissal
8 is required.

9 Notably, assuming *arguendo* that a defendant **may** waive her right to have an untimely amended
10 complaint dismissed, the People **certainly** can waive their right to amend a complaint:

11 [If] it were proper to sustain [a demurrer] without leave to amend, the proper order would
12 be one dismissing the action as well as discharging the defendant, if he were in custody. . . .
13 As we have seen, however, the defect in the complaint was in form, and while not merely
14 technical, was one that could be remedied by an amendment. . . . **No doubt the People**
15 **could waive such amendment**

16 *People v. Bailey*, 72 Cal. App. 2d Supp. 880, 884 (Cal. App. Dep’t Super. Ct. 1946) (citation omitted)
17 (emphasis added). Here, there is no question that Ms. Merritt has **not** waived her statutory right to
18 dismissal where the Attorney General filed no amended complaint in Ms. Merritt’s case. There is also no
19 question that the Attorney General **has** waived (or forfeited) his right to file an Amended Complaint by
20 failing to exercise that right within the strict 10-day period allotted by Section 1007 and this Court’s order.⁹

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23 ⁹ Other authorities confirm that dismissal is mandatory here. In *People v. Williams*, 77 Cal. App. 4th 436, 455 (Ct. App., 6th
24 Dist. 1999), the Sixth District Court of Appeal examined the mandatory and directory nature of two provisions of the Mentally
25 Disordered Prisoners Act (MDPA), Cal. Penal Code § 2960, *et seq.* Under the MDPA, a district attorney may file a petition to
26 extend involuntary treatment; however, Section 2972(a) of the MDPA requires that the commitment trial be commenced “no
27 later than 30 calendar days prior to the time the person would otherwise have been released, **unless the time is waived by the**
28 **person or unless good cause is shown.**” *Id.* at 445 (quoting Cal. Penal Code § 2972(a)) (emphasis added). The court found
that Section 2972(a) lacked a consequence for violating the deadlines which meant that Section 2972(a) was directory. *Id.* at
451. The court further found that the statute’s explicit “good cause” and waiver exceptions were further indicators that the
deadline was directory and non-jurisdictional. *Id.* at 452. Here, Sections 1007 and 1008, unlike Section 2972(a), **do not** contain
a “good cause” or other waiver exceptions, and **do** indeed impose an explicit remedy for noncompliance – dismissal. The
California Legislature is presumed to know how to draft a law to provide courts the ability to extend deadlines for “good cause”
or other reasons. The Legislature’s exclusion of such discretion from Sections 1007 and 1008 can only mean that it does not
exist.

1 Furthermore, to carry her burden on this Motion to Dismiss, Ms. Merritt only has to show that the
2 Attorney General failed to comply with the statutory requirements of Sections 1007 and 1008. Because
3 Ms. Merritt has timely objected to the Attorney General’s failure to meet the mandatory requirements of
4 Sections 1007 and 1008, **she need not show any prejudice**, as held in *People v. Wilson*, 60 Cal. 2d 139
5 (1963). There, the Supreme Court of California considered the defendant’s burden of proof when he
6 alleged his right to a speedy trial had been denied under Section 1382,¹⁰ whereas he failed to timely appeal
7 the denial of his writ of mandate (after the trial court had denied his motion to dismiss). *Id.* at 151. The
8 Court agreed that, although defendant had made several waivers of time, under Section 1382 he had a
9 right to demand trial within 10 days of August 25, 1960, the last day to which defendant consented for
10 trial. *Id.* at 145. Recognizing that Section 1382, subdivision 2 is **mandatory** (absent good cause shown
11 under the statutory exception), the Court held that, “**defendant then had the right to have the action**
12 **dismissed on his motion.**” *Id.* at 151 (emphasis added). Had the defendant properly brought his writ of
13 mandate to the Supreme Court (before the trial, rather than waiting to appeal after trial), “**no further**
14 **showing was required of him; in particular, he was not required to affirmatively show that he had**
15 **been prejudiced by the delay.**” *Id.* at 151 (emphasis added).¹¹

16 In sum, the Attorney General indisputably has failed to file any amended complaint in Ms.
17 Merritt’s case. Thus, considering the mandatory nature of Sections 1007 and 1008, as well as the definition
18 of “shall” as employed in Section 1008 (and as defined in Evidence Code Section 11), the Attorney
19 General’s failure amounts to a waiver or forfeiture, and requires dismissal of Counts One through Fourteen
20 of the Complaint.

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27 ¹⁰A further analysis comparing the nature of Section 1382 with Sections 1007 and 1008 is set forth in this Memorandum,
Section II.B., *infra*.

28 ¹¹ Because defendant brought an appeal of his motion to dismiss **after** trial, the court was required to determine whether the
error was prejudicial. *Id.* at 151-52. The right to a speedy trial is a personal right, and may be waived. *Id.*

1 **B. The Dismissal Provision Under Penal Code Section 1008, in Conjunction with Section**
2 **1007, is Jurisdictional, and Therefore Ms. Merritt’s Constitutional and Statutory**
3 **Protections Should Not be Subverted by the Attorney General’s Negligence.**

4 In comparison to how the Supreme Court of California treats another jurisdictional provision
5 designed to protect criminal defendants—statutes of limitation—the jurisdictional nature of Sections 1007
6 and 1008 further demonstrates that Counts One through Fourteen of the Complaint must be dismissed as
7 to Ms. Merritt. The filing requirements for criminal complaints under Sections 1007 and 1008 are properly
8 considered jurisdictional, although not necessarily in the sense of subject matter jurisdiction; rather, they
9 are jurisdictional in the sense that a violation of those provisions can be termed as an act “in excess” of
10 jurisdiction. Although the courts in *Williams v. Superior Court* and *Osman*, as discussed above, analyzed
11 statutory time limitations in terms of “mandatory” vs. “directory,” the California Supreme Court’s
12 treatment of statutes of limitations is both analogous and instructive.

13 In *Cowan v. Superior Court of Kern County*, 14 Cal. 4th 367 (1996), the Supreme Court of
14 California considered whether a defendant could intentionally waive the statute of limitations on a lesser-
15 included offense when such waiver worked to his benefit. *Id.* at 370. In that case, the waiver allowed the
16 defendant to plea bargain down from murder (a charge with no statute of limitations) to a lesser-included
17 charge of voluntary manslaughter, even though the statute of limitations had run on the lesser-included
18 charge. *Id.* The hurdle for the Supreme Court consisted of prior caselaw that categorized a statute of
19 limitation as fundamentally jurisdictional, such that it could not be waived. *Id.* at 372. As the Court
20 explained, prior cases discussing whether statutes of limitation were jurisdictional “have generally
21 involved ‘waiver’ in the sense of forfeiture, not the intentional relinquishment of a known right, and have
22 not considered whether defendants could *expressly* waive the statute of limitations for their own benefit.”
23 *Id.* at 372 (emphasis in original). The court in *Cowan* concluded that a defendant, in fact, could “‘waive
24 the **most crucial** of rights,’” including the statute of limitations. *Id.* at 372-73 (citation omitted) (emphasis
25 added). But such waivers must be, among other things, knowing, intelligent and voluntary. *Id.* at 372.

26 A statute of limitation is a statutory right, not unlike the statutory rights afforded under Sections
27 1007 and 1008. The constraints imposed by the Legislature in Sections 1007 and 1008 operate more like
28 a statute of limitation because the Legislature has intentionally chosen not to include any explicit “good
 cause” or intentional waiver exception. Such statutes are designed to supplement and stand as a

1 construction of constitutional protections for defendants. **That the right to a statute of limitation may**
2 **be intentionally waived does not negate the right's importance or demote its status to a non-favored**
3 **right.** As noted above, even the most crucial of rights may be waived. Instead, where the Legislature has
4 intentionally **excluded** “good cause” or intentional waiver exceptions in a penal code section designed to
5 protect criminal defendants, such intentional exclusion indicates the Legislature’s intent to require strict
6 compliance with the protection, absent a defendant’s intentional waiver for a defendant’s own benefit.
7 Such statutory protections should be strictly enforced by the courts against governmental officials, and
8 particularly against those officials who neglect their duties at the expense of criminal defendants. Criminal
9 defendants, such as Ms. Merritt, are still considered innocent until proven guilty, and Ms. Merritt’s
10 fundamental rights, whether constitutional or statutory, should not be subverted by the Attorney General,
11 who neglected to file an amended complaint in a case purported by him to be highly important.

12 Additionally, when comparing Section 1007’s and 1008’s time limit and dismissal requirements
13 to other time limited statutes which have explicit exceptions (such as Sections 1382 and 859b), the
14 jurisdictional nature of Sections 1007 and 1008 becomes even more apparent. Both Section 1382 (“Failure
15 to file information or bring case to trial within time limit; dismissal”) and Section 859b (“Felony to which
16 defendant has not pleaded guilty; setting time for examination; issuance of subpoenas; preliminary
17 examination; dismissal of complaint”), contain specific statutory exceptions. For example, Section
18 1382(a) contains a “good cause” exception for the time limits stated therein as to deadlines for filing an
19 information, *see* Code § 1382(a)(1), and for a defendant to be brought to trial, *see* Code § 1382(a)(2), as
20 well as allowing a defendant to enter a waiver or otherwise consent to the 60-day (speedy) trial
21 requirement, *see* Code § 1382(a)(2)(A), (B). Absent “good cause” or an intentional waiver, a court is
22 required to dismiss an action when the government fails to meet these statutory deadlines. *See* Code §
23 1382(a). Likewise, Section 859b provides that both the People and defendants have a “right to a
24 preliminary examination at the earliest possible time,” and proscribes a 10-court-day time limit, absent a
25 waiver by both the people and the defendant, or absent “good cause shown for a continuance.” *Id.*
26 Additionally, a magistrate must dismiss the complaint if a preliminary examination is “set or continued
27 more than 60 days from the date of the arraignment, plea, or reinstatement of criminal proceedings . . .

1 **unless** the defendant personally waives his or her right to a preliminary examination within the 60 days.”
2 *Id.* (emphasis added).

3 As noted even by the court in *Osman*, there are no such explicit waiver or good cause requirements
4 in Sections 1007 or 1008. 134 Cal. App. 4th at 41. As the court in *People v. Williams* explained, “the
5 difference in these [Penal Code Sections] indicates . . .that when the Legislature intends to prescribe a . . .
6 deadline . . ., it does so expressly **and not by implication.**” See *People v. Williams*, 77 Cal. App. 4th at
7 452 (citation omitted) (emphasis added). Accordingly, no authority exists for extending the deadline for
8 filing an amended complaint following the sustaining of a demurrer.

9 CONCLUSION

10 The command of Section 1007 expressly requires the Attorney General to **file** an amended
11 complaint “within such time not exceeding 10 days as [the court] may fix.” Cal. Penal Code § 1007. This
12 Court granted the Attorney General 10 days to amend his complaint against Ms. Merritt and Mr. Daleiden,
13 in the **two** cases that the Attorney General filed against each defendant, respectively. Section 1008
14 expressly requires a complaint to be **dismissed** after a demurrer is sustained, where “no . . . amendment
15 is made or amended pleading is filed within the time fixed therefore . . .” Cal. Penal Code § 1008. Unlike
16 other Penal Code Sections that contain “good cause” and intentional waiver exceptions, there is no such
17 exception in either Section 1007 or Section 1008. The protections afforded to Ms. Merritt under Sections
18 1007 and 1008 are mandatory and jurisdictional, and therefore should be strictly enforced, specifically
19 when Ms. Merritt has timely asserted her objections.

20 The Attorney General should not be heard to argue that Ms. Merritt received notice, or that his
21 failure to file an amended complaint in her case should be excused, based on Ms. Merritt’s receipt of a
22 courtesy, unfiled copy of the Amended Complaint that was eventually filed in Mr. Daleiden’s case alone.
23 To hold otherwise would render the **separate** original Complaint filed against Ms. Merritt superfluous.

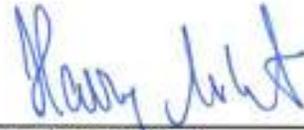
24 “A court speaks by its dockets, minutes, or records. Where there is no record there is no judgment.”
25 *Bode v. Trimmer*, 82 Cal. 513 (1890). Here, the Court’s docket in Ms. Merritt’s case indisputably is
26 missing a timely filed Amended Complaint. There is no excuse. There can be no excuse. Dismissal is
27 warranted.

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Respectfully submitted

DEFENDANT SANDRA SUSAN MERRITT,
By Counsel,

DATED: August 14, 2017



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hmihet@lc.org
* Admitted Pro Hac Vice

Attorneys for Defendant Sandra Susan Merritt

1 CERTIFICATE OF SERVICE

2 Pursuant to Cal. Code Civ. P. 1013(a), I hereby certify that, on August 14, 2017, I served the
3 forgoing *Motion to Dismiss Complaint*; on the following parties/entities via the following methods:

4 Johnette Jauron
5 Deputy Attorney General
6 California Department of Justice
7 455 Golden Gate Avenue, Suite 11000
8 San Francisco, CA 94102
9 Johnette.Jauron@doj.ca.gov

Steve Cooley
Brentford J. Ferreira
Steve Cooley & Associates
5318 E. 2nd Street, #399
Long Beach, CA 90803
Steve.Cooley@stevecooley.com
Bjferreira47@hotmail.com

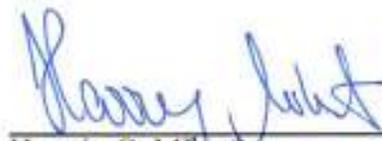
Attorney for the State of California

Attorneys for Defendant David Daleiden

10 [Via Electronic Mail at the email addresses shown above, pursuant to their agreement to receive
11 electronic service].

12 I further certify that I am over the age of 18 and not a party to this action.

13 Dated: August 14, 2017



15 _____
16 Horatio G. Mihet
17 Liberty Counsel
18 P.O. Box 540774
19 Orlando, FL 32854
20 Tel: (407) 875-1776
21 Fax: (407) 875-0770
22 hmihet@lc.org
23 * Admitted Pro Hac Vice

24 *Attorney for Defendant Merritt*

EXHIBIT A

From: Nic Cocis
To: [Staci Caston; steve@stevecooley.com](mailto:Staci.Caston@doj.ca.gov)
Cc: [Johnette Jauron; Horatio Mihet](mailto:Johnette.Jauron@doj.ca.gov)
Subject: Re: People v. David Daleiden et al., Case No. 2502505
Date: Wednesday, July 5, 2017 7:27:25 PM

Staci,

I'm confirming that I received a copy of the amended Complaint. Would you also send us a conformed copy?

Best regards,

NIC COCIS
Attorney at Law
38975 Sky Canyon Dr., Suite 211
Murrieta, CA 92563
www.cocislaw.com

Tel: [\(951\) 695-1400](tel:(951)695-1400)
Fax: [\(951\) 698-5192](tel:(951)698-5192)

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From: Staci Caston <Staci.Caston@doj.ca.gov>
To: "nic@cocislaw.com" <nic@cocislaw.com>; "steve@stevecooley.com" <steve@stevecooley.com>
Cc: Johnette Jauron <Johnette.Jauron@doj.ca.gov>
Sent: Thursday, June 29, 2017 2:51 PM
Subject: People v. David Daleiden et al., Case No. 2502505

Counsel,

Attached please find the amended criminal complaint referencing the above case. If you have any questions please contact Deputy Attorney General Johnette Jauron.

Thank you,
Staci Caston
LSSI - SF

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended

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EXHIBIT B

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

HONORABLE CHRISTOPHER C. HITE, JUDGE PRESIDING

DEPARTMENT NO. 9

---oOo---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff,)

Court No. 2502505
17006621

vs.)

DAVID ROBERT DALEIDEN AND)
SANDRA SUSAN MERRITT,)

Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday, July 17, 2017

Please note Government Code Section 69954(d):

"Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy or copies to any other party or person."

Reported by: Janet S. Pond, CSR No. 5292, RMR, CRR
Official Reporter

A P P E A R A N C E S O F C O U N S E L

For the People:

STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
BY: **JOHNETTE JAURON**, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

For Defendant David Daleiden:

STEVE COOLEY & ASSOCIATES
BY: **BRENTFORD J. FERREIRA**, Attorney At Law
5318 E. 2nd Street, #399
Long Beach, CA 90803

For Defendant Sandra Merritt:

LAW OFFICE OF NIC COCIS & ASSOCIATES
BY: **NIC COCIS**, Attorney at Law
38975 Sky Canyon Drive, No. 211
Murrieta, CA 92563

LIBERTY COUNSEL
BY: **HORATIO G. MIHET**, Attorney at Law (Pro Hac Vice)
P. O. Box 540774
Orlando, FL 32854

---o0o---

P R O C E E D I N G S

Monday, July 17, 2017

---oOo---

1
2
3
4 **THE COURT:** Calling Line 21, David Daleiden, and
5 Line 22, Sandra Merritt.

6 **MS. JAURON:** Johnette Jauron, Deputy Attorney General.

7 **MR. COCIS:** Good morning, Your Honor. Nic Cocis on
8 behalf of Ms. Merritt. Ms. Merritt is present out of
9 custody, making her way up.

10 **THE COURT:** Good morning.

11 **MR. MIHET:** And Horatio Mihet also on behalf of
12 Ms. Merritt.

13 **MR. FERREIRA:** Good morning, Your Honor. Brentford
14 Ferreira on behalf of Mr. Daleiden.

15 **THE COURT:** Good morning.

16 This matter was originally on, or is on, for the filing
17 of an amended criminal complaint after a demurrer was
18 sustained previously.

19 The Attorney General's Office has filed an amended
20 complaint that looks to be filed and entered on June 30th,
21 of 2017.

22 The amended criminal complaint uses the case number
23 2502505, which is the case number for Mr. Daleiden. It
24 also, on the complaint -- the amended complaint that was
25 filed by the Attorney General's Office, it does mention in
26 that complaint under that case number both Mr. Daleiden and
27 Sandra Susan Merritt.

28 However, there does not appear, and correct me if I'm

1 wrong, there does not appear to be an amended complaint
2 filed separately for Sandra Susan Merritt under
3 Case Number 17006621.

4 Is that correct, with the clerk?

5 **THE CLERK:** Your Honor, I don't have the case file
6 here.

7 (Off-the-record discussion.)

8 **THE COURT:** But that is my understanding. Is that also
9 your understanding, Ms. Jauron?

10 **MS. JAURON:** I didn't understand that before this
11 morning, Your Honor. If there's some way to repair that
12 today, I would be willing to orally amend the number on the
13 charging document, if that would repair any error in the
14 Court's mind.

15 But my understanding is that by filing the complaint on
16 June 30th with both names, that it was statutorily
17 sufficient.

18 **THE COURT:** Okay. Why don't we do this first.

19 With regards to Mr. Daleiden, since that is -- the
20 amended complaint is filed under his name and his case
21 number, at this time have you received a copy of the amended
22 complaint?

23 **MR. FERREIRA:** I have, Your Honor.

24 **THE COURT:** And it was timely filed within the ten-day
25 period that was ordered by the Court previously. In light
26 of that, do you wish at this time to enter pleas?

27 **MR. FERREIRA:** No, Your Honor. We're filing a
28 demurrer.

1 **THE COURT:** Okay.

2 The other option that I will give both counsel is, even
3 though you may want to file a demurrer, I will allow both
4 parties to waive further instruction and enter not guilty
5 pleas but reserve the right to file any demurrer or any
6 post -- or any pre-plea motions that are applicable.

7 So you need not continue to not enter pleas if you
8 would still like to reserve any pre-plea motions.

9 So before we proceed on the setting the date, because I
10 understand you may both want to file demurrers at some
11 point, take into consideration that you can also enter the
12 not guilty plea and still file a demurrer or any other
13 pre-plea motions so long as it's reserved.

14 I'll move on to Ms. Merritt before you make that
15 decision on that offer by the Court.

16 So with regards to Ms. Merritt, I have both dockets
17 before me, and I had originally noticed this as well when I
18 got a copy of the amended complaint under the case number
19 that relates to Mr. Daleiden. I went to check to see if
20 there was anything filed for Ms. Merritt under the case, and
21 I did not see that.

22 I did notice, though, that her name is mentioned on the
23 amended criminal complaint but without her case number and
24 without it being filed in the other docket.

25 This may be one of those incidences where the
26 Attorney General, with regards to this court, wasn't aware
27 it needs to be filed in both dockets. It's not -- well, at
28 this point there is not an amended criminal complaint in the

1 docket for Sandra Susan Merritt under Case Number 17006621.

2 So with regards to Ms. Merritt, what's the defense
3 position?

4 **MR. MIHET:** Horatio Mihet on behalf of Ms. Merritt.

5 Your Honor, there are two separate complaints, original
6 complaints that were filed, one with Mr. Daleiden's case
7 number and one with Ms. Merritt's case number.

8 So the Attorney General's office knows that there are
9 two cases with separate attorneys, separate parties, and
10 separate case numbers.

11 The Court only speaks through its docket, and the
12 docket in Ms. Merritt's case indisputably has no record of
13 any amended complaint being filed.

14 This is not a matter of an error by the Court's clerk.
15 This is a matter of an error by the Attorney General. And
16 unfortunately for the Attorney General, Section 1008 of the
17 Penal Code mandates that unless a complaint -- an amended
18 complaint is filed within ten days of the sustaining of a
19 demurrer, it shall be dismissed, the case shall be
20 dismissed. So Ms. Merritt insists upon the rights that are
21 granted to her by Section 1008 and 1007.

22 I would also note for the record that this is not a
23 matter of us trying to surprise the Attorney General's
24 Office. More than two weeks ago on July 5 by email we did
25 request for them to provide to us a conformed copy of the
26 complaint as filed in Ms. Merritt's case. They failed to do
27 that then. They failed to do that at any other time since
28 then until today, and they can't do it because they haven't

1 filed it.

2 Ms. Jauron mentioned that if there's a way to cure it,
3 she would be happy to cure it. Section 1008 makes it
4 absolutely clear that there is no way to cure it. Dismissal
5 is the only option, and that is what we request of the
6 Court.

7 Thank you.

8 **THE COURT:** Just to clarify, you were served with the
9 filed copy that was dated June 30th, 2017, and under
10 Case Number 2502505 with Ms. Merritt's name on it, correct?

11 **MR. MIHET:** Your Honor, yes, partially correct.

12 We were served on June 29, 2017 via email, per our
13 agreement with the AG's Office.

14 The subject -- this was day before any complaint was
15 filed with the Court in any case -- the subject is
16 People v. David Daleiden, Case Number 2502505.

17 And the complaint that was subsequently filed in
18 Mr. Daleiden's case was provided to us and we received it.
19 It was in response to that email that we sent an email
20 saying would you please send us a conformed copy of the
21 complaint as filed in our case. It never came.

22 **THE COURT:** In that email, did you also put in the
23 subject line the case number 17006621?

24 **MR. MIHET:** We simply responded, we replied to the
25 email that was sent to us with this complaint, Judge.

26 **THE COURT:** Do you have additional copies of those
27 emails?

28 **MR. MIHET:** I do.

1 May I approach?

2 **THE COURT:** Yes.

3 (Document submitted to the Court.)

4 **MR. MIHET:** From the beginning of this case, the
5 Attorney General has continually tried to lump these two
6 defendants into one category and to speak of them as if
7 they were one unit. And from the beginning until today, we
8 have continually reminded them these are two separate
9 defendants, separate counsel, separate case numbers, and
10 separate files.

11 This isn't, you know, the first rodeo. This is the one
12 of the biggest cases in the state right now that the
13 Attorney General has decided to prosecute against
14 Ms. Merritt. I don't think it's too much to ask them to
15 actually file the pleadings in her particular case as they
16 are required to.

17 Thank you.

18 **THE COURT:** Ms. Jauron?

19 **MS. JAURON:** Your Honor, if I may look at the Court's
20 file. I really don't quite understand what happened.

21 I am unwilling to submit factually on what happened
22 when I don't really know. My understanding is my office
23 submitted the amended complaint on June 30th. It was
24 filed.

25 If there was an error as to the case filing number on
26 it, I would move to repair that here and now, if that would
27 repair any housekeeping impropriety. They have the filing,
28 they have the 15 counts, they have all of the evidence

1 described in the complaint.

2 **THE COURT:** I don't see this as a notice issue. I
3 think they were properly noticed that there was going to be
4 a filing of an amended complaint and with regards to
5 Ms. Merritt.

6 The issue is more whether it's a jurisdictional issue
7 at this point and whether or not I can rectify the
8 jurisdictional failure based on there being proper notice.

9 So in this case your office actually filed against
10 Ms. Merritt with the proper case number 17006621, a criminal
11 complaint, which is the same as the criminal complaint that
12 was filed in the other docket against Mr. Daleiden under
13 2502505.

14 So prior to the filing of the amended complaint, they
15 were properly filed in both dockets, which is reflected.

16 What we do not have for the amended complaint is an
17 amended criminal complaint in the docket 17006621. And
18 there are amended complaints that are filed in this court
19 almost daily, surely monthly, where there are co-defendants
20 and where there are two separate case numbers for the
21 co-defendants, and criminal complaints are filed separately
22 in each docket.

23 So I think this really comes down to a jurisdictional
24 issue as to whether or not the Attorney General's Office
25 will have to take a first dismissal with regards to
26 Ms. Merritt based on the circumstances.

27 **MR. MIHET:** If I can have 30 more seconds, Judge.

28 Both Section 1007 and 1008 speak clearly in terms of

1 filing. They don't speak in terms of giving notice to the
2 other attorneys, serving them. Filing is the operative
3 word, and filing is what they failed to do in this case.

4 **THE COURT:** Well, they did file. They did not file
5 under the case number for Ms. Merritt, although they do
6 mention her name in the amended criminal complaint.

7 **MR. MIHET:** They did not file it in her case.

8 **THE COURT:** Correct, under her case number.

9 **MS. JAURON:** I think I understand the Court's question,
10 and if the Court would be willing to give me some time to
11 look into the answer, I will certainly look into it.

12 But I would also say that that first case number is
13 still active and still live because there was that
14 15th count, when 14 counts were dismissed. That 15th count
15 is still alive on the original complaint.

16 **THE COURT:** Correct.

17 **MR. MIHET:** We're ready to proceed to arraignment on
18 that count then.

19 **THE COURT:** That part is not an issue because, you're
20 correct, during the sustaining of the original demurrer,
21 there was a count that remained under that case number.

22 **MS. JAURON:** Right.

23 **THE COURT:** And that particular count would not be
24 affected by the first dismissal.

25 **MS. JAURON:** Right.

26 **THE COURT:** But that doesn't eliminate the issue with
27 regards to the amended criminal complaint that has not been
28 filed under the 17006621 case.

1 **MS. JAURON:** Understood. So if the Court would just
2 give me some time to look into that, I will. I will find an
3 answer.

4 **THE COURT:** Well, you guys had already discussed a date
5 of August 24th.

6 I think, under the circumstances, since we have kind of
7 a split of what's going on between the two defendants on
8 this issue, instead of entering the not guilty pleas at this
9 time, I will allow -- I will put that over until the 24th as
10 well. That way we can resolve all the issues, hopefully, on
11 the 24th.

12 What I think both sides should do is provide -- even
13 though the attorneys for Ms. Merritt have provided me with
14 some citations as well as cases, you may want to brief the
15 issue for the 24th. So we'll have the matter on for motion
16 to dismiss for Ms. Merritt.

17 **MS. JAURON:** And that would be at 9:00 a.m.,
18 Your Honor?

19 **THE COURT:** That would be at 9:00 a.m. It will on for
20 motion to dismiss with regards to Ms. Merritt, and it will
21 be on for -- as well as demurrer.

22 What I would request for Ms. Merritt's attorneys,
23 unfortunately, is that you file the demurrer as well so
24 we don't -- I don't want to drag this out with regards to --
25 if I allow the amended complaint against Ms. Merritt,
26 I don't want to put this over for a further date for
27 demurrer.

28 So if you can file the demurrer, the Court will not --

1 if the Court dismisses the case, the demurrer becomes moot
2 and I will take it off calendar, but I don't want to stretch
3 this out further based on the timeframes that we're working
4 with.

5 **MR. MIHET:** Just for the record, Judge, we would object
6 to having to file a demurrer in a case where there's no
7 amended complaint. If I walk over to the clerk now with a
8 demurrer, the clerk's going to ask me, what are you
9 demurring to? They don't have a record of an amended
10 complaint in the file.

11 So I would object to that. I will do it, reserving the
12 objection, if that's what the Court wants me to do.

13 **THE COURT:** Why don't you do it reserving the
14 objection. If there's any issues with the clerk, you can
15 it, just ask to have it filed at the insistence of a
16 litigant. They will stamp a big red stamp on it that says
17 "Filed at the Insistence of the Litigant." And I'll know
18 what it's about.

19 **MR. MIHET:** But the only problem is Ms. Merritt isn't
20 insisting to file a demurrer to a nonexistent complaint so I
21 don't want this to make it seem like we are waiving that
22 objection.

23 Even though it may delay things, it's a delay caused by
24 the AG. My preference, strong preference, is to not address
25 this head on until the Court rules on it.

26 I would note the statute also provides some appellate
27 rights so we may -- well, I think it's a significant enough
28 issue it has to be dealt with separately, Judge.

1 **THE COURT:** Okay. Ms. Jauron, any comment on that?

2 **MS. JAURON:** No comment. I disagree.

3 **THE COURT:** I am actually convinced by counsel that
4 we'll take it one step at a time.

5 So with regards to Ms. Merritt, just to file the motion
6 to dismiss. And for Mr. Daleiden, it will be on for
7 demurrer and entry of plea.

8 So both parties, Ms. Merritt and Mr. Daleiden, you are
9 ordered present back in this department on August 24, 2017,
10 at 9:00 a.m., okay?

11 **MS. JAURON:** Thank you, Your Honor.

12 **THE COURT:** Anything further from counsel?

13 **MR. FERREIRA:** No, Your Honor.

14 **MS. JAURON:** Nothing further from the People.

15 **MR. COCIS:** Thank you. We agree with August 24th.

16 Would it be possible to take a waiver of Ms. Merritt's
17 presence pursuant to 977(b) of the Penal Code? She lives
18 about an hour away and in case something happens, we would
19 like to appear in her absence, if possible.

20 **THE COURT:** With regards to her, I will do that because
21 the demurrer is going to have to follow that and there's not
22 going to be -- it's unlikely there will be entry of a plea
23 on that date.

24 What you may want to do at some point, and you can
25 discuss this with the Attorney General, is make a
26 determination. If you want some 977 waivers that are going
27 to come up in the past, you may want to get -- there's a
28 signed form for 977 waivers because this does appear to be a

1 highly litigated case, and they may not want to be present
2 for each aspect of that.

3 So I will allow 977 waivers for certain matters
4 including this one for the 24th. So her appearance is
5 waived on that date, but obviously she can come if she
6 decides she wants to.

7 The waiver forms, you can ask any of the attorneys
8 here. All three parties would sign off on it, although do
9 them separately under the separate cases.

10 **MR. COCIS:** All right.

11 **THE COURT:** Anything further?

12 **MR. COCIS:** No, Your Honor. Thank you. Nic Cocis, for
13 the record.

14 **THE COURT:** Thank you.

15 (Whereupon, proceedings concluded.)

16 ---o0o---

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1 State of California)
2 County of San Francisco)

3

4 REPORTER'S CERTIFICATE

5

6 I, Janet S. Pond, CSR No. 5292, Official Court Reporter
7 for the Superior Court of California, County of San
8 Francisco, do hereby certify:

9 That I was present at the time of the above proceedings
10 and took down in machine shorthand notes all proceedings had
11 and testimony given;

12 That I thereafter transcribed said shorthand notes with
13 the aid of a computer;

14 That the above and foregoing is a full, true, and
15 correct transcription of said shorthand notes, and a full,
16 true and correct transcript of all proceedings had and
17 testimony taken;

18 That I am not a party to the action or related to a
19 party or counsel;

20 That I have no financial or other interest in the
21 outcome of the action.

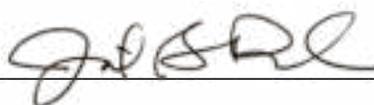
22

23 Dated: July 23, 2017

24

25

26



Janet S. Pond, CSR No. 5292

27

28

EXHIBIT C



XAVIER BECERRA

Attorney General

0

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Attorney General Xavier Becerra Announces Charges Filed Against David Robert Daleiden for Criminal Invasion of Privacy

Press Release ([/news/press_release](#)) / [Attorney General Xavier Becerra Announces Charges Filed Against...](#)

USA 2017 Total 0% Done 23

Tuesday, March 28, 2017

Contact: (415) 703-5837, agressoffice@doj.ca.gov

SAN FRANCISCO - Attorney General Xavier Becerra today announced the filing of an arrest warrant detailing 15 criminal charges against David Robert Daleiden. Daleiden, along with co-conspirator Sandra Merritt, used manufactured identities and a fictitious bioresearch company to meet women's healthcare providers and covertly record the private discussions they initiated.

"The right to privacy is a cornerstone of California's Constitution, and a right that is foundational in a free democratic society," said Attorney General Becerra. "We will not tolerate the criminal recording of confidential conversations."

Please note that a complaint contains only allegations against a person and, as with all defendants, David Robert Daleiden and Sandra Merritt must be presumed innocent unless and until proven guilty.

A copy of the complaint and arrest warrant are attached to the electronic version of this release here: <https://oag.ca.gov/news> (<https://oag.ca.gov/news>).

#

Attachment	Size
 Complaint Affidavit_SF.PDF (https://oag.ca.gov/system/files/attachments/press_releases/Complaint%20Affidavit_SF.PDF)	889.43 KB



STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

WHO WE ARE (/office)

- [About AG Xavier Becerra \(/about\)](#)
- [History of the Office \(/history\)](#)
- [Organization of the Office \(/career/jobstatus\)](#)

WHAT WE DO

- [Public Safety \(/safety/about-us/psd/s\)](#)
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EXHIBIT D

**XAVIER BECERRA***Attorney General*

/A

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About the Office of the Attorney General

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The Attorney General is the state's top lawyer and law enforcement official, protecting and serving the people and interests of California through a broad range of duties. The Attorney General's responsibilities include safeguarding the public from violent criminals, preserving California's spectacular natural resources, enforcing civil rights laws, and helping victims of identity theft, mortgage-related fraud, illegal business practices, and other consumer crimes.

Overseeing more than 4,500 lawyers, investigators, sworn peace officers, and other employees, the Attorney General

- Represents the People of California in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States.
- Serves as legal counsel to state officers and, with few exceptions, to state agencies, boards and commissions.
- Assists district attorneys, local law enforcement and federal and international criminal justice agencies in the administration of justice.
- Strengthens California's law enforcement community by coordinating statewide narcotics enforcement efforts, supporting criminal investigations and providing forensic science services, identification and information services and telecommunication support.
- Manages programs and special projects to detect and crack down on fraudulent, unfair and illegal activities that victimize consumers or threaten public safety.

Under the state Constitution, the Attorney General is elected to a four-year term in the same statewide election as the Governor, Lieutenant Governor, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and Insurance Commissioner. In 1990, California voters imposed a two-term limit on these statewide offices.

Mission Statement

It is our duty to serve our state and work honorably every day to fulfill California's promise. The Attorney General and Department of Justice employees provide leadership, information and education in partnership with state and local governments and the people of California to:

- Enforce and apply all of our laws fairly and impartially.

- Ensure justice, safety and liberty for everyone.
- Encourage economic prosperity, equal opportunity and tolerance.
- Safeguard California's human, natural and financial resources for this and future generations.

About the Office

[About Attorney General Xavier Becerra \(/about\)](#)

[About the Office of the Attorney General \(/office\)](#)

[History of the Office of the Attorney General \(/history\)](#)

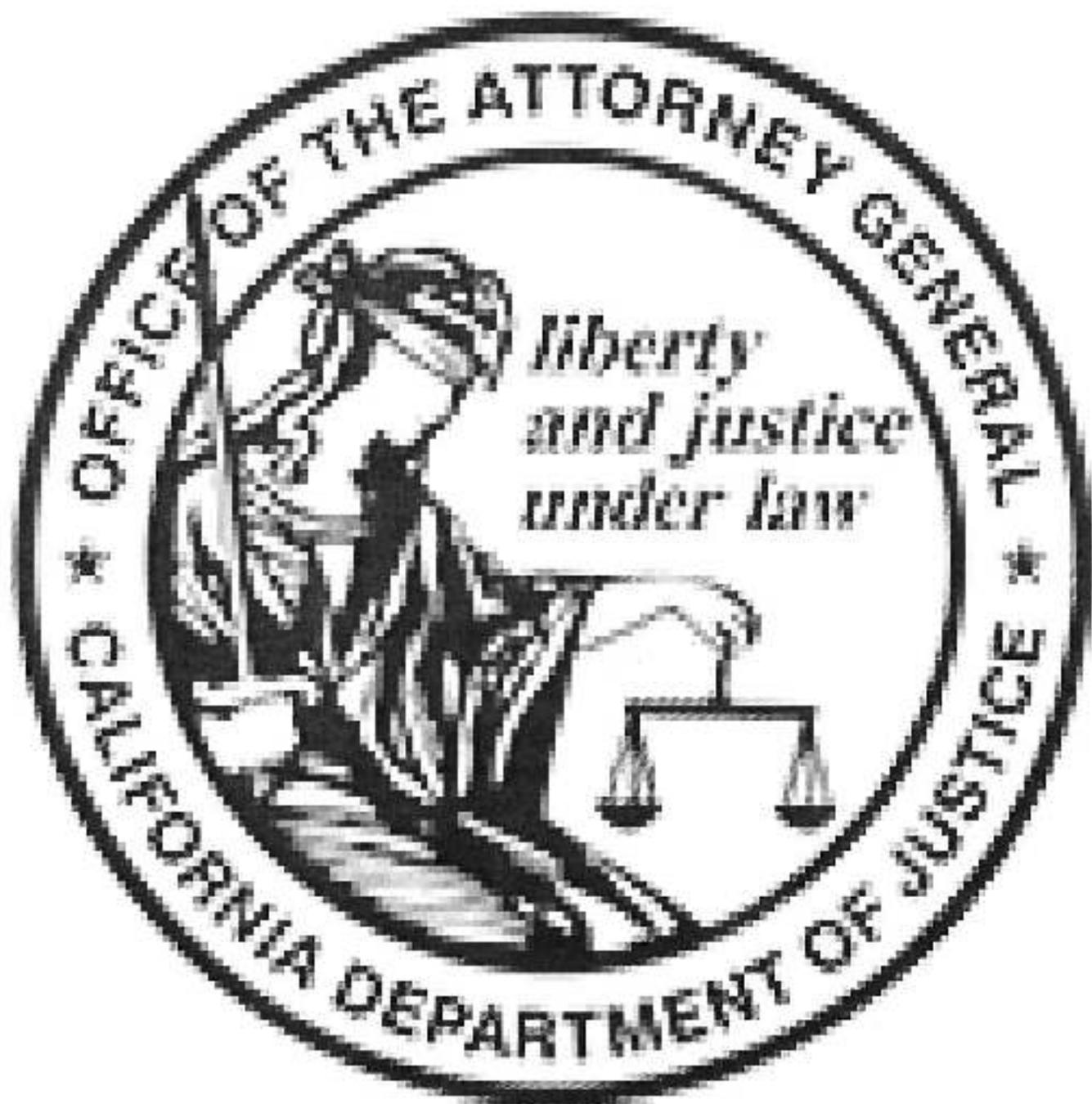


EXHIBIT E



Legislative Analyst's Office
The California Legislature's Nonpartisan Fiscal and Policy Advisor

Budget and Policy Post

January 31, 2017

The 2017-18 Budget

Department of Justice

Overview

Department of Justice Has Various Responsibilities. Under the direction of the Attorney General, the California Department of Justice (DOJ) provides legal services to state and local entities, brings lawsuits to enforce public rights, and carries out various law enforcement activities. The DOJ also collects criminal justice statistics from local authorities; manages the statewide criminal history database; and conducts background checks required for employment, licensing, and other purposes. In addition, the department provides various services to local law enforcement agencies, including providing forensic services to local law enforcement agencies in jurisdictions without their own crime laboratories.

Spending Proposed to Increase by \$33 Million in 2017-18. The Governor's 2017-18 budget proposes \$858 million to support DOJ. This is an increase of \$33 million, or 4 percent, over the estimated current-year level of expenditures. As shown in Figure 1, roughly half of DOJ's budget supports its Division of Legal Services, while the remainder supports its Division of Law Enforcement and its California Justice Information Systems Division. Of the total budget proposed for DOJ in 2017-18, about one-fourth—\$215 million—is from the General Fund. The General Fund amount is \$6 million, or nearly 3 percent, below 2016-17 spending. This is primarily due to a proposed one-time unallocated reduction, which we discuss in greater detail below.

Figure 1

Total Expenditures for the Department of Justice

(Dollar in Millions)

	2015-16 Actual	2016-17 Estimated	2017-18 Proposed	Change from 2016-17	
				Amount	Percent
Legal services	\$397	\$444	\$448	\$4	0.9%
Law enforcement	182	200	212	12	6.0%
California Justice Information Services	149	138	133	-\$15	-10.9%
Total	\$729	\$782	\$858	\$76	9.7%

One-Time Unallocated General Fund Reduction

LAO Bottom Line. We recommend that the Legislature withhold action on the Governor's proposed one-time \$5 million unallocated reduction to DOJ, pending specific information from the administration and DOJ on how the reduction would be accommodated.

Governor's Proposal

The Governor's 2017-18 budget includes a one-time unallocated \$5 million General Fund reduction to DOJ in order to achieve General Fund savings. The department would be allowed to decide how to accommodate the reduction.

Impact of Proposed Reduction Is Unclear

The proposed reduction does not appear to result from reduced workload or costs. As such, this one-time reduction could potentially impact DOJ operations. Absent a specific plan on how this reduction would be achieved, it is difficult for the Legislature to weigh the trade-offs of the proposed reduction, including how it could impact legislative priorities. For example, the reduction could have minimal impact on programs that are a legislative priority to the extent that DOJ can absorb the reduction through savings from routine staff vacancies or delaying one-time expenditures. Alternatively, DOJ could choose to reduce or eliminate activities that are a legislative priority. Without a specific plan from the department, the Legislature has no way to ensure that this would not occur.

LAO Recommendation

Withhold Action on Proposed Reduction. In view of the above, we recommend the Legislature withhold action on the Governor's proposed one-time \$5 million unallocated reduction to DOJ, pending specific information from the administration and DOJ on how the reduction would be accommodated. Specifically, we recommend the Legislature require the administration and DOJ to report at budget hearings this spring on the specific actions it plans to take to achieve \$5 million in General Fund savings in 2017-18. Based on this information, the Legislature would be able to weigh the proposed reduction against its other General Fund priorities, as well as assess whether the department's plan to address the reduction is aligned with its priorities. To the extent that the Legislature decides to reduce DOJ's budget, we recommend that the Legislature consider making targeted reductions—rather than an unallocated reduction that would give the department full discretion to implement—in order to ensure that legislative priorities are maintained.

Proposition 56

LAO Bottom Line. We recommend the Legislature require DOJ to report by April 1 on how it plans to (1) use Proposition 56 funds for the enforcement of tobacco-related laws, (2) allocate Proposition 56 funds to local law enforcement, and (3) provide sufficient oversight to ensure that the funds are used in accordance to the requirements of the measure. We also recommend that the Legislature adopt budget trailer legislation requiring DOJ distribute Proposition 56 funds to local law enforcement through a competitive grant program, consistent with best practices.

Background

Proposition 56 Funding for DOJ. Proposition 56, which was approved by the voters in November 2016, increases the state excise tax on cigarettes and other tobacco products (including e-cigarettes). The measure requires that the revenues from the increased tax be used to support various specified purposes. Of these revenues, \$36 million is to be distributed annually to DOJ: \$6 million to enforce laws that regulate the sale and distribution of tobacco products and \$30 million for the department to distribute to local law enforcement agencies for the support and hiring of peace officers for various activities, including investigations intended to reduce the illegal sale of tobacco products to minors. The measure specifies that this revenue cannot be used to supplant state or local funds currently used for these purposes. We note that the annual allocation to DOJ could potentially be adjusted if it is determined that there has been a reduction in revenues due to lower consumption of tobacco products due to the measure.

DOJ Tobacco Litigation and Enforcement Section. DOJ currently has a Tobacco Litigation and Enforcement Section that administers and enforces numerous federal and state tobacco laws. For example, this section is responsible for overseeing compliance with the tobacco Master Settlement Agreement (MSA)—an agreement reached in 1998 between four large tobacco companies and the Attorneys General of 46 states, including California. The MSA imposed various requirements upon the tobacco companies, such as making annual payments to offset a portion of state costs resulting from tobacco use and restricting advertising activities related to tobacco. Additionally, this section works with other government agencies and stakeholders to reduce tobacco sales to minors. The Tobacco Litigation and Enforcement Section is estimated to receive \$3.2 million—\$2.9 million General Fund and \$0.3 million special fund—to support approximately ten authorized positions in 2016-17.

Governor's Proposal

The Governor's budget reflects a total of \$45 million of Proposition 56 revenues being allocated to DOJ in 2017-18 for the enforcement activities required by the measure described above. This amount includes (1) \$9 million in revenues from 2016-17 that were deposited after the enactment of Proposition 56 in November 2016 and (2) \$36 million in revenues for 2017-18. Of the \$45 million total, the budget provides \$7.5 million to enforce tobacco-related laws and \$37.5 million to allocate to local law enforcement. DOJ is currently in the process of determining how it will allocate these funds.

Unknown How Proposition 56 Funds Will Be Spent

Absent specific details on how DOJ plans to allocate the \$45 million in Proposition 56 funds, it is difficult for the Legislature to ensure that the funds will be used in accordance with the measure's provisions and legislative priorities. It is unclear whether the department will use the \$7.5 million for the enforcement of tobacco-related laws to expand upon the activities of the Tobacco Litigation and Enforcement Section. It is also unclear whether DOJ will require additional position authority to hire new employees to assist with the enforcement of tobacco-related laws.

According to DOJ, it is currently in the process of developing a methodology for determining how the \$17.5 million for local law enforcement will be allocated and administered. Until the department develops such a methodology, the Legislature cannot assess whether the funds will be distributed fairly, effectively, and for activities it prioritizes. It is also unclear how the department plans to ensure the monies provided to local law enforcement are used in accordance with the requirements of Proposition 56.

LAO Recommendations

Require DOJ to Report on Use of Proposition 56 Funds This Spring. We recommend the Legislature require DOJ to report by April 1 on how it plans to (1) use the \$7.5 million for the enforcement of tobacco-related laws (including how such enforcement will coordinate with the Tobacco Litigation and Enforcement Section and whether the department will need additional position authority), (2) allocate the \$45 million to local law enforcement, and (3) provide sufficient oversight to ensure that the funds are used in accordance to the requirements of Proposition 56. Based on this information, the Legislature would be able to determine the extent to which it needs to provide statutory guidance to the department. At a minimum, we recommend that the Legislature adopt budget trailer legislation requiring DOJ distribute the monies to local law enforcement through a competitive grant program, consistent with best practices. Such best practices include developing (1) clear criteria for evaluating and comparing applications for funding and (2) specific performance or outcome reporting requirements for recipients that can be used to ensure accountability.