THOMAS E. MONTGOMERY, County Counsel
County of San Diego
By THOMAS D. BUNTON, Senior Deputy (State Bar No. 193560)
1600 Pacific Highway, Room 355
San Diego, California 92101
Telephone: (619) 531-6456
Facsimile: (619) 531-6005

Attorneys for Defendants William D. Gore, Sheriff, and County of San Diego

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DIMITRIOS KARRAS, an individual,

Plaintiff,

v.

WILLIAM D. GORE, SHERIFF, in his official capacity, COUNTY OF SAN DIEGO, a municipal corporation, UNKNOWN SAN DIEGO COUNTY SHERIFF'S DEPARTMENT FACEBOOK FAN PAGE ADMINISTRATORS I through V, in their individual and official capacities, inclusive, DOES VI THROUGH XX INCLUSIVE,

Defendants.

Case No. 3:14-cv-2564-BEN-KSC

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION

Date: November 20, 2014
Time: 1:30 p.m.
Courtroom: 5A
The Honorable Roger T. Benitez

TOPICAL INDEX

PAGE

TABLE OF AUTHORITIES

PAGE

CASES

CONSTITUTIONAL AUTHORITY

I. INTRODUCTION.

Plaintiff wrote comments on a Facebook page maintained by the San Diego County Sheriff's Department (the "Sheriff"). Because those comments were unrelated to the article posted by the Sheriff, plaintiff's comments violated the Sheriff's Facebook page policy and were deleted.

Plaintiff's complaint alleges that the comments section of the Sheriff's Facebook page is a "designated" or "limited" public forum and that the Sheriff violated plaintiff's First Amendment rights by deleting his comments.[1] In this application for a preliminary injunction, plaintiff seeks a broad injunction prohibiting the Sheriff from (1) deleting **any comments** made **by anyone** to the Sheriff's Facebook page and (2) blocking **any individuals** from making comments to the Sheriff's Facebook page. Plaintiff's request for injunctive relief should be denied.

Assuming for the sake of argument that the comments section of the Sheriff's Facebook page is a "designated" or "limited" public forum, plaintiff's request for injunctive relief is now moot because the Sheriff has closed his Facebook page. Under binding precedent from the United States Supreme Court and the Ninth Circuit, a government entity is entitled to close a "designated" or "limited" public forum "whenever it wants." Because the forum is now closed, plaintiff's request for injunctive relief requiring the Sheriff to refrain from deleting any comments and allowing all individuals to make comments on his Facebook page is now moot.

///

///

///

[1] Plaintiff also alleges that the Sheriff removed comments from the Sheriff's Facebook page that were made by other people. Plaintiff does not have standing, however, to maintain a First Amendment claim based on these comments because he suffered no harm as a result of their removal. *Preminger v. Peake*, 536 F.3d 1000, 1005 (9th Cir. 2008) ("In an as-applied First Amendment challenge, the plaintiff must identify some **personal harm** resulting from application of the challenged statute or regulation.") (emphasis added); *Morrison v. Bd. of Educ.*, 521 F.3d 602, 609 (6th Cir. 2008) ("[A]bsent proof of a concrete harm, where a First Amendment plaintiff only alleges inhibition of speech, the federal courts routinely hold that no standing exists.").

Even if plaintiff's request for injunctive relief were not moot, plaintiff would still not be entitled to the relief he seeks. First, the Sheriff was constitutionally allowed to limit the subject matter of comments on his Facebook page. Under the Sheriff's Facebook page policy, comments were required to be "on-topic," i.e., related to the subject of the article posted by the Sheriff on Facebook. Plaintiff's comments (and those made by third parties) were not relevant to the articles that the Sheriff had posted and were properly removed. Thus, plaintiff has not established any harm necessary to warrant the imposition of injunctive relief. Moreover, plaintiff's request for broad injunctive relief that applies to all Facebook comments and users should be denied because plaintiff does not have standing to assert claims on behalf of non-parties to this litigation. In addition, the Sheriff is constitutionally authorized to limit the subjects and individuals who may participate in a "designated" or "limited" public forum. Therefore, plaintiff is not entitled to a broad injunction prohibiting the Sheriff from (1) deleting **any comments** made **by anyone** to his Facebook page and (2) blocking **any individuals** from making comments to his Facebook page.

II. THE REQUEST FOR INJUNCTIVE RELIEF IS MOOT.

Assuming for the sake of argument that the comments section of the Sheriff's Facebook page is a "designated" or "limited" public forum, plaintiff's request for injunctive relief is moot because the Sheriff has closed that forum by shutting down his Facebook page. (Decl. of Jan Caldwell, at ¶ 2.) Under controlling Ninth Circuit precedent, a government entity may close a "designated" or "limited" public forum, "**whenever it wants**." *Currier v. Potter*, 379 F.3d 716, 728 (9th Cir. 2004) (citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983)) (emphasis added).[2]

In *DiLoreto v. Downey Unified School District Board of Education*, 196 F.3d 958 (9th Cir. 1999), the School District refused to post an advertisement containing the text of the Ten Commandments on Downey High School's baseball field fence. Thereafter, the

[2] In *Perry*, the United States Supreme Court held that "a state is not required to indefinitely retain the open character of the [designated public forum] . . . ." 460 U.S. 37 at 46.

School District discontinued its policy of allowing advertisements on the baseball field fence and "removed approximately forty other signs that had been posted on the baseball field fence . . . ." *Id.*, at 963 (citation omitted). The Ninth Circuit rejected the argument that the School District violated the First Amendment by closing the "designated" or "limited" public forum – the baseball field fence:

> Nor do we believe that the Constitution prohibited the school from closing the forum in response to appellant's ad. The government has an inherent right to control its property, **which includes the right to close a previously open forum.** . . . Accordingly, the fact that the District **chose to close the forum rather than post Mr. DiLoreto's advertisement and risk further disruption or litigation does not constitute viewpoint discrimination.**

Id., at 970 (citations omitted). (emphasis added).

In *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022 (9th Cir. 2005), the plaintiff challenged, on First Amendment grounds, provisions of the City's Street Banner Ordinance, which allowed some street banners containing private speech, but did not allow others. While the litigation was pending, the City amended its Street Banner Ordinance, prohibiting all private street banners in the City. The Ninth Circuit held that the amendment to the Street Banner Ordinance rendered the First Amendment challenge to the original Street Banner Ordinance moot:

> As Food Not Bombs recognizes, the February 24, 2004 amendments to the street banner ordinance render the original challenge to that ordinance – premised on the distinctions drawn by providing exceptions from some private speech but not others – no longer viable. **By precluding all private parties from putting up street banners and limiting such "bannering" to the City itself, the Council has now closed the designated public forum in which appellants sought to exercise their rights.** As the challenge to the street banner ordinance is moot, we vacate the district court's judgment insofar as it upheld the validity of that ordinance.

Id., at 1031-32 (citations omitted) (emphasis added).

In *Sons of Confederate Veterans v. City of Lexington*, 722 F.3d 224 (4th Cir. 2013), the Fourth Circuit, relying on Ninth Circuit precedent, similarly held that the City was free to close a "designated" or "limited" public forum. In that case, the City had granted a permit to the Sons of Confederate Veterans to display the Confederate flag from city-owned flag standards attached to light poles. Thereafter, a city council meeting was held

in which "the Council received public comments, most opposing the display of the Confederate flag within the City." *Id.*, at 226. Six months later, the City adopted an ordinance restricting the use of city-owned light standards to three flags – the flags of the United States, the Commonwealth of Virginia and the City of Lexington. *Id.*, at 227.

Citing the United States Supreme Court's decision in *Perry* and the Ninth Circuit's decision in *Potter*, the Fourth Circuit held that the city was entitled to close the "designated" or "limited" public forum. According to the Fourth Circuit, "[t]he Ordinance has the effect of closing a designated public forum – the perpetual availability of which was never guaranteed – to all private speakers. The City was entitled to listen to the public and to enact ordinances that are constitutional in text and operation, and that are supported by the electorate." *Id.*, at 231. The Fourth Circuit also rejected the argument that the motive of the council members for closing the "designated" or "limited" public forum had any relevance:

> The argument that a legislative motive matters – in the nature of a "clean hands" equity contention – does not assist our inquiry here. **A government is entitled to close a designated public forum to all speech. Reading a clean-hands requirement into the closure of such a forum is not supported by precedent** . . . . [I]t appears that the City experimented with private speakers displaying flags on the City's standards, and that effort turned out to be troublesome. It was entitled, under the controlling principles, to alter that policy.

Id., at 232 (emphasis added). *See also Making the Road by Walking, Inc. v. Turner*, 378 F.3d 133, 143 (2d Cir. 2004) (a "government may decide to close a designated public forum"); *United States v. Bjerke*, 796 F.2d 643, 647 (3d Cir. 1986) ("Officials may choose to close . . . a designated public forum at any time.").

Under California law, a government entity is also entitled to close a "dedicated" or "limited" public forum at any time. *See Danskin v. San Diego Unified School Dist.*, 28 Cal.2d 536, 547 (1946) ("It is true that the state need not open the doors of a school building as a forum **and may at any time choose to close them**.") (emphasis added). Moreover, cases interpreting the United States Constitution are persuasive authority in determining the meaning of the free speech clause of the California Constitution.

Beeman v. Anthem Prescription Management, LLC, 58 Cal.4th 329, 341 (2013) ("Our case law interpreting California's free speech clause has given respectful consideration to First Amendment case law for its persuasive value, while making clear that federal decisions interpreting the First Amendment are not controlling.") (internal quotation marks and citations omitted).

Because the Sheriff has closed his Facebook page, plaintiff's request for injunctive relief is moot and plaintiff's motion should be denied. Since the "designated" or "limited" public forum has been closed, individuals, including plaintiff, are not entitled to post comments on the Sheriff's Facebook page.

III. PLAINTIFF IS NOT ENTITLED TO THE INJUNCTIVE RELIEF HE SEEKS.

Plaintiff seeks a broad injunction ordering the Sheriff and the County to "desist and refrain from deleting or editing[3] **any comments** posted on the Facebook page maintained by the San Diego County Sheriff's Department . . . ." (Pltf's Memo of P's & A's, at 1.) (emphasis added). Even if this case were not moot, plaintiff would not be entitled to this broad injunction. There is no doubt that the Sheriff can constitutionally regulate the comments that are made on his Facebook page. As the Ninth Circuit explained in *Potter*, "[d]esignated or limited public fora are sites created by the government's express dedication of its property to expressive conduct. . . . **The government may limit the forum to certain** groups or **subjects** – although it may not discriminate on the basis of viewpoint . . . ." 379 F.3d at 728 (emphasis added). *Accord Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001) ("When the State establishes a limited public forum, **the State is not required to and does not allow persons to engage in every type of speech**. The State may be justified in reserving its forum for certain groups **or for the discussion of certain topics**. The State's power to restrict speech, however, is not without limits. The restriction must not discriminate against speech on the basis of

[3] Plaintiff has submitted no evidence that the Sheriff ever edited, as opposed to removed, any comment made on the Sheriff's Facebook page.

viewpoint, and the restriction must be reasonable in light of the purpose served by the forum.") (internal quotations and citations omitted) (emphasis added); *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) ("The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in **reserving it** for certain groups or **for the discussion of certain topics.**") (emphasis added).[4]

Here, the Sheriff's policy limited Facebook comments by subject/topic, clearly stating that comments must be "on-topic" [i.e., related to the subject of the article posted by the Sheriff on Facebook]. (Pltf's Memo of P's & A's, at 3.) Indeed, the Sheriff's policy explained that "[w]e believe it is the height of incivility to use those opportunities to vent about **unrelated topics** or offer unrelated insults. . . . **Comments on topics outside these postings may be directed to the Sheriff's Department** via http://www.sdsheriff.net/." (Pltf's Memo. of P's & A's, at 3.) (emphasis added).

A. The Comments That Were Removed Were Not "On-Topic."

The comments that plaintiff alleges were unconstitutionally removed were not related to the topics of the Facebook posts and were properly removed under the Sheriff's Facebook policy.

For instance, the Sheriff posted a video from a television news report on his Facebook page with the following caption: "#Brake4Buses—Please spread the word, North Carolina drivers break school bus traffic laws over 3,000 times a day, WNCN Jonathan Rodriguez has an incredibly powerful special report tonight after the Emmys and we've empowered you lots of great information here." (Ex. 4 to the Declaration of Dimitri Karras.)

///

[4] Comments containing obscenity or epithets would not be protected by the First Amendment and could also be removed by the Sheriff. *United States v. Schales*, 546 F.3d 965, 970 (9th Cir. 2008) ("Obscenity has no protection under the First Amendment.") (citations omitted); *Cantwell v. Conn.*, 310 U.S. 296, 309-10 (1940) ("Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.").

Plaintiff, writing under the assumed name Jim Block, wrote the following comment about the school bus safety post: "Do you plead the 5th about your involvement in the MURDER of an unarmed woman who was holding her baby? REMEMBER RUBY RIDGE." [5] (Exs. 1 & 4 of the Karras Decl.)

Plaintiff appears to assert that is his comment was "on topic" when he states in his declaration that it "addresses child safety . . . ." (Karras Decl., at ¶ 14.) The posted video, however, was not about child safety in general or the intentional killing of a woman who was holding a baby. Rather, it was about the need to stop for school buses. Plaintiff's comment had nothing to do with the posted topic and was properly removed under the Sheriff's Facebook comments policy.

Plaintiff also asserts that Lindy Diaz made the following comment about the school bus safety post: "Are you the same person who is responsible for the murder of Vicky Weaver? If so how is it that you are not in jail? If the world was just you would be tried for your crimes." (Ex. 4 to the Karras Decl.)[6] Again, Ms. Diaz's comment had nothing to do with school bus safety and was properly removed under the Sheriff's Facebook comments policy.

Plaintiff also refers to a comment made by Brendon Benghazi Von that was removed from a post entitled "Suicide Prevention Week." The post stated that "[e]very 40 seconds, someone in the world takes their own life, that's about 800,000 suicides each year. The finding is from a World Health Organization (WHO) report which also shows suicide kills more than conflicts . . . ." (Ex. 6 to the Karras Decl.) Mr. Von wrote the following comment on the post: "What about Bill Gore? Isn't he responsible for the death of 2 people at ruby ridge?" (Ex. 6 to the Karras Decl.) Once again, this comment

///

[5] Plaintiff asserts that he made an earlier comment that was removed from Sheriff's Facebook page, but does not identify the content of the comment or provide supporting documents showing that it was removed. (Karras Decl., at ¶ 7.)

[6] As discussed in footnote 1, plaintiff does not have standing to assert that the Sheriff improperly removed comments made by others.

has nothing to do with suicide prevention and was properly removed under the Sheriff's Facebook comments policy.

Finally, plaintiff refers to a comment from TJ Smith regarding a post entitled "Coffee with the Community – Del Mar Tuesday, September 23 at 8:00 am Powerhouse Community Center in Del Mar." (Exs. 7 & 8 to the Karras Decl.) The comment stated, "Can I bring my mom, she is drop dead gorgeous." (Ex. 7 to the Karras Decl.) Along with the comment was a picture of Vicki Weaver and her daughter. (Ex. 7 to the Karras Decl.; Karras Decl., at ¶ 23.) Vicki Weaver was killed at Ruby Ridge.

Obviously, TJ Smith's mother was not Vicki Weaver and Vicki Weaver would not be attending the Coffee with the Community event. Thus, this comment was not related to the topic posted and was properly removed under the Sheriff's Facebook comments policy.

The documents submitted by plaintiff demonstrate that the Sheriff properly removed all of the comments at issue and therefore plaintiff is not entitled to injunctive relief.

Plaintiff contends that the Sheriff engaged in "viewpoint" discrimination because he did not remove "favorable comments" posted by other Facebook users. Those comments, however, related to the article that the Sheriff had posted on Facebook and therefore did not violate the Sheriff's Facebook comments policy. (Ex. 13 to the Karras Decl.) A September 5, 2014 a post entitled "Operation Tip the Scale" stated that "18 people are under arrest following the 16th Operation Tip the Scale in the North County. More than 50 deputies, officers, and drug treatment professionals took part in the operation on Thursday, September 4th from 3:00 p.m. to 11:00 p.m." (Ex. 1 to the Declaration of Jan Caldwell.) Several people made comments on the Sheriff's Facebook page congratulating the Sheriff's Department on the successful operation. (Exs. 13 & 14 to the Karras Decl.) Those comments were not removed because they related to the posted topic. The comments plaintiff cites, on the other hand, were off topic and were

///

properly removed. Plaintiff has submitted no evidence that the Sheriff applied its "on topic" policy in a manner that discriminated on the basis of viewpoint.

The request for injunctive relief should be denied because plaintiff suffered no constitutional injury as a result of the removal of the Facebook comments.

B. Plaintiff Does Not Have Standing To Obtain Injunctive Relief On Behalf Of Non-Parties.

As discussed in footnote 1 above, plaintiff does not have standing to seek injunctive relief on behalf of non-parties whose comments were removed from Facebook because he suffered no harm as a result of the removal of those comments. *Preminger*, 536 F.3d at 1005 ("In an as-applied First Amendment challenge, the plaintiff must identify some **personal harm** resulting from application of the challenged statute or regulation.") (emphasis added); *See also Hrivnak v. NCO Portfolio Mgmt.*, 994 F.Supp.2d 889, 902 (N.D. Ohio 2014) ("Plaintiff does not have standing to seek injunctive relief on behalf of absent non-parties to this action, under the guise of a putative class.") (citation omitted); *McMahon v. Delta Air Lines, Inc.*, 830 F.Supp.2d 674, 686-87 (D. Minn. 2011) (plaintiff did not have standing to obtain injunctive relief on behalf of non-parties).

Because plaintiff cannot seek an injunction that applies to comments made by Facebook users other than himself, his request for a broad injunction ordering the Sheriff and the County to "desist and refrain from deleting or editing **any comments** posted on the Facebook page maintained by the San Diego County Sheriff's Department . . ." should be denied. (Pltf's Memo of P's & A's, at 1) (emphasis added).

C. The Sheriff Is Not Required To Accept All Facebook Comments.

Plaintiff also seeks an injunction ordering the Sheriff and the County to "desist and refrain from preventing **any persons** from posting to the Facebook page for the San Diego County Sheriff's Department . . . ." (Pltf's Memo of P's & A's, at 1) (emphasis added). This request for a broad injunction should also be denied.

///

First, as discussed above, plaintiff does not have standing to seek injunctive relief on behalf of non-parties (others who want to post comments on the Sheriff's Facebook page). Second, the Sheriff is not constitutionally required to accept all comments on his Facebook page. Indeed, the Sheriff properly removed the comments that plaintiff alleges should not have been removed. Thus, plaintiff's request for injunctive relief should be denied.

D. The Sheriff Does Not Have To Accept All Persons Who Wish To Leave Comments on His Facebook Page.

Next, plaintiff seeks an injunction "that those persons that have been banned from publishing comments [on the Sheriff's Facebook page] be allowed to publish their comments on the comments section." (Pltf's Memo. of P's & A's, at 1.) Once again, this request for a broad injunction should be denied.

First, plaintiff does not have standing to seek injunctive relief on behalf of non-parties. Second, as discussed above, the Sheriff does not have to accept all comments on his Facebook page. Third, the request for injunctive relief is too broad because a local government has a right to exclude individuals from a "designated" or "limited" public forum if it can satisfy strict scrutiny. *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666, 677 (1998) ("If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny.") (citations omitted). Whether the Sheriff can meet the strict scrutiny standard must be determined on a case by case basis, preventing the issuance of the requested injunction.

Moreover, plaintiff was not effectively "banned" or "blocked" from making comments on the Sheriff's Facebook page. Plaintiff alleges that following his unidentified September 2, 2014 comment, "my personal Facebook account was banned from further commenting on the Sheriff's Department Facebook fan page." (Karras Decl., at ¶ 8.) Plaintiff admits, however, that he could still post comments on the Sheriff's Facebook page. He states that "[o]n or about September 3, 2014, as 'Jim

Block,' I posted a comment on the Sheriff's Department Facebook fan page . . . ." (Karras Decl., at ¶ 13.) Plaintiff asserts that his comment was also removed, but does not indicate that he was banned or "blocked" from making comments as "Jim Block." (Karras Decl., at ¶ 15.) Moreover, he does not allege that he is unable to create additional aliases in order to post comments on the Sheriff's Facebook page. Since plaintiff was not effectively "banned" or "blocked" from making comments on the Sheriff's Facebook page, he was not harmed and therefore does not have standing to obtain the broad injunctive relief he seeks.

Accordingly, even if the request for injunctive relief were not moot, the request for broad injunctive relief should be denied.

IV. CONCLUSION.

For these reasons, plaintiff's application for a preliminary injunction should be denied.

DATED: **Nov. 14, 2014** THOMAS E. MONTGOMERY, County Counsel

By **s/ Thomas D. Bunton**
THOMAS D. BUNTON, Senior Deputy
Attorneys for Defendants William D. Gore, Sheriff, and County of San Diego

DECLARATION OF SERVICE

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

On November 14, 2014, I served the following documents:

1) **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION; and**
2) **DECLARATION OF JAN CALDWELL IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION** in the following manner:

☐ By personally delivering copies to the person served.

☐ By placing a copy in a separate envelope, with postage fully prepaid, for each addressee named below and depositing each in the FedEx overnight mail service at San Diego, California.

☐ By faxing a copy to the person served. The document was transmitted by facsimile transmission and the transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

☒ By electronic filing, I served each of the above referenced documents by E-filing, in accordance with the rules governing the electronic filing of documents in the United States District Court for the Southern District of California, as to the following parties:

Scott A. McMillan
The McMillan Law Firm, APC
4670 Nebo Drive, Suite 200
La Mesa, CA 91941-5230
619-464-1500 x14
fax 206-600-5095
Email: *scott@mcmillan.us*

Alan Alexander Beck
Attorney at Law
4780 Governor Drive
San Diego, CA 92122
619-971-0414
Email: *alan.alexander.beck@gmail.com*

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 14, 2014, at San Diego, California.

By:
S/ Thomas D. Bunton
Attorney for Defendant County of San Diego

THOMAS E. MONTGOMERY, County Counsel
County of San Diego
By THOMAS D. BUNTON, Senior Deputy (State Bar No. 193560)
1600 Pacific Highway, Room 355
San Diego, California 92101
Telephone: (619) 531-6456
Facsimile: (619) 531-6005

Attorneys for Defendants William D. Gore, Sheriff, and County of San Diego,

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DIMITRIOS KARRAS, an individual, Plaintiff, v. WILLIAM D. GORE, SHERIFF, in his official capacity, COUNTY OF SAN DIEGO, a municipal corporation, UNKNOWN SAN DIEGO COUNTY SHERIFF'S DEPARTMENT FACEBOOK FAN PAGE ADMINISTRATORS I through V, in their individual and official capacities, inclusive, DOES VI THROUGH XX INCLUSIVE, Defendants.	Case No. 3:14-cv-2564-BEN-KSC DECLARATION OF JAN CALDWELL IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION Date: November 20, 2014 Time: 1:30 p.m. Courtroom: 5A The Honorable Roger T. Benitez

I, JAN CALDWELL, declare as follows:

1. I am employed as the Public Affairs Officer of the San Diego County Sheriff's Department (the "Sheriff's Department" or "Department"). One of my duties as the Public Affairs Officer was to oversee the Department's Facebook page. I make this declaration of my own personal knowledge. If called upon to testify to the matters stated in this declaration, I could and would competently do so.

2. On October 31, 2014, the Sheriff's Department permanently closed its

Facebook page to avoid the time, expense and hassle necessary to enforce the Department's policies regarding comments to its Facebook page.

3. Attached hereto as Exhibit 1 is a true a correct copy of a September 5, 2014 post entitled "Operation Tip the Scale" from the Department's Facebook page. The bottom portion of this post is shown in Exhibits 13 and 14 to the Declaration of Dimitrios Karras, which was filed in this case.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct and that this declaration was executed in San Diego, California, this 14th day of November 2014.

JAN CALDWELL

EXHIBIT 1

San Diego County Sheriff's Department
Posted by Melissa Lopez Aquino [?] · September 5

Operation Tip The Scale (8 photos)
18 people are under arrest following the 16th Operation Tip the Scale in the North County. More than 50 deputies, officers, and drug treatment professionals took part in the operation on Thursday, September 4th from 3:00 p.m. to 11:00 p.m.... See More