



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Dec-27-2016 1:58 pm

Case Number: CGC-16-556164

Filing Date: Dec-27-2016 1:54

Filed by: KALENE APOLONIO

Image: 05684124

COMPLAINT

CYNTHIA CERLETTI VS. VICKI HENNESSY

001C05684124

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

VICKI HENNESSY in her Official Capacity as Sheriff of the City and County of San Francisco

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CYNTHIA CERLETTI

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte puede desechar el caso.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte puede desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **SAN FRANCISCO SUPERIOR**
400 McCalister Street
San Francisco CA 94102

CASE NUMBER:
(Número de Caso) **CC-16-556164**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Robert Patrick Sticht, P.O. Box 49457 Los Angeles CA 90049 (310) 889-1950

DATE: **DEC 27 2016** CLERK OF THE COURT Clerk, by *Karen Ardonio* Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

1 jail and receiving all prisoners committed to jail by competent authorities. S.F. Cal. Charter, §
2 6.105. Defendant is being sued in her official capacity only.

3 **STATEMENT OF FACTS**

4 **I.**

5 6. "The Government of the United States has broad, undoubted power over the
6 subject of immigration and the status of aliens." *Arizona v. United States*, 132 S. Ct. 2492, 2498
7 (2012). "This authority rests, in part, on the National Government's constitutional power to
8 'establish an uniform Rule of Naturalization,'" and its inherent power as a sovereign to control
9 and conduct relations with foreign nations. *Id.* (internal citations omitted). "Federal governance
10 of immigration and alien status is extensive and complex." *Id.* at 2499.

11 7. In August 1996, Congress exercised its broad, undoubted power over immigration
12 by enacting the following statute:

13 Notwithstanding any other provision of Federal, State, or local law, no State or
14 local government entity may be prohibited, or in any way restricted, from sending
15 to or receiving from the Immigration and Naturalization Service information
16 regarding the immigration status, lawful or unlawful, of an alien in the United
17 States.

18 8 U.S.C. § 1644.

19 The term "alien" is defined in Title 8, Section 1101(a)(3) of the U.S. Code and "means
20 any person not a citizen or national of the United States." "Immigration and Naturalization
21 Service" is now known as "Immigration and Customs Enforcement" or "ICE."

22 8. In September 1996, Congress again exercised its broad, undoubted power over
23 immigration by enacting the following statute:

24 (a) In general.

25 Notwithstanding any other provision of Federal, State, or local law, a Federal,
26 State, or local government entity or official may not prohibit, or in any way
27 restrict, any government entity or official from sending to, or receiving from, the
28 Immigration and Naturalization Service information regarding the citizenship or
immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities.

1 Notwithstanding any other provision of Federal, State, or local law, no person or
2 agency may prohibit, or in any way restrict, a Federal, State, or local government
3 entity from doing any of the following with respect to information regarding the
immigration status, lawful or unlawful, of any individual:

- 4 (1) Sending such information to, or requesting or receiving such
information from, the Immigration and Naturalization Service.
5 (2) Maintaining such information.
6 (3) Exchanging such information with any other Federal, State, or
Local government entity.

7 (c) Obligation to respond to inquiries.

8 The Immigration and Naturalization Service shall respond to an inquiry by a
9 Federal, State, or local government agency, seeking to verify or ascertain the
10 citizenship or immigration status of any individual within the jurisdiction of the
agency for any purpose authorized by law, by providing the requested verification
11 or status information.

12 8 U.S.C. § 1373.

13 9. Section 1373 prohibits State and local government entities and officials from
14 taking action to “prohibit,” or “in any way restrict,” the maintenance or intergovernmental
15 exchange of immigration status information, including through written or unwritten policies or
16 practices.

17 10. The two statutes individually and collectively demonstrate that Congress has long
18 sought to encourage full and open communication between state and local agencies and federal
19 immigration law enforcement officials and to remove obstacles to such communication to aid in
20 the enforcement of federal immigration laws.

21 11. The legislative history of Section 1373 confirms that the statute was intended
22 to give State and local officials the authority to communicate with the INS
23 regarding the presence, whereabouts, and activities of illegal aliens. This section
24 is designed to prevent any State or local law, ordinance, executive order, policy,
25 constitutional provision, or decision of any Federal or State court that prohibits or
in any way restricts any communication between State and local officials and the
INS.

26 U.S. House of Representatives Report, *Immigration in the National Interest Act of 1995*, (H.R.
27 2202), 1996, H. Rept. 104-469, p. 277, [https://www.congress.gov/104/crpt/hrpt469/CRPT-](https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf)
28 [104hrpt469-pt1.pdf](https://www.congress.gov/104/crpt/hrpt469/CRPT-104hrpt469-pt1.pdf) (accessed August 1, 2016).

1 12. The Senate Report accompanying Section 1373 also confirms this clear
2 congressional objective:

3 Effective immigration law enforcement requires a cooperative effort between all
4 levels of government. The acquisition, maintenance, and exchange of
5 immigration-related information by State and local agencies is consistent with, and
6 potentially of considerable assistance to, the Federal regulation of immigration and
7 the achieving of the purposes and objectives of the Immigration and Nationality
8 Act.

9 Senate Report, *Immigration Control and Financial Responsibility Act of 1996*, (S. 1664), 1996, S.
10 Rept. 104-249, p. 19, available at [https://www.congress.gov/104/crpt/srpt249/CRPT-](https://www.congress.gov/104/crpt/srpt249/CRPT-104srpt249.pdf)
11 [104srpt249.pdf](https://www.congress.gov/104/crpt/srpt249/CRPT-104srpt249.pdf) (accessed August 16, 2016).

12 13. The Conference Report accompanying Section 1644 is identical to the House
13 Report accompanying Section 1373. *See* Conference Report, Personal Responsibility and Work
14 Opportunity Reconciliation Act of 1996, (H.R. 3734), p. 383,
15 <https://www.congress.gov/104/crpt/hrpt725/CRPT-104hrpt725.pdf> .

16 14. Other statutes reflect this same congressional objective. Title 8, Section 1357 of
17 the U.S. Code, for example, authorizes the U.S. Attorney General to enter into written agreements
18 with state or local governments to assist in the enforcement of federal immigration laws, but also
19 makes clear that no such agreement is required for the cooperation desired by Congress:

20 Nothing in this subsection shall be construed to require an agreement under this
21 subsection in order for any officer or employee of a State or political subdivision
22 of a State –

23 (A) to communicate with the Attorney General regarding the immigration
24 status of any individual, including reporting knowledge that a particular alien is
25 not lawfully present in the United States; or

26 (B) otherwise to cooperate with the Attorney General in the identification,
27 apprehension, detention, or removal of aliens not lawfully present in the United
28 States.

29 8 U.S.C. § 1357(g)(10).

30 15. Another provision in this same statute demonstrates Congress' particular interest
31 in promoting information sharing between state and local law enforcement agencies and federal
32 immigration law enforcement officials about aliens arrested for controlled substance violations:

1 Detainer of aliens for violation of controlled substances laws. In the case of an
2 alien who is arrested by a Federal, State, or local law enforcement official for a
3 violation of any law relating to controlled substances, if the official (or another
official) –

4 (1) has reason to believe that the alien may not have been lawfully admitted to
5 the United States or otherwise is not lawfully present in the United States,

6 (2) expeditiously informs an appropriate officer or employee of the Service
7 authorized and designated by the Attorney General of the arrest and of facts
concerning the status of the alien, and

8 (3) requests the Service to determine promptly whether or not to issue a
9 detainer to detain the alien,

10 the officer or employee of the Service shall promptly determine whether or not to
11 issue such a detainer. If such a detainer is issued and the alien is not otherwise
12 detained by Federal, State, or local officials, the Attorney General shall effectively
and expeditiously take custody of the alien.

13 8 U.S.C. § 1357(d).

14 16. In its 2012 ruling in *Arizona*, the U.S. Supreme Court confirmed that
15 “[c]onsultation between federal and state officials is an important feature of the immigration
16 system.” *Arizona v. United States*, 132 S. Ct. at 2508. The Court also noted that Congress “has
17 encouraged the sharing of information about possible immigration violations.” *Id.* (quoting 8
18 U.S.C. § 1357(g)(10)(A)). According to the Court, examples of such cooperation include
19 “allow[ing] federal immigration officials to gain access to detainees held in state facilities” and
20 state officials’ “responding to requests for information about when an alien will be released from
their custody.” *Id.* at 2507 (internal citations omitted).

21 II.

22 17. The free exchange of immigration-related information by state and local agencies
23 remains a federal priority, as confirmed by the current program and policies of the federal
24 agencies responsible for immigration law enforcement – the U.S. Department of Homeland
25 Security (“DHS”) and its immigration components, U.S. Immigration and Customs Enforcement
26 (“ICE”), U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services.

27 18. In 2014, DHS changed its immigration enforcement program and policies to
28 promote cooperation and information sharing by state and local law enforcement officials

1 particularly regarding criminal aliens in their custody. The change was prompted by a number of
2 enforcement obstacles including state and local law enforcement officials refusing to cooperate
3 and communicate with ICE and issuing policies or signing laws prohibiting such cooperation.
4 Specifically, in a November 20, 2014 memorandum DHS Secretary Jeh Johnson directed ICE to
5 discontinue its enforcement program known as "Secure Communities" (also known as "S-
6 Comm") and to replace it with a new program referred to as the "Priority Enforcement Program"
7 or "PEP." Secretary Johnson further directed ICE to take enforcement actions through the new
8 program only against criminal aliens in the custody of state and local law enforcement who have
9 been convicted of particular, priority crimes, or when an alien poses a danger to national security.
10 In a separate memorandum issued the same day entitled "Policies for the Apprehension,
11 Detention and Removal of Undocumented Immigrants," Secretary Johnson set forth DHS's civil
12 immigration enforcement priorities.

13 19. PEP targets criminal aliens in the custody of state and local law enforcement who
14 have been convicted of the following priority offenses:

15 Priority 1(c), aliens convicted of an offense for which an element was active
16 participation in a criminal street gang, as defined in 18 U.S.C. § 521(a);

17 Priority 1(d), aliens convicted of an offense classified as a felony in the convicting
18 jurisdiction, other than a state or local offense for which an essential element was
19 the alien's immigration status;

20 Priority 1(e), aliens convicted of an "aggravated felony," as defined in section
21 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43);

22 Priority 2(a), aliens convicted of three or more misdemeanor offenses, other than
23 minor traffic offenses or state or local offenses for which an essential element was
24 the alien's immigration status;

25 Priority 2(b), aliens convicted of a "significant misdemeanor," defined as an
26 offense of domestic violence; sexual abuse or exploitation; burglary; unlawful
27 possession or use of a firearm; drug distribution or trafficking; or driving under the
28 influence; or another offense for which the individual was sentenced to time in
custody of 90 days or more (and the sentence was not a suspended sentence).

20. Under PEP, two forms may be sent to state and local law enforcement agencies.
Form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien)
requests a state or local law enforcement agency notify ICE of a pending release during the time

1 that a priority alien is in custody under state or local authority. The information enables ICE to
2 take custody of the alien, who poses a danger to public safety, before he or she is released into the
3 community. Form I-247D (Immigration Detainer – Request for Voluntary Action) requests a
4 state or local law enforcement agency voluntarily maintain custody of an alien for a period of up
5 to 48 hours beyond the time the alien otherwise would have been released. The continued
6 detention allows ICE additional time to assume custody of the individual. ICE only issues a
7 detainer when an alien meets the criteria on the list of enforcement priorities and is subject to a
8 final order of removal or there is other probable cause that the alien is removable.

9 **III.**

10 21. The City and County of San Francisco has declared it is a City and County of
11 Refuge. *See* S.F. Admin. Code ch. 12H.1. As such, the CCSF has enacted a number of laws that
12 serve as barriers or obstacles to federal civil immigration enforcement. Indeed, the CCSF
13 imposes substantial restrictions on sharing information with, and providing assistance to, federal
14 immigration law enforcement officials. Administrative Code Section 12H.2, entitled
15 “Immigration Status,” provides:

16 No department, agency, commission, officer, or employee of the City and County
17 of San Francisco shall use any City funds or resources to assist in the enforcement
18 of Federal immigration law or to gather or disseminate information regarding
19 release status of individuals or any other such personal information as defined in
20 Chapter 12I in the City and County of San Francisco unless such assistance is
21 required by Federal or State statute, regulation, or court decision.

22 S.F. Cal. Admin. Code § 12H.2 (2016).

23 22. This prohibition is broadly written and expressly includes, but is not limited to:

24 (a) Assisting or cooperating, in one’s official capacity, with any investigation
25 conducted by the Federal agency charged with enforcement of the Federal
26 immigration law and relating to alleged violations of the civil provisions of the
27 Federal immigration law, except as permitted under Administrative Code Section
28 12I.3.

(c) Requesting information about, or disseminating information, in one’s
official capacity, regarding the release status of any individual or any other such
personal information as defined in Chapter 12I, except as permitted under
Administrative Code Section 12I.3.

1 S.F. Cal. Admin. Code § 12H.2(a) and (c).

2 23. "Personal information" is defined broadly and, in addition to an individual's
3 release status, includes "any confidential, identifying information about an individual, including,
4 but not limited to, home or work contact information, and family or emergency contact
5 information." S.F. Cal. Admin. Code § 12I.2. On information and belief, citizenship and
6 immigration status constitutes "identifying information about an individual."

7 24. A separate section of the Administration Code, entitled "Restrictions on Law
8 Enforcement Officials," prohibits officials from responding to a "federal immigration officer's
9 notification request." S.F. Cal. Admin. Code § 12I.3(c). A "notification request" is defined as

10 a non-mandatory request issued by an authorized federal immigration officer to a
11 local law enforcement official asking for notification to the authorized
12 immigration officer of an individual's release from local custody prior to the
13 release of an individual from local custody. Notification requests may also include
informal requests for release information by the Federal agency charged with
enforcement of the Federal immigration law.

14 *Id.* at § 12I.2.

15 25. The only exception to this prohibition is a notification request regarding an alien
16 who has been convicted of a "Violent Felony" in the past seven years, a "Serious Felony" in the
17 past five years, or three separate, particular, serious or violent felonies in the past five years,
18 provided further that a magistrate has also determined there is currently probable cause to believe
19 the alien is guilty of a particular, serious or violent felony and has ordered the alien to answer for
20 the offense. *Id.* at § 12I.3(d). Even if the alien meets both of these criteria, before responding to a
21 notification request, law enforcement officials also

22 shall consider evidence of the individual's rehabilitation and evaluate whether the
23 individual poses a public safety risk. Evidence of rehabilitation or other mitigating
24 factors to consider includes, but is not limited to, the individual's ties to the
25 community, whether the individual has been a victim of any crime, the individual's
contribution to the community, and the individual's participation in social service
or rehabilitation programs.

26 *Id.*

27 26. The section further limits the authority of law enforcement officials to
28 communicate with ICE:

1 Law enforcement officials shall not . . . provide any individual's personal
2 information to a federal immigration officer, on the basis of an administrative
3 warrant, prior deportation order, or other civil immigration document based solely
4 on alleged violations of the civil provisions of immigration laws.

5 S.F. Cal. Admin. Code § 12I.3(e).

6 **IV.**

7 **A.**

8 27. The SFSD receives millions of dollars in taxpayer support annually in order to
9 fund its operations. In Fiscal Year 2014-15, the SFSD was appropriated approximately \$190
10 million from the CCSF's general fund to finance its operations. In Fiscal Year 2015-16, the
11 SFSD was appropriated nearly \$200 million from the CCSF's general fund to finance its
12 operations. The CCSF's adopted budget for Fiscal Year 2016-17 appropriates nearly \$208
13 million to the SFSD from the general fund to finance the SFSD's operations. The primary source
14 of funds for the CCSF's general fund are property taxes and other local taxes such as those paid
15 by Plaintiff.

16 **B.**

17 28. On March 13, 2015, then-Sheriff Ross Mirkarimi issued a directive to "All
18 Personnel" in the SFSD by way of an inter-office correspondence, Reference No. 2015-036,
19 entitled "Immigration & Customs Enforcement Procedures (ICE) Contact and Communications"
20 ("2015 Directive").

21 29. According to the 2015 Directive, SFSD "policy is that there shall be limited
22 contact and communication with ICE representatives absent a court issued warrant, a signed court
23 order, or other legal requirement authorizing ICE access." The 2015 Directive expressly states
24 that SFSD staff shall not provide the following information or access to ICE representatives:

- 25 • citizenship/immigration status of any inmate;
- 26 • access to inmates in jail;
- 27 • access to SFSD computers and/or databases;
- 28 • SFSD logs;
- booking and arrest documents;
- release dates or times;
- home or work contact information;
- other non-public jail records or information.

1 The 2015 Directive was, and is, part of a broader SFSD policy and practice of restricting
2 nearly all, if not all, information sharing with federal immigration law enforcement officials, in
3 accordance with the Administrative Code provisions described above.

4 30. On information and belief, taxpayer funds and taxpayer-financed resources were
5 expended to prepare and issue the 2015 Directive, communicate the directive to all SFSD
6 personnel, train SFSD personnel on the directive's requirements, and implement, enforce, and
7 otherwise carry out the directive.

8 31. The issuance of the 2015 Directive generated considerable opposition within the
9 government of the CCSF, the SFSD, and the taxpayers and residents of the CCSF, particularly in
10 the aftermath of the July 1, 2015 shooting death of Kathryn Steinle by a repeatedly-deported,
11 unlawfully present alien who had seven prior felony convictions and had recently been released
12 from SFSD's custody despite an outstanding ICE request that he be detained. On information and
13 belief, the SFSD expended additional taxpayer funds and taxpayer financed resources responding
14 to this opposition and defending the directive.

15 C.

16 32. Sheriff Mirkarimi's term in office expired on January 8, 2016, and Defendant
17 became Sheriff on or about that date. On April 11, 2016, Defendant issued a directive to "All
18 Personnel" in the SFSD by way of an inter-office correspondence, Reference No. 2016-051,
19 entitled "Immigration and Custom Enforcement Procedure (ICE) Contact and Communication"
20 ("2016 Directive").

21 33. The 2016 Directive states that it revokes and replaces the 2015 Directive, but does
22 not state that SFSD personnel are free to exchange information with ICE about a person's
23 citizenship or immigration status. Although the 2016 Directive lists several items of information
24 that SFSD staff are "authorized" or "not authorized" to provide ICE, citizenship or immigration
25 status is not listed in either category. Information SFSD staff are NOT authorized to provide ICE
26 includes the following:

- 27
- Access to inmates in jail
 - Access to SFSD computers and/or data bases
 - SFSD logs
- 28

- Booking and arrest documents
- Release dates and times
- Home or work contact information
- Faxed Form SFSD ICE Notification: rev. 3-2014

1
2
3
4 34. The 2016 Directive also contains a purported “savings clause” that states, “This
5 memo does not limit staff from providing information required or authorized by state law,
6 including the reporting requirements for specific drug arrests pursuant to California H&S 11369,
7 and federal law.” On information and belief, “California H&S 11369” refers to California Health
8 and Safety Code Section 11369, a California law requiring that “the appropriate agency of the
9 United States having charge of deportation matters” be notified whenever there is reason to
10 believe a person arrested for certain offenses involving controlled substances may not be a
11 citizen. Also, on information and belief, “federal law” does not refer to Title 8, United States
12 Code, Sections 1373 and 1644. Neither statute requires or authorizes any information, including
13 citizenship or immigration status, be provided to ICE; they only prohibit obstacles to sharing such
14 information.

15 35. The 2016 Directive also provides, “All ICE notification requests for intended
16 release dates of suspected undocumented immigrant inmates in our custody are voluntary in
17 nature, meaning it is up to the department whether to notify pursuant to a request or not.” It
18 further states that Defendant is developing “a case by case determination policy for voluntary
19 notification of release.” The directive then provides, “All ICE Requests for Voluntary
20 Notification (DHS Form I-247D or I-247N) will continue to be forwarded to Administration
21 without action.”

22 36. On information and belief, the term “notification request” in the 2016 Directive is
23 intended to have the same meaning as that term is defined in Section 12I.2 of the Administrative
24 Code. Thus, the 2016 Directive restricts SFSD staff from communicating with ICE, formally or
25 informally, in the case of all ICE notification requests, including requests about an individual’s
26 release from SFSD’s custody.

27 37. In addition, a SFSD document dated April 18, 2016, entitled “Comparison of
28 Proposed Policies Regarding Response to ICE Voluntary Notification Requests,” explains that the

1 SFSD will only respond to a “notification request” if the individual subject to the request meets a
2 specific criminal history threshold. If the threshold is met, the SFSD will consider evidence of
3 mitigating factors before any release information is shared with ICE. In addition, whether or not
4 the ICE notification request is honored, the individual “will be informed of the notification
5 request and provided with information about social and legal services available for immigrants.
6 The Public Defender’s Office will also be informed of the notification request.”

7 38. The April 18, 2016 document also states that Defendant “personally reviewed
8 approximately 50 ICE Voluntary Requests for Notification that were sent to the San Francisco
9 Sheriff’s Department over the course of three months and found no cases where a review of
10 criminal history triggered a review of Evidence of Mitigating Factors.” This demonstrates that
11 the 2016 Directive’s notification provision is effective in substantially restricting, if not
12 prohibiting, SFSD staff from communicating with ICE. It further demonstrates that SFSD is
13 systematically acting in a way that conflicts with the policies or priorities set by the DHS as
14 outlined above.

15 39. The fact that the April 18, 2016 document identifies restrictions on information
16 sharing not expressly contained in the 2016 Directive demonstrates that Defendant’s policy and
17 practice is broader than appears on the face of the directive. On information and belief, the 2016
18 Directive was, and is, part of a broader SFSD policy and practice of restricting nearly all, if not
19 all, immigration-related information sharing with federal immigration law enforcement officials,
20 including information about citizenship or immigration status and release information.

21 40. On information and belief, Defendant expended taxpayer funds and taxpayer-
22 financed resources revoking and replacing the 2015 Directive. On information and belief,
23 Defendant also expended additional taxpayer funds and taxpayer-financed resources preparing
24 and issuing the 2016 Directive, communicating the directive to all SFSD personnel, training
25 SFSD personnel on the directive’s requirements, and implementing, enforcing, and otherwise
26 carrying out the directive. On further information and belief, Defendant also expended taxpayer
27 funds and taxpayer-financed resources preparing and issuing the April 18, 2016 document,
28

1 distributing the document to the San Francisco Board of Supervisors, and coordinating with
2 members of the Board of Supervisors and others on the document.

3 41. The issuance of the 2016 Directive caused confusion and generated opposition
4 from the immigrant rights advocacy community within the CCSF. On or about April 25, 2016,
5 for example, a prominent immigrant rights advocacy group claimed that the 2016 Directive
6 allows SFSD personnel to respond to ICE notification requests in circumstances beyond those
7 allowed by the CCSF Administrative Code. On information and belief, Defendant expended
8 additional taxpayer funds and taxpayer-financed resources defending and explaining the 2016
9 Directive and responding to this and other challenges to the directive.

10 **FIRST CAUSE OF ACTION**

11 (Express Preemption – 8 U.S.C. §§ 1373 and 1644)

12 42. Plaintiff incorporates paragraphs 1 to 41 by reference as if fully set forth herein
13 and further alleges as follows:

14 43. An actual and justiciable controversy has arisen and now exists between Plaintiff
15 and Defendant. Plaintiff contends Defendant's policies and practices substantially restricting, if
16 not prohibiting, SFSD personnel from sharing information with federal immigration law
17 enforcement officials are expressly preempted by 8 U.S.C. §§ 1373 and/or 1644 and, as a result,
18 are illegal. On information and belief, Defendant contends that her policies and practices are not
19 expressly preempted by 8 U.S.C. §§ 1373 and/or 1644 and are not illegal.

20 44. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
21 by Defendant's expenditures of taxpayer funds and taxpayer-financed resources on her illegal
22 policies and practices. On information and belief, these expenditures will continue unless the
23 policies and practices are declared to be unlawful.

24 45. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is
25 necessary and appropriate so that the parties may ascertain their respective legal rights and duties
26 with respect to expenditures of taxpayer funds and taxpayer-financed resources on Defendant's
27 illegal policies and practices.

28 46. Plaintiff also has no adequate remedy at law.

1 **SECOND CAUSE OF ACTION**

2 (Implied Preemption – Obstacle to Purpose and Objectives of Congress)

3 47. Plaintiff incorporates paragraphs 1 to 46 by reference as if fully set forth herein
4 and further alleges as follows:

5 48. An actual and justiciable controversy has arisen and now exists between Plaintiff
6 and Defendant. Plaintiff contends that Defendant’s policies and practices substantially restricting,
7 if not prohibiting, SFSD personnel from sharing information with federal immigration law
8 enforcement officials are impliedly preempted because they stand as obstacles to the
9 accomplishment and execution of the full purposes and objectives of Congress and, as a result,
10 are illegal. On information and belief, Defendant contends that her policies and practices are not
11 impliedly preempted and are not illegal.

12 49. Plaintiff has been irreparably harmed and will continue to be irreparably harmed
13 by Defendant’s expenditures of taxpayer funds and taxpayer-financed resources on her illegal
14 policies and practices. On information and belief, these expenditures will continue unless the
15 policies and practices are declared to be unlawful.

16 50. A judicial declaration pursuant to California Code of Civil Procedure § 1060 is
17 necessary and appropriate so that the parties may ascertain their respective legal rights and duties
18 with respect to expenditures of taxpayer funds and taxpayer-financed resources on Defendant’s
19 illegal policies and practices.

20 51. Plaintiff also has no adequate remedy at law.

21 **PRAAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for the following relief against Defendant:

23 **FIRST CAUSE OF ACTION**

24 1. A judgment declaring that Defendant’s policies and practices on sharing
25 information with federal immigration law enforcement officials are expressly preempted by 8
26 U.S.C. §§ 1373 and 1644 and are illegal;

27 2. An injunction permanently prohibiting Defendant from expending or causing the
28 expenditure of taxpayer funds or taxpayer-financed resources to implement, enforce, maintain,

1 defend, or otherwise carry out the policies and practices;

2 3. Costs of suit herein;

3 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of
4 Civil Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

5 5. Such other relief as the Court deems just and proper.

6 **SECOND CAUSE OF ACTION**

7 1. A judgment declaring that Defendant's policies and practices on sharing
8 information with federal immigration law enforcement officials are impliedly preempted and are
9 illegal;

10 2. An injunction permanently prohibiting Defendant from expending or causing the
11 expenditure of taxpayer funds or taxpayer-financed resources to implement, enforce, maintain,
12 defend, or otherwise carry out the policies and practices;

13 3. Costs of suit herein;

14 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of
15 Civil Procedure § 1021.5, the Common Fund Doctrine, and the Substantial Benefit Doctrine; and

16 5. Such other relief as the Court deems just and proper.

17
18
19 Dated: December 23, 2016



ROBERT PATRICK STICHT (SBN 138586)
Law Offices of Robert Patrick Sticht
P.O. Box 49457
Los Angeles, CA 90049
Telephone: (310) 889-1950
Facsimile: (310) 889-1864
Email: LORPS@verizon.net

20
21
22
23
24
25
26
27
28
Sterling E. Norris (SBN 040993)
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, California 91108
Telephone: (626) 287-4540
Facsimile: (626) 237-2003
Email: jw-West@judicialwatch.org

ATTORNEY OR PARTY WITHOUT ATTORNEY (Please State Bar number, and address):
ROBERT PATRICK STICHT (SBN 138586)
LAW OFFICES OF ROBERT PATRICK STICHT
P.O. BOX 49457
LOS ANGELES CA 90049
TELEPHONE NO: **310-889-1950** FAX NO: **310-889-1864**
ATTORNEY FOR (Name): **Plaintiff CYNTHIA CERLETTI**

FOR COURT USE ONLY
FILED
Superior Court of California
County of San Francisco
DEC 2 / 2016
CLERK OF THE COURT
BY: Kalene [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **SAN FRANCISCO**
STREET ADDRESS: **400 McCalister Street Room 103**
MAILING ADDRESS:
CITY AND ZIP CODE: **San Francisco CA 94102**
BRANCH NAME: **Civic Center Courthouse**

CASE NAME:
Cynthia Cerletti v. Vicki Hennessy in her Official Capacity as Sheriff

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
060-16-556164

JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) Non-P/IPD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **Two**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **12/23/16**
ROBERT PATRICK STICHT
(TYPE OR PRINT NAME)

Robert Patrick Sticht
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rules.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
Other PVPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collections (e.g., money owed, open book accounts) (06)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Product Liability (not asbestos or toxic/environmental) (24)	Collection Case—Seller Plaintiff	Enforcement of Judgment
Medical Malpractice (45)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice—Physicians & Surgeons	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Auto Subrogation	Confession of Judgment (non-domestic relations)
Other PVPD/WD (23)	Other Coverage	Sister State Judgment
Premises Liability (e.g., slip and fall)	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract Dispute	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Real Property	Miscellaneous Civil Complaint
Other PVPD/WD	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Non-PVPD/WD (Other) Tort	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Business Tort/Unfair Business Practice (07)	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Defamation (e.g., slander, libel) (13)	Mortgage Foreclosure	Mechanics Lien
Fraud (16)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Intellectual Property (19)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Professional Negligence (25)	Unlawful Detainer	Miscellaneous Civil Petition
Legal Malpractice	Commercial (31)	Partnership and Corporate Governance (21)
Other Professional Malpractice (not medical or legal)	Residential (32)	Other Petition (not specified above) (43)
Other Non-PVPD/WD Tort (35)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
Employment	Judicial Review	Workplace Violence
Wrongful Termination (36)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Employment (15)	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	