IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

Kyle Kjoller, Petitioner, v. The Superior Court of Nevada County, Respondent; The People; Real Party in Interest.	No. C104445 California Supreme Court No. S293723 Nevada County Sup. Court No. CR0005981

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR SANCTIONS AND PROPOSED ORDER

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INTRODUCTION

The Nevada County District Attorney's Office ("the Office") concedes that it committed sanctionable misconduct in citing to fabricated citations in no fewer than six briefs in four separate cases. Nevertheless, it argues that the Court should decline to issue sanctions or take any further action because the Office has, on its own, ceased its pattern of submitting fabricated legal authority.

The Office's track record—and failure to resolve fundamental factual questions about what occurred here—makes it impossible to resolve this matter based on the Office's assurances alone.

For months, the Office appears to have misled courts, counsel, and the public. Prosecutors expressed outrage at the idea that AI hallucinations were present in their briefs; the second-in-command of the Office even told opposing counsel that such an accusation was unethical and threatened consequences if counsel persisted in moving for sanctions. The prosecutor who filed most of these briefs offered a variety of non-AI explanations to the Nevada County Superior Court, Court of Appeal, and counsel, including claims that she: typed fabricated case names herself; inadvertently created fabricated quotations by placing quotation marks around language she intended to italicize; cited to cases in her briefing without intending to suggest the cases' holdings supported her arguments; and accidentally created fabricated citations because she had too many browser tabs open. Pieces of some of those fabricated citations link to civil cases having nothing to do with criminal law, such as determining the

independent contractor status of a man working for a scooter company; the Office has never explained why the prosecutor would have been researching such topics.

During these months of denial, a trial court, the Nevada County Public Defender's Office, and opposing counsel identified and disclosed briefs containing citations to fabricated authority. To this day, prosecutors have identified none. Even after being notified of the fabricated authority, prosecutors allowed briefs with erroneous citations to linger on court dockets for weeks without promptly correcting them.

The Office now admits that its citations bear "all the markings" of AI hallucinations and that the prosecutor who drafted many of the briefs is being investigated. Response to Order to Show Cause ("OSC Response") at 8, 9. It further claims that it has addressed the issue internally by instituting unspecified policy changes as well as warning and training its staff about the dangers of AI use. *Id.* at 10-12. This claim is not new; the Office told the superior court it had resolved this issue by taking these exact same steps, even while briefs with fabricated citations sat in court dockets.

Most troublingly, the Office reveals for the first time that it has reviewed 18 months of briefs and found unspecified "citation issues." OSC Response at 12. The Office categorizes these errors as "minor" and not indicative of AI hallucinations, just as it claimed about the errors in these cases that it now concedes bear the hallmarks of AI. *Id.*

Although the Public Defender's Office and undersigned counsel have already expended significant time from their small teams' limited capacity to investigate this issue, serious and essential questions remain open. Not about whether this conduct deserves to be sanctioned–courts routinely sanction lawyers for far less–but about what actually happened at the Office that led to fabricated authorities being cited in so many cases, management's response, and how many other briefs with errored citations remain outstanding. This Court still does not know:

1) What is the source of these citations to fabricated authorities? The Office still refuses to squarely address the source of the fabrications; the Office has not confirmed that its citations to fabricated authorities are the product of the reckless inclusion of AI hallucinations. The OSC Response does not even include a declaration from the prosecutor who filed the briefs.
2) What supervision regarding the use of AI and citation-checking were prosecutors provided during this time period? When did high-ranking supervisors first learn of, or suspect, that AI hallucinations were present in briefs? For months, the Office's leadership made a series of apparently false statements and claimed opposing counsel acted unethically for suggesting their briefs may contain AI hallucinations. How much did the supervising lawyers know at the time?

3) How many other briefs has the Office filed with similar errors? How many remain pending in California courts? The OSC Response reveals for the first time that the Office has reviewed 18 months of its own briefs and conceded that it found citation errors. To counsel's knowledge, these errors have not been revealed to this Court, the superior court, or the defense bar. The Office also gives no explanation for how it conducted the audit or categorized those errors as "minor or non-substantive citation issues," OSC Response at 12, as opposed to representatives of a "broader use of errors due to artificial intelligence or any other systemic pattern of error." *Id.* The Office offers no explanation for why its current assurances that AI was not used in these cases are more reliable than similar past assurances that now seem to be false.

As officers of the court engaged in the work of filing emergency habeas petitions for people detained prior to trial, opposing counsel took seriously the responsibility to inform the Court when counsel uncovered these misrepresentations. And opposing counsel took seriously the private threat of the Office that counsel committed ethical misconduct in bringing this pattern of fabrications to the Court's attention. Given the profound questions of fact that still remain unresolved, undersigned counsel is unable to support the Office's request to look no further. These questions go to the heart of what happened and,

therefore, what appropriate sanctions would ensure that it does not happen again.

STATEMENT OF FACTS

1. Prosecutors filed six briefs riddled with fabricated citations over four months while claiming they had internally addressed the problem; an unknown number of briefs with errors remain.

The Office filed briefs citing to fabricated authority, including fictitious cases, quotes and holdings, in separate prosecutions of Petitioner Kyle Kjoller, Kalen Turner, Taylor McGrath, and Alvin Mosley.

The first known brief with citations to fabricated authority was Deputy District Attorney ("DDA") Amelia Vogt's Opposition to Motion to Suppress in *People v. Kalen Turner* (Sup. Ct. Case No. CR0006300B). *See* Successive Motion for Sanctions ("Second Motion") Attach. C; *see also* Second Motion at 25-27. Later that month, DDA Madison Maxwell (who also authored the brief in this case) filed an Opposition to Petition for Mental Health Diversion in the case of *People v. McGrath* (Sup. Ct. Case No. CR0005340). *See* Request for Judicial Notice ("RJN") Attach. A; *see also* RJN at 5-13 (describing the errors).

Brief	Date Filed	Summary of Citation Errors
Turner Opposition to Motion to Suppress	8/8/25	DDA Vogt urges superior court to deny Mr. Turner's Fourth Amendment claims ● Includes nonexistent quotations from four cases (quotations are not found in any case) ● Misstates the facts of cases ● Misrepresents the holding of at least one case *See* Second Motion at 25-27.

McGrath Opposition to Petition for Mental Health Diversion	8/13/25	DDA Maxwell urges superior court to reject Mr. McGrath's Petition for Mental Health Diversion ● Cites 12 cases and constitutional provisions– only one of which exists and is cited accurately throughout the brief ● Includes nonexistent quotations from two cases ● Includes citations to a nonexistent case, including a reporter citation that links to a case about a City of San Diego voter ordinance ● Cites a case for a standard of proof the case does not address; cites another case for the principle of implied malice which the case does not address ● Misrepresents the holdings of cases *See* RJN at 4-13.

At the August 28 *Turner* hearing, the superior court brought the fabricated citations to the attention of Assistant District Attorney ("ADA") Lydia Stuart, second-in-command at the Office, and warned her about the dangers of AI hallucinations. Stuart told the court that the AI-hallucinated authority was "not on point," that she "ha[d] no further information at this time as to how it wound up in the brief," and assured the court that the issue would be "followed up upon." Second Motion Attach. D at 4:11-17.

Stuart's Declaration tells this Court that her Office took action "immediately" after being warned by the superior court in *Turner*, notifying prosecutorial staff of the seriousness of the issue, advising them of their ethical obligations, and warning them "not to rely upon artificial intelligence in their legal work." OSC Response at 19 ¶ 10. District Attorney ("DA") Jesse Wilson

made the same claims to media. *See* Jesse Wilson, *'Our Office has used this opportunity to provide enhanced instruction': Nevada County District Attorney Jesse Wilson offers response to AI use inaccuracies*, The Union (Dec. 4, 2025), https://tinyurl.com/7rz28f48 ("The Union Article"). According to Stuart, Office supervisors ordered staff attorneys to check the accuracy of all historical pleadings. OSC Response at 19 ¶ 10.

Nevertheless, the Office did not notify the superior court of similar errors in the *McGrath* brief, or any other. And, over the following months, prosecutors filed at least *four more briefs* citing to fabricated authority: [1]

Brief	Date Filed	Summary of Citation Errors
Kjoller Answer	9/4/25	DDA Maxwell urges Court of Appeal to deny Mr. Kjoller's habeas petition and affirm the illegal order detaining him pretrial[2] ● Cites three nonexistent cases: reporter citations link to unrelated cases about whether a butter knife is a deadly weapon, an arbitration clause in a dispute over independent contractor status, and California's Uninsured Motorist Statute ● Misrepresents the record and the holdings of other cases ● Twice cites to a section of the California Constitution for a proposition unaddressed by that section ● DDA Maxwell verified "under penalty of perjury" that she had "read [the brief] and

[1] A calendar chronicling all filing dates is appended as Exhibit B for the Court's reference.
[2] This Court ultimately agreed Mr. Kjoller was unlawfully incarcerated pretrial in violation of *In re Humphrey*, 11 Cal. 5th 135 (2021) and ordered the lower court to conduct a new, constitutionally-compliant bail hearing. *See Palma* Notice.

		kn[e]w its contents" "were true." Answer at 12 (emphasis added). *See* Motion for Sanctions at 7-10.
Mosley Opposition to Petition for Mental Health Diversion	9/11/25	DDA Maxwell urges superior court to reject Mr. Mosley's Petition for Mental Health Diversion ● Nearly identical errors as *McGrath* *See* Second RJN at 13-14.
McGrath Amended Opposition to Petition for Mental Health Diversion	11/13/25	DDA Maxwell files amended brief still urging superior court to reject Mr. McGrath's Petition for Mental Health Diversion ● Retained several fabrications from the original,[3] including a citation to a case for the proposition that there is a preponderance of evidence standard in Mental Health Diversion cases (cited case does not mention that standard) ● Eliminates fabricated quotations from a case, but still citing the case for a proposition it does not discuss ● Changes a fabricated citation to that of a real case, but retains a citation to the case for a principle inapposite to the actual case holding ● Changes a case name and citation to an entirely different case and removing a fabricated quotation, but retaining a citation to the case for a principle unsupported by the case

[3] ADA Stuart's declaration notes, "On December 11, 2025, opposing counsel . . . filed briefing alleging the People's Amended Opposition failed to correct the inaccuracies. This prompted careful and thorough supervisory review of the filings [in all three cases] . . . the concerning and unacceptable scope of the citation errors and unsupported citations were identified, errors which resembled to markings of artificial intelligence. Second Amended Oppositions were thereafter filed in the above-referenced matters to correct the errors." OSC Response at 22-23 ¶ 31.

		See Exhibit L, *Mosley* Defense Reply to People's Amended Opposition, December 9, 2025 at 16-21.[4]
Mosley Amended Opposition to Petition for Mental Health Diversion	11/13/25	• DDA Maxwell filed amended brief urging court to still reject Mr. Mosley's Petition for Mental Health Diversion • Maintained the same errors as the amended opposition in *McGrath* *See* Ex. L at 16-21.

Even as these last two briefs with errors sat on the superior court's docket, ADA Stuart informed the superior court that "[t]he errors [in *McGrath* and *Mosley*] have been corrected." Exhibit J, *McGrath* People's Response to Defendant's Motion to Dismiss, November 17, 2025 at 6. DA Wilson authored an editorial in December asserting that his Office "promptly corrected" the erroneous briefs. *See* The Union Article. Neither statement was accurate; prosecutors would not correct all the errors until January 2026, weeks after being told of the errors by opposing counsel.

ADA Stuart advised the superior court, "This Court need not take any further action as corrective measures have already been taken by the Office of the District Attorney. . . . Indeed, the prosecutor [Maxwell] who filed the brief containing errors, promptly informed their supervisors of the errors and has vowed to implement new strategies for managing a demanding caseload with accuracy and candor." Ex. J at 16.

[4] While this brief was filed in the *Mosley* case, it notes that nearly all the same errors are present in *McGrath*.

According to DDA Maxwell, there is at least one additional brief containing fabricated citations that the Office has not yet disclosed to opposing counsel or this Court. At a hearing in *McGrath* on November 6, 2025, DDA Maxwell informed the superior court that she pulled one of the fabricated citations "from another brief and did not check that cite." Second RJN Attach. A at 12:9-10. As of this filing, the Office has not identified or withdrawn the brief that DDA Maxwell told the superior court was the source of the error over four months ago. *See* Exhibit A, Declaration of Thomas Angell ¶¶ 8-10.

Finally, in its OSC Response, the Office admits it found additional, unspecified errors in an internal review of an undisclosed number of other briefs. *See* OSC Response at 12-13, 23 ¶ 33. The Office categorized those errors as "minor or non-substantive citation issues" and not representative of a "broader use of errors due to artificial intelligence or any other systemic pattern of error." *Id.* at 12. The Office has not explained how the search was conducted or by whom, nor how it determined that all the errors were "minor" and none were representative of a "systemic pattern of error" or "artificial intelligence." The Office has not advised opposing counsel or the Court of these errors or the cases in which they were filed. *See* Ex. A ¶ 11. It is unknown how many of these erroneous prosecution briefs remain pending in California courts.

2. Prosecutors failed to affirmatively or prospectively identify any of their own errors.

Of the fabricated citations that have been identified thus far, none were brought forward by the Office. In *Turner*, the superior court judge uncovered the

fabricated citations. *See* OSC Response at 19 ¶ 9. In the other five briefs, opposing counsel first raised them. *See id.* at 19-22 ¶¶ 11, 18, 31.

3. When caught, prosecutors threatened opposing counsel, categorically denied using artificial intelligence, and offered a variety of explanations claiming that human error was responsible.

As noted in Petitioner's Motion for Sanctions—and conceded by the Office in its OSC Response five months later—the Office's fabricated citations bear all the hallmarks of artificial intelligence. *See* OSC Response at 8-9; *see also* Sanctions Motion at 7.

a. District Attorney Jesse Wilson

DA Wilson, whose name appears on all six filings but who did not submit a declaration in response to this Court's OSC, publicly admitted in November that AI was used in *Turner*, but denied its use in *Kjoller* and *McGrath*. *See* Sharon Bernstein, *AI caused errors in a criminal case, Northern California prosecutor says*, The Sacramento Bee (Nov. 7, 2025), https://tinyurl.com/4myzxwdu ("The Sacramento Bee Article"). *See also Legal Scholars warn AI hallucinations threaten criminal justice system*, Daily Journal (Nov. 24, 2025), https://tinyurl.com/bdhjtkyh.

b. Assistant District Attorney Lydia Stuart

ADA Stuart, second-in-command at the Office, also repeatedly denied that the Office used artificial intelligence in this case, *McGrath*, and *Mosley*.

After Petitioner filed the initial Motion for Sanctions in this case, Stuart and Maxwell called Mr. Kjoller's trial attorney, Acting Public Defender ("APD")

Thomas Angell, and told him that the fabricated authorities were real lower court decisions. Stuart next claimed that the citations were to real civil cases that Maxwell had mistakenly cited because she was going too fast in her research.[5] Second Motion Attach. A ¶¶5-7; Second Motion Attach. B.

In the same call, Stuart asked Angell to withdraw the Motion for Sanctions and suggested opposing counsel had acted unethically by filing a motion raising the possibility of AI hallucinations without a good faith basis for doing so. Second Motion Attach. A ¶ 6. Stuart now tells this Court that the nature of these exchanges was "inquisitive" and that she simply "noted the general principal [sic] that motions for sanctions may themselves be subject to sanctions if not well founded." OSC Response at 19 ¶ 12.

After the Court of Appeal denied the Motion for Sanctions, Stuart detailed by email the various statutes and ethical rules potentially violated by Petitioner's Motion. Second Motion Attach. B. Stuart again characterized the fabricated authorities in the Office's Answer as "inadvertent errors" and claimed opposing counsel had misled this Court by suggesting they may be AI hallucinations. *Id.*

Stuart's email warned APD Angell and the attorneys from Civil Rights Corps: "Although the Court has already resolved this matter," she "caution[ed]," any future similar motions brought by opposing counsel "may warrant closer

[5] In fact, the cases are not real opinions of any court.

scrutiny." Second Motion Attach. B. Stuart does not address this statement in her Declaration. *See* OSC Response at 18-24.

Over the following months, Stuart maintained to courts and counsel that AI was not used, even after opposing counsel identified additional case filings by Stuart's deputies that contained fabricated authority. For example, Stuart accused APD Angell of "advanc[ing] a series of unsupported allegations suggesting that the citation errors resulted from the use of artificial intelligence." Ex. J at 4. She asserted that AI fabrication cases such as *Noland* and *Alvarez* are "factually distinguishable" from *McGrath* because those AI cases "included hallucinated cites, multiple substantive errors, and the clear use of AI in the pleadings," while the *McGrath* errors were mere "citation inaccuracies." *Id.* at 12-13 (in fact, the *McGrath* brief contained fabricated cases, holdings, and quotations; *see* RJN at 5-13).

Even while publicly denying the involvement of AI in *Kjoller* and *McGrath*, the Office made supervising DDA Helenaz Hill "AI Policy Coordinator" on November 7, and on November 10, the Office issued an internal AI Policy. Ex. J at Ex. E ¶¶ 11-12; *see also* OSC Response at 21 ¶¶ 23-24.

c. Deputy District Attorney Madison Maxwell

DDA Maxwell, who authored the brief in this case as well as four other briefs with fabricated citations, did not submit a declaration in response to the Court's OSC.

In this case, Maxwell has repeatedly flatly denied using artificial intelligence (*see* Second Motion Attach. A ¶¶ 10-13) and has offered counsel and multiple courts a range of alternative human-error explanations. *See* Second RJN at 10-13.

i. To Court of Appeal (*Kjoller)*

In this case, DDA Maxwell filed an additional brief, Respondents' Response to Informal Reply ("Sept. 23 Filing") without seeking permission from this Court. In it, Maxwell did not explain the source of the most errors, saying only: "Petitioner raises claims in their Informal Reply that Respondent cited to multiple fake cases. This is untrue. There are errored citations; however, the errored citations belong to real cases." Sept. 23 Filing at 4. Maxwell's Response mentions some, but not all, of the fabricated citations in the initial brief. *See* Second Motion at 13-21 (describing the Response's confusing attempts to correct the fabrications). In the brief, Maxwell does not offer any explanation for the errors in case citations. Maxwell does, however, seek to explain why she cited an irrelevant section of the California Constitution, claiming that she made a "typo" when she twice cited California Constitution Article 1, section 28(b)(13) while meaning to cite to (b)(3). Sept. 23 Filing at 5. But, as Petitioner explained in his Second Motion, section (b)(3) would not support the principle for which Maxwell claimed she intended to cite it, and Maxwell's argument appeared to be invoking a completely separate constitutional provision, section 28(f)(3).

ii. To counsel (*Kjoller*)

Maxwell told opposing counsel, Carson White, that the reporter citations she erroneously cited were real cases that she had been reading for other matters, and, because she had them open in different browser tabs on her computer, she mixed up the names and reporter citations. *See* Second Motion Attach. A ¶¶ 10-13. Maxwell said she included an untethered string of case names because she did not know what the Court should do, and wanted the Court to figure it out, but did not intend those citations to be legal authority for the preceding sentence. *Id.* ¶ 11.

iii. To the Superior Court (*McGrath*)

In *McGrath*, Maxwell appeared in open court, on the record, and claimed a range of human error caused the fabrications, including typing a nonexistent case name and incorrect case year herself, twice placing quotation marks around text she had actually intended to italicize, three times intending to cite to completely different cases, and intending to delete an entire section from her brief before filing. *See* Second RJN Attach. A *passim*.[6] Stuart's Declaration describes this as Maxwell "attempt[ing] to correct the errors on the record, affirming the errors were in no way made to represent the law or facts or to mislead the court." OSC Response at 20 ¶ 19.

4. When the superior court and opposing counsel uncovered the fabricated citations, prosecutors failed to promptly withdraw

[6] Many of the cases DDA Maxwell claims she intended to cite would also not support the principle for which they would have been cited. *See* Second RJN at 10-13.

the briefs and claimed errors had been corrected when they had not.

The Office did not promptly withdraw any of the six briefs it filed with fabricated authorities–in this case, the Office first moved to withdraw its September 4, 2025 Answer (with citations to fabricated authorities) and September 23, 2025 Response (with Maxwell's responses noted above) in its February 27, 2026 OSC Response.

Brief	Date filed	Who identified the errors and when	Date of DA's corrective action	Time between identification and DA's corrective action	Total time between filing and DA's corrective action
Turner Opposition to Motion to Suppress	8/8/25	Superior Court, on 8/28/25	8/28/25 (request to withdraw)	0 days	20 days
McGrath Opposition to Petition for Mental Health Diversion	8/13/25	Opposing counsel, on 10/30/25	11/13/25 (amended with errors remaining) 1/5/26 (all errors corrected)	14 days (with errors remaining); 67 days (without)	92 days (with errors remaining); 145 days (without)
Kjoller Answer	9/4/25	Opposing counsel, on 9/17/25	2/27/26 (request to withdraw)[7]	163 days	176 days
Mosley Opposition to Petition for Mental Health Diversion	9/11/25	Opposing counsel, on 11/12/25	11/13/25 (amended with errors remaining)	1 day (with errors remaining); 64 days (without)	63 days (with errors); 126 days (without)

[7] The Office's Sept. 23 "Respondent's Response," as noted *infra*, addresses some, but not all, of the fabrications and does not withdraw the Answer.

			1/15/26 (all errors corrected)		
McGrath Amended Opposition to Petition for Mental Health Diversion	11/13/25	Opposing counsel, on 10/30/25[8]	1/5/26 (request to withdraw)	67 days	53 days
Mosley Amended Opposition to Petition for Mental Health Diversion	11/13/25	Opposing counsel, on 10/30/25[9] Opposing counsel, on 12/9/25	1/15/26 (request to withdraw)	77 days (after RJN) 37 days (after second notice in Reply brief)	63 days (after RJN)

5. Prosecutors recently found citation errors in an internal audit of past briefs but claim these are not the product of AI, without explaining how this audit was conducted or this conclusion reached.

In its OSC Response, the Office again asserts that there is no need for the Court to impose sanctions because the Office has conducted its own "audit," implemented an undisclosed AI policy and training, and is currently investigating the source of the fabrications submitted by Maxwell. *See* OSC Response at 10-17. The Response also contends that Office has determined, with "reasonable certainty," that "the filings at issue originated with two Deputy District Attorneys

[8] Some errors in the *McGrath* Opposition (identical to those in *Mosley*) were identified in Mr. Kjoller's October 30 Request for Judicial Notice but were retained in the prosecutor's Amended Oppositions in *McGrath* and *Mosley*.
[9] *See supra* note 7.

during an approximately four-week period that predates the Office's adoption of artificial intelligence research tools." *Id.* at 12.

However, the Office concedes that it found "citation issues" in its audit of cases. OSC Response at 12. The Office does not disclose the number of cases it has reviewed in this internal audit, nor has it submitted any of the briefs with "citation issues" to this Court or brought any citation errors to the attention of the superior court. *See* Ex. A ¶ 11.

In addition, the Office does not explain on what basis it categorized those errors as "minor or non-substantive citation issues" that were not "due to artificial intelligence or any other systemic pattern of error." OSC Response at 12. It is unclear whether unidentified briefs with erroneous citations remain pending in California courts.

ARGUMENT

1. The District Attorney's Office concedes that it has committed sanctionable misconduct by citing to fabricated authority.

Filing briefs containing citations to fabricated authority—even a single case, and even when immediately taking full responsibility—is sanctionable misconduct. *Noland v. Land of the Free, L.P.*, 114 Cal. App. 5th 426, 445-447 (2025).

The citation of fabricated legal authorities violates California Rules of Court, Rule 8.1115(a) (requiring citing only published opinions) and Rule 8.204(b)-(c) (requiring supporting each point by citations to actual authority and the record). *See People v. Alvarez*, 114 Cal. App. 5th 1115 (2025); *Shayan v.*

Shakib, 116 Cal. App. 5th 619 (2025); *Schlichter v. Kennedy*, 116 Cal. App. 5th 24 (2025); *Noland*, 114 Cal. App. 5th 426. In mandamus proceedings like these, a court imposes sanctions for these violations under Rule 8.492 (prohibiting the filing of frivolous writs and any other unreasonable rule violation).[10]

Attorneys who file fabricated citations, fail to correct the errors, make misleading statements, attempt to block others from learning about their misconduct, and otherwise evade responsibility also violate a series of statutes including Business and Professions Code section 6068(d) (describing the duty of an attorney to "employ . . . those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law") and Business and Professions Code section 6106 (stating that the commission of any act involving dishonesty or moral turpitude constitutes a cause for disbarment or suspension). This prohibition is not limited to intentional, affirmative acts of deceit; State Bar Court decisions have found that section 6106 is violated by grossly negligent conduct (*Matter of Wyrick*, No. 88-O-10804, 1992 WL 70556, at *5 (Cal. Bar Ct. Apr. 6, 1992)) and conduct creating a false impression by concealment (*In re Wells*, No. 01-O-00379, 2005

[10] In some cases, Rule 8.276 is the vehicle to impose sanctions for these violations, such as criminal appeals (*Alvarez*) and civil appeals (*In re Domestic P'ship of Campos & Munoz*, No. D085584, 2026 WL 622292, at *1-9 (Cal. Ct. App. Mar. 5, 2026); *Shayan*, 116 Cal. App. 5th 619; *Schlichter*, 116 Cal. App. 5th 24).

WL 3293313, at *1 (Cal. Bar Ct., Dec. 5, 2005), *as modified on denial of reconsideration* (Feb. 3, 2006), *as modified* (Mar. 7, 2006).

This form of misconduct also violates several ethical duties, including California Rules of Professional Conduct, Rule 3.3(a)(1) ("A lawyer shall not . . . knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer"); Rule 3.3(a)(2) (duty to not "knowingly misquote to a tribunal the language of a book, statute, decision or other authority"); Rule 4.1 (false statement of fact or law to a third person); Rule 5.1 (supervisory duty to ensure ethical conduct by subordinate attorneys); and Rule 8.4 (conduct involving dishonesty, whether intentional or involving gross negligence).

Asking courts to rely on fabricated authority is a threat to the legitimacy of legal rulings in any case and "the problem of AI hallucinations is getting worse, not better." *Noland*, 114 Cal. App. 5th at 444 (discussing the pervasiveness of fabricated authority in court briefs). Research has shown that AI models frequently generate hallucinated citations, including AI-driven legal research tools like those offered by LexisNexis and Thomson Reuters. *See* Professors and Scholars Amicus Letter at 3.

But this case involves something far more serious: a prosecutor attempting to use fabricated legal authority to maintain the unlawful pretrial incarceration of an indigent person. *See* Exhibit C, California Public Defenders Association Amicus Letter at 3-4. As the State Bar Court, noted that prosecutors have "an

elevated standard of candor and impartiality as compared to other attorneys." *Matter of Nassar*, No. 14-O-00027, 2018 WL 4490909, at *10 (Cal. Bar Ct. Sept. 18, 2018) (internal citation omitted) (suspending a prosecutor's license). Furthermore, powerful prosecutorial agencies are often given great deference by courts (*see* Ex. C at 4 n.2); if these agencies file fabricated authorities, courts will rely on them, especially in busy court environments. Federal courts, which have lower caseloads and dedicated clerks, have issued opinions including fabricated citations and filed orders prepared by attorneys with fabricated citations. *See, e.g.*, Josh Blackman, *Two Federal Judges Apologize For Issuing Opinions With AI Hallucinations*, Reason (Oct. 24, 2025), https://tinyurl.com/yv44f7xz*; see also Campos*, 2026 WL 622292, at *5 (California court signed order proposed by counsel that included AI-hallucinated case citations).

While Maxwell's citations to fabricated authority are highly concerning, it is her Office's actions and response that are most troubling. Managing and supervising lawyers have an ethical duty to ensure that subordinate attorneys comply with ethical rules (Rule of Professional Conduct 5.1(a)-(b)) and can be held liable and disciplined for a subordinate attorney's misconduct (Rule of Professional Conduct 5.1(c)). Managing lawyers are required to "ensure that inexperienced lawyers are properly supervised." Rule of Professional Conduct 5.1(a) Comment [2].

While counsel has not located a California case assessing the ethical duties of managing and supervisory lawyers in the context of fabricated citations, the

Supreme Court in Suffolk County, New York, applied its state's similar Rule of Professional Conduct 5.1 and held that a supervising attorney violated this rule based on the subordinate attorney's citations of fabricated authorities. The court found that the supervising attorney did not fully understand AI technology and could therefore not competently supervise the attorney's work, and that the supervising attorney did not adequately ensure that the subordinate attorney's explanation was candid. *Cassata v. Michael Macrina Architect, P.C.*, No. 617183/2025 (N.Y. Sup. Ct. Jan. 27, 2026).

Here, the record establishes that the Office's management team did not merely fail to properly supervise DDA Maxwell, but rather appears to have actively misled the courts, counsel, and the public. The leaders of the Office[11] failed to prevent the filing of citations to fabricated authority in multiple cases, over multiple months, and threatened opposing counsel in an apparent attempt to prevent courts from investigating.

The record still lacks several crucial facts, described below, that would enable the Court to even understand the scope of this misconduct. For that

[11] ADA Stuart notes the Office's staffing numbers in the OSC Response (at 18 ¶ 1). But despite heavy caseloads, as is true in all California counties, the Office has more than twice the resources of the understaffed, overworked Public Defender's Office, *see* Ex. A ¶¶ 3-5, or, indeed, the superior court judges tasked with reviewing the Office's briefing. It is all but certain the overwhelmed superior court will rely on the fabricated authority submitted by the Office in deciding criminal cases, if it has not done so already.

reason, counsel reserves argument about the nature of the appropriate sanctions until the referee or Court has a proper factual record.

2. The Office's misconduct demonstrates the need for an evidentiary inquiry and serious sanctions.

a. Courts routinely issue sanctions in cases much less serious than this one.

Because of the danger posed by convincing AI-hallucinated legal authority, courts routinely sanction attorneys for filing fabricated citations, even when the attorney quickly takes responsibility and expresses remorse. *See, e.g.*, *Noland*, 114 Cal. App. 5th at 448 ("[B]ecause counsel has represented that his conduct was unintentional, and because he has expressed remorse for his actions, we impose a conservative sanction of $10,000.").

Courts impose more serious sanctions on lawyers who cite fabricated citations and are not forthcoming about the source of the citations, attempt to evade or deflect responsibility, or minimize or mislead the court about the nature of the citations—all of which the Office has done here.

In *United States v. Hayes*, a case repeatedly cited in the Office's OSC Response, the attorney's fabricated citation "ha[d] all the markings of a hallucinated case created by generative artificial intelligence (AI)." 763 F. Supp. 3d 1054, 1065 (E.D. Cal. 2025), *reconsideration denied*, No. 2:24-CR-0280-DJC, 2025 WL 1067323 (E.D. Cal. Apr. 9, 2025).[12]

[12] The citation was to a "*United States v. Harris*, 761 F.Supp. 409, 414 (D.D.C. 1991)." There is a real case at page 409 of that reporter: *Harris v. Murray*, 761 F. Supp. 409 (E.D. Va. 1990).

As here, the attorney in *Hayes* denied the use of AI and claimed the errors were the result of "hastily" drafting the brief. *Id.* at 1066. The court found that rather than "candidly acknowledg[ing] and correct[ing] the fictitious case and quotation," the attorney's initial claim of an "inadvertent citation error" was "not accurate and was misleading. It failed to acknowledge that the [cited case] is fictitious." *Id.* at 1067. The attorney "did not provide any explanation for the fictitious case and quotation." *Id.* at 1068. The court imposed monetary sanctions, referred the attorney for discipline with the state bar, and ordered the sanction order served on every judge and magistrate in the judicial district. *Id.* at 1072-1073. *See also Shayan*, 116 Cal. App. 5th at 623, 625 (imposing monetary sanctions and forwarding sanction order to State Bar where attorney claimed fabricated authority was "clerical citation error[]"); *Fletcher v. Experian Info. Sols., Inc.*, 168 F.4th 231, 239 (5th Cir. 2026) ("Had [the attorney] accepted responsibility and been more forthcoming, it is likely that the court would have imposed lesser sanctions."); *Schlichter* , 116 Cal. App. 5th at 30, 32-33 (monetary sanctions and state bar referral for attorney whose fabricated citations included real case names and wrong reporter citations, finding as "not credible" the attorney's claims that AI hallucinations did not cause the fabrications and there may have been a "clerical mistake"); *Campos*, 2026 WL 622292, at *9 (monetary sanctions and state bar referral for an attorney who refused to admit the source of fictitious citations, conceding only that they "may have" come from an AI tool).

Indeed, the Office cites no case—from any jurisdiction—where a court declined to sanction an attorney who cited fabricated law, much less after failing to respond swiftly, transparently, and truthfully once the fabrications were brought to the attorney's attention.

Here, the actions of the Office—including the elected District Attorney Wilson, ADA Stuart, and DDA Maxwell—appear to have gone well beyond even the denial and evasiveness of the attorneys in the sanctions cases cited above who sought to escape the truth and avoid accountability. The Office committed the same misconduct repeatedly, over months, in the highest stakes cases in our legal system, and claimed that opposing counsel may be subject to discipline for bringing the misconduct to this Court's attention. But the full scope of the fraudulent conduct has yet to be uncovered, because the Office has not answered key factual questions in its briefs to the Court. Only after obtaining answers to several discrete categories of questions will the Court be able to fully understand the extent to which multiple employees of the Office have attempted to evade accountability.

b. Following an evidentiary inquiry, this Court should impose sanctions to deter other law firms and government attorneys from engaging in a similar pattern of misconduct and compensate counsel for resources expended.

After appropriate further proceedings, discussed below, to uncover the key facts on which the nature and degree of sanctions will turn, the Court should impose sanctions.

The Office asks this Court to decline to issue sanctions on the basis of ADA Stuart's word that the Office has implemented a series of corrective actions to resolve the issue on its own. The Office's track record makes that assertion untenable, and sanctions are necessary to deter future conduct by similarly-situated prosecutors—inside and outside Nevada County—and to compensate counsel for the significant use of resources spent addressing this issue.

i. The Court should not rely on the District Attorney's recycled claims to have resolved this issue.

The Office's current claim to have solved the problem cannot be taken seriously. Stuart claims that her Office took action to curb its reliance on AI hallucinations in August 2025, informing attorneys of their ethical duties, warning them against using artificial intelligence, and requiring staff attorneys to check the accuracy of all historical pleadings. OSC Response at 19 ¶ 10. But prosecutors went on to file *four more briefs* containing citations to fabricated authority and did not bring a single previous brief containing fabricated authority to the attention of the court. *See supra* Section 1. Prosecutors allowed fabricated briefs to linger on court dockets for weeks and months without correction. In one egregious example, Stuart admits she and Maxwell conferred about the fabrications in the *McGrath* brief a week before the hearing, *then decided not to do anything*. Ex. J at Ex. E ¶ 2. Then three weeks after the Office was caught citing to AI hallucinations in *Turner* and it issued directives to staff regarding AI, Stuart and Maxwell told opposing counsel in this case that AI hallucinations were

not present in *Kjoller*, then threatened counsel with disciplinary action for suggesting otherwise. Second Motion Attach. B.

The Office has repeatedly insisted—falsely—that the citation issue was resolved. In November 2025, even as two of the Office's briefs citing to fabricated authority remained pending, ADA Stuart filed a brief assuring the superior court that the errors were corrected (Ex. J at 6) and the court "need not take any further action as corrective measures have already been taken by the Office of the District Attorney." *Id.* at 16.

The Court should also view with deep skepticism the Office's claims that the fabricated citations were only caused by two prosecutors during a four-week period and that an undisclosed batch of 18 months of briefs contained only "minor" errors, not AI hallucinations. *See* OSC Response at 12-13. The Office initially claimed that it was unaware, for months after they were uncovered, that the errors in the *Turner*, *Kjoller*, *McGrath*, and *Mosley* briefs were AI hallucinations.[13] *See supra* Section 3. Even after designating an "AI Policy Coordinator" with unknown duties and issuing an undisclosed internal AI Policy,

[13] ADA Stuart's claim that the Office was "not fully aware of the scope of the technology's capabilities or the risks it presented to the accuracy of legal work,"(*see* OSC Response at 18 ¶ 2) is also suspect. First, all California lawyers are required to perform competent work under Rule of Professional Conduct 1.1, which includes "the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology." Moreover, AI hallucinations were not a novel issue in August 2025, when Nevada County prosecutors filed briefs with fabricated citations in *Turner* and *McGrath*. The California State Bar had issued its guidelines on the ethical use of AI in 2023, raising virtually all the same ethical principles at stake here.

Stuart denied that AI hallucinations appeared in the *McGrath* brief (saying it only contained "citation inaccuracies"), accusing opposing counsel of "advanc[ing] a series of unsupported allegations suggesting that the citation errors resulted from the use of artificial intelligence." Ex. J at 4, 12-13. Now, the Office essentially says it does not know whether Maxwell's briefs contain AI hallucinations and it is investigating (*see* OSC Response at 9), but again claims to have determined that 18 months of (undisclosed) past briefs reveal only minor errors not consistent with AI hallucinations. OSC Response at 12-13.

The Office claims its training and AI policies–the same described to the superior court in November–render sanctions unnecessary. But none of those trainings or policies (which were not submitted to the Court and counsel has not seen) compelled the Office to stop filing briefs citing to fabricated authority, notify courts of the fabricated authority which had previously been filed, or retract its misstatements to courts or opposing counsel. The Office's recycled assurances should not now be taken at face value.

ii. Sanctions would provide an essential deterrence, ensure the orderly administration of justice, and properly compensate for attorneys' costs.

Despite the Office's protestations otherwise, the deterrent effect of sanctions in this case is obvious and compelling. Nor are sanctions limited to deterrence: opposing counsel and this Court should be compensated for the costs of litigating the issue. Finally, this Court should exercise its inherent authority

and impose additional nonmonetary sanctions aimed at ensuring the integrity of the criminal system in Nevada County.

The OSC Response argues that sanctions should not be imposed because they would have no deterrent effect. *See* OSC *passim*. In support of this argument, the Office selects language from cases addressing a very narrow aspect of a different sanctions vehicle–the safe-harbor provision of Code of Civil Procedure section 128.7–without explaining the context of these cases. Nonetheless, even when imposing sanctions under section 128.7, courts consider the deterrent effect on the party involved *and* "others similarly situated." Cal. Code Civ. Proc. § 128.7(d). The purpose of sanctions to deter frivolous filings "is not limited to guiding the course of the case in which they are awarded." *Eichenbaum v. Alon*, 106 Cal. App. 4th 967, 976 (2003) (internal citations omitted) (interpreting the purpose of sanctions under section 128.7).

Indeed, sanctions are regularly imposed after the offending conduct has ceased and the underlying legal dispute is resolved. In virtually all sanctions cases, there has been an order to show cause hearing and often a formal apology. An attorney's retraction of fabricated citations does not allow them to violate the Rules of Court and evade sanctions; courts impose sanctions to deter every similarly situated party from doing the same.

Another, separate purpose of sanctions is to compensate opposing counsel and the court for the loss that results from the misconduct. *Pierotti v. Torian*, 81 Cal. App. 4th 17, 33-34 (2000) (citing *In re Marriage of Economou*, 223 Cal.

App. 3d 97, 107 (1990) ($30,000 in total sanctions)). When attorneys violate the Rules of Court, the court can impose monetary sanctions paid to the court and/or monetary sanctions paid to opposing counsel. *Noland*, 114 Cal. App. 5th at 447. Rules of Court 8.276 (used in other AI fabrication cases) and 8.492 (the sanction vehicle applicable here) both allow courts to order "the award . . . of costs" for sanctionable conduct. Sanctions are paid to the court to compensate the court for conduct "that unnecessarily burdens the court and the taxpayers." *Noland*, 114 Cal. App. 5th at 447. Sanctions paid to opposing counsel are awarded "to compensate for the costs of responding to a frivolous" pleading. *Id.*

Finally, California courts also have an inherent power to "control their proceedings." *Huang v. Hanks*, 23 Cal. App. 5th 179, 181-182 (2018) (citation omitted). This inherent power derives from the California Constitution and is "not confined by or dependent on statute." *Id.* A court has "fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation." *Id.* California courts may therefore exercise their inherent powers to impose nonmonetary sanctions towards misconduct to ensure "the orderly administration of justice." *New Albertsons, Inc. v. Superior Ct.*, 168 Cal. App. 4th 1403, 1431-34 (2008) (nonmonetary sanctions can be imposed pursuant to a trial court's inherent authority).

After the crucial, material questions of fact are resolved, this Court should issue sanctions substantial enough to send a deterrent message to other

government law offices and law firms that the pattern of misconduct that occurred here is unacceptable.

a. The Office concedes that it has committed misconduct but wrongly suggests that Canon 3D(2) of the Judicial Code of Ethics constitutes an alternative to the imposition of sanctions, rather than an independent obligation of the court.

The Office suggests that this Court issue an "appropriate corrective action" pursuant to its duties under Canon 3D of the Code of Judicial Ethics, seemingly conceding that this Court has personal knowledge, or will conclude in a judicial decision, that an attorney has committed misconduct or violated the Rules of Professional Conduct. OSC Response at 7-8. The Office does not identify which of its prosecutors have committed misconduct.

The Canons of the Code of Judicial Ethics are not alternatives to other remedies addressing lawyer misconduct, such as contempt or sanctions. The Code establishes particular obligations for judges when they learn of misconduct, including the reporting of attorneys and other judges to appropriate disciplinary authorities under certain circumstances.

The reporting obligation under Canon 3D is triggered by violations of the Rules of Professional Conduct, not violations of Rules of Court, which trigger sanctions. Counsel is not aware of any authority, and the Office cites none, in support of the proposition that a court could properly decline to issue sanctions on the basis that the court followed its independent obligations under the Code of Judicial Ethics. Indeed, recent case law addressing fabricated citations includes

examples from the Second and Fourth District Courts of Appeal where the court did both, issuing monetary sanctions and making a State Bar referral pursuant to the court's Canon 3D obligations. *See, e.g.*, *Alvarez*, 114 Cal. App. 5th 1115; *Shayan*, 116 Cal. App. 5th 619.

3. Essential questions remained unresolved, requiring the Court to appoint a special referee to take evidence.

The Office's OSC Response leaves the essential factual questions of this matter entirely unresolved.[14] Resolving these questions may be simple—at the outset, the Court should order sworn declarations from members of the Office. *See infra* Proposed Order.

a. Questions of Material Fact Remain Unresolved.

i. Did DDA Maxwell use AI to generate the fabricated authority or not? If so, what program(s) did she use?

Until the California Supreme Court granted Mr. Kjoller's Petition for Review, the Office was adamant that generative AI did not cause the fabrications in *Kjoller*, *McGrath*, or *Mosley,* while simultaneously attempting to prevent a court inquiry by contending that "the source of the citation errors is not a relevant determination for" the superior court. Ex. J at 6; *see also* The Union

[14] To resolve the open questions in this case, it is necessary to conduct a limited inquiry into the very similar errors by the same prosecutor in *McGrath* and *Mosley*. This will not intrude on the proceedings in the superior court; indeed, ADA Stuart advised the superior court in *McGrath* that these proceedings in the Court of Appeal were "a more appropriate forum" to address this issue than the superior court. Exhibit P, *McGrath* People's Notice of Adverse Authority, January 20, 2026 at 3; Exhibit Q, *Mosley* People's Notice of Adverse Authority, January 20, 2026 at 3.

Article (DA Wilson claimed the source of the errors "doesn't matter"). In its OSC Response, the Office keeps the root cause of the fabrications obscured by not including a declaration from DDA Maxwell.

Whether Maxwell used generative AI—and if so, what program(s) she used—is a central question. If Maxwell lied to this Court, the superior court, and opposing counsel about the source of the errors, that is a foundational fact that must be established to understand the nature of sanctions that should be imposed.

The Office concedes that the fabrications bear the hallmarks of generative AI and claims that it is "investigat[ing]" the source of the errors. OSC Response at 8-9. This is insufficient to avoid a court inquiry; the Office does not have the track record of integrity or competence to receive the blind faith of the Court to investigate this matter on its own. Furthermore, the Office provides no indication of how it is investigating the matter or when this investigation will be complete. The Office does not suggest that it plans to share the results of that investigation with this Court, the superior court, or the Public Defender's Office.

ii. When did supervisors first learn of, or suspect, that AI hallucinations were present? For months, the Office's leadership made a series of false statements. How much did they know at the time?

To identify the proper scale and nature of sanctions, the Court needs to resolve the fundamental question of what role the managing and supervising attorneys played in this troubling series of events. The Court needs information about the supervision provided to subordinate attorneys and the content of

Maxwell's and Vogt's conversations with supervising members of the Office about their citations to fabricated authority. When did DA Wilson and ADA Stuart first suspect or know that the errors were due to the inclusion of AI hallucinations? Was it before or after Stuart told opposing counsel that Mr. Kjoller's Motion for Sanctions was frivolous because the motion suggested the possibility that Maxwell's brief was produced by AI?

i. How many briefs have Nevada County prosecutors filed with erroneous citations? Is there a pattern and practice of doing so beyond DDAs Vogt and Maxwell? How many such briefs remain pending with California courts?

The Office claims that it has reviewed 18 months of its own briefs but does not disclose the number of cases it has reviewed in its internal "audit." *See* OSC Response at 12. The methodology is particularly important because AI checkers are notoriously unreliable; *all* the fabricated authorities identified by counsel here were uncovered by checking them by hand.

The Office concedes that it found citation errors in its own briefs but has submitted none of those briefs to this Court, or, to counsel's knowledge, to the superior court. *See* Ex. A ¶ 11. In her Declaration, ADA Stuart does not explain how or why the Office categorized those errors as "minor or non-substantive citation issues" as opposed to representative of a "broader use of errors due to artificial intelligence or any other systemic pattern of error." OSC Response at 12. ADA Stuart does not explain why the Office's current assurances that AI was not used in these cases are more accurate than its past assurances that proved to be

false. The Office does not suggest that it has taken any corrective action regarding the errors that it identified in its "audit," and it is unclear from its Response whether unidentified briefs with erroneous citations remain pending in California courts.

The Court needs to resolve whether DDA Vogt, DDA Maxwell, and potentially other prosecutors used AI program(s) to litter briefs with hallucinated citations in California courts. The number of such briefs and the cause of the errors are essential facts to determine sanctions against the Office.

b. The Court Should Appoint a Referee to Resolve These Questions.

As the California Supreme Court's order noted, this Court may appoint a referee to resolve questions of material fact. *See* Order Granting Petition for Review (January 14, 2026), citing *Holt v. Kelly*, 20 Cal. 3d 560, 562 (1978) ("Since appellate courts are not equipped to take evidence, a reference is essential when the determination of controverted issues of fact becomes necessary in an original proceeding."); *see also* Cal. Code Civ. Proc. §§ 638-640 (outlining procedures for appointment of referee(s)).

A referee is well-suited to collect evidence and make findings to determine the root cause(s) of these issues. The Court should initiate this process by ordering specific staff members of the Office to provide answers to a discrete number of specific questions in sworn declarations and produce a small number of relevant documents. *See infra* Proposed Order. As these documents have the potential to quickly resolve a number of outstanding factual questions, counsel

suggests they be submitted to the Court and referee prior to any hearing, so the parties can determine what additional evidence is needed.

The Court or referee should order that the Office provide the Court, and opposing counsel, answers to specific factual questions and documents:

Declarations

1. A sworn declaration from DA Jesse Wilson including answers to the following questions:
    a. Describe your training, education and experience on the use of AI tools in law practice. Describe any safeguards or policies your Office had in place that could have prevented the dissemination of citations to fabricated authorities prior to your Office's adoption of an AI policy on November 10, 2025.
    b. Describe how you first learned of the citations to fabricated authority and how your understanding of the cause changed over time (if it did).
    c. In 2025, who supervised the work of DDA Vogt and DDA Maxwell?
    d. When did you first know or suspect DDA Vogt and DDA Maxwell had in fact used AI in drafting briefs?
    e. Why did you appoint an AI Policy Coordinator? What is that person's role and responsibility and what specific work has that person done as part of their duties?
    f. On what basis did you tell journalists that AI hallucinations were not present in the *Kjoller* Answer or the *McGrath* Opposition to Mental Health Diversion?
    g. Who conducted your Office's internal review of 18 months of briefs? How did the Office choose which briefs to review? What criteria was used to determine the nature of the errors and whether they could be related to AI hallucinations?
2. A sworn declaration of Lydia Stuart including answers to the following questions.
    a. Describe your training, education and experience on the use of AI tools in law practice.

b. Describe your supervisory duties at the Office in 2025-2026, including whether you were responsible for supervising DDA Vogt and/or DDA Maxwell at any point.

c. What was the cite checking process/protocol in the District Attorney's Office during that time? Describe all instances of which you are aware where a prosecutor in your Office filed a brief with erroneous, inaccurate, or fabricated citations.

d. Have you asked or investigated whether any employees at the Office have accounts with any AI provider, including, but not limited to, ChatGPT, Claude, or Co-Pilot? Describe in detail your knowledge of your staff's use of generative AI platforms. Other than your Office's use of the Westlaw AI provider, to your knowledge, what other AI platforms have staff used for work?

e. Have you or the Office suspected, at any point, any unauthorized use of AI by a prosecutor at the Office?

f. When did you first read each brief containing citations to fabricated authorities in *Turner*, *Kjoller*, *McGrath*, and *Mosley*? To your knowledge, what is the source of the errors in each of the briefs?

g. Describe when and how you first learned or suspected that AI hallucinations were present in each of the following briefs: the Opposition to Motion to Suppress filed in *Turner*, the Answer in Kjoller, the Opposition to Mental Health Diversion in *McGrath*, the Opposition to Mental Health Diversion in *Mosley*, the Amended Opposition to Mental Health Diversion in *McGrath*, and the Amended Opposition the Mental Health Diversion in *Mosley*.

h. What did DDA Vogt communicate to you about the citation errors in *Turner*? What steps did you take in response? What investigation and/or disciplinary actions did your Office take?

i. Did you have any communications with Judge Bjerkhoel or court staff about the *Turner* brief or AI off the record, and if so, what were the contents and date of those communications?

j. Did you review DDA Maxwell's September 23 "Response" in this case prior to it being filed? When did you review the Motion for Sanctions and Successive Motion for Sanctions?

k. After learning that DDA Maxwell had included citations to unrelated cases, including civil cases, what investigation, if any, did you do to

understand why Maxwell would have been researching those cases, as she claimed?

l. When did you first learn of DDA Maxwell's November 6, 2025 statements to Judge Abril on the record about the source of the errors? What, if any, steps have you or your Office taken to correct them?

m. Describe in detail DDA Maxwell's communications with you and other members of the Office regarding the citation errors in each brief. To your knowledge, has DDA Maxwell ever admitted to using AI in her work? If so, has she indicated what AI tool or tools she used?

n. When did you first know or suspect that DDA Maxwell in fact used AI? In your opinion, did DDA Maxwell provide your Office with inaccurate information about the source of the errors in this case (*Kjoller*)? Did DDA Maxwell provide your Office inaccurate information about the source of the errors in *Mosley* or *McGrath*?

o. Why was DDA Maxwell removed from her cases? When did that happen? Who made the decision?

p. Who conducted your Office's internal review of 18 months of briefs? Have you read those briefs? What criteria was used to determine the nature of the errors and whether they could be related to AI hallucinations?

q. Are you aware of any cases other than *Turner*, *Kjoller*, *McGrath*, and *Mosley* where a prosecutor in your Office has submitted a brief citing to fabricated or inaccurate authorities? Provide a detailed answer, including a list of all such cases and what steps you and the Office have taken to remedy those errors, instill accountability, and prevent their recurrence in future submissions.

3. A sworn declaration from DDA Madison Maxwell including answers to the following questions.

a. Who was your supervising attorney(s) at the Office from when you were hired to the present? Describe the nature and amount of supervision and training you received regarding the following topics: legal writing, citation-checking, the use of AI, candor to the court, and candor to opposing counsel.

b. Have you ever used AI in preparing a legal brief? If so, in what cases and what capacity? Did you use AI in any capacity in the *Kjoller*, *McGrath*, or *Mosley* cases, and if so, in what capacity?

c. At the time you used these AI programs or apps, what was your understanding of what data should, and should not, be entered into AI programs? Did you operate under any restrictions based on privacy, confidentiality or privilege concerns regarding data?

d. When did you learn of the fabricated citations in the *Kjoller*, *McGrath*, and *Mosley* briefs? What actions did you take in each case? What advice or direction did you receive from colleagues and supervisors in each case?

e. On November 6, 2025, you told Judge Abril that you pulled a citation to the *Sarmiento* case from another brief to add to your Opposition to Mental Health Diversion in *People v. McGrath*. Provide that brief and describe how you came across it. If no such brief exists, advise the court of that fact and provide a truthful explanation.

f. Below are real legal cases that were linked to your citations (which you listed as having different case names). You have claimed that these ended up in your briefs because you were actually researching these cases. For each of the cases below, provide the Court with a description of the following: 1) the criminal case and case number you were working on when you were researching the legal case and 2) any brief you filed citing the legal case. If you were not actually researching the case, explain truthfully and in detail how the citation came to be in your brief.

   i. *In re B.M.*,6 Cal. 5th 528 (2018);

   ii. *Olabi v. Neutron Holdings Inc.*, 50 Cal. App. 5th 1017 (2020);

   iii. *Daun v. USAA Cas. Ins. Co.*, 125 Cal. App. 4th 599, 611 (2005);

   iv. *People v. Sorenson*, 125 Cal. App.4th 612, 622 (2005).

4. A sworn declaration of DDA Amelia Vogt including answers to the following questions.

   a. Who was your supervising attorney(s) at the Office from when you were hired to the present? Describe the nature and amount of supervision and training you received regarding the following topics: legal writing, citation-checking, the use of AI, candor to the court, and candor to opposing counsel.

b. Can you confirm that the citations to fabricated authorities in the *Turner* Opposition to Motion to Suppress were the result of AI hallucinations? Describe in detail how you drafted that brief, what AI platform you used, and what cite-checking or other review was done by you or any supervising attorney.

c. Describe in detail your communications with other attorneys at your Office, including managing attorneys, regarding AI hallucinations.

d. List any other briefs, including case names, in which you used AI in drafting.

e. What, if any, actions did you take regarding drafting, using AI, or checking citations following the August 28 *Turner* court hearing? What advice or direction, if any, did you receive from colleagues and supervisors?

Documents

1. Provide true and complete copies of the following:

a. The AI policy adopted on November 10, 2025.

b. All training materials and policies related to the use of AI, legal citations, or ethical duties that have been provided to staff.

c. Documents regarding the Office's internal audit of 18 months of briefs. Provide the briefs and all documentation of errors.

d. All earlier drafts of the Opposition to Motion to Suppress filed in *Turner*, the Answer in Kjoller, the Opposition to Mental Health Diversion in *McGrath*, the Opposition to Mental Health Diversion in *Mosley*, the Amended Opposition to Mental Health Diversion in *McGrath*, and the Amended Opposition the Mental Health Diversion in *Mosley*.

e. The contract between Westlaw Advantage and Nevada County, as well as any written promises or policies related to potential errors or inaccuracies in the use of AI.

CONCLUSION

Even as AI-hallucinated legal authority plagues courts across the country, the Nevada County District Attorney's Office's actions appear to be unprecedented.

Prosecutors, as lawyers for the state who exercise tremendous power, have the highest ethical duties of all attorneys. As the State Bar Court noted in suspending one prosecutor's license, "As an officer of the court and representative of the People, [a prosecutor] is subject to the highest standards of honesty, fidelity, and rectitude." *Matter of Murray*, No. 14-O-00412, 2016 WL 6651388, at *9 (Cal. Bar Ct. Nov. 10, 2016). Reliance on fabricated citations is especially dangerous when the rights of a criminal defendant are at stake. *Alvarez*, 114 Cal. App. 5th 1115 at 1119. But in this case, the Office repeatedly asked courts to rely on made-up caselaw to deprive indigent criminal defendants of their most basic constitutional rights. If, as seems likely, the errors were actually caused by AI hallucinations, prosecutors lied about the source of the errors to courts, opposing counsel, and the public. The Court is left with open, material questions of fact about the root cause of these errors and the way managing attorneys supervised subordinate attorneys and aggressively responded to being notified of the fabricated citations by opposing counsel. The Office now admits there are "citation issues" in other, undisclosed cases, further demonstrating the need for this Court to appoint a referee and resolve these issues in a forum independent of the District Attorney's Office.

This Court must take action not only to ensure these actions—filing briefs containing fabricated authority and seemingly misleading courts and counsel about the source of the errors—are not repeated, but also to protect the integrity of the judicial system and the rights of vulnerable people in Nevada County. After a referee determines what exactly occurred here, the Court should impose sanctions sufficiently weighty to ensure this conduct is not repeated, in Nevada County or elsewhere.

Dated: March 30, 2026

Respectfully submitted,

_/s/ Peter Santina___

Peter Santina
Attorney for Kyle Kjoller

CERTIFICATE OF WORD COUNT

Counsel for Petitioner hereby certifies that this brief consists of 10,698 words (excluding cover page information, tables, proof of service, signature blocks, and this certificate), according to the word count of the computer word-processing program.

Dated: March 30, 2026

Respectfully submitted,

/s/ Peter Santina

Peter Santina
Attorney for Kyle Kjoller

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

Kyle Kjoller, Petitioner, v. The Superior Court of Nevada County, Respondent; The People; Real Party in Interest.	No. C104445 California Supreme Court No. S293723 Nevada County Sup. Court No. CR0005981

[PROPOSED] ORDER

The Nevada County District Attorney's Office is hereby ordered to submit the following:

Declarations

1. A sworn declaration from DA Jesse Wilson including answers to the following questions:
    a. Describe your training, education and experience on the use of AI tools in law practice. Describe any safeguards or policies your Office had in place that could have prevented the dissemination of citations to fabricated authorities prior to your Office's adoption of an AI policy on November 10, 2025.
    b. Describe how you first learned of the citations to fabricated authority and how your understanding of the cause changed over time (if it did).
    c. In 2025, who supervised the work of DDA Vogt and DDA Maxwell?

d. When did you first know or suspect DDA Vogt and DDA Maxwell had in fact used AI in drafting briefs?

e. Why did you appoint an AI Policy Coordinator? What is that person's role and responsibility and what specific work has that person done as part of their duties?

f. On what basis did you tell journalists that AI hallucinations were not present in the *Kjoller* Answer or the *McGrath* Opposition to Mental Health Diversion?

g. Who conducted your Office's internal review of 18 months of briefs? How did the Office choose which briefs to review? What criteria was used to determine the nature of the errors and whether they could be related to AI hallucinations?

2. A sworn declaration of Lydia Stuart including answers to the following questions.

a. Describe your training, education and experience on the use of AI tools in law practice.

b. Describe your supervisory duties at the Office in 2025-2026, including whether you were responsible for supervising DDA Vogt and/or DDA Maxwell at any point.

c. What was the cite checking process/protocol in the District Attorney's Office during that time? Describe all instances of which you are aware where a prosecutor in your Office filed a brief with erroneous, inaccurate, or fabricated citations.

d. Have you asked or investigated whether any employees at the Office have accounts with any AI provider, including, but not limited to, ChatGPT, Claude, or Co-Pilot? Describe in detail your knowledge of your staff's use of generative AI platforms. Other than your Office's use of the Westlaw AI provider, to your knowledge, what other AI platforms have staff used for work?

e. Have you or the Office suspected, at any point, any unauthorized use of AI by a prosecutor at the Office?

f. When did you first read each brief containing citations to fabricated authorities in *Turner*, *Kjoller*, *McGrath*, and *Mosley*? To your knowledge, what is the source of the errors in each of the briefs?

g. Describe when and how you first learned or suspected that AI hallucinations were present in each of the following briefs: the

Opposition to Motion to Suppress filed in *Turner*, the Answer in Kjoller, the Opposition to Mental Health Diversion in *McGrath*, the Opposition to Mental Health Diversion in *Mosley*, the Amended Opposition to Mental Health Diversion in *McGrath*, and the Amended Opposition the Mental Health Diversion in *Mosley*.

h. What did DDA Vogt communicate to you about the citation errors in *Turner*? What steps did you take in response? What investigation and/or disciplinary actions did your Office take?

i. Did you have any communications with Judge Bjerkhoel or court staff about the *Turner* brief or AI off the record, and if so, what were the contents and date of those communications?

j. Did you review DDA Maxwell's September 23 "Response" in this case prior to it being filed? When did you review the Motion for Sanctions and Successive Motion for Sanctions?

k. After learning that DDA Maxwell had included citations to unrelated cases, including civil cases, what investigation, if any, did you do to understand why Maxwell would have been researching those cases, as she claimed?

l. When did you first learn of DDA Maxwell's November 6, 2025 statements to Judge Abril on the record about the source of the errors? What, if any, steps have you or your Office taken to correct them?

m. Describe in detail DDA Maxwell's communications with you and other members of the Office regarding the citation errors in each brief. To your knowledge, has DDA Maxwell ever admitted to using AI in her work? If so, has she indicated what AI tool or tools she used?

n. When did you first know or suspect that DDA Maxwell in fact used AI? In your opinion, did DDA Maxwell provide your Office with inaccurate information about the source of the errors in this case (*Kjoller*)? Did DDA Maxwell provide your Office inaccurate information about the source of the errors in *Mosley* or *McGrath*?

o. Why was DDA Maxwell removed from her cases? When did that happen? Who made the decision?

p. Who conducted your Office's internal review of 18 months of briefs? Have you read those briefs? What criteria was used to determine the

nature of the errors and whether they could be related to AI hallucinations?

q. Are you aware of any cases other than *Turner*, *Kjoller*, *McGrath*, and *Mosley* where a prosecutor in your Office has submitted a brief citing to fabricated or inaccurate authorities? Provide a detailed answer, including a list of all such cases and what steps you and the Office have taken to remedy those errors, instill accountability, and prevent their recurrence in future submissions.

3. A sworn declaration from DDA Madison Maxwell including answers to the following questions.

   a. Who was your supervising attorney(s) at the Office from when you were hired to the present? Describe the nature and amount of supervision and training you received regarding the following topics: legal writing, citation-checking, the use of AI, candor to the court, and candor to opposing counsel.

   b. Have you ever used AI in preparing a legal brief? If so, in what cases and what capacity? Did you use AI in any capacity in the *Kjoller*, *McGrath*, or *Mosley* cases, and if so, in what capacity?

   c. At the time you used these AI programs or apps, what was your understanding of what data should, and should not, be entered into AI programs? Did you operate under any restrictions based on privacy, confidentiality or privilege concerns regarding data?

   d. When did you learn of the fabricated citations in the *Kjoller*, *McGrath*, and *Mosley* briefs? What actions did you take in each case? What advice or direction did you receive from colleagues and supervisors in each case?

   e. On November 6, 2025, you told Judge Abril that you pulled a citation to the *Sarmiento* case from another brief to add to your Opposition to Mental Health Diversion in *People v. McGrath*. Provide that brief and describe how you came across it. If no such brief exists, advise the court of that fact and provide a truthful explanation.

   f. Below are real legal cases that were linked to your citations (which you listed as having different case names). You have claimed that these ended up in your briefs because you were actually researching these cases. For each of the cases below, provide the Court with a description of the following: 1) the criminal case and case number you were working on when you were researching the legal case and

2) any brief you filed citing the legal case. If you were not actually researching the case, explain truthfully and in detail how the citation came to be in your brief.

i. *In re B.M.*,6 Cal. 5th 528 (2018);

ii. *Olabi v. Neutron Holdings Inc.*, 50 Cal. App. 5th 1017 (2020);

iii. *Daun v. USAA Cas. Ins. Co.*, 125 Cal. App. 4th 599, 611 (2005);

iv. *People v. Sorenson*, 125 Cal. App.4th 612, 622 (2005).

4. A sworn declaration of DDA Amelia Vogt including answers to the following questions.

   a. Who was your supervising attorney(s) at the Office from when you were hired to the present? Describe the nature and amount of supervision and training you received regarding the following topics: legal writing, citation-checking, the use of AI, candor to the court, and candor to opposing counsel.

   b. Can you confirm that the citations to fabricated authorities in the *Turner* Opposition to Motion to Suppress were the result of AI hallucinations? Describe in detail how you drafted that brief, what AI platform you used, and what cite-checking or other review was done by you or any supervising attorney.

   c. Describe in detail your communications with other attorneys at your Office, including managing attorneys, regarding AI hallucinations.

   d. List any other briefs, including case names, in which you used AI in drafting.

   e. What, if any, actions did you take regarding drafting, using AI, or checking citations following the August 28 *Turner* court hearing? What advice or direction, if any, did you receive from colleagues and supervisors?

<u>Documents</u>

1. Provide true and complete copies of the following:

   a. The AI policy adopted on November 10, 2025.

   b. All training materials and policies related to the use of AI, legal citations, or ethical duties that have been provided to staff.

c. Documents regarding the Office's internal audit of 18 months of briefs. Provide the briefs and all documentation of errors.

d. All earlier drafts of the Opposition to Motion to Suppress filed in *Turner*, the Answer in Kjoller, the Opposition to Mental Health Diversion in *McGrath*, the Opposition to Mental Health Diversion in *Mosley*, the Amended Opposition to Mental Health Diversion in *McGrath*, and the Amended Opposition the Mental Health Diversion in *Mosley*.

e. The contract between Westlaw Advantage and Nevada County, as well as any written promises or policies related to potential errors or inaccuracies in the use of AI.

All documents must be true and correct copies and declarations made under penalty of perjury.

Date:

_____
Hon. Justice Hull
Acting P.J.

EXHIBIT A

DECLARATION OF THOMAS ANGELL

I, the undersigned, declare:

1. I am the Acting Public Defender of Nevada County. The Nevada County Public Defender's Office represented Petitioner Kyle Kjoller in his criminal case and co-counseled with nonprofit legal organization Civil Rights Corps in representing Mr. Kjoller in the underlying habeas corpus proceedings, and in motions for sanctions. My Office no longer represents Mr. Kjoller in this sanctions proceeding; on March 6, 2026, the Public Defender's Office and Civil Rights Corps filed a joint substitution of counsel letter, removing my Office from the case due to Mr. Kjoller seeking new appointed counsel in his post-conviction criminal appellate proceedings.

2. The Nevada County Public Defender's Office also represented Kalen Turner and currently represents Taylor McGrath and Alvin Mosley in their ongoing criminal cases.

3. The Nevada County Public Defender's Office is currently comprised of the following full time staff: one acting public defender, seven deputy public defenders, one office manager, two legal secretaries, and one legal office assistant.

4. The Nevada County Public Defender's Office is appointed to the lion's share of the criminal cases in Nevada County.

5. The Nevada County Public Defender's Office has an approximate annual budget of $3.86 million, approximately half that of the Nevada County District Attorney's Office, which has approximately $7.37 million for fiscal year 2025-2026.

6. The Public Defender's Office has partnered with Civil Rights Corps to litigate petitions for writs of habeas corpus challenging unconstitutional pretrial detention orders on behalf of our clients.

7. The Nevada County Public Defender's Office has dedicated substantial time investigating and litigating the District Attorney's Office's submission of fabricated briefs in the prosecutions of Mr. Kjoller, Mr. McGrath and Mr. Mosley. The cases of Mr. McGrath and Mr. Mosley have been continued for lengthy periods to allow this issue to be fully litigated.

8. In the District Attorney's Office's original Opposition to Mental Health Diversion signed on August 13, 2025, in *People v. McGrath*, Deputy District Attorney Madison Maxwell cited "*People v. Sarmiento* (2024) 94 Cal.App.5th 447, 458–459." This is not a real citation; the reporter's citation links to *Alliance San Diego v. City of San Diego*, 94 Cal. App. 5th 419 (2023), which discusses the validity of a ballot initiative raising occupancy taxes. It does not mention mental health diversion.

9. On November 6, 2025, I appeared in Department 1 in *People v. McGrath* on behalf of Mr. McGrath. Madison Maxwell appeared on behalf of the District Attorney's Office. At the hearing, Maxwell informed the Honorable Judge Courtney Abril that she took that the above *Sarmiento* citation "from another brief and did not check that cite." Second RJN Attach. A at 12:8-10.

10. To my knowledge, the District Attorney's Office has not informed anyone at the Public Defender's Office or the superior court of the case or brief that Maxwell said was the source of the citation to fabricated authority.

11. In its OSC Response in this Court, the District Attorney's Office states it found additional, unspecified citation issues in an internal review of an undisclosed number of other briefs (OSC Response at 12-13, 23 ¶ 33). To my knowledge, the District Attorney's Office has not advised the Public Defender's Office or the superior court of these errors.

12. The District Attorney's Office has offered no direct apology to the vulnerable people it has prosecuted in these cases for the significant delays its fabricated citations have caused, as far as I am aware.

Signed on March 30, 2026 under penalty of perjury in Nevada City, California,

_____/s/_____
Thomas Angell
Acting Public Defender
Nevada County

EXHIBIT B

AUGUST 2025						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
27	28	29	30	31	**1**	**2**
3	**4**	**5**	**6**	**7**	**8** *Turner*: DAO (DDA Vogt) files Opposition to Defendant's Motion to Suppress ("MTS") in the Nevada County Superior Court. The filing contains numerous fabricated citations and quotations.	**9**
10	**11**	**12**	**13** *McGrath*: DAO (DDA Maxwell) files Opposition to Defendant's Petition for Mental Health Diversion in the Nevada County Superior Court. The filing contains numerous fabricated citations and quotations.	**14**	**15**	**16**
17	**18**	**19**	**20** *Kjoller:* Kyle Kjoller files Petition for Writ of Habeas Corpus in the COA (3rd District).	**21** *Kjoller:* COA orders briefing in Mr. Kjoller's habeas case and requests informal response by 9/5.	**22**	**23**
24	**25**	**26**	**27**	**28** *Turner*: Hearing on MTS. ADA Stuart appears on behalf of DAO and Hon. Judge Bjerkhoel raises the issue of the fabricated citations. Stuart later claims, "Promptly thereafter [the hearing], the issue was addressed both individually with the involved attorney and collectively with all prosecutorial staff." (Stuart 11/17/25 Declaration, Nos. 9-10).	**29**	**30**

SEPTEMBER 2025						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
31	**1**	**2**	**3**	**4** *Kjoller*: DAO (DDA Maxwell) files Answer in COA containing numerous erroneous legal citations. (NOTE: The signature block on the Answer is dated 8/28 but it was filed on 9/4).	**5**	**6**
7	**8**	**9**	**10**	**11** *Mosley*: DAO (Maxwell) files Opposition to Mental Health Diversion containing the same errors as the 8/13 *McGrath* brief. DAO begins a trial period for Westlaw Advantage, "an artificial intelligence-powered legal research tool." (Stuart 2/27/26 Declaration, OSC Response, No. 3).	**12**	**13**
14	**15**	**16**	**17** *Kjoller*: Mr. Kjoller files Informal Reply & Motion for Sanctions in COA, putting DAO on notice that its Answer brief contained numerous erroneous legal citations and misstatements of law.	**18** *Kjoller*: ADA Stuart & DDA Maxwell call T.Angell, offering "human error" explanations for the fabrications, asking him to withdraw the Motion, and suggesting he committed misconduct by filing a frivolous motion.	**19** *Kjoller*: COA denies Motion for Sanctions.	**20**
21	**22**	**23** *Kjoller*: DDA Maxwell files "Response" in COA, claiming she "did not cite to fake cases and did not misrepresent the record." T.Angell emails ADA Stuart memorializing the 9/18 call. C.White leaves a voicemail for ADA Stuart.	**24** *Kjoller*: C.White speaks with DDA Maxwell on the phone, Maxwell says she inadvertently mismatched case names and reporter citations. C.White emails Angell & Stuart & Maxwell memorializing the 9/24 call.	**25**	**26**	**27**

28	**29** *Kjoller:* COA issues *Palma* Notice re: habeas proceedings.	**30** *Kjoller*: ADA Stuart emails Mr. Kjoller's counsel, confirming previous emails "reflect the spirit of [the DAO's] position" and citing authorities for filing frivolous motions; warns: "Although the Court has already resolved this matter, I would caution that similar motions" from Petitioner's counsel "may warrant closer scrutiny."	1	2	3	4

OCTOBER 2025						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
28	29	30	**1**	**2** *Kjoller*: Mr. Kjoller files 2nd Motion for Sanctions, including the 8/8 *Turner* brief and 8/28 transcript, and the email exchange between defense counsel, DDA Maxwell, and ADA Stuart. C.White submits declaration with filing.	**3**	**4**
5	**6**	**7**	**8**	**9**	**10**	**11**
12	**13**	**14**	**15**	**16**	**17**	**18**

19	**20** *Kjoller:* COA denies 2nd Motion for Sanctions.	**21**	**22**	**23**	**24**	**25**
26	**27**	**28**	**29**	**30** *Kjoller:* Defense files *Kjoller* PFR & RJN (*McGrath* brief) in CSC. ADA Stuart later admits these documents placed the DAO on notice of *McGrath* errors. Stuart says Maxwell immediately alerted her; they conferred and decided not to file an Errata. (Stuart 11/17/25 Declaration, No. 2).	**31**	1 DAO enters contract with Westlaw for the continued use of Westlaw Advantage. (Stuart 2/27/26 Declaration, OSC Response, No. 4).

NOVEMBER 2025						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
2	**3**	**4**	**5** *McGrath*: PD Thomas Angell files Notice of Errata, alerting superior court of errors in DAO's brief. Daily Journal: *Prosecutor accused of AI hallucinations in habeas brief*.	**6** *McGrath*: Hearing on Petition for Mental Health Diversion. DDA Maxwell offers explanations for errors.	**7** DAO appoints Supervising Deputy District Attorney Helenaz Hill as "AI Policy Coordinator, responsible for policy compliance and for providing ongoing oversight and guidance as we adapt to this developing technology of AI in legal work." (Stuart 11/17/25 Declaration, No. 11) SacBee: *AI caused errors in a criminal case, Northern California prosecutor says*.	**8**
9	**10** DAO implements a formal AI Policy Directive. (Stuart 11/17/25 Declaration, No. 12.)	**11**	**12** *Kjoller*: Defense files a 2nd RJN in CSC (*Mosley* brief, *McGrath* transcript). "ADA Stuart, Supervising Deputy District Attorney Helenaz Hill and Supervising	**13** *Mosley*: DDA Maxwell files 1st Amended Opposition; the filing still contains errors. *McGrath*: DDA Maxwell files 1st Amended Opposition; the filing still contains	**14** DA Jesse Wilson issues statement to Daily Journal: "The Nevada County District Attorney's Office acknowledges that, in a recent matter, a prosecutor utilized artificial intelligence	**15**

			District Attorney Casey Ayer, reviewed the applicable Rules of Professional Conduct governing supervisory duties." (11/17/25 Stuart Declaration, No.7).	errors. DDA Maxwell also files Notice of Intent to Withdraw the Opposition brief. ADA Stuart files People's Response to Defendant's Request for Judicial Notice. DAO conducts "mandatory training for all prosecutors" addressing Rules 3.1, 3.3. & 3.8, "emphasizing diligence, competence, and candor toward the Court, and underscoring the importance of thorough oversight in verifying all legal citations and filings." (Stuart 11/17/25 Declaration, No. 8).	in preparing a filing, which resulted in inaccurate legal citations. Once discovered, the filing was immediately withdrawn. It is important to note that the filing was withdrawn prior to litigation on the legal issue."	
16	**17** *McGrath*: ADA Stuart files Response to Defendant's Request for Dismissal.	**18**	**19** *McGrath*: Defense files Reply brief.	**20** *McGrath*: hearing on RJN. Stuart appears on behalf of DAO. Hearing dates vacated, continued to 1/9 for RJN.	**21** *Kjoller*: Professors' amicus letter filed in the CSC. DA Wilson tells the Daily Journal: "This is our attorney's position, and I say, 'OK, fine, but we're not getting lost in the details. It doesn't matter. Errors are not OK. Everyone has to check citations.'"	**22**
23	**24**	**25** NYT: *Prosecutor Used Flawed A.I. to Try to Keep a Man in Jail, His Lawyers Say* ● "Mr. Wilson has acknowledged that the briefs contain numerous errors, but he has said that A.I. was used to draft only one of them, and not the one filed in Mr. Kjoller's case."	**26**	**27**	**28**	**29**

DECEMBER 2025						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
30	**1** *Kjoller*: California Public Defenders Association files amicus letter in the CSC.	**2**	**3**	**4** DA Jesse Wilson publishes op-ed in The Union *('Our Office has used this opportunity to provide enhanced instruction': Nevada County District Attorney Jesse Wilson offers response to AI use inaccuracies*).	**5**	**6**
7	**8**	**9** *Mosley*: Defense files Reply to People's Amended Opposition.	**10**	**11**	**12**	**13**
14	**15**	**16** *Kjoller:* CSC extends time for granting or denying review to 1/28/26.	**17**	**18**	**19**	**20**
21	**22**	**23**	**24**	**25**	**26** *Mosley*: ADA Stuart files Response to RJN.	**27**
28	**29**	**30**	**31**	1	2	3

JANUARY 2026						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
28	29	30	31	**1**	**2**	**3**
4	**5** *McGrath*: ADA Stuart files 2nd Amended Opposition.	**6**	**7**	**8**	**9**	**10**
11	**12**	**13**	**14** *Kjoller*: CSC grants PFR and RJNs and remands the case to the COA.	**15** *Mosley*: ADA Stuart files 2nd Amended Opposition.	**16**	**17**
18	**19**	**20** *McGrath & Mosley*: ADA Stuart files Notice of Adverse Authority regarding CSC order in *Kjoller.*	**21**	**22**	**23**	**24**
25	**26**	**27**	**28** *Kjoller:* COA issues Order to Show Cause.	**29**	**30**	**31**

FEBRUARY 2026						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
1	**2**	**3**	**4**	**5**	**6**	**7**
8	**9**	**10**	**11**	**12**	**13**	**14**
15	**16**	**17**	**18**	**19**	**20**	**21**
22	**23**	**24**	**25**	**26**	**27** *Kjoller:* DAO files Response to COA's OSC.	**28**

EXHIBIT C

California Public Defenders Association
10324 Placer Lane
Sacramento, CA 95827
(800) 538-4993

September 12, 2025

Hon. Patricia Guerrero, Chief Justice, and Associate Justices
Supreme Court of the State of California
336 McAllister St.
San Francisco, CA 94102

Re: *Kjoller v. Superior Court*, no. S293723

Dear Chief Justice Guerrero and Associate Justices of the Court:

The California Public Defenders Association submits this letter as amicus curiae in support of the petition for review in *Kjoller v. Superior Court*, no. S293723. (Cal. Rules of Court, rule 8.500(g).) We respectfully urge the Court to grant review and transfer the matter to the Court of Appeal with instructions to issue an order to show cause why the Nevada County District Attorney should not be sanctioned for misstating the record, misrepresenting existing authorities, and citing multiple fictitious cases in its answer to Kjoller's habeas petition—errors which bear the "hallmarks of hallucinated citations produced by generative AI." (*Schlichter v. Kennedy* (2025) ___ Cal.App.5th ___, 2025 WL 3204738, *6.)

We agree with the arguments offered by Kjoller and the amici professors, scientists and scholars. We write to offer two additional reasons for granting review.

First, in summarily rejecting sanctions, the court below applied an unduly forgiving standard to prosecutors that is starkly at odds with *People v. Alvarez* (2025) 114 Cal.App.5th 1115 [337 Cal.Rptr.3d 585], a case decided just weeks earlier. In *Alvarez*, the court sanctioned a defense attorney and referred him to the state bar for similar misconduct even after he admitted citing fabricated authority, apologized, and withdrew from the representation, noting that such lapses are

"particularly disturbing" in criminal cases where a defendant's constitutional rights are at stake. (*Supra*, 337 Cal.Rptr.3d at pp. 587–588.) Here, there was no admission or apology: instead, the District Attorney's Office denied wrongdoing and threatened disciplinary action against Kjoller's counsel, even as evidence stacked up that it had submitted similar hallucinated citations in other cases. Review and transfer is necessary to enforce the heightened ethical standards to which prosecutors are held (see *People v. Hill* (1998) 17 Cal.4th 800, 820) and to guard against one-sided application of the sanction power.

Second, compared to other litigants tempted to copy erroneous generative AI output into briefs, there is a greater need to deter prosecutors, because there is a slimmer chance that their misrepresentations will ever come to the attention of the court. (See *Musaelian v. Adams* (2009) 45 Cal.4th 512, 519 [primary purpose of sanctions under Code Civ. Proc. § 128.7 is deterrence].) AI-generated hallucinations are superficially plausible (*Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426, 444), especially if they take the less obvious but "[e]ven more concerning" form of citing real cases but misrepresentating their holdings. (*United States v. Czartorski* (W.D. Ky. Nov. 10, 2025, No. 3:25-CR-00030-RGJ) 2025 WL 3143800, *3.) They may often fly under the radar in the informal, fast-paced and poorly-resourced context in which most criminal litigation happens. And since prosecutors are powerful repeat players in the local legal system, defense attorneys who discover fake citations may face pressure not to pursue the matter—as Kjoller's counsel apparently did here. That makes it all the more important for courts not to turn a blind eye to this form of prosecutorial misconduct when they encounter it, but to look into whether sanctions are warranted. Review and transfer is necessary to show all members of the bar that California courts will not tolerate fabricated authority in criminal cases.

STATEMENT OF INTEREST

The California Public Defenders Association is a statewide organization of more than 4,000 public defenders and criminal defense attorneys. Our members represent most people charged with crimes in California state courts. We have long been concerned about the risks posed by generative artificial intelligence to the integrity of criminal proceedings. We recently sponsored Senate Bill 524, a law that will require police agencies to disclose the use of report-writing AI software and maintain an audit trail of AI-generated drafts. (Stats. 2025, ch. 587; Pen. Code, § 13663 [eff. Jan. 1, 2026].) We have a strong interest in ensuring that prosecutors do not rely on hallucinated cases and holdings to win convictions or keep our clients in jail, and in the even-handed application of ethical rules to prosecutors and defense attorneys.

REASONS FOR GRANTING REVIEW AND TRANSFER

1. Review and transfer is necessary in light of *Alvarez* to enforce the heightened standards of candor and impartiality to which prosecutors are held and to avoid one-sided application of the sanction power

Citing made-up cases is sanctionable misconduct. (*Noland*, *supra*, 114 Cal.App.5th at pp. 444–445.) So is citing real cases for propositions that they do not support. (*Id.* at p. 445.)[1] When attorneys include fictitious authority in a legal brief and file it with the court—thereby falsely certifying it as "existing law" (see Code Civ. Proc., § 128.7, subd. (b)(2))—they violate the duty of candor, abuse the adversary system, waste the opposing party's time, and "promote cynicism about the legal profession." (*Noland*, p. 445; *Johnson v. Dunn* (2025) 792 F.Supp.3d 1241, 1256–1257 [citation omitted].) Although the availability of ChatGPT and similar tools has made this form of deception common, the ethical violation does not depend on whether the attorney actually used such software: "[c]iting nonexistent case law or misrepresenting the holdings of a case is making a false statement to a court," regardless of whether "generative AI told you so." (*United States v. Hayes* (E.D. Cal. 2025) 763 F.Supp.3d 1054, 1067 [cleaned up].)

In criminal cases, reliance on fabricated citations is "particularly disturbing" because it imperils the defendant's due process rights and undermines the integrity of judicial proceedings. (*Alvarez*, *supra*, 337 Cal.Rptr.3d at p. 588.) For that reason, when public defenders or defense attorneys are caught citing fake cases, courts have not hesitated to impose sanctions. (*Ibid.* [$1,500 sanction and state bar referral]; *Hayes*, *supra*, 763 F.Supp.3d at p. 1073 [$1,500 sanction, state bar referral and notification to all district judges]; *United States v. McGee* (S.D. Ala. 2025) ___ F.Supp.3d ___, 2025 WL 2888065, *9 [reprimand, $5,000 fine, state bar referral and referral for removal from panel]; *United States v. Brewer* (M.D. Fla. Sept. 11, 2025, No. 6:19-cr-22-RBD-DCI) 2025 WL 2636404, *2–3 [order to show cause, listing fines, suspension from district court bar and state bar referral as possible sanctions]; *Czartorski*, *supra*, 2025 WL 3143800, *4 [order to show cause].) In *McGee*, a federal court sanctioned a defense attorney who submitted fake cases in a motion to continue a criminal trial, despite the attorney's personal mitigation, professed ignorance of the risk of AI hallucination, and profuse apology, finding that his

[1] *Noland* was a civil appeal, and the case below arose out of a petition for a writ of habeas corpus or mandate. But the court still had the same sanction power. As in an appeal, a reviewing court may impose sanctions on a party or attorney in a writ proceeding for an "unreasonable violation" of the Rules of Court. (Cal. Rules of Court, rule 8.492(a)(2); cf. *id.*, rule 8.276(a)(4).) Here, rule 8.204(a)(1)(B) required the prosecution to support its points, "if possible, by citation to authority." (*Id.*, rule 8.485(a) [applying rule 8.204 to documents filed in writ proceedings].) As *Noland* explains, a party unreasonably violates this rule if it fails to support each point with citations to "real (as opposed to fabricated) legal authority." (*Noland*, *supra*, 114 Cal.App.5th at p. 447; see also *Alvarez*, *supra*, 337 Cal.Rptr.3d at p. 588 [rule unreasonably violated where filing "misrepresented the substance of cases"].)

"parrot[ing]" of unverified citations "reflects a complete and utter disregard for his professional duty of candor and is tantamount to bad faith." (*McGee*, *supra*, 2025 WL 2888065, *2, *7.) Likewise, in *Alvarez*—a case decided just weeks before the order under review—the Court of Appeal imposed sanctions on an appellate defense attorney who cited a nonexistent case, cited two cases that did not address the issue for which they were cited, and included an inaccurate quotation. (*Alvarez*, *supra*, 337 Cal.Rptr.3d at p. 587.) Noting his admission, apology and voluntary withdrawal, the court found the attorney's conduct "not as egregious" as what occurred in *Noland*, but still imposed sanctions because his client was a criminal defendant with a right to due process and competent counsel. (*Id.* at p. 588.)

In theory, the same rules apply on the other side of the courtroom. Prosecutors are held to standards of conduct "higher than that imposed on other attorneys" because of their "unique function": exercising the sovereign power of the state against individuals accused of crimes. (*People v. Hill* (1998) 17 Cal.4th 800, 820.) If they use made-up citations and holdings to win convictions or keep people in jail, they can do much more real-world harm, and much more damage to public confidence in the judiciary, than any civil litigant or defense attorney. In practice, however, prosecutorial misconduct rarely results in any sanction.[2] This case presents a striking example of that phenomenon, especially viewed alongside *Alvarez*. According to Kjoller's sanctions motion, a prosecutor misstated the record, misrepresented existing authorities, and cited multiple bogus cases in an effort to defeat a writ petition seeking pretrial release. (Petition for Review, pp. 11–13.) When confronted with these facts, the District Attorney's Office "doubled down" (*Mata v. Avianca, Inc.* (2023) 678 F.Supp.3d 443, 449), offering implausible excuses for its "errored citations" and allegedly threatening petitioner's counsel with professional discipline for daring to raise the issue. (Petition for Review, pp. 14–18.)

In almost every way, the misconduct alleged here is more serious than *Alvarez*. It involved a larger number of misrepresentations; posed the risk of summary denial of release for an in-custody defendant; and appears to be part of a pattern in the District Attorney's Office, since found to include two more briefs by the same prosecutor riddled with inaccurate quotations, nonexistent cases, and fictitious summaries of existing cases. (Petitioner's First Request for Judicial Notice, pp. 4–13; Petitioner's Second Request for Judicial Notice, pp. 10–14.) Despite all that, the Court of Appeal refused even to investigate the matter. That outcome cannot be squared with *Alvarez*, and waters down the high standards which this Court has long demanded of prosecutors. (See *Hill*, *supra*, 17 Cal.4th at p. 820.) This Court should grant review and transfer to bring about a proper

[2] In a comprehensive study of 4,000 cases involving allegations of prosecutorial misconduct over a twelve-year period, researchers found that only 707 resulted in a specific finding of misconduct by the Court of Appeal, and only 20% of those findings resulted in reversal; out of 4,741 State Bar disciplinary reports over the same period, only ten involved prosecutors, and only six were for conduct arising in the handling of a criminal case. (Ridolfi and Possley, Northern California Innocence Project, Santa Clara University of Law (Oct. 2010) Preventable Error: A Report on Prosecutorial Misconduct in California 1997–2009, pp. 2–3.)

investigation of the troubling facts presented here, and to make sure that appellate courts' sanction power is applied uniformly. (Cal. Rules of Court, rule 8.500(b)(1)).

2. Review is necessary because prosecutors' improper use of artificial intelligence is more likely to go undetected, increasing the need for deterrence

The primary purpose of sanctions under Code of Civil Procedure section 128.7 is to deter repetition of the conduct by the attorney and comparable conduct by others. (*Musaelian*, *supra*, 45 Cal.4th at p. 519.) As dozens of cases demonstrate, meaningful deterrence is sorely needed against lawyers' misuse of generative AI. (See *Johnson*, *supra*, 792 F.Supp.3d at p. 1266 ["If fines and public embarrassment were effective deterrents, there would not be so many cases to cite"]; *McGee*, *supra*, 2025 WL 2888065, *3 ["[s]omehow the message still has not been hammered home as the epidemic of citing fake cases continues unabated."]) But the realities of criminal litigation mean that prosecutors' improper use of AI is often likely to go undetected. That makes it all the more important to investigate and impose appropriate sanctions when it is brought to a court's attention.

First, criminal proceedings at the trial court level are informal, fast-paced, and handled with limited resources amid substantial caseloads.[3] Litigants often rely on stock briefing, especially for common types of motions, and opposing parties lack the time to manually check every citation; busy criminal court judges often read the papers shortly before the hearing and rule orally from the bench. In this environment, AI-generated hallucinations are likely to fly under the radar, especially if they consist of incorrect descriptions of real cases. Moreover, because of prosecutors' status as powerful repeat players in the local legal system, allegations of misconduct are a more "serious" and "significant" step that some defense attorneys may hesitate to take even when they catch fake citations, since there is a "high likelihood that counsel on both sides will encounter each other again." (See *Hayes*, *supra*, 763 F.Supp.3d at p. 1069 [not crediting public defender's professed ignorance of made-up quotation in light of government's written briefing].) According to the Petition for Review, that dynamic was on full display here: Kjoller's counsel was met with retaliatory threats of disciplinary action as soon as he raised the false citations with the Court of Appeal. (See Petition for Review, pp. 16–18.)

Second, writ petitions are often the only practical means for criminal defendants to obtain appellate review on key issues in their cases. (See, e.g., *In re Stier* (2007) 152 Cal.App.4th 63, 83–84 [pretrial release]; *People v. Johnson* (1980) 26 Cal.3d 557, 574–575 [speedy trial claims]; *People v. Moreno* (1984) 158 Cal.App.3d 109, 113–114 [denial of motion to set aside information]; *Hill v. Superior*

[3] In fiscal year 2023–2024, California superior courts disposed of 123,063 felony cases and 315,712 misdemeanor cases. (See Judicial Council of Cal., 2025 Court Statistics Report: Statewide Caseload Trends (2025) p. 85.) 98% of these dispositions were before trial. (*Id.* at pp. 87–88.)

Court (1974) 10 Cal.3d 812, 816, fn. 2 [discovery].) But an appellate court has discretion to summarily deny a writ. (*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 201.) It may also grant relief without issuing a formal opinion. As a result, it is not required to discuss the prosecution's authorities and arguments in detail, as it would if it were deciding an appeal. That feature of writ practice means that prosecutors may evade scrutiny of their citation misconduct. (See *Alvarez*, *supra*, 114 Cal.5th at p. 588 [citing Cal. Code of Jud. Ethics, canon 3D(2) [court's duty to "take appropriate corrective action" triggered when it "conclude[s]" that attorney has violated ethical rules].) It also compounds the harm to the administration of justice caused by AI-generated hallucinations, because it will generally be impossible to tell whether the Court of Appeal relied on them when denying a writ petition.

To stem the tide of bogus cases and hallucinated arguments in court filings, the judiciary must make clear to all lawyers, including prosecutors, that suspected AI misuse will lead to an investigation and serious consequences. The Court should grant review and transfer to uphold the deterrent function of sanctions, and to send a message that this form of dishonesty will not be tolerated.

CONCLUSION

For these reasons, the Court should grant review and transfer the matter to the Court of Appeal with instructions to issue an order to show cause why sanctions should not be imposed.

Respectfully submitted,

/s/

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Kathleen Guneratne
Chair, CPDA Amicus Committee

/s/

____

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EXHIBIT D

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November 21, 2025

The Honorable Chief Justice Patricia Guerrero
and the Honorable Associate Justices of the
Supreme Court of the State of California
336 McCallister Street
San Francisco, CA 94102

Re: Letter of *Amici Curiae* in Support of Petition for Review of *Kjoller v. Superior Court of Nevada County*, Case No. S293723

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

This letter brief is submitted to the Court by the professors, scientists, and scholars appearing in Appendix A (the "Amici Curiae")[1] pursuant to the California Rules of Court, Rule 8.500(g), urging the Court to grant the petition for review in *Kjoller v. Superior Court of Nevada County*, Case No. S293723.

IDENTIFICATION OF *AMICI CURIAE* AND INTEREST IN SUPPORTING REVIEW

This letter is submitted on behalf of *Amici Curiae*, who are professors, scientists, and scholars that conduct research on issues of criminal law and procedure, prosecutorial obligations and misconduct, wrongful convictions, the use of forensic scientific evidence in criminal proceedings, or the use of generative artificial intelligence ("AI") models. The apparent use or misuse of generative artificial intelligence by the Nevada County District Attorney's Office raises many of the issues examined by the *Amici Curiae* in their academic and professional work: prosecutorial conduct in the criminal legal system, the ethical obligations of attorneys and prosecutors, how deficiencies in scientific tools and methods can lead to wrongful conviction, and deficiencies and error rates in generative AI specifically.

[1] This brief was prepared by the undersigned on behalf of the *amici curiae*. No party or counsel for any party authored this brief in whole or in part, and no monetary contribution was provided for preparation or submission of the brief. Institutional affiliations of *amici curiae* are included for identification purposes only.

ARGUMENTS IN SUPPORT OF REVIEW

I. REVIEW IS NECESSARY TO EXAMINE WHETHER USE OF GENERATIVE ARTIFICIAL INTELLIGENCE RESULTED IN SUBMISSION OF FABRICATED LEGAL CITATIONS OR OTHER HALLUCINATION ERRORS, AND WHETHER SANCTIONS SHOULD ISSUE

Courts nationwide are facing the threat posed by use of generative AI in court submissions. To date, hundreds of published cases have grappled with the submission of fabricated and misleading legal authority and cascading risks to the rule of law.[2] This case presents the first known allegation of a prosecutor's office submitting nonexistent and misleading legal authority that appears to be generated by AI. Moreover, if the allegations in Mr. Kjoller's petition are correct, the Nevada County District Attorney's Office has engaged in the submission of fabricated legal authority in *multiple* proceedings without correcting or withdrawing the submissions.[3]

False citations are the tip of the iceberg. They signal deeper problems that are more difficult to detect, such as false quotations or false holdings from real cases or sycophantic arguments that lack factual or legal basis. Left uninvestigated and unchecked, the use of false or misleading legal authority in the criminal justice system—whether generated by AI or not—will have grave consequences: inaccurate judicial decisions, unjustified deprivation of individual liberty, wrongful convictions, and an erosion of public trust in the judicial system.

Review is warranted to stem the tide of potential AI misuse that would render the fundamental basis of our legal system—judicial decisions based on legal precedent—unreliable. To that end, investigation of whether and how the District Attorney has used generative AI is necessary, and should include the factual accuracy of its pleadings, how it supervises and manages attorneys in its office regarding their use of generative AI, and whether sanctions and further remedies must issue to protect the integrity of the judicial process and to "maintain[] public trust in the judicial branch."[4]

Generative AI or "GenAI"[5] is a tool that can produce "output," such as legal authority

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[2] (Charlotin, *AI Hallucination Cases Database*, Damien Charlotin Website <https://www.damiencharlotin.com/hallucinations/>[tracking "legal decisions in cases where generative AI produced hallucinated content" and identifying 569 such cases as of November 20, 2025].)

[3] Pet'r Request for Judicial Notice at pp. 2-3 (Nov. 12, 2025). The District Attorney's office maintains that it did not use generative artificial intelligence ("AI") in its written submissions in Mr. Kjoller's proceedings, even though it has belatedly admitted that its use of AI led to incorrect citations submitted to the trial court in another criminal proceeding. (Bernstein, *AI Caused Errors in Criminal Case, Northern California Prosecutor Says* (Nov. 7, 2025),The Sacramento Bee <https://www.sacbee.com/news/local/article312815223.html>.)

[4] (Judicial Council of California, *Judicial Branch Administration: Rule and Standard for Use of Generative Artificial Intelligence in Court-Related Work*," at 5 (June 16, 2025) <https://news.workcompacademy.com/2025/California-Court-Rules-on-AI.pdf>.)

[5] The California Judicial Council defined "generative artificial intelligence" or "generative AI" as a "computer-based system that uses machine learning or similar techniques to produce new content—such as text, images, audio, video, code, or data visualizations—in response to user inputs. Generative AI systems create content that is not pre-programmed or explicitly retrieved but synthesized based on underlying models trained on large datasets and may

and argumentation, in response to "inputs," *i.e.*, prompts or questions. This technology, however, carries with it a significant risk of producing "hallucinations."[6] We use the definition of "hallucination" employed in the recent groundbreaking study by Stanford scientists to include responses that are incorrect or misgrounded: "In other words, if a model makes a false statement or falsely asserts that a source supports a statement, that constitutes an hallucination."[7] This definition provides technical clarity to the term and establishes that "hallucinations" are not limited to instances where the AI system fabricates the existence of a case, statute, or regulation but includes the more general problems of factual inaccuracy. For example, in one instance AI-assisted legal research not only generated a state statute and a bankruptcy rule that did not exist, but also claimed that a real Supreme Court case contained a dissent that it did not and misstated the standard of judicial review in a constitutional challenge.[8] As one court has noted, AI hallucinations may be "more likely to occur when there are little to no existing authorities available that clearly satisfy the user's request—such as, for example, when a lawyer asks a generative AI tool to supply a citation for an unsupported principle of law." (*Noland v. Land of the Free, L.P.* (2025) 114 Cal. App. 5th 426, citing in part *In re Richburg* (Bankr. D.S.C. Aug. 27, 2025, No. AP 25-80037-EG) 671 B.R. 918, 924, fn. 11.)

The first study to assess the rate of hallucinations in response to a legal query found that commonly used AI models "***hallucinate between 58% (ChatGPT 4) and 88% (Llama 2) of the time***."[9] Even AI-driven research tools offered by LexisNexis and Thomson Reuters—which claim to mitigate hallucination risk—have each been found to "hallucinate ***between 17% and 33% of the time***."[10]

In addition to hallucinations, generative AI can reproduce the biases, inaccuracies, or other distortions of the underlying data on which it was trained. It can "regurgitate a falsely homogeneous sense of the legal landscape to their users, collapsing important legal nuances," and "their distributional biases, if they exist, may permeate and afflict *every* downstream version of these models, producing a kind of algorithmic monoculture by entrenching one particular notion of the law across a wide range of applications."[11]

The concerns identified by Mr. Kjoller in his petition for review—of "eight cases cited by the District Attorney in his Answer [to Mr. Kjoller's habeas petition], three do not exist," three more "do exist but do not stand for the principle the District Attorney claims," and there is "an additional fabricated case in the Answer's Table of Authorities"—are consistent with the GenAI hallucinations found by multiple courts in legal submissions. (Petition for Review at 11.) These fictitious cases often look "like a real case with a case name; a citation to the Federal

include integration with other sources, such as real-time access to proprietary databases." (California Rule of Court 10.430(a)(2).)

[6] (Magesh, V., Surani, F., Dahl, M., Suzgun, M., & Ho, D.E., *Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models* (Apr. 25, 2025), Journal of Legal Analysis 16:64 <https://arxiv.org/pdf/2401.01301>.)

[7] (Magesh, V., Surani, F., Dahl, M., Suzgun, M., Manning, C.D., & Ho, D.E., *Hallucination-Free? Assessing the Reliability of Leading AI Research Tools* (May 30, 2024) Journal of Empirical Legal Studies 22:216, <https://arxiv.org/pdf/2405.20362>; *Large Legal Fictions* at 9.)

[8] (*Hallucination-Free* at 2-3.)

[9] (*Large Legal Fictions* at 6.) (emphasis added).

[10] (*Hallucination-Free* at 1-2.) (emphasis added).

[11] (*Large Legal Fictions* at 5-6.) (emphasis in original) (omitting citations)

Supplement, which is the reporter that publishes opinions from federal district courts; identification of a district court; and the year for the decision." (*U.S. v. Hayes* (E.D. Cal. 2025) 763 F. Supp. 3d 1054, 1065; *Noland*, *supra*,114 Cal. App. 5th at p. 436 [appellant's brief contained "23 case quotations, 21 of which are fabrications" and was "peppered with inaccurate citations that do not support the propositions for which they are cited"].)

Use (and misuse) of GenAI implicates several California statutes, rules of court, and rules of professional conduct. CCP § 128.7 makes clear that an attorney certifies that their factual contentions in court filings have evidentiary support, while their legal contentions are based in existing law or "nonfrivolous argument[s]." (Code Civ. Proc. § 128.7(b)(2), (3).) A court can issue sanctions for violations of this rule that are "sufficient to deter repetition of this conduct or comparable conduct by others similarly situated," including monetary sanctions or "directives of a nonmonetary nature." (*Ibid.* § 128.7(d); *cf.* Code Civ. Proc. § 907 [filing frivolous appeal is sanctionable].) Similarly, the California Rules of Court permit a court to sanction a party or attorney for filing frivolous motions and appeals, for including in the record matters not reasonably material to the appeal, and for committing any unreasonable violation of the rules. (Cal. Rules of Court 8.276(a).)[12]

Both the California State Bar and the American Bar Association have reminded lawyers that use of GenAI tools implicate the duties of candor, competence and diligence, confidentiality, and supervision.[13] They have advised attorneys to "review for accuracy" all outputs from generative AI tools, "including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments."[14]

California Rule of Professional Conduct 3.8 imposes **special responsibilities on**

[12] Beyond CCP § 128.7, the Judicial Council has mandated that California courts adopt policies requiring staff to verify the accuracy of material created by generative AI and to comply with all applicable laws, policies, and ethical rules. (California Rule of Court 10.430(a)(2).) And in the criminal legal context, the California Legislature recently enacted S.B. 524 to ensure that the use of AI in generating official documents—there, official law enforcement reports—be documented, disclosed, and weighed appropriately.

[13] (The State Bar of California, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, (Practical Artificial Intelligence in the Practice of Law) <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>; American Bar Association, Formal Opinion 512, *Generative Artificial Intelligence Tools*, at 10 (July 29, 2024) <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf>.) Submission of misleading or fabricated legal authority to a court squarely violates the **duty of candor** to the trial tribunal and the duty to present meritorious claims and contentions. (See Cal. Rule of Professional Conduct (RPC) 3.1, 3.3; Cal. Bus. & Prof. Code § 6068(d).) A lawyer's **duties of competence and diligence** require an understanding of how the technology works, review, validation, and correction of both the input and output of generative AI "to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand, including as part of advocacy for the client." (*Practical Artificial Intelligence in the Practice of Law* at 3; RPC 1.1, 1.3.) The **duty of confidentiality** counsels against the input of confidential or personally identifying information to a generative AI tool that lacks adequate confidentiality and security protections. (RPC 1.6, 1.8.2; Cal Bus. & Prof. Code § 6068(e).) The **duty to supervise** warrants "clear policies regarding the permissible uses of generative AI," "reasonable efforts" to ensure that lawyers comply with their professional obligations when using generative AI, and training on the "ethical and practical aspects, and pitfalls, of any generative AI use." (*Practical Artificial Intelligence in the Practice of Law* at 3; RPC 5.1, 5.2, 5.3.)

[14] (*Generative Artificial Intelligence Tools* at 10; *Practical Artificial Intelligence in the Practice of Law* at 4.)

prosecutors. Prosecutors bear "specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons."[15] As this Court recently observed, "Prosecutors . . . are held to an elevated standard of conduct. It is the duty of every member of the bar to maintain the respect due to the courts . . . . A prosecutor is held to a standard higher than that imposed on other attorneys because of the unique function he or she performs in representing the interests, and in exercising the sovereign power, of the state." (*People v. Barrett* (2025) 17 Cal. 5th 897, 984 [cleaned up].) As the representative of the state, "whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done," (*Kyles v. Whitley* (1995) 514 U.S. 419, 439), "prosecutors remain under the solemn obligation to present evidence only if it advances rather than impedes the search for truth and justice." (*People v. Seaton* (2001) 26 Cal. 4th 598, 649 *as modified* (Sept. 26, 2001).)

When confronted with evidence of fabricated authority, courts have not hesitated to demand sworn testimony from attorneys and thereafter to impose sanctions. In *Noland v. Land of the Free, L.P.*, the Second District Court of Appeal on its own motion issued an order to show cause why plaintiff's counsel should not be sanctioned for filing appellate briefs "replete with fabricated quotes and citations." (*Noland*, *supra*,114 Cal. App. 5th at p. 441.) The court later found the attorney's conduct to violate court rules against filing a frivolous appeal. (*Ibid.* at pp. 447-448.) Sanctions were warranted even though the attorney claimed to be unaware that GenAI could hallucinate fake cases because "counsel [] fundamentally abdicated his responsibility to the court and to his client" by failing "to *read* the legal authorities they cite in appellate briefs or any other court filings to determine that the authorities stand for the propositions for which they are cited." (*Ibid.* at p. 445 [ordering sanction of $10,000].) Only last month, the Fourth District Court of Appeal sanctioned an attorney for citing a case that did not exist in his appellate brief, along with two cases that did not address the issues for which they were cited. (*People v. Alvarez* (2025) 114 Cal. App. 5th 1115.) The court observed that, as here, the case was "particularly disturbing because it involves the rights of a criminal defendant, who is entitled to due process, and representation by competent counsel. Courts are obligated to ensure these rights are protected." (*Ibid.* [cleaned up].)

The District Attorney's apparent serial submission of nonexistent legal citations in court proceedings involving multiple criminal defendants—that appear to be AI-generated hallucinations—warrants review. If true, the submission of fake or misleading legal authority—whether intentionally or not—violates the California Rules of Court. If true, it also violates the District Attorney's ethical obligations. Steps should be taken to prevent potential GenAI misuse among subordinate attorneys: implementing a policy governing subordinate attorneys' use of AI, requiring verification of the accuracy of content created in part or in full with generative AI, or requiring trainings on the appropriate use and risks of generative AI. And if GenAI did not cause the errors in the District Attorney's briefs, the errors would still raise concerns regarding whether the submissions complied with court rules and rules of professional conduct.

An order to show cause is warranted to investigate the District Attorney's conduct and determine whether sanctions are appropriate.

[15] (RPC 3.8, cmt. 1.)

II. REVIEW IS NECESSARY TO INVESTIGATE THE CAUSE OF FABRICATED LEGAL CITATIONS AND HALLUCINATION ERRORS AND TO MITIGATE THE RISK OF PROSECUTORIAL MISCONDUCT, WRONGFUL CONVICTION, AND ERRONEOUS ADJUDICATIONS

Review is warranted because nonexistent legal authority contained in court submissions raises concerns of prosecutorial misconduct, wrongful conviction, and the negative downstream effects of legal briefs and judicial decisions containing false authority. Mr. Kjoller's case does not appear to be isolated. His attorneys have identified ***four briefs*** containing nonexistent legal citations; the District Attorney has admitted GenAI led to the error in only ***one*** of these cases.[16] The District Attorney's position, and the lower courts' denial of an investigation of his office's conduct, has prevented a fulsome examination of how nonexistent legal citations may have arrived in the District Attorney's court filings, whether GenAI tools or models were used, how those tools or models generated errors, and the error rates of those tools. Even if GenAI did not produce the nonexistent authority that appeared in the District Attorney's submissions, they raise concerns that must be addressed.

Prosecutors must "refrain from improper methods calculated to produce a wrongful conviction." (*Berger v. United States* (1935) 295 U.S. 78, 88, *overruled on other grounds by Stirone v. United States* (1960) 361 U.S. 212.) At least three prosecutorial obligations are implicated by use of GenAI, and if violated, may require reversal of a conviction. *First*, under due process principles, the prosecution cannot "present evidence it knows is false and must correct any falsity of which it is aware in the evidence it presents, even if the false evidence was not intentionally submitted." (*Seaton*, *supra*, 26 Cal.4th at p. 647, citing *Napue v. Illinois* (1959) 360 U.S. 264.) In the context of expert testimony, this Court has observed that a prosecutor that has "serious[] doubts" regarding the accuracy of evidence cannot present it to the factfinder. (*Seaton*, *supra*, 26 Cal.4th at p. 650.)[17] *Second*, "[i]t is prosecutorial misconduct to misstate the law." (*People v. Fayed* (2020) 9 Cal.5th 147, 204.) To establish such error, bad faith on the prosecutor's part is not required. (*People v. Centeno* (2014), 60 Cal. 4th 659, 666.)[18] *Third*, a prosecutor must disclose exculpatory evidence and cannot shift that burden to a defendant to discover the evidence. (*Brady v. Maryland* (1963) 373 U.S. 83, 88 [prosecutor may not become the "architect of a proceeding that does not comport with [the] standards of justice"].) "A rule declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process." (*Banks v. Dretke* (2004) 540 U.S. 668, 696 [cleaned up].)

Prosecutorial misconduct may require reversal of a conviction. "A prosecutor who uses deceptive or reprehensible methods to persuade the jury commits misconduct, and such actions require reversal under the federal Constitution when the infect the trial with such unfairness as to make the resulting conviction a denial of due process.'" (*People v. Friend* (2009) 47 Cal. 4th 1,

[16] Pet'r Request for Judicial Notice at pp. 2-5.
[17] (*Cf.* Gershman, *The Prosecutor's Duty to Truth* (2001) 14 Geo. J. Legal Ethics 309.)
[18] "The term prosecutorial 'misconduct' is somewhat of a misnomer to the extent that it suggests a prosecutor must act with a culpable state of mind. A more apt description of the transgression is prosecutorial error." (*Hill, supra*, 17 Cal.4th at pp. 822–823 fn. 1.)

29 [cleaned up].) "Under state law, a prosecutor who uses such methods commits misconduct even when those actions do not result in a fundamentally unfair trial," (*People v. Alfaro* (2007) 41 Cal.4th 1277, 1328), but "a result more favorable to the defendant . . . without the misconduct" was reasonably probable. (*People v. Martinez* (2010) 47 Cal.4th 911, 955–956.)

Fabricated or misleading facts, legal citations, or arguments generated by AI may infect criminal proceedings and lead to wrongful convictions in a manner akin to other types of prosecutorial misconduct. One study of capital convictions that were reversed or exonerated found that prosecutorial misconduct consisted, among other issues, of the failure to correct false testimony or evidence or the introduction of expert evidence "not supported by scientific rigor."[19] Another study of exonerated individuals found that, in 60% of these cases, "forensic analysts called by the prosecution provided invalid testimony," *i.e.*, where empirical data did not support the trial testimony.[20] In Houston, for example, several men were exonerated following wrongful convictions—and more than 50 years of wrongful incarceration—that were clearly linked to substandard and unreliable analysis and reports by the Houston Police Department's Crime Laboratory and Property Room. The error rates of the severely underfunded serology laboratory were shocking and laid out in instructive detail by independent investigator Michael Bromwich's scientific audit.[21]

Many of the concerns raised by generative AI are mirrored in Bromwich's assessment of the Crime Lab's deficiencies: "the absence of a quality assurance program, inadequately trained analysts, poor analytical technique, incorrect interpretations of data, the characterizing of results as 'inconclusive' when that was not the case, and the lack of meaningful and competent technical reviews," and forensic reports that "suggested a strength of association between a suspect and the evidence that simply was not supported by the analyst's actual DNA results."[22] Professor Sandra Guerra Thompson tells the story of how the audit of the Houston Crime Lab scandal ultimately led to the creation of a model independent forensic laboratory in Harris County.[23] Instead of just sanctioning lawyers, an audit of this kind would go a long way to bringing about constructive change and clarity given the controversy surrounding the reliability of AI tools, the financial stakes for vendors, and the profound consequences for criminal defendants, public safety, and our justice system.

Many of the root causes of wrongful convictions arising from prosecutorial misconduct or false or misleading forensic evidence may be present in the use of generative AI by prosecutor's offices: lack of financial and personnel resources; ineffective management and training of personnel; disciplines with an inadequate scientific foundation; lack of adequate

[19] (Death Penalty Information Center, *Documenting Prosecutorial Misconduct Reversals and Exonerations in Capital Cases*, https://deathpenaltyinfo.org/stories/documenting-prosecutorial-misconduct-reversals-and-exonerations-in-capital-cases.)
[20] (Garrett & Neufeld, *Invalid Forensic Science Testimony*, (2009) 95 Va. L. Rev. 1, 9.)
[21] (Bromwich, *Final Report of the Independent Investigator for the Houston Police Department Crime Laboratory and Property Room* (Bromwich Report) (June 13, 2007), https://studylib.net/doc/8300867/final-report-of-the-independent-investigator-for-the-hous....)
[22] (*Ibid.* at p. 5.)
[23] (Thompson, Cops In Lab Coats: Curbing Wrongful Convictions through Independent Forensic Laboratories (2015).)

quality control and quality assurance.[24] And the criminal legal system may be unable to detect, prevent, or redress inaccurate or biased outputs of generative AI: prosecutors and defense counsel may not realize that factual or legal assertions in briefing or testimony presented to the court or factfinder are inaccurate or misleading; and trial and appellate courts may not independently review these submissions, especially given that the vast majority of criminal proceedings result in plea agreements and no further review.

The consequences of wrongful convictions based on the misuse of generative AI would be grave. In addition to the vacatur of individual convictions, systematic investigations and reform efforts may be required to understand the scope of the problem and implement forward-looking fixes. Wrongfully incarcerated individuals may be entitled to restitution and damages. And, over time, reliance by courts and juries on nonexistent or misleading legal authority will have downstream effects: inappropriately shifting the legal landscape towards precedent that favors the prosecution.

Review is warranted to investigate the District Attorney's conduct and safeguard against any potential risk of prosecutorial misconduct, wrongful conviction, and other collateral and downstream consequences of unacknowledged, uncorrected, and widespread misuse of GenAI. Those harms undermine the integrity of and public trust in the judicial system.

III. A REFEREE SHOULD BE APPOINTED THAT WILL ASSESS THE USE AND RISKS OF GENERATIVE AI AND MAKE APPROPRIATE RECOMMENDATIONS

Review is warranted to appoint a special master or referee that has the breadth and scope of expertise to investigate the District Attorney's conduct, assess whether GenAI tools may have caused fabricated legal authority, and, if so, recommend sanctions or other remedial measures.

A court is empowered to appoint a special master or special referee to investigate technical and legal issues, conduct joint factfinding with the parties, and issue a report of their findings. (Cal. Code Civ. Proc. §§ 845-846; Cal. Code Civ. Proc. § 639(a)(3), (a)(4); *Wilson v. Eu* (1991) 54 Cal. 3d 471, 473-474 [appointing referee in mandate proceeding to hear matter, employ counsel, experts, and other personnel to assist, with court's approval, and make report and recommendation to court]; *Holt v. Kelly* (1978) 20 Cal. 3d 560, 562 ["Since appellate courts are not equipped to take evidence, a reference is essential when the determination of controverted issues of fact becomes necessary in an original proceeding"].)

A special master or referee is well-suited for this task considering the technical aspects of an investigation. Not only can they make findings regarding the conduct of the attorneys in the District Attorney's Office, but they can also issue subpoenas to examine any underlying inputs/queries and outputs/responses from GenAI tools that may have led to the use of nonexistent authority. They can also assess the error rates in GenAI tools, including the representations by vendors about the risk of hallucination and sycophancy, and how to

[24] (Bromwich Report at 7-9; National Institute of Justice, *The Impact of False or Misleading Forensic Evidence on Wrongful Convictions* (Nov. 28, 2023), <https://nij.ojp.gov/topics/articles/impact-false-or-misleading-forensic-evidence-wrongful-convictions>.)

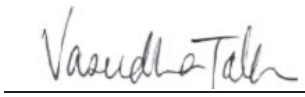
reasonably verify the accuracy of legal citation and argument in legal submissions. Finally, they can evaluate the internal and external costs and benefits of implementing policies and practices to prevent GenAI misuse.

Based on that investigation, the Court of Appeal may proceed with determination of an appropriate remedy, if warranted: such as monetary sanctions, nonmonetary directives, dismissal of the indictment in the interests of justice, or sanctions imposed on the attorneys involved. If the court relied upon fabricated or misleading authority, that should be corrected. A judge has inherent power to devise a procedure for resolution of an issue presented to the court, unless otherwise specified by statute or court rule. (See *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 812-813; *People v. Jordan* (1884) 65 Cal. 644, 646; Code Civ. Proc. § 187.)

****

In sum, the conduct alleged here has grave consequences for the rule of law, the integrity of the judicial system, and the rights of criminal defendants. This Court should grant the petition for review and direct the Court of Appeal to issue an Order to Show Cause to ensure a complete investigation is conducted.

Respectfully Submitted,



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On behalf of *Amici Curiae*

APPENDIX A

List of *amici curaie*

1. Abbe Smith, Scott K. Ginsburg Professor of Law, Georgetown University Law Center
2. Aditya Parameswaran, Associate Professor, Computer Science and Co-Director, EPIC Data Lab, University of California, Berkeley
3. Alondra Nelson, Harold F. Linder Professor, Institute for Advanced Study
4. Andrea Roth, Professor of Law and Barry Tarlow Chancellor's Chair in Criminal Justice, University of California, Berkeley Law School of Law
5. Barry Friedman, Jacob D. Fuchsberg Professor of Law, Faculty Director, Policing Project, New York University School of Law
6. Barry Scheck, Professor of Law, Cardozo School of Law; Co-Founder & Special Counsel, Innocence Project*
7. Brandon Garrett, David W. Ichel Distinguished Professor of Law, Duke University School of Law
8. Bruce A. Green, Louis Stein Chair, Director, Louis Stein Center for Law and Ethics, Fordham University School of Law
9. Chesa Boudin, Executive Director, Criminal Law and Justice Center, University of California, Berkeley School of Law*
10. Colleen Chien (she/her), Professor and Co-Director, Berkeley Center for Law and Technology, University of California, Berkeley School of Law
11. W. David Ball, Professor, Santa Clara University School of Law
12. David L. Faigman, Chancellor & Dean and John F. Digardi Distinguished Professor of Law, University of California College of the Law, San Francisco
13. David Luban, Distinguished University Professor, Georgetown Law School
14. Elizabeth Daniel Vasquez, President, The Forensic Evidence Table*
15. Erin Murphy, Norman Dorsen Professor of Civil Liberties, New York University School of Law
16. Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law
17. Jeffrey Fagan, Isidor & Seville Sulzbacher Professor of Law, Columbia Law School,
18. Katherine Judson, Executive Director, Center for Integrity in Forensic Sciences
19. Katie Kinsey, Chief of Staff/Tech Policy Counsel, Policing Project, New York University, School of Law
20. Maneka Sinha, Professor of Law, George Washington University Law School
21. Rebecca E. Wexler, Alfred W. Bressler Professor of Law, Columbia Law School
22. Suresh Venkatasubramanian, Director of the Center for Tech Responsibility, Brown University

*On the brief.

PROOF OF SERVICE

I, Sadie Cook, declare that I am over the age of eighteen and not a party to the above action. My business address is 1 Rockefeller Plaza, 8th Floor, New York, New York 10020. My electronic service address is scook@ecbawm.com. On November 21, 2025, I served the attached:

Letter of Amici Curiae in Support of Petition for Review in *People v. Kjoller*
Case No. S293723

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

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Attorneys for Kyle Kjoller

BY MAIL: I mailed a copy of the document identified above to the following case participants by depositing the sealed envelope with the U.S. Postal Service, with the postage fully prepaid:

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Real Party in Interest

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Nevada City, CA 95959
Trial Court Case No. CR0005981

Clerk of the Court of Appeal - Third Appellate District
For: Hon. Harry Hull
914 Capitol Mall, 4th Floor
Sacramento, CA 95814
Appellate Court Case No. C104445
Respondent

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I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed on November 21, 2025, in New York, NY.

Sadie Cook

Sadie Cook, Declarant

EXHIBIT E

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Thomas Angell S.B. #282107
Assistant Public Defender
Attorney for TAYLOR ANTHONY HILES MCGRATH

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, *plaintiffs*, vs. TAYLOR ANTHONY HILES MCGRATH, *Defendant*	Case No. **CR0005340** **NOTICE OF ERRATA REGARDING PEOPLE'S OPPOSITION TO DEFENDANT'S PETITION FOR MENTAL HEALTH DIVERSION PURSUANT TO PENAL CODE SECTION 1001.36** DATE: November 06, 2025 TIME: 9:00 a.m. DEPT: 1

TO THE ABOVE-ENTITLED COURT, AND TO THE DISTRICT ATTORNEY OF NEVADA COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that TAYLOR ANTHONY HILES MCGRATH by and through Counsel, Assistant Public Defender Thomas Angell, hereby respectfully submits this Notice of Errata in the People's Opposition to Defendant's Petition for Mental Health Diversion Pursuant to Penal Code Section 1001.36.

The People's filing contains multiple citation errors and misstatements of law detailed in the memorandum below.

//

MEMORANDUM

1. "*People v. Frahs* (2020) 9 Cal.5th 618, 631-632."

The People cite to *People v. Frahs* (2020) 9 Cal.5th 618 at pages 631-632 to assert that a "mental disorder must have been a 'significant factor' in the commission of the charged offense." However, the phrase "significant factor," as the People have contained in quotes in the Opposition does not appear at pages 631-632 of *Frahs*. The term "significant factor" appears three times at 636 and once at 639 in *Frahs*.

2. *"People v. Sarmiento* (2022) 98 Cal.App.5th 882" and "*People v. Sarmiento* (2024) 94 Cal.App.5th 447."

The People cite to a "*People v. Sarmiento*" twice in their Opposition, at page 4 and page 10 of their filing, with different citations on both pages. Both citations used are incorrect. Defense believes the People are attempting to cite to *Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882. While the first occurrence of *Sarmiento* uses the correct reporter but incorrect date and name, the second citation on page 10 cites to the wrong reporter ("*People v. Sarmiento* (2024) 94 Cal.App.5th 447"). In fact, 94.Cal.App.5th 447 directs to *Alliance San Diego v. City of San Diego* (2023) 94 Cal.App.5th 419, a civil case.

3. "D. Nature and Circumstances of the Charged Offenses"

Under II. Suitability Determination, D. Nature and Circumstances of Charged Offense, in the People's Opposition cites to three cases to support an assertion that none of the cases include. The People's Opposition argues:

> "The court may consider the nature and circumstances of the charged offense, including its severity, planning, and whether it involved violence. (*People v. Moine* (2021) 62 Cal.App.5th 440, 449-450; *People v. Williams* (2021) 63 Cal.App.5th 990, 1003; *People v. Bunas* (2022) 79 Cal.App.5th 840, 847-848.)"

Defense does not dispute that courts may consider the nature and circumstances of the charged offense in the evaluation of suitability for mental health diversion. However, the People's citations appear to be, at best, overstating the law and, at worst, a misrepresentation of the court's discussion. All cited cases discuss the consideration of the nature and circumstances of the charged offense, including severity and whether it included violence, but none discuss consideration of the planning of the underlying offense (which hardly seems relevant in the underlying case here, where there was an unfortunate and tragic accident, but no indication of planning). What is more, this discussion of the nature and circumstances does not occur at the pages cited in *Bunas*. The pages cited to for *Bunas* primarily encompass the procedural background and factual background of the case, with only one partial paragraph of the court's discussion included in the cited page range. While the factual background does discuss the nature of the offense, this alone and apart from any citation to the discussion portion of the court's opinion does not support the conclusion for which the case is being cited.

4. "E. Defendant's Criminal History and Prior Violent Conduct."

In II. Suitability Determination, E. Defendant's Criminal History and Prior Violent Conduct, the People cite to *People v. Qualkinbush* (2022) 79 Cal.App.5th 879, 887 (along with *People v. Williams* (2021) 63 Cal.App.5th 990) to support their assertion that "[t]he court should consider the defendant's criminal history and prior violent conduct when evaluating suitability." There is no mention of criminal history or prior violent conduct at this page of *Qualkinbush*. The cited page discusses the abuse of discretion standard of review and whether the defendant forfeited her claim to appeal the denial of her motion for mental health diversion. The court only discusses the consideration of the defendant's prior violent conduct in determining whether it was an

abuse of discretion for the trial court to consider general sentencing objectives under rule 4.410 while not considering "the goals of promoting increased diversion of individuals with mental disorders." *People v. Qualkinbush* (2022) 79 Cal.App.5th 879, 891. The court provides little to no analysis of whether a trial court should consider a defendant's prior violent conduct and, in fact, remands the case to the trial court to reconsider the denial of the defendant's motion for mental health diversion.

5. "G. Adequacy and Feasibility of Proposed Treatment Plan."

On page 7 of their Opposition, the People assert:

> "The court should consider whether the proposed treatment plan and provider are adequate and feasible, ensuring the defendant can access and complete appropriate mental health care. (*People v. Braden* (2023) 14 Cal.5th 791; *People v. Pacheco* (2022) 75 Cal.App.5th 207, 214-215)"

While the People only provided a general citation for Braden, Defense was unable to find any part of *Braden* that supported this assertion. What is more, the discussion at *People v. Pacheco* (2022) 75 Cal.App.5th 207, 214-215 focuses on the defendant's ability to remain treatment compliant, with no mention nor consideration of a treatment plan or provider.

6. "[A]n unreasonable risk that the defendant will commit a new violent felony"

On page 7 of the People's Opposition, they attribute the quote "an unreasonable risk that the defendant will commit a new violent felony" to *People v. Williams* (2021) 63 Cal.App.5th 990. While the People provide no pincite for this quotation, Defense found that the language contained as contained in quotes does not exist in *People v. Williams*. The court, however, does state "an unreasonable risk that the petitioner will commit a new violent felony." *People v. Williams* (2021) 63 Cal.App.5th 990, 1001. It appears that

the People changed the language it quoted from the case without note to the change nor citation to where the quote appeared in the case.

Additionally, there are four separate citations in the sentence containing the quote:

1. *People v. Williams* (2021) 63 Cal.App.5th 990
2. § 1001.36(c)(4)
3. § 1170.18(c)
4. § 667(e)(2)(C)(iv)

Defense found it difficult to discern which source the People were attributing the quote to. This was compounded by the lack of pincite in the citation to *People v. Williams* and the language in quotes not appearing in any source.

7. "[W]ide latitude."

Under the section "I. Residual Discretion and Victim Safety" on page 8 of the People's Opposition, the People attribute the phrase "wide latitude" to "*People v. Moine* (2021) 62 Cal.App.5th 440." While the People do not provide a pincite to where this phrase appears in this decision, Defense was unable to find this phrase anywhere in *People v. Moine*.

8. *People v. Qualkinbush* – "the court upheld denial of diversion" and "'any factor bearing on the defendant's suitability for diversion.'"

On page 8 of the People's Opposition, the People assert that the court in *People v. Qualkinbush* upheld the trial court's denial of diversion. This is incorrect. The disposition of the court states (in part):

> "Qualkinbush's guilty plea is conditionally vacated and the order granting formal probation is conditionally reversed. The matter is remanded to the superior court to conduct another mental health diversion eligibility hearing under section 1001.36, no later than 90 days from the

> filing of the remittitur, and exercise its discretion in conformity with the principles articulated herein." *People v. Qualkinbush* (2022) 79 Cal.App.5th 879, 895.

Further, on pages 10 to 11, the People attribute "any factor bearing on the defendant's suitability for diversion" to *People v. Qualkinbush* (2022) 79 Cal.App.5th 879, 890. Once again, the language used in quotes does not exist in the case. At that page, the court does include a lengthy quote (attributed to Couzens et al., Sentencing California Crimes (The Rutter Group, Sept. 2021 update) Sec. 7:21, pp. 7-29 to 7-30) that includes the language "any factor relevant to whether the defendant is suitable for diversion." People v. Qualkinbush (2022) 79 Cal.App.5th 879, 890. This language is the closest Defense could find to what the People quoted in their Opposition.

9. <u>"[T]he defendant's mental health history, criminal history, and the circumstances of the charged offense."</u>

The People's Opposition at page 9 states:

> "The California Supreme Court in *People v. Braden* (2023) 14 Cal.5th 791, 813 emphasized that the suitability determination is a holistic one, requiring consideration of 'the defendant's mental health history, criminal history, and the circumstances of the charged offense.'"

The phrase enclosed in quotes does not appear anywhere in *People v. Braden*. Further, the phrases "mental health history" and "criminal history" do not appear anywhere in *People v. Braden*. Defense searched for the quote in Westlaw by typing the phrase in the search bar and enclosing it in quotes, but the search returned zero results.

Unlike previous misquotes detailed above, Defense was unable to find similar phrasing to the People's quote at the page cited to in *People v. Braden* or in the decision generally. The page cited to (813) discusses mental health diversion as it relates to

statutes governing incompetence to stand trial, which does not appear relevant to the claim the People are asserting nor the underlying facts of the case before this Court.

10. "*People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1310"

On page 9 of the People's Opposition, the People assert:

> "In *People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1310, the Court recognized that when statutory language grants the court broad discretion — here, "any other factors the court deems appropriate" — the trial court may consider the specific risks the defendant poses, including risks to a particular victim or community members."

Given the words community and member do not appear at all in *People v. Hoffman* and the word victim only appears once, the claim that the court recognized these specific risks is unsupported. Further, the page the People cite to (1310) discusses whether the trial court was authorized in aggregating check values and the "likely to commit a 'super-strike' offense" evaluation for whether a defendant poses an unreasonable risk of danger to public safety in the context of Prop. 47. *People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1310. Moreover, the court appears to not recognize broad discretion at all, stating, "The 'criteria' for resentencing are explicitly stated in section 1170.18, subdivision (a), and 'unreasonable risk' is defined in subdivision (c)."

Additionally, on page 10, the People's Opposition asserts that *People v. Hoffman* "recognized that where a statute authorizes the court to consider 'any other factors,' the court may weigh victim safety as part of its analysis." The phrase "any other factors" does not appear in *Hoffman* nor does the word factor. There is no discussion of weighing victim safety in *Hoffman*.

11. "[T]he defendant's history, offense conduct, or conduct, or ongoing risk factors make diversion inconsistent with the protection of the public or the interests of justice."

The People include the above quote at page 10 of their Opposition. The sentence containing the quote does not provide any citation to where this quote occurs. The surrounding discussion of "*People v. Sarmiento*" (correct citation discussed above) appears to suggest the People intended to cite to *Sarmiento* for this quote. However, once again, the language within quotes does not appear in *Sarmiento*. Further, the phrases "offense conduct," "risk factors," and "interests of justice" do not appear in *Sarmiento* either. A full text search of Westlaw of the language in quotes returned no results.

12. "[R]easonably protected from the defendant."

Twice in the People's Opposition they attribute the principle that victims be reasonably protected from the defendant to "Cal. Const., art. I, §28, subd.(a)(1)." The first occurrence on page 9 does not include quotes, but the use of the phrase "reasonably protected from defendant" appears in quotes on page 10 of the People's Opposition. This phrase is not in subd.(a)(1), but rather at Cal. Const., art. I, §28, subd(b)(2).

DATE: November 5, 2025

Respectfully submitted,

Thomas Angell

Thomas Angell
Assistant Public Defender
Attorney for Taylor Anthony Hiles McGrath

EXHIBIT F

JESSE WILSON (SBN 281933)
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

TAYLOR ANTHONY HILES MCGRATH

Defendant.

Case No.: CR0005340

PEOPLE'S AMENDED OPPOSITION TO DEFENDANT'S PETITION FOR MENTAL HEALTH DIVERSION PURSUANT TO PENAL CODE SECTION 1001.36

Date: December 3, 2025
Time: 9:00 am
Dept. 1

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through their attorneys JESSE WILSON, District Attorney, and Madison Maxwell, Deputy District Attorney, hereby move to withdraw their Mental Health Diversion Opposition previously filed on the date of August 13, 2025, and file the enclosed Amended Mental Health Diversion Opposition, which corrects errors in citations and drafting.

//

STATEMENT OF FACTS

On August 11, 2024, at approximately 0906 hours, Nevada County Sheriff's Deputies Ramos and Sonnier were dispatched Code 3 to 12281 Rough and Ready Highway, Grass Valley, for a report of a two-year-old child overdosing on suspected fentanyl. Dispatch advised that the reporting party, later identified as Nicolas McGrath, stated the child was awake and breathing. While on the phone with dispatch, Nicolas could be heard yelling profanities at another individual inside the residence, later identified as Taylor McGrath, hereinafter the Defendant.

Upon arrival, deputies contacted a female, Sarah Thomas, who was holding the child, identified as Silas McGrath, hereinafter S.M. S.M. was conscious but appeared pale, lethargic, and breathing shallowly — symptoms consistent with opioid overdose. Deputies immediately requested medical personnel respond to the scene. Nevada County Consolidated Fire and emergency medical personnel arrived within minutes and administered Narcan to S.M. Shortly after Narcan administration, S.M. became more responsive, further confirmed suspected opioid exposure. While securing the scene, deputies observed in plain view on a nearby table a piece of foil with burn marks, a lighter, and a straw — all items consistent with the smoking of fentanyl. Deputies also noted the odor of burnt fentanyl inside the residence.

During subsequent interviews, the Defendant admitted to smoking fentanyl inside the home earlier that morning. Sarah Thomas also admitted to fentanyl use that day in the residence. Neither individual had taken steps to secure the narcotics or ensure the child was protected from exposure. Nicolas confirmed to deputies that Taylor had been using fentanyl in the home prior to the incident and that when S.M. overdosed, he and the Defendant argued over calling 911 as Nicholas wanted to, but the Defendant stated that S.M. was fine. Medical personnel transported S.M. to Sierra Nevada Memorial Hospital for further evaluation and treatment. At the hospital, S.M. provided a urine sample which tested positive for both fentanyl and amphetamines. Hospital staff confirmed that S.M.'s symptoms were

consistent with fentanyl inhalation or ingestion and emphasized the potentially fatal consequences if Narcan had not been administered promptly.

ARGUMENT

Penal Code section 1001.36 establishes a pretrial mental health diversion program, permitting—but not requiring—diversion for defendants with qualifying mental health disorders. Diversion postpones prosecution to allow defendants to undergo treatment, with the goal of reducing recidivism and promoting rehabilitation. (§ 1001.36, subd. (a).)

The court must assess two primary issues: Eligibility—whether the defendant meets the statutory requirements under § 1001.36, subdivision (b), and Suitability—whether diversion is appropriate based on all relevant factors, including rehabilitation prospects, the nature of the offense, criminal history, and public safety under § 1001.36, subdivision (c). The defendant bears the burden of proving eligibility and suitability by a preponderance of the evidence. (*People v. Oneal* (2021) 64 Cal.App.5th 581, 588.) The court retains broad discretion in both determinations. (*People v. Braden* (2023) 14 Cal.5th 791, 813–814.)

I. ELIGIBILITY REQUIREMENTS.

A. Qualifying Mental Disorder

The defendant must suffer from a mental disorder identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), as diagnosed by a qualified mental health expert.

The People do not dispute that the defendant suffers from a qualifying mental disorder, as the defendant has been diagnosed with Major Depressive Disorder, Post-Traumatic Stress Disorder, Stimulant Use Disorder, and Opioid Use Disorder, all recognized in the DSM-V.

B. Significant Factor in the Offense

The mental disorder must have been a "significant factor" in the commission of the charged offense; mere temporal association is insufficient. (*People v. Frahs* (2020) 9 Cal.5th 618, 636–639.) The court must evaluate whether the disorder motivated, caused, or contributed to the defendant's involvement in the offense**.**

As noted above the Defendant suffers from several metal health disorders including Stimulant Use and Opioid Use Disorder. This crime involves the Defendant using Fentanyl and other possible drugs, leaving drugs and paraphernalia strewn about, not supervising his 2-year-old child, and that child subsequently ingesting the Defendant's drugs, overdosing, receiving Narcan, and tested positive for both Fentanyl and amphetamines. The People do not argue that Defendants mental health disorders, specifically the Stimulant and Opioid Use disorders, contributed to the crime.

C. Excluded Offenses

Eligibility is barred if the charged offense falls under the statutory exclusions listed in § 1001.36 subdivision (d), including murder, rape, most child sexual offenses, certain firearm violations, or offenses requiring registration as a sex offender. This gatekeeping ensures only defendants without such disqualifying charges may be considered for diversion.

In this case, the Defendant is charged with Penal Code 273a(a) plus a Penal Code 12022.7(d) great bodily injury enhancement, Health and Safety Codes 11364(a) and 11350(a), and Penal Code 148(a)(1). None of the charged offenses affect Defendant's eligibility as they are not a listed excluded offense.

The People do not contend that the Defendant is ineligible for Mental Health Diversion as he meets the eligibility requirements; however, it is the People's strong contention that the Defendant is wholly unsuitable for Mental Health Diversion.

II. SUITABILITY DETERMINATION.

Even if eligible, diversion is not mandatory. Eligibility focuses narrowly on statutorily excluded offenses and whether the mental disorder was a significant factor in the offense. Suitability allows the court to evaluate all relevant circumstances, including risks to victims, potential for rehabilitation, and the effectiveness of treatment in mitigating future risk. (*People v. Braden* (2023) 14 Cal.5th 791; *Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882.) The court must consider whether diversion serves the purposes of rehabilitation and community safety. Suitability factors include but are not limited to: treatability, consent to diversion, agreement to be treated, the nature and circumstances of the charged offense, the defendant's criminal history and prior violent conduct, the defendant's history of compliance with prior supervision and court orders, the adequacy and feasibility of the proposed treatment plan and provider, and finally, public safety considerations beyond the statutory super strike threshold.

A. Treatability

A qualified mental health expert must opine that the defendant's symptoms are likely to respond to treatment. Suitability is dependent on the likelihood that diversion and treatment will reduce criminal behavior and support rehabilitation.

In this case, two qualified mental health experts agree that that Defendant would respond well to treatment; however, the People disagree. On page 3 of Dr. Rhee's report, the Defendant reported attending residential treatment in the past as well as participating in Narcotics Anonymous sessions. This concerns the People since Defendant has availed himself of these services in the past but continued to use substances so much so that he allowed his 2-year-old child to get a hold of said substances (which was not hard to do since the substances and paraphernalia were all around) and the child overdosed. The Defendant's recommended treatment plan mirrors treatment he has participated in the past which

ultimately did not change the path that Defendant was on since we are currently here with the instant case.

B. Consent to Diversion

The defendant must consent to diversion and waive the right to a speedy trial. For defendants found incompetent under diversion-in-lieu-of-commitment provisions, inability to consent does not preclude diversion.

The Defendant has agreed to participate in diversion and waive his right to a speedy trial. The People have no argument to provide.

C. Agreement to Comply with Treatment

The defendant must agree to comply with treatment conditions. If the defendant is incompetent under diversion-in-lieu-of-commitment provisions, inability to agree does not bar diversion.

The Defendant has agreed to comply with treatment. The People raised issues pertaining to treatability of the Defendant but agree that that Defendant has agreed to comply with treatment.

D. Nature and Circumstances of Charged Offenses

The court may consider the nature and circumstances of the charged offense, including its severity, planning, and whether it involved violence. (*People v. Moine* (2021) 62 Cal.App.5th 440; *People v. Williams* (2021) 63 Cal.App.5th 990; *People v. Bunas* (2022) 79 Cal.App.5th 840.)

Per the statement of facts provided above and the reports provided in Defendant's petition, this case involved the Defendant ingesting illegal substances, leaving those substances and paraphernalia strewn about which allowed his 2-year-old child to ingest substances that led the child to overdose. The child was administered Narcan by the Defendant's brother – which ultimately saved the child's life. Moreover,

and perhaps even more concerning, was the fact that the Defendant's brother called 911 despite the Defendant arguing that 911 did not need to be called. While this case does not involve planning or violence, this is a severe case. On these particular facts, including the Defendant's desire to not call 911 to help his 2-year-old child receive medical help after overdoing on his drugs and receiving lifesaving Narcan, make clear that the circumstances surround the Defendant's charges are severe.

E. Defendant's Criminal History and Prior Violent Conduct

The court should consider the defendant's criminal history and prior violent conduct when evaluating suitability. (*People v. Williams* (2021) 63 Cal.App.5th 990; *People v. Qualkinbush* (2022) 79 Cal.App.5th 879.)

The Defendant has a minimal criminal history that includes convictions ion 2010 for a wet reckless and tampering with a fire alarm and a 2017 conviction for shoplifting. On the limited facts and circumstances that are available to the People, there is no indication that these offenses contained violent conduct.

F. Defendant's History of Compliance with Court Orders

A history of compliance with prior supervision and court orders is relevant to suitability. Courts weigh past compliance as an indicator of whether the defendant is likely to follow diversion requirements. *(People v. Moine* (2021) 62 Cal.App.5th 440; *People v. Qualkinbush* (2022) 79 Cal.App.5th 879.)

The People have no information to provide the Court about Defendant's history to comply with Court orders as the Defendant has been in custody since his arrest; however, the People will note that there are no violations of probation or any unsuccessful probation terminations on the Defendant's RAP sheet.

G. Adequacy and Feasibility of Proposed Treatment Plan

The court should consider whether the proposed treatment plan and provider are adequate and feasible, ensuring the defendant can access and complete appropriate mental health care. (*People v. Pacheco* (2022) 75 Cal.App.5th 207.)

The People do not feel the treatment plan proposed is adequate. The treatment plan located on page 13 of Dr. Rhee's report and a letter from NCBH (see Exhibit 4) do not provide a specific, outlined, or comprehensive plan. The treatment plan lacks the following: specific terms of participation in mental health services and psychiatric services, specific terms of his treatment for his Substance and Opioid Use Disorder, and that random drug testing "might" help support the Defendant. The treatment plan does not provide where or with who the Defendant will receive these services or how often the Defendant would receive these services. While NCBH states that they are working on getting the Defendant a bed for residential treatment – where? Does it include testing? What happens when if the Defendant gets reassessed at certain point and is offered outpatient treatment? If that occurs, who is doing the testing? These are just some of the questions the People have concerning the proposed treatment plan. The People also do not see anything in the treatment plan that addresses parenting – which is important since the Defendant's 2-year-old child nearly died from ingesting the defendant's drugs. If the Court finds Defendant suitable for Menal Health Diversion, which again, the People strongly oppose, the People would request a more substantive and in depth treatment plan.

H. Unreasonable Risk of Public Safety

In *People v. Williams* (2021) 63 Cal.App.5th 990, the Court of Appeal held that the "public safety" determination under the suitability (§ 1001.36(c)(4)) prongs is limited by the definition in § 1170.18(c): whether the defendant poses "an unreasonable risk that the petitioner will commit a new

violent felony" — meaning a "super strike" under § 667(e)(2)(C)(iv). The court rejected arguments that "public safety" could be read more broadly than this express statutory definition.

In the present case, the Defendant, engaged in conduct that directly endangered his 2-year-old child. By providing or permitting access to illicit substances, the Defendant created a substantial risk of serious injury or death. Even though the child survived, this behavior demonstrates a clear, ongoing danger. Moreover, after the child was given Narcan, the Defendant willfully refused to call 911 and argued with his brother that 911 did not need to be called while his brother was on the phone with 911. The People contend that he facts here demonstrate that the Defendant's conduct presents a concrete, foreseeable risk of a super strike. By leaving fentanyl and other controlled substances accessible in the home and failing to supervise his two-year-old child, the Defendant created a life-threatening situation. When the child, S.M., ingested the substances, the Defendant not only failed to promptly summon medical assistance but actively argued against calling 911. This conduct demonstrates conscious disregard for human life — the very definition of implied malice under California law — and is precisely the type of behavior that could foreseeably lead to death, satisfying the threshold for a murder or manslaughter-level risk. (See *People v. Thomas* (2011) 52 Cal.4th 336 [implied malice exists where the defendant engages in conduct with knowledge of a high probability of death].)

Courts have recognized that endangering a vulnerable person through controlled substances may be sufficient to show risk of future serious or violent felonies. Here, the Defendant's continued substance use in proximity to a young child demonstrates both capacity and willingness to engage in highly dangerous conduct again. Even if the prior incident did not result in death, the statutory language focuses on the risk of committing a super strike, not the actual occurrence of death. The People believe that the Defendant is at risk of committing a super strike.

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I. Residual Discretion and Victim Safety

Even if a defendant meets the technical eligibility requirements under Penal Code § 1001.36, the court retains broad residual discretion to deny diversion based on "any other factors the court deems appropriate." (§ 1001.36(c)(4).) This provision empowers the court to consider risks that fall outside the narrow "public safety" definition in § 1170.18(c) — including the safety of specific victims, the seriousness of the offense, the defendant's criminal history, and the likelihood of successful treatment.

California courts have repeatedly confirmed this authority. *People v. Bunas* (2022) 79 Cal.App.5th 840, the Court held that trial courts have *wide latitude* to weigh circumstances beyond the statutory "public safety" definition when determining suitability factors. Likewise, in *People v. Qualkinbush* (2022) 79 Cal.App.5th 879, the court, explained that § 1001.36 allows consideration of "any factor relevant to whether the defendant is suitable for diversion." The Court in *People v. Bunas* (2022) 79 Cal.App.5th 840 emphasized that the suitability determination is a holistic one, thus requiring consideration of *the defendant's mental health history, criminal history, and the circumstances of the charged offense*.

The court in *Williams* did not hold that the court's analysis of suitability must end with the public safety question. Section 1001.36(c)(4) expressly authorizes the court to consider "any other factors that the court deems appropriate" in determining suitability. This clause preserves the court's discretion to deny diversion even where a defendant is not likely to commit a super-strike offense, if other factors show the defendant poses a substantial, immediate, and foreseeable danger to individuals or the community.

Moreover, victim safety is a core component of public safety under the suitability analysis. The Legislature authorized courts to consider the positions of the defense and prosecution, the nature of the offense, and "any other factors the court deems appropriate" in assessing suitability. (Pen. Code, §

1001.36, subd. (b).) This "any other factors" language explicitly allows consideration of risks to victims. California appellate courts have repeatedly confirmed that suitability determinations may include considerations such as the impact on victims, seriousness of the offense, and protection of the community. (*People v. Moine* (2021) 62 Cal.App.5th 440; *People v. Williams* (2021) 63 Cal.App.5th 990; (*People v. Braden* (2023) 14 Cal.5th 791.)

Additionally, Marsy's Law (Cal. Const., art. I, § 28, subd. (a) and (b)) requires that victims be reasonably protected from the defendant, supporting the court's authority to weigh potential harm, intimidation, or traumatization of a victim in evaluating suitability for diversion. Accordingly, courts may consider whether the defendant's participation in community-based treatment sufficiently mitigates these risks before granting diversion. In sum, public safety at the suitability stage is broader than the eligibility "super strike" standard, encompassing both community protection and victim protection, while still balancing the rehabilitative goals of the statute.

Most recently, in *Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, the Court confirmed that trial courts are not bound to grant diversion merely because a defendant meets the eligibility criteria. The court held that suitability involves a discretionary judgment call, so denial could be proper where the *defendant's history, offense conduct, or ongoing risk factors make diversion inconsistent with the protection of the public or the interests of justice*. *Sarmiento* reinforces that the "unreasonable risk" language in § 1001.36(c)(4) is not the sole basis for denial — the statute expressly allows the court to consider "any other factors" it finds relevant, which includes victim safety and the protection of vulnerable individuals. This discretion necessarily includes protecting victims. This is consistent with Marsy's Law (Cal. Const., art. I, § 28, subd. (a) and (b)), which requires that victims be "reasonably protected from the defendant."

Beyond general public safety concerns, the defendant poses a direct risk to the Victim. A two-year-old child, S.M.—unable to protect themselves—was exposed to a lethal substance due to the Defendant's actions. The Defendant's disregard for the child's welfare demonstrates a concrete threat to victim safety. Public safety and diversion guidelines recognize that such direct, foreseeable harm to specific individuals is a valid basis for denying diversion. The Defendant's pattern of substance misuse, coupled with the inherent vulnerability of the victim, shows that granting diversion would endanger both the public at large and the specific victim involved. Public safety in this context necessarily includes the protection of children and other vulnerable individuals from foreseeable, preventable harm. The Defendant created a substantial, foreseeable, and immediate danger to his two-year-old child by providing or permitting access to fentanyl, resulting in overdose. The child — entirely unable to protect themselves — survived only because of the administration of Narcan. The Defendant then willfully refused to call 911, arguing against medical assistance while his brother was actively on the phone with emergency services. This conduct demonstrates ongoing recklessness and disregard for life, posing a direct and continuing threat to the specific victim and to public safety more broadly.

Given the vulnerability of the victim, the lethal nature of the substance, and the Defendant's demonstrated unwillingness to act to prevent harm, the People submit that the court should exercise its residual discretion to deny diversion. The risks here are not speculative — they are immediate, severe, and unmitigated by community-based treatment at this time.

CONCLUSION

While the Defendant may meet the technical criteria for eligibility under Penal Code §1001.36, eligibility alone does not mandate that diversion be granted. The law is clear that a court must consider whether diversion is appropriate, and the defendant is suitable. In this case, the Defendant's actions—

providing an environment where a two-year-old child ingested fentanyl, combined with ongoing substance abuse in the household—demonstrate a direct, foreseeable, and serious risk of harm.

Accordingly, although the Defendant may be technically eligible, the circumstances demonstrate that he is unsuitable for diversion to protect both the public and the victim. The People respectfully request that this Court deny Defendant's Petition for Mental Health Diversion under Penal Code § 1001.36.

Date: November 12, 2025

JESSE WILSON
District Attorney

By:

Madison Maxwell
Deputy District Attorney

DA#: 05724-013999
Agency: NCSO
Report #: 12403583
MM/mm

EXHIBIT G

JESSE WILSON (SBN 281933)
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **TAYLOR ANTHONY HILES MCGRATH** Defendant.	**Case No.: CR0005340** **NOTICE OF INTENT TO WITHDRAW FILING** Date: December 3, 2025 Time: 9:00 am Dept. 1

TO THE HONORABLE COURT and COUNSEL for DEEFNDANT:

PLEASE TAKE NOTICE that the People of the State of California, by and through the Office of the District Attorney of Nevada County, hereby notify the Court and opposing counsel of their intent to withdraw the following filing:

- Title of Filing: People's Opposition to Defendant's Petition For Mental Health Diversion Pursuant To Penal Code Section 1001.36.
- Date Filed: August 13, 2025.

This notice is made in good faith and in the interest of candor to the tribunal, following review and identification of citation and drafting errors within the above-referenced filing.

The People intend to withdraw the filing and submit a corrected and amended version to ensure accuracy and compliance with applicable ethical and procedural standards.

Pursuant to Code of Civil Procedure §128.7(c)(1), the People respectfully provide this notice within the statutory 21-day safe harbor period to avoid unnecessary motion practice and to permit voluntary correction of the record.

The People acknowledge their continuing duty of candor to the Court and affirm that this corrective action is undertaken to ensure full accuracy, transparency, and compliance with the Rules of Professional Conduct.

Date: November 12, 2025

JESSE WILSON
District Attorney

By:

Madison Maxwell
Deputy District Attorney

DA#: 05724-013999
Agency: NCSO
Report #: 12403583
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EXHIBIT H

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

TAYLOR MCGRATH

Defendant.

Case No.: CR0005340

PEOPLE'S RESPONSE TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE; PEOPLE'S NOTICE AND AND REQUEST FOR JUDICIAL NOTICE

Date: Nov 20, 2025
D1
Time: 9:00am

The People of the State of California, by and through its attorney, JESSE WILSON, District Attorney, respectfully submit the following Argument in Response to Defendant's Request for Judicial Notice. The People furthermore respectfully submit the following Notice and Request for Judicial Notice:

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I. INTRODUCTION

This case is a felony child abuse matter. On or about December 9, 2024, Taylor McGrath**,** hereinafter "the Defendant" exposed his two-year-old son to fentanyl, causing the child to become poisoned and unresponsive. The Defendant sought assistance from the child's paternal uncle, who administered Narcan, reviving the minor. The Defendant then attempted to dissuade the paternal uncle from calling for medical help, but the uncle proceeded to do so.

When law enforcement and medical personnel arrived, the Defendant initially refused access to the minor and withheld information. After several minutes of coaxing, the Defendant ultimately permitted medical personnel to render life-saving aid. By that time, the minor's vital signs were dropping and they needed to be transported to the hospital immediately.

This motion comes before the Court upon request of the Defendant for judicial notice. While the record is less than clear on the exact request, and the People were not provided proper notice, it appears that the Defendant is asking this Court to take judicial notice of: the Petition for Review in *Kyle Kjoller v. Superior Court of Nevada County*, California Supreme Court Case No S293723 filed on October 30, 2025; and Successive Motion to Issue an Order to Show Cause in *Kyle Koller v Superior Court of Nevada County*, California Court of Appeal Case No C104445 filed on October 2, 2025. Attached to this filing in C104445 are multiple exhibits to include emails, declarations and a transcript of a hearing in *People v. Kalen Turner* CR0006300B, held on August 28, 2025, which Defendant has specifically referred to in its oral request for judicial notice.

The People agree that the Court may take judicial notice of the existence of the referenced filings. Indeed we join in this request. However, Defendant's further request—that the Court take judicial notice of the contents within the filings—is clearly contrary to well-established law as to the proper uses of judicial

notice. Courts may not take judicial notice of the truth of statements contained within pleadings, affidavits, allegations, or transcripts.

Judicial notice cannot be used as a vehicle for accepting disputed factual assertions or for relieving a party of its evidentiary burden. The Defendant may not rely on judicial notice of factual allegations to bypass its obligations and meet its burden of proof on its present motion—which itself lacks specificity, clarity and proper notice on such an important issue. The Defendant may not ask this Court to bypass due process rights.

The People respectfully request the Court grant the Defendant's request for judicial notice of the existence of the filings. Next, the People request the Court deny the Defendant's improper request to deem the contents of the filings—the allegations, declarations and untested hearsay statements—as fact, which is the effect of judicial notice. Finally, the People respectfully request the Court grant the People's own request for judicial notice, as set for the below, and now properly noticed.

II. **LAW**

California's judicial notice framework is governed by Evidence Code Sections 451, 452 and 453 which establishes both mandatory and permissive categories of judicial notice. Judicial notice can only be taken by a court when authorized by law. Evid. Code, § 450. A trial court must take judicial notice of the matters listed in Evidence Code section 451. This includes "[f]acts and propositions of generalized knowledge that are so universally known that they cannot reasonably be subject to dispute." Evid. Code, § 451, subd. (f). The court also may, if certain circumstances are met (*see* Evid. Code, § 453) are required to, take judicial notice of the matters listed in Evidence Code section 452. This includes "[f]acts and circumstances that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Evid. Code, § 452, subd. (h).

In addition, Evidence Code section 452, subdivision (c) allows judicial notice of official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States, and

subdivision (d) allows the trial court in its discretion to take judicial notice of its own records or "any court of this state."

A. Disputed Facts are Not a Proper Subject for Judicial Notice

A judicially noticed fact is treated as true for purposes of proof. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564. "Judicial notice" is a judicial short cut, a doing away, in the case of evidence, with the formal necessity for evidence, because there is no real necessity for it. *Varcoe v. Lee (1919) 180 Cal. 338,* 343. As such, it is improper to rely on judicially noticed documents to prove disputed facts because judicial notice, by definition, applies solely to undisputed facts. *Barri v. Workers' Comp.* Appeals Bd. (2018) 28 Cal.App.5th 428, 193.

B. A Court May Not Take Judicial Notice of the Truth of Allegations or Hearsay Statements within Court Records

A court may take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached in documents such as orders, statements of decision, and judgments, but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact. *Aixtron, Inc. v. Veeco Instruments Inc*. (2020) 52 Cal.App.5th 360, 382; See also *Dominguez v. Bonta,* (2022) 87 Cal.App.5th 389, 399 (declining to take judicial notice of an "Accusation" filed before a different tribunal); *Williams v. Wraxall* (1995) 33 Cal.App.4th 120 *fn* 7, citing *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 418; *People v. Harbolt*, 61 Cal. App. 4th 123, 126–27.

A court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file. *Day v. Sharp* (1975) Cal.App.3d 904, 914; See also *Sosinsky v. Grant*, (1992) 6 Cal.App.4th 1548, 1566; *People v Surety Ins.Co.* (1982) 136 Cal.App.3d 556, 564. The court may not judicially notice the truth of the allegations in the pleadings and other documents filed with the superior court. *County of Los Angeles Child Support Services Dept. v. Superior Court*, (2015), 243 Cal.App.4th 230, *fn 4.* However,

the court may take judicial notice of the existence of the documents, and the fact that certain arguments were made by the parties therein. *Id.*

C. Judicial Notice Can Not Be Properly Taken of the Truth of Comments Made at a Hearing by an Attorney and a Judge

Judicial notice cannot be properly taken of the truth of comments made at a hearing by an attorney and a judge that have not been subject to hearing or challenge. In *People v Surety Ins.Co.*, supra, the court record disclosed a dialogue between the trial judge and the attorney for the convicted defendant's father purporting to show that the company required the assets of the father to be pledged on behalf of the appeal bond, thus indicating facts relevant to the instant cause of action. *Id.* 136 Cal.App.3d at p. 564. The court held the statements in the dialogue on the record were hearsay and were made without any contest or adversary proceeding, and the court held that a trial court may not take judicial notice of hearsay allegations as being true just because they are part of a court record or file. *Id.*

Further, judicial notice cannot be taken of truth of factual findings by judge in previous case. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1551. See also *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1747 (court may not take judicial notice of truth of factual finding made in another action); *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112 (A court may not use judicial notice of another court's action to prove the truth of the facts found and recited).

D. The Existence of a Transcript May be Judicially Noticed, But Not its Contents, Unless it Contains an Official Act or Order Therein

The fact that a court may take judicial notice of its own records does not mean that it may judicially notice the truth of the statements contained in a transcript filed as part of its record. *Garcia v. Sterling,* (1985) 176 Cal. App. 3d 17, 21. A transcript itself is not an official act or record. *See In People ex rel. Schlesinger v. Sachs*, (2023) 97 Cal.App.5th 800, 822 (the court declined to take judicial notice of a transcript prepared

by a certified court reporter of city council meeting excerpts, reasoning that the transcript was not an official act or record and does not otherwise fall within any subdivision of Evidence Code sections 451 and 452).

However, it is well accepted that when courts take judicial notice of the existence of court documents, the legal effect of the results reached in orders and judgments may be established. *White v. Davis,* (2015) 87 Cal. App. 5th 270, 276 *fn* 3, citing *Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors*, LLC (2015) 234 Cal.App.4th 166, 185.

III. AGRUMENT

A. The People Join the Defendant's Request to take Judicial Notice of the Fact of the Filings.

The People join in the Defendant's request for judicial notice of the fact the following motions have been filed:

1. Petition for Review in *Kyle Kjoller v. Superior Court of Nevada County*, California Supreme Court Case No S293723 filed on October 30, 2025; and
2. Successive Motion to Issue an Order to Show Cause in *Kyle Koller v Superior Court of Nevada County,* California Court of Appeal Case No C104445 filed on October 2, 2025.

This request is proper pursuant to Evidence Code section 452(d), and the People do not oppose this request.

B. The People Oppose Defendant's Request for Judicial Notice of the Contents of the Filings, to Include the Transcript in *People v Tuner*; The Request is not Proper.

The law is clearly established. The statutory authority under 452(d) extends only to taking notice of the record themselves, not the truth of contested allegations within them. A cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact. See *Aixtron, Inc. v. Veeco Instruments Inc*. (2020) 52 Cal.App.5th 360, 382; *Dominguez v. Bonta*

(2022) 87 Cal.App.5th 389, 399; *Williams v. Wraxall* (1995) 33 Cal.App.4th 120 fn 7, citing *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 418; *People v. Harbolt*, 61 Cal. App. 4th 123, 126–27.

The Defendant's request for the Court to take judicial notice of 42 pages—and, separately, 116 pages—of allegations, out-of-court emails, untested declarations, and other statements offered as part of a broader dialogue within a judicial proceeding is improper. The materials Defendant seeks to have judicially noticed contain precisely the type of content that courts have consistently held to be improper for judicial notice. Judicial notice applies solely to undisputed facts. Accepting such statements as true would effectively bypass the adversarial process and deprive the People of the opportunity to test those assertions through the ordinary procedures of proof. Judicial notice cannot be used to establish the truth of factual allegations contained in filings, affidavits, or other documents, as doing so would undermine procedural due process and the parties' right to challenge and litigate those facts in a court of law.

i. Judge Bjerkhoel's Statements Within the Transcript in *People v Turner* Were Not Factual Findings, Judicial Determinations or Court Orders Pursuant to Evidence Code section 452(d)

The People offer that this Court can review the transcript in *People v Turner* for purposes of context without relying on its contents for the disputed factual assertions. A review of the transcript shows that Judge Bjerkhoel's statements were part of a dialogue with the People and a warranted admonishment on the use of AI, after which the People promptly withdrew the subject filing.

Having not been provided with the statutory or legal authority upon which the Defendant bases their request for judicial notice of the transcript, the People anticipate the Defendant may attempt to argue that Judge Bjerkhoel's statements, given her stature as a judicial officer, amounted to a judicial determination, finding, or a court order—which can be subject to judicial notice. However, Judge Bjerkhoel's remarks, despite her role as a judicial officer, did not constitute a judicial determination, finding, or an order subject to judicial notice. Characterizing them as such would be inaccurate. There was no hearing on the issue, no sworn

testimony, and no final adjudication. The minute order contains no record of any determination, confirming that no official act or ruling occurred. (See Exhibit D, which the People respectfully request the Court take judicial notice of). Accordingly, the Court cannot take judicial notice of Judge Bjerkhoel's comments in the transcript and cannot accept them as true, as they do not reflect any conclusion of fact or law but are merely unsworn statements made during proceedings. These facts are akin to those in *People v Surety Ins.Co.*, supra, wherein the court record disclosed a dialogue between the trial judge and the attorney. *Id.* 136 Cal.App.3d at p. 564. The court held the statements in the dialogue on the record were hearsay and were made without any contest or adversary proceeding and that they were not subject to judicial notice just because they were part of a court record or file. *Id.*

Again, because Defendant has not identified any statutory or legal basis supporting the request for judicial notice of the transcript, the People can only surmise that Defendant may contend the statements are not offered for their truth, but merely for notice purposes. Even so, this does not bring the statements within the statutory scope of judicial notice of a court order under Evidence Code section 452(d), nor would this asserted purpose obscure the reality that the "notice" sought would necessarily go to the truth of the matter asserted.

The People respectfully request this Court deny the Defendant's request to take judicial notice of any of the contents in the aforestated pleadings to include the transcript in *People v. Turner*.

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IV. PEOPLE'S NOTICE AND REQUEST FOR JUDICIAL NOTICE

The People hereby provide notice that at the date of the above-stated hearing, the People will request that the Court take judicial notice of the following, pursuant to Evidence Code section 452(d):

1. The Court of Appeals Docket in *Kjoller v. The Superior Court of Nevada County*, C104445.

   This request is made pursuant to Evidence Code section 452(d). See *People v. Mendoza*, 241 Cal.App.4th 764 (taking judicial notice of on online court docket). Exhibit A.

2. Denial of Petitioner's Motion for Sanction and Attorney's Fees in *In re Kyle Kjoller*, Court of Appeals Case No C10445, issued 9/19/25

   This request is made pursuant to 452 (d). Exhibit B.

3. Denial of Petitioner's Successive Motion to Issue an Order to Show Cause in *In re Kyle Kjoller*, Court of Appeals Case No C104445, issued 10/20/25.

   This request is made pursuant to 452 (d). Exhibit C.

4. The Minute Order in *People v. Taylor*, CR0006300B, from August 28, 2025.

   This request is made pursuant to 452 (d). Exhibit D.

CONCLUSION

The People respectfully request the Court grant the Defendant's request as set forth above, deny the Defendant's request as set forth above, and grant the People's request for judicial notice as set forth above.

Dated: November 13, 2025

Respectfully submitted,

JESSE WILSON
DISTRICT ATTORNEY
By: Lydia Stuart
Assistant District Attorney

Exhibit A

Appellate Courts Case Information

3rd Appellate District

Change court

Case Summary
Docket
Briefs
Disposition
Parties and Attorneys
Trial Court

Docket (Register of Actions)

Kjoller v. The Superior Court of Nevada County
Case Number C104445

Date	Description	Notes
08/20/2025	Petition for a writ of habeas corpus filed.	Treated as a petition for writ of mandate per 09/29/2025 order.
08/21/2025	Opposition requested.	Due: 09/05/25. Petitioner's reply to the informal response, if any, is to be served and filed with this court within 15 days after the filing of the informal response.
08/26/2025	Substitution of attorneys filed for:	Respondent substituting the Nevada County District Attorney as sole counsel of record. By stipulation.
08/27/2025	Filed proof of service	Supplemental as to stipulation for substitution of counsel.
09/04/2025	Informal response filed by:	Real Party in Interest: The People Attorney: Jesse Daniel Wilson
09/17/2025	Reply filed to:	respondent's informal response by petitioner.
09/17/2025	Motion filed.	by petitioner for sanctions and attorneys' fees.
09/19/2025	Order filed.	Petitioner's motion for sanctions and attorney's fees is denied. HULL, Acting, P.J., DUARTE, J RENNER, J.
09/23/2025	Response filed:	by respondent to petitioner's informal reply. Filed with permission of the court.

09/29/2025	Palma sent. Response due:	This court is considering issuing a peremptory writ of mandate in the first instance, i.e., without first issuing an alternative writ. (See Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171.) Respondent court may avoid issuance of the writ by vacating its June 20, 2025, order denying bail and holding a new bail hearing that addresses the aforementioned considerations, in particular, by setting "forth the reasons for its decision on the record" (Humphrey, supra, 11 Cal.5th at p. 155; see id. at pp. 152-155) and issuing a new order. In the event respondent court is considering proceeding in this manner, it must afford the parties notice and an opportunity to be heard (if requested by a party) before vacating its earlier decision. (Brown, Winfield & Canzoneri, Inc. v. Superior Court (2010) 47 Cal.4th 1233, 1250 (Brown).) Respondent court is directed to inform this court of any relevant action taken consistent with this order and to provide a status update on or before October 14, 2025. If respondent court chooses to change its order in the manner described herein, this court will dismiss this petition for writ of mandate as moot. (Cf. Brown, supra, 47 Cal.4th at p. 1251.) HULL, Acting P.J., DUARTE, J., RENNER, J. (See order for full text.)
10/02/2025	Motion filed.	by petitioner to issue an order to show cause why this court should not impose sanctions.
10/07/2025	Received copy of	notice of setting bail review hearing filed 10/03/2025, minute orders dated 10/06/2025 and 10/07/2025, and minute addendum dated 10/07/2025 from Nevada County Superior Court.
10/20/2025	Petition denied or dismissed after alternative writ or palma issued.	Petitioner's successive motion to issue an order to show cause why this court should not impose sanctions is denied. The superior court having complied with this court's order of September 29, 2025, the petition for writ of mandate is dismissed as moot. Hull, Acting P.J., Duarte, J., Renner, J.
10/20/2025	Case complete.	
10/30/2025	Service copy of petition for review received.	Petitioner's. (S293723)
10/31/2025	Petition for review filed in Supreme Court.	By Petitioner (S293723).

Click here to request automatic e-mail notifications about this case.

Exhibit B

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

In re KYLE KJOLLER on Habeas Corpus.

C104445
Nevada County
No. CR0005981

BY THE COURT:

Petitioner's motion for sanctions and attorney's fees is denied.

HULL, Acting P.J.

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cc: See Mailing List

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: In re KYLE KJOLLER on Habeas Corpus
C104445
Nevada County Super. Ct. No. CR0005981

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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Office of the State Attorney General
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Nevada County Superior Court - Main
201 Church Street, Suite 5
Nevada City, CA 95959

Exhibit C

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

KYLE KJOLLER,
Petitioner,
v.
THE SUPERIOR COURT
OF NEVADA COUNTY,
Respondent;
THE PEOPLE,
Real Party in Interest.

C104445
Nevada County
No. CR0005981

BY THE COURT:

Petitioner's successive motion to issue an order to show cause why this court should not impose sanctions is denied.

The superior court having complied with this court's order of September 29, 2025, the petition for writ of mandate is dismissed as moot.

HULL, Acting P.J.

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cc: See Mailing List

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: Kjoller v. The Superior Court of Nevada County
C104445
Nevada County Super. Ct. No. CR0005981

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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Nevada City, CA 95959-2511

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Exhibit D

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF NEVADA

Date: 08/28/2025
People v. Turner, Kalen Drake — Case No.: CR0006465B
Judge: Alissa Bjerkhoel — Reporter: Jessica Ayres
Clerk: Robin Herrgesell

PRELIMINARY EXAMINATION

Charges:
Count 1 HS11351 Possession for Sale of a Controlled Substance
Count 1.1 PC12022.1 Enhancement - Secondary Offense while on bail or O.R.
Count 2 HS11352(a) Sale/Transportation/Offer to Sell a Controlled Substance
Count 3 HS11366.5(b) Controlled Substance - Knowingly Rent Fortified Space
Count 4 PC30305(a)(1) Prohibited Person Possess Ammunition
Appearances:
Assistant District Attorney: Lydia Stuart is Present

Defendant Kalen Drake Turner present in custody , Attorney Hayley Dewey, DPD

Nature of Proceedings: Preliminary Examination

People's motion to designate deputy Olivia Rodriguez-Spillner as investigating officer is granted.

District Attorneys exhibit 001 is marked for identification and admitted into evidence.

The People request defendant be held to answer on an added count of HS§11395.

People request the Court take judicial notice of our court case CR0006300B out of bail status.

Parties waive formal reading of complaint.

03:24 PM: Olivia Rodriguez-Spillner is sworn and examined.

03:42 PM : Witness is excused.
Preliminary examination was held on the above date and it appearing to the above named judge that the above felony violation(s) has/have been committed and that there is sufficient cause to believe that the above named defendant is guilty thereof, it is ordered that the defendant be held to answer the same.

Defendant is held to answer on the following charges
Count 1 **HS§11351**
Count 1.1 **PC§12022.1**

Count 2 **HS§11352(a)**
Count 3 **HS§11366.5(b)**
Count 4 **PC§30305(a)(1)**

Defendant is also held to answer on the added charge HS§11395 is held to answer.

Court to retain exhibit.

Next Court Appearance: Arraignment - Information on 09/12/2025 at 1:30 PM in Department 4.

Defendant is ordered to appear

EXHIBIT I

JESSE WILSON (SBN 281933)
Nevada County District Attorney
By: Madison Maxwell (SBN 355020)
Deputy District Attorney
201 Commercial Street
Nevada City, CA 95959
Telephone: (530) 265-1301

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **ALVIN DEREK DOUG MOSLEY** Defendant.	**Case No.: CR0006184** **PEOPLE'S AMENDED OPPOSITION TO DEFENDANT'S PETITION FOR MENTAL HEALTH DIVERSION PURSUANT TO PENAL CODE 1001.36** Date: November 20, 2025 Time: 9:00 am Dept. 1

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through their attorneys JESSE WILSON, District Attorney, and Madison Maxwell, Deputy District Attorney, hereby move to withdraw their Mental Health Diversion Opposition previously filed on the date of August 13, 2025, and file the enclosed Amended Mental Health Diversion Opposition, which corrects errors in citations and drafting.

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STATEMENT OF FACTS

On May 14, 2025, at approximately 1428 hours, Nevada City Police Department Officer Jesse Burmeister responded to a call for service from a reporting party, later identified as Heather Rose. Ms. Rose stated she could hear a male screaming that he was going to kill the female he was with and the dog in their possession.

Officer Burmeister contacted two individuals identified as Alvin Mosley (hereinafter the Defendant) and Sheri Madonna (hereinafter the Victim.) The Defendant advised that he and the Victim were venting after being kicked off a bus due to the Victim's backpack striking the driver. Officer Burmeister re-contacted Ms. Rose, who confirmed that she saw a male adult, matching the Defendant's description, yelling loudly and appearing agitated, while the Victim appeared calm. Ms. Rose stated she heard the Defendant yelling from her nearby window and specifically heard him threaten to kill the Victim and the dog. No dog was observed with the Defendant or the Victim during this contact. At this time, the Defendant appeared agitated but stated he and the Victim were planning to return to their camp on Dorsey Drive in Grass Valley. Because no active disturbance was occurring, the Defendant and the Victim were released from the scene. The Victim did not appear distraught or indicate she was in any danger during this initial contact.

At approximately 1502 hours that same day, Officer Burmeister responded to another report of a male and female yelling and throwing items at each other in the 300 block of South Pine Street. Upon arrival, Officer Burmeister observed the Defendant yelling at the Victim. The Defendant was grabbing his buttocks and yelling, "I'll fully spread my ass cheeks for you," while squaring up his body and clenching his fists toward the Victim. The Defendant continued to appear agitated, yelling that he was tired of carrying the Victim's belongings and did not want to be with her anymore. The Defendant was detained and placed in handcuffs, which were checked for proper fit and double locked.

Officer Burmeister then contacted the Victim, who was observed crying with tears on her face and breathing rapidly. The Victim reported that she had asked the Defendant to stop yelling at her, to which the Defendant responded, "I'm going to hurt you." The Victim told him again to stop yelling and stated, "You're not going to touch me." The Victim further disclosed that on approximately May 12, 2025, at their camp off Dorsey Drive in Grass Valley, the Defendant threw her down. The Victim showed Officer Burmeister multiple visible and dark bruises on her left arm. She stated the Defendant was "a real abusive person" and had threatened to kill her if she called the police or had him arrested. Out of fear, she had not reported the prior incident. The Victim stated she and the Defendant had been in a dating relationship for approximately 30 days, staying together in the same tent at their camp. She confirmed that the Defendant had recently returned from out of town within the last month.

During transport to the Nevada County Jail, the Defendant became increasingly agitated and repeatedly claimed that the Victim "hit herself" and was attempting to ruin his life because he was close to completing probation. Pursuant to his Post Release Community Supervision (PRCS) terms, the Defendant consented to provide a urine sample, which tested positive for alcohol and methamphetamine.

ARGUMENT

Penal Code section 1001.36 establishes a pretrial mental health diversion program, permitting—but not requiring—diversion for defendants with qualifying mental health disorders. Diversion postpones prosecution to allow defendants to undergo treatment, with the goal of reducing recidivism and promoting rehabilitation. (§ 1001.36, subd. (a).)

The court must assess two primary issues: Eligibility—whether the defendant meets the statutory requirements under § 1001.36, subdivision (b), and Suitability—whether diversion is appropriate based on all relevant factors, including rehabilitation prospects, the nature of the offense, criminal history, and public safety under § 1001.36, subdivision (c). The defendant bears the burden of proving eligibility and

suitability by a preponderance of the evidence. (*People v. Oneal* (2021) 64 Cal.App.5th 581, 588.) The court retains broad discretion in both determinations. (*People v. Braden* (2023) 14 Cal.5th 791, 813–814.)

I. ELIGIBILITY REQUIREMENTS.

A. Qualifying Mental Disorder

The defendant must suffer from a mental disorder identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), as diagnosed by a qualified mental health expert.

The People do not contest that the Defendant suffers from a qualifying mental health disorder, specifically Post-Traumatic Stress Disorder and Amphetamine-type Substance Use Disorder – both of which are described in the DSM-V.

B. Significant Factor in the Offense

The mental disorder must have been a "significant factor" in the commission of the charged offense; mere temporal association is insufficient. (*People v. Frahs* (2020) 9 Cal.5th 618, 636–639.) The court must evaluate whether the disorder motivated, caused, or contributed to the defendant's involvement in the offense**.**

The People do not contest and cannot prove by clear and convincing evidence that the Defendant's mental disorder was not a significant factor in the commission of the charged offense.

C. Excluded Offenses

Eligibility is barred if the charged offense falls under the statutory exclusions listed in § 1001.36, subdivision (d), including murder, rape, most child sexual offenses, certain firearm violations, or

offenses requiring registration as a sex offender. This gatekeeping ensures only defendants without such disqualifying charges may be considered for diversion.

The Defendant is currently charged with Penal Code § 273.5(a), felony domestic violence with a litany of aggravating factors. Nothing the Defendant is charged with an excluded offense.

The People do not contend that the Defendant is ineligible for Mental Health Diversion as he meets the eligibility requirements; however, it is the People's strong contention that the Defendant is wholly unsuitable for Mental Health Diversion.

II. SUITABILITY DETERMINATION.

Even if eligible, diversion is not mandatory. Eligibility focuses narrowly on statutorily excluded offenses and whether the mental disorder was a significant factor in the offense. Suitability allows the court to evaluate all relevant circumstances, including risks to victims, potential for rehabilitation, and the effectiveness of treatment in mitigating future risk. (*People v. Braden* (2023) 14 Cal.5th 791; *Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882.) The court must consider whether diversion serves the purposes of rehabilitation and community safety. Suitability factors include but are not limited to: treatability, consent to diversion, agreement to be treated, the nature and circumstances of the charged offense, the defendant's criminal history and prior violent conduct, the defendant's history of compliance with prior supervision and court orders, the adequacy and feasibility of the proposed treatment plan and provider, and finally, public safety considerations beyond the statutory super strike threshold.

Here, the People will note that Defense's petition fails to address the suitability prong that is essential to making a determination on whether the Defendant should be granted a chance in Mental Health Diversion. Defense makes a blanket assertion on page 6 of their petition that "Mr. Mosley is

eligible and suitable for this specific statutory diversion, based on the preliminary information submitted to counsel from behavioral health." (Defense's Motion for Statutory Diversion, pg. 6, ln. 2-4.) This is insufficient.

A. Treatability

A qualified mental health expert must opine that the defendant's symptoms are likely to respond to treatment. Suitability is dependent on the likelihood that diversion and treatment will reduce criminal behavior and support rehabilitation.

Nevada County Behavioral Health contends that the Defendant's symptoms would respond to treatment. The People do not contest this finding.

B. Consent to Diversion

The defendant must consent to diversion and waive the right to a speedy trial. For defendants found incompetent under diversion-in-lieu-of-commitment provisions, inability to consent does not preclude diversion.

Although not specifically mention in Defense's petition, if the Defendant consents, the People do not argue on this factor.

C. Agreement to Comply with Treatment

The defendant must agree to comply with treatment conditions. If the defendant is incompetent under diversion-in-lieu-of-commitment provisions, inability to agree does not bar diversion.

Per the NCBH Assessment, the Defendant agrees to treatment and medication. However, the People are concerned given that the Defendant has engaged in outpatient therapy in the past but stated that he [the Defendant] has a "hard time trusting doctors…" (NCBH Assessment, pg. 2, Domain 3,

Paragraph 3.) The People are concerned given that Defendant has engaged in services in the past and has not trusted healthcare providers before. Without more elaboration from Defense, the People are left unsure if Defendant can maintain an agreement to comply with treatment.

D. Nature and Circumstances of Charged Offenses

The court may consider the nature and circumstances of the charged offense, including its severity, planning, and whether it involved violence. (*People v. Moine* (2021) 62 Cal.App.5th 440; *People v. Williams* (2021) 63 Cal.App.5th 990; *People v. Bunas* (2022) 79 Cal.App.5th 840.)

This crime stems from an all-day, multiple law enforcement contact incident. Per the statement of facts above, which is derived from the incident report taken by the Nevada City Police Department, the incident escalated in nature as the day progressed. Eventually, after the Defendant was observed clenching his fists at the Victim by law enforcement, the Victim disclosed that the Defendant threw her [the Victim] on the ground, leaving bruises on her left arm. The Victim stated that the Defendant threatened to kill her [the Victim] is she called law enforcement; thus, the Victim did not report it the day of due to being in fear of the Defendant.

This is conduct that involves control, fear, and violence – all of which are manipulative tactics that abusers engage in to perpetrate abuse on others. The People urge this Court to consider the Defendant's tactics and escalating behavior as displayed in this incident in finding the Defendant unsuitable for Mental Health Diversion.

E. Defendant's Criminal History and Prior Violent Conduct

The court should consider the defendant's criminal history and prior violent conduct when evaluating suitability. (*People v. Williams* (2021) 63 Cal.App.5th 990; *People v. Qualkinbush* (2022) 79 Cal.App.5th 879.)

When the incident occurred, and currently, the Defendant is on Post-Release Community Supervision ("PRCS") for a felony Penal Code § 594(a) conviction that resulted in a sentence of 2 years in CDCR and 3 years on PRCS. However, the Defendant also has the following prior convictions:

- 2005, Nevada County, 10851(a) – felony.
    - 2006, Violation of Probation
- 2006, Placer County, 148(a)(1) – misdemeanor, 594(a) – misdemeanor, 459 2nd degree – misdemeanor, 459 2nd degree – misdemeanor
- 2011, Yuba County, 12021(a)(1) – felony.
- 2015, Yuba County, 243(e)(1) – misdemeanor.
- 2016, Yuba County, 29800(a)(1) – felony, 4502(b) – felony.
- 2018, Yuba County, 136.1(c)(1) – felony, strike.
- 2020, Yuba County, 11550(a) – misdemeanor, 11364(a) – misdemeanor.
- 2020, Yuba County, 245(a)(1) – misdemeanor.
- 2021, Yuba County, 594(b)(1) – felony.
    - 2021, Violation of Parole
- 2023, Yuba County, 594(a) – felony (case he is on PRCS for as noted above.)

Defendant has also incurred a multitude of various arrests through the years including but not limited to: a 2010 arrest for Penal Code §§§§§ 597(a), 288(a), 261(a)(1), 286(a), and 242 – all dismissed for insufficient evidence; a 2011 arrest for Penal Code §§ 245(a)(2) and 417(a)(2) – dismissed in light of a plea to other charges; a 2020 arrest for Health and Safety Code §§ 11550(a) and 11364(a) – dismissed in the interests of justice; and a 2021 arrest for Penal Code § 422 – dismissed in light of a plea to other charges. The Defendant has been consistently involved in

criminal activity and has suffered numerous and various criminal convictions and arrests stemming from his criminal conduct.

F. Defendant's History of Compliance with Court Orders

A history of compliance with prior supervision and court orders is relevant to suitability. Courts weigh past compliance as an indicator of whether the defendant is likely to follow diversion requirements. *(People v. Moine* (2021) 62 Cal.App.5th 440; *People v. Qualkinbush* (2022) 79 Cal.App.5th 879.)

Defendant has had a significant number of convictions, some of which were committed while he was on some form of supervision from various courts and/or probation departments. Even more concerning to the People is the fact that the Defendant was on PRCS when he committed the current offense. Defendant consistently disregards the law and the orders imposed by courts and probation. The People believe that the Defendant is unlikely to follow diversion orders and requirements.

G. Adequacy and Feasibility of Proposed Treatment Plan

The court should consider whether the proposed treatment plan and provider are adequate and feasible, ensuring the defendant can access and complete appropriate mental health care. (*People v. Pacheco* (2022) 75 Cal.App.5th 207.)

The People do not take issue with the adequacy or feasibility of the treatment plan. If the Defendant is given the opportunity to participate in Mental Health Diversion, the People would request regular urinalysis screenings instead of urinalysis screenings upon request.

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H. Public Safety

In *People v. Williams* (2021) 63 Cal.App.5th 990, the Court of Appeal held that the "public safety" determination under the suitability (§ 1001.36(c)(4)) prongs is limited by the definition in § 1170.18(c): whether the defendant poses "an unreasonable risk that the petitioner will commit a new violent felony" — meaning a "super strike" under § 667(e)(2)(C)(iv). The court rejected arguments that "public safety" could be read more broadly than this express statutory definition.

The Defendant's current conduct, coupled with his extensive criminal history, demonstrates that he poses an unreasonable risk of committing a new violent felony. In the instant case, the Defendant twice threatened the Victim with violence, including a statement that he was going to hurt her, and a witness overheard him threaten to kill both the Victim and her dog. The Victim disclosed that just days earlier the Defendant had thrown her to the ground, leaving visible bruising, and that he threatened to kill her if she reported his abuse. This escalating pattern of domestic violence, coercive control, and threats of homicide strongly mirrors the precursors to more serious offenses such as attempted murder or forcible sex crimes, both of which qualify as "super strikes." The Defendant's criminal record highlights this risk: he has prior felony convictions for firearm possession and witness intimidation (a strike offense), along with repeated felony vandalism and parole violations. He has shown a persistent disregard for the law and a willingness to arm himself, silence victims, and reoffend.

Given his history of escalating criminal conduct, repeated failures under supervision, and present threats of lethal violence, the Defendant poses an unreasonable risk of committing one of the enumerated "super strike" felonies. Due to the Defendant's lengthy criminal history, including a strike conviction and serious arrests, and the facts of the current offense, the People believe that the Defendant poses and unreasonable risk of committing a new violent felony.

I. Residual Discretion and Victim Safety

Even if a defendant meets the technical eligibility requirements under Penal Code § 1001.36, the court retains broad residual discretion to deny diversion based on "any other factors the court deems appropriate." (§ 1001.36(c)(4).) This provision empowers the court to consider risks that fall outside the narrow "public safety" definition in § 1170.18(c) — including the safety of specific victims, the seriousness of the offense, the defendant's criminal history, and the likelihood of successful treatment.

California courts have repeatedly confirmed this authority. *People v. Bunas* (2022) 79 Cal.App.5th 840, the Court held that trial courts have *wide latitude* to weigh circumstances beyond the statutory "public safety" definition when determining suitability factors. Likewise, in *People v. Qualkinbush* (2022) 79 Cal.App.5th 879, the court, explained that § 1001.36 allows consideration of "any factor relevant to whether the defendant is suitable for diversion." The Court in *People v. Bunas* (2022) 79 Cal.App.5th 840 emphasized that the suitability determination is a holistic one, thus requiring consideration of *the defendant's mental health history, criminal history, and the circumstances of the charged offense*.

The court in *Williams* did not hold that the court's analysis of suitability must end with the public safety question. Section 1001.36(c)(4) expressly authorizes the court to consider "any other factors that the court deems appropriate" in determining suitability. This clause preserves the court's discretion to deny diversion even where a defendant is not likely to commit a super-strike offense, if other factors show the defendant poses a substantial, immediate, and foreseeable danger to individuals or the community.

Moreover, victim safety is a core component of public safety under the suitability analysis. The Legislature authorized courts to consider the positions of the defense and prosecution, the nature of the offense, and "any other factors the court deems appropriate" in assessing suitability. (Pen. Code, §

1001.36, subd. (b).) This "any other factors" language explicitly allows consideration of risks to victims. California appellate courts have repeatedly confirmed that suitability determinations may include considerations such as the impact on victims, seriousness of the offense, and protection of the community. (*People v. Moine* (2021) 62 Cal.App.5th 440; *People v. Williams* (2021) 63 Cal.App.5th 990; (*People v. Braden* (2023) 14 Cal.5th 791.)

Additionally, Marsy's Law (Cal. Const., art. I, § 28, subd. (a) and (b)) requires that victims be reasonably protected from the defendant, supporting the court's authority to weigh potential harm, intimidation, or traumatization of a victim in evaluating suitability for diversion. Accordingly, courts may consider whether the defendant's participation in community-based treatment sufficiently mitigates these risks before granting diversion. In sum, public safety at the suitability stage is broader than the eligibility "super strike" standard, encompassing both community protection and victim protection, while still balancing the rehabilitative goals of the statute.

Most recently, in *Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, the Court confirmed that trial courts are not bound to grant diversion merely because a defendant meets the eligibility criteria. The court held that suitability involves a discretionary judgment call, so denial could be proper where the *defendant's history, offense conduct, or ongoing risk factors make diversion inconsistent with the protection of the public or the interests of justice*. *Sarmiento* reinforces that the "unreasonable risk" language in § 1001.36(c)(4) is not the sole basis for denial — the statute expressly allows the court to consider "any other factors" it finds relevant, which includes victim safety and the protection of vulnerable individuals. This discretion necessarily includes protecting victims. This is consistent with Marsy's Law (Cal. Const., art. I, § 28, subd. (a) and (b)), which requires that victims be "reasonably protected from the defendant."

Here, the Defendant was in public, was under the influence of both alcohol and methamphetamine, and not only physically harmed the Victim two days prior and was almost about to on the day of the report, but he also threatened the Victim and threatened her if she were to contact law enforcement. This is serious and violent harm the Defendant willfully inflicted on the Victim and the People have concerns for the Victims safety if the Defendant is allowed to be treated in the community.

CONCLUSION

While the Defendant may meet the technical criteria for eligibility under Penal Code §1001.36, eligibility alone does not mandate that diversion be granted. The law is clear that a court must consider whether diversion is appropriate, and the defendant is suitable. In this case, the Defendant's actions demonstrate a direct, foreseeable, and serious risk of harm.

Accordingly, although the Defendant may be technically eligible, the circumstances demonstrate that he is unsuitable for diversion to protect both the public and the victim. The People respectfully request that this Court deny Defendant's Petition for Mental Health Diversion under Penal Code § 1001.36.

Date: November 12, 2025

JESSE WILSON
District Attorney

By:

Madison Maxwell
Deputy District Attorney

DA#: 05725-015642
Agency: NCPD
Report #: C2500261
MM/mm

EXHIBIT J

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **TAYLOR MCGRATH** Defendant.	**Case No.: CR0005340** **PEOPLE'S RESPONSE TO DEFENDANT'S REQUEST FOR DISMISSAL PURSUANT TO PC 1385 AND OTHER REMEDIES** Date: December 2, 2025 Time: 9:00 am Dept. 1

The People of the State of California, by and through its attorney, JESSE WILSON, District Attorney, respectfully submit the following Response to Defendant's Request for Dismissal Pursuant to Penal Code 1385 or Other Remedies.

INTRODUCTION

This is a felony child abuse matter. Tayler McGrath herein after "the Defendant" stands charged with one count felony child abuse in violation of Penal Code section 273a(a), and a special

allegation of causing great bodily injury to a child under five, within the meaning of Penal Code section 12022.7(d), among other charges. The Defendant has remained in custody since on or about December 12, 2024, and is pending adjudication on Defendant's Application for Mental Health Diversion Under Penal Code section 1001.35-1001.36 et seq, filed on July 28, 2025.

On August 13, 2025, the People filed an Opposition to the Defendant's Petition for Mental Health Diversion under Penal Code section 1001.36. The Opposition contained several errors within the legal citations discussing the law related to eligibility and suitability for diversion. Opposing counsel identified these errors and pointed them out in their Petition for Review filed on October 30, 2025, in *Kyle Kjoller v. Superior Court of Nevada County*, California Supreme Court Case No. S293723.

On November 6, 2025, at the next scheduled hearing, the People corrected the errors on the record, ensuring that the Court did not rely on any inaccuracies before adjudicating the merits of the case. The hearing on the Defendant's Application for Mental Health Diversion is now set for December 11, 2025.

The issues before the Court are threefold. First, whether the Defendant has suffered prejudice as a result of the errors in the People's Opposition, such that dismissal of the matter would be in furtherance of justice under Penal Code section 1385. Second, whether the errors rise to the level of a legally frivolous filing—meaning "any reasonable attorney would agree that it is totally and completely without merit"—sufficient to justify issuance of an Order to Show Cause for sanctions under Code of Civil Procedure section 128.7. Third, whether any Rule of Professional Conduct was implicated as a result of the errors and, if so, what, if any, further corrective action from this Judicial Officer is appropriate under California Code of Judicial Ethics Canon 3D(2).

The People respectfully submit that there has been no showing of prejudice or detriment to the Defendant such to warrant dismissal in the furtherance of justice under Penal Code section 1385.

Further, the filing does not constitute a frivolous pleading within the meaning of California Code of Civil Procedure section 128.7, and even if the Court were to find otherwise, the deterrent purposes of the statute have already been fully satisfied.

Finally, the People respectfully acknowledge that the Rules of Professional Conduct may be implicated when a legal brief contains citation errors that were not thoroughly verified prior to filing. However, there is no evidence that the People knowingly or intentionally submitted any false statement of law. The People have already taken remedial steps by correcting the record and implementing internal guidance, training, and supervisory measures consistent with the remedial expectations under the California Code of Judicial Ethics, thereby ensuring accuracy, candor, and the prevention of similar errors going forward. Accordingly, the People respectfully submit that no further action is required by the Court.

SUMMARY OF RELEVANT FACTS

On August 13, 2025, the People filed an Opposition to the Defendant's Petition for Mental Health Diversion under Penal Code section 1001.36. The Opposition contained several errors within the legal citations discussing the law related to eligibility and suitability for diversion. Opposing counsel identified these errors and pointed them out in their Petition for Review filed on October 30, 2025, in *Kyle Kjoller v. Superior Court of Nevada County*, California Supreme Court Case No. S293723, thereby noticing the People of the errors.

On or about October 30, 2025, the assigned prosecutor and the undersigned supervisor immediately conferred regarding the appropriate corrective steps, to include filing an *Errata* to alert the Court and correct the citation errors. Because the Defendant was already on notice of the errors, it was determined that the People would orally address the matter on the record at the earliest available hearing the following week on November 6, 2025. Given heightened concern for candor, the People

wanted the opportunity to directly address this Court to correct the errors and dispel any inference of intent to mislead or confuse the Court. In hindsight, the People acknowledge that promptly filing the written *Errata* as initially discussed would have been the most proper way to immediately inform the court of the errors, in addition to personally and directly addressing the Court at the following court date.

On November 5, 2025, the Defendant filed a Notice of Errata to bring the errors to the Court's attention. At the hearing on November 6, 2025, the People acknowledged and explained the errors, corrected them on the record prior to any prejudicial impact on the Defendant. The People assured the Court that there was no intent to misrepresent the law or the facts or to mislead the Court. The Court accepted the corrections and no rulings were made on the merits of the Defendant's Application for Mental Health Diversion.

Counsel for Defendant then advanced a series of unsupported allegations suggesting that the citation errors resulted from the use of artificial intelligence. As its sole evidentiary support, Counsel for Defendant improperly asked this Court to take the untested allegations made in other cases and deem them true—an approach plainly inconsistent with established law, the principles governing judicial notice, and fundamental due process. Counsel for Defendant further advanced a serious of allegations regarding "cumulative errors" yet offered no evidence of, or even mentioned, specific detriment or prejudice resulting from the errors.

Counsel for Defendant cited: *Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426, 336 Cal.Rptr.3d 897; *People v. Alvarez*, (2025) 114 Cal.App.5th 1115, 337 Cal.Rptr.3d 585; *Matter of Nassar,* 2018 WL 4490909; and a number of Rules of Professional Conduct. After merely citing these authorities, Counsel for the Defendant—without analyzing the relevant factors, addressing the required procedural framework, or offering any evidentiary support—asked the Court to either grant

the petition based on alleged "cumulative error", dismiss the matter pursuant to Penal Code section 1385, or impose any other remedy the Court deemed appropriate.

Paradoxically, as further discussed i*nfra*, in making these allegations against the People, Counsel for Defendant misrepresented the law and established a pattern of errors related to case citations.

The Court set briefing on the instant issues and hearing on Defendant's Application for Mental Health Diversion was continued to December 11, 2025. There were no rulings, discussions or judicial determinations as to the eligibility or suitability of the Defendant for Mental Health Diversion.

On November 13, 2025, the People filed a Notice of Intent to Withdraw and an Amended Opposition to the Defendant's Petition for Mental Health Diversion. That same day, the People also filed an Amended Opposition in *People v. Mosley*, Case No. CR0006184, to correct the same citation errors that appeared in the shared Opposition to Mental Health Diversion template used to address legal issues of suitability and eligibility.

What seems clear is that Counsel for Defendant seeks to use this Court as a platform for broader commentary on the use of artificial intelligence in the legal system—an important subject, but one raised here without proper evidentiary support and lacking procedural and substantive due process. In doing so, Counsel for Defendant asks this trial court to undertake what the Court of Appeal has twice declined to do. *See* Denial of Petitioner's Motion for Sanction and Attorney's Fees in *In re Kyle Kjoller*, Court of Appeals Case No C104445, issued 9/19/25 (Exhibit A); Denial of Petitioner's Successive Motion to Issue an Order to Show Cause in *In Kyle Kjoller v Superior Court of California*, Court of Appeals Case No C104445, issued 10/20/25 (Exhibit B). Counsel has likewise sought review in the California Supreme Court, where the matter remains pending as to whether review will be granted. *See* Court of Appeals Docket in *Kjoller v. The Superior Court of Nevada County*, C104445 (Exhibit C).

What is more, is that the source of the citation errors is not a relevant determination for this Court. The errors have been corrected; there is no evidence of intentional falsity or any resulting detriment; and appropriate corrective measures have been implemented to deter future errors and to promote diligence, candor, and accuracy in all court filings. Accordingly, the People respectfully submit that this Court should decline to litigate this collateral issue further, avoid additional delay, and proceed to adjudicate the merits of the Defendant's Application for Mental Health Diversion under Penal Code section 1001.36.

LAW AND ARGUMENT

The People do not shy away from the heightened obligations imposed upon prosecutors under Rule of Professional Conduct 3.8—to serve as ministers of justice rather than mere advocates, and to ensure that the defendant is afforded both procedural and substantive justice. Accordingly, the issue of primary importance before the Court extends beyond whether sanctions should be imposed; it is whether the Defendant has suffered any prejudice—a question the People address first below.

I. Dismissal Pursuant to Penal Code section 1385 is Not in the Furtherance of Justice

In deciding whether to dismiss case in furtherance of justice, court may consider whether prosecution acted abusively or in bad faith, whether defendant has suffered prejudice, society's interest in prosecution of crime, and other relevant factors. *People v. Brown* (2023) 306 Cal.Rptr.3d 25, 40. Dismissals of indictments in furtherance of justice are disfavored where less drastic remedies exist. *People v. Thorbourn* (2004) 121 Cal.App.4th 1083, 1090. In this evaluation the court must consider the interests of the People as equal in importance to the rights of the accused. *People v. Andrad*e (1978) 86 Cal.App.3d 963, 976. Defendant does not have the statutory privilege of moving to dismiss an action, or part of an action in furtherance of justice; dismissal may only be had on judge's own motion or upon application of prosecuting attorney. *People v. Hernandez* (2000) 22 Cal.4th 512, 521.

a. Dismissal Pursuant to 1385 Requires Showing of Detriment and Prejudice

A court's discretionary authority to dismiss an action is not unlimited and must be exercised within the confines of the applicable legal principles. *People v. Randolph* (2018) 239 Cal.Rptr.3d 395, 405-406. An order of dismissal in furtherance of justice is a matter of public concern, as "furtherance of justice" means justice to society and the People as well as to a criminal defendant; a dismissal which arbitrarily cuts those rights without a showing of detriment to the defendant is an abuse of discretion. *People v. Marroquin,* (2017) 223 Cal.Rptr.3d 322, 328.

It is a fundamental principle that reversal for prosecutorial misconduct is not required unless the defendant can show that he has suffered prejudice. *People v. Uribe* (2011) 199 Cal.App.4th 836, 873; *People v. Arias* (1996) 13 Cal.4th 92; see also *In re Martin* (1987) 44 Cal.3d 1, 54-55 (dismissal unwarranted where no showing that prosecutorial misconduct "prejudiced the defense by undermining the defendant's ability to mount a defense"). The focus of the inquiry is on the effect of the prosecutor's action on the defendant, not on the intent or bad faith of the prosecutor. *People v. Hamilton* (2009) 45 Cal.4th 863, 920; see *People v. Hill* (1998) 17 Cal.4th 800, 822-823. Even where prosecutorial misconduct is egregious, the critical due process inquiry is on the effect of the misconduct on the trial, not the nature or blameworthiness of the misconduct itself. *See Smith v. Phillips* (1982) 455 U.S. 209, 220 & fn. 10, cited in *People v Uribe, supra*, 199 Cal.App.4th 836 at 870. The aim of due process is not punishment of society for the misdeeds of the prosecutor but avoidance of an unfair trial to accused. *Smith v. Phillips,* supra, 455 U.S. at 219, quoting *Brady v. Maryland* (1963) 373 U.S. 83 at 87, cited in *People v Uribe, supra*, 199 Cal.App.4th 836 at 870.

b. **Defendant Has Not Suffered Prejudice on Account of the People**

Here, there has been no showing of detriment to, or prejudice against, the Defendant. Fortunately, the citation errors were identified by Counsel for Defendant and corrected by the People before this Court made any substantive ruling on the Application for Mental Health Diversion. As a

result, the Court did not rely on the erroneous citations, and the errors did not impede the Defendant's ability to have the Application adjudicated on its merits.

The Defendant argues "cumulative error," yet makes no specific showing of actual detriment. Counsel's assertion that he spent additional time addressing the errors does not establish the prejudice required to warrant dismissal under Penal Code section 1385.

Accordingly, the People respectfully submit that no requisite detriment has been shown, and dismissal would not be in furtherance of justice nor in the interests of society, or the Defendant. This important matter should proceed to adjudication on its merits.

II. Sanctions Pursuant to Code of Civil Procedure section 128.7 are Neither Warranted Nor Necessary; The People's Oppositive was not "Legally Frivolous" and the Deterrent Purposes of Section 128.7 have Been Satisfied.

The Defendant cites *Noland v. Land of the Free*, L.P (2025) 114 Cal.App.5th 426, 336 Cal.Rptr.3d 897 and *People v. Alvarez* (2025) 114 Cal.App.5th 1115, 337 Cal.Rptr.3d 585**.** Both are recent Court of Appeal decisions addressing briefs that contained fabricated legal authorities and incorrect citation references generated through the use of generative artificial intelligence (AI). Both cases clarified that there is nothing inherently wrong with using artificial intelligence (AI) in law practice, but attorneys must check every citation to make sure case exists and citations are correct. *People v. Alvarez*, (*Alvarez)* 337 Cal.Rptr.3d at 588, citing *Noland v. Land of the Free L.P.*, *(Noland*) 336 Cal.Rptr.3d at 913. The *Noland* Court held, "Simply stated, no brief, pleading, motion or any other paper filed in any court should contain *any* citations—whether provided by generative AI or any other source—that the attorney responsible for submitting the pleading ahs not personally read and verified". *Id.* 336 Cal.Rptr.3d at 901.

Both Courts discussed legal principles and issued sanctions pursuant to California Code of Civil Procedure section 128.7, amongst other grounds reserved for Appellate Courts. See *Noland*, 336

Cal.Rptr.3d 909-10 ("The Code of Civil Procedure permits an appellate court to impose sanctions for filing a frivolous appeal. (§ 907 ("When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just"); § 128.7 (attorney may be sanctioned for submitting pleading for which the attorney does not have a belief "formed after an inquiry reasonable under the circumstances" that the "legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law")); *Alvarez,* 337 Cal.Rptr.3d 585, 588 (*"*Further, consistent with the notion that sanctions should deter future improper behavior (see, e.g., Code Civ. Proc., § 128.7, subds. (b)(2), (c), (h)), we issue a sanction in the amount of $1,500 to be paid by Attorney Siddell individually to the Fourth District Court of Appeal, Division One.").

The Defendant has not identified any specific procedural basis for the request that this Court impose "any other remedial steps the Court deems appropriate," but seemingly relies on the cases cited above which issued sanctions based on the findings of frivolous filings under Code of Civil Procedure section 128.7. Accordingly, the People will address the legal principles and remedies available to a trial court under the authorities implicitly referenced by Defendant, to wit, Code of Civil Procedure section 128.7.

a. **Legal Principals of California Code of Civil Procedure Section 128.7 to Include Notice, Purpose and Safe-Harbor Period**

Section 128.7 applies only in limited circumstances. *Kumar v. Ramsey***,** (2021) 71 Cal. App.5th 1110, 1120. It "authorizes trial courts to impose sanctions to check abuses in the filing of pleadings, petitions, written notices of motions or similar papers." *Id.* citing *Musaelian v. Adams* (2009) 45 Cal.4th 512, 514. Under that authority, trial courts may issue sanctions, including monetary and terminating sanctions, against a party for filing a complaint that is legally or factually frivolous. *Id.,* § 128.7, subds. (b)-(d); *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 263-264.

"A claim is factually frivolous if it is 'not well grounded in fact' and is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. A claim is objectively unreasonable if 'any reasonable attorney would agree that [it] is totally and completely without merit." *Kumar v. Ramsey,* Cal.App.5th at 1120 citing B*ucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189. A claim is "legally frivolous," as required to support a sanctions award on ground that it is "indisputably without merit either legally or factually," if it is not warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law. *McCluskey v. Henry* (2020) 270 Cal.Rptr.3d 803.

Adequate notice prior to the imposition of sanctions for frivolous filings is not only mandated by the statute providing for such sanctions, but also by the due process clauses of the state and federal Constitutions. *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685. Informal notice of an intent to seek sanctions in the future cannot serve as a substitute to the requirements set forth in section 128.7 for a formal noticed motion. *CPF Vaseo Assocs., LLC v. Gray*, 29 Cal. App. 5th 997, 1007.

Like its federal counterpart, Rule 11, the state statute governing sanctions for frivolous filings should be utilized only in the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose. *Kumar v. Ramsey*, supra, 71. Cal.App.5th at 1121. Statute providing for sanctions for frivolous filings is not designed to be punitive in nature, but rather to promote compliance with statutory standards of conduct. *Martorana v. Marlin & Saltzman* supra, 175 Cal.App.4th 685 at 699; *Cromwell v. Cummings* (1998) 65 Cal.App.4th Supp. 10, 14. The purpose of statute providing for sanctions for frivolous filings is to deter frivolous filings. *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814.

Section 128.7 contains a safe-harbor provision that permits a party to withdraw a questionable pleading without penalty, thus saving the court and the parties time and money litigating the pleading as well as the sanctions request. *Martorana v. Marlin & Saltzman* supra, 175 Cal.App.4th 685 at 669; citing *Malovec v. Hamrell.* 70 Cal.App.4th at 441. The sanctions statute providing a 21-day safe harbor period to allow correction or withdrawal of an offending document is designed to be remedial, not punitive. *CPF Vaseo Assocs., LLC v. Gray*, 29 Cal. App. 5th 997, 1007.

Sanctions for a frivolous claim should be made with restraint, and are not mandatory even if a claim is frivolous. *Peake v. Underwood* (2014) 227 Cal.App.4th 428,448.

b. **The Defendant Has Failed to Provide Proper Notice on Its Motion for Sanctions and the People Have Withdrawn the Filing Pursuant to the 21 Day Safe Harbor Period.**

Clearly, the Defendant's request for sanctions "or other remedies" without *any notice at all*, and without specificity, does not follow procedural due process as mandated by Section 128.7. The Defendant has failed to provide proper notice in its motion for sanctions, which requires service of specific allegations, in conformity with Code of Civil Procedure Section 1010, and shall not be presented to the court, unless within 21 days after the service of the claim, the pleading is not withdrawn. See section 128.7(c)(1).

Furthermore, the People filed a Notice of Intent to Withdraw on November 13, 2025—well within the 21-day safe-harbor period. (Exhibit D.) While the People fully recognize that the rights of a criminal defendant are not governed by the same rigid timelines applicable to civil sanctions procedures, any potential prejudicial impact on the Defendant has already been addressed above. Here, the Notice to Withdraw reflects the People's good-faith effort to promptly correct the errors and to address any warranted sanctions within the framework seemingly referenced by Defendant.

Sanctions on the motion of the Defendant should be denied for lack of due process.

c. **The Errors in Legal Citations Do Not Rise to a Legally Frivolous Filing**

The People acknowledge this Courts separate authority to issues sanctions pursuant to Section 128.7 outside of the request of the Defendant. However, the People respectfully submit the errors within the People's Opposition do not rise to the level of a "legally frivolous" filing that is "indisputably without merit either legally or factually" *McCluskey v. Henry*, supra, 270 Cal.Rptr.3d 803, 809.

In requesting this Court to issue sanctions, the Defendant cites *Noland v. Land of the Free*, L.P, supra, 114 Cal.App.5th 426, 336 Cal.Rptr.3d 897 and *People v. Alvarez*, supra, 114 Cal.App.5th 1115, 337 Cal.Rptr.3d 585**.** Both of these cases are factually distinguishable from the circumstances in front of the Court.

In *Noland v. Land of the Free*, *L.P.*, the Court noted that:

> "Nearly all of the legal quotations in plaintiff's opening brief, and many of the quotations in plaintiff's reply brief, are fabricated. That is, the quotes plaintiff attributes to published cases do not appear in those cases or anywhere else. Further, many of the cases plaintiff cites do not discuss the topics for which they are cited, and a few of the cases do not exist at all.
>
> *Id.,* 336 Cal.Rptr.3d at 901.

Further, the Court found that:

> "In total, appellant's opening brief contains 23 case quotations, 21 of which are fabrications. Appellant's reply brief contains many more fabricated quotations. And, both briefs are peppered with inaccurate citations that do not support the propositions for which they are cited.
>
> *Id.,* 336 Cal.Rptr.3d at 905.

In *People v. Alvarez*, the opposition at issue included a case that did not exist, it attributed quotes that did not exist within a case, and included two cases that did not address the issue for which they were cited. *Id.* 337 Cal.Rptr.585, 587. Further, the attorney who filed the opposition admitted to using AI to draft is pleading, admitted to being aware that AI

could hallucinate cases, and stated that he did not verify the accuracy of any citations. *Id.* at 587.

Here, the citation errors in the People's Opposition are factually distinguishable from the offending conduct in the above cases, both of which included hallucinated cites, multiple substantive errors, and the clear use of AI in the pleadings. Furthermore of distinction, is that moving parties did not bring the errors to the courts' attention prior to the Court of Appeals issuing an order to show cause. Here, the People have addressed the errors with the Court, withdrawn the pleadings, and it now lies within this Court's discretion whether or not to even issue an order to show cause.

The People respectfully submit that that the errors in the Opposition did not deem the filing legally or factually frivolous within the meaning of section 128.7. A claim is frivolous if it is objectively unreasonable, in that 'any reasonable attorney would agree that [it] is totally and completely without merit." *Kumar v. Ramsey,* Cal.App.5th at 1120 citing B*ucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.

Here, as explained by the People, the errors consisted of citation inaccuracies—such as incorrect pincites, misattributed quotations, and erroneous subsections—but the brief otherwise relied on sound legal principles. A reasonable attorney, cognizant of the demands of the profession, would not conclude that the People's Opposition was wholly without merit. While the People do not minimize or excuse these errors, we respectfully submit that they do not rise to the level of frivolousness required to satisfy the thresholds of Code of Civil Procedure section 128.7.

d. **Counsel for Defendant Completely Misrepresents the Holding of *Matter of Nassar* and Creates a Pattern of Errors in Citing to a Case.**

In his request for remedies in response to People's errors in citing law, Counsel for Defendant directed the *Court to Matter of Nasser,* 2018, WL 4490909, stating "that case talks about the duty to

read the authorities they're citing to, to determine that the authority stands for the proposition for which they are cited." (Transcript from November 6, 2025 Hearing, pg 18, line 2-5.)

Counsel for Defendant entirely misrepresented the holding and discussion in *Matter of Nassar*. That case addressed prosecutorial misconduct arising from the withholding of discovery and cited other examples of misconduct, including circumstances in which a prosecutor fabricated a defendant's confession. *Id.* Nowhere in the opinion does the court discuss the duty to read authorities in order to "determine that the authority stands for the proposition for which they are cited," as Counsel for Defendant asserts.

This raises an obvious question: Did Counsel for Defendant read the authority he relied upon when making allegations against the People?

Moreover, throughout his argument, Counsel for Defendant establishes his own "pattern of errors" by repeatedly citing "*People v. Kjoller*" (see Transcript, p. 6, line 6; p. 28, line 16), when in reality, Counsel presumably intended to refer to the appellate filings in *Kjoller v. Superior Court*.

The misrepresentations and inaccuracies within Defendant's own arguments and can help situate this Court's analysis as to what is error versus a legally frivolous filing.

e. **The Remedial Purposes of Section 128.7 Have Been Satisfied.**

Sanctions for a frivolous claim should be made with restraint, and are not mandatory even if a claim is frivolous. *Peake v. Underwood*, supra, 227 Cal.App.4th 428,448. The sanctions statute for frivolous filings is not designed to be punitive in nature, but rather to promote compliance with statutory standards of conduct and to deter frivolous filings. *See Martorana v. Marlin & Saltzman* supra, 175 Cal.App.4th 685 at 699; *Cromwell v. Cummings* (1998) 65 Cal.App.4th Supp. 10, 14; *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814.

Here, the remedial purposes of section 128.7 have already been satisfied. All prosecutors within the Office have been reminded of their duty to verify every citation, review all authorities relied upon, and ensure the accuracy of all filings submitted to the Court. Internal corrective actions have been implemented, as discussed below and in the People's Declaration of Corrective Action (Exhibit E). The People have also internalized and reaffirmed their ongoing obligation to promptly notify the Court of any errors discovered in prior filings through the most prompt and effective means, which is typically alerting the Court and parties in writing.

No monetary sanctions are necessary, as the corrective message has been received and acted upon. Accordingly, the People respectfully submit that the Court need not exercise its discretion to impose sanctions.

III. Defendant Fails to Provide Legal Authority for its Requested Remedy of Granting the Application for Mental Health Diversion; The People Cannot Surmise that One Exists

Defendant argues that this Court should grant the Application for Mental Health Diversion as a "remedy" for the citation errors. Defendant provides no authority for this proposition, and the People are unaware of any legal principle that would create such a nexus. There is simply no argument—consistent with law or logic—that corrected citation errors could somehow transform statutory ineligibility into eligibility, or make a defendant suitable for diversion where the statutory criteria are not met.

The Defendant is, in effect, asking this Court to adopt a remedy that circumvents the law. Granting diversion on this basis would require the Court to disregard mandatory statutory requirements. Errors in a pleading—particularly those that have been corrected—cannot retroactively create factual eligibility or legal suitability where the statute does not permit it. The Court's discretion

to act "in the interests of justice" operates within the statutory framework; it does not authorize the Court to waive or ignore statutory criteria as a form of sanction.

Such a result would contradict the plain language and structure of Penal Code section 1001.36 and is unsupported by any cited authority or recognized legal doctrine.

IV. Filing of Briefs Without Verifying Legal Citations May Implicate Rules of Professional Conduct; The Appropriate Corrective Actions Pursuant to California Code of Judicial Ethics have Already Been Achieved.

The People acknowledge that filing a brief without verifying the underlying authorities can implicate the Rules of Professional Conduct—and that, in turn, may trigger the obligations set forth in California Code of Judicial Ethics, Canon 3D(2). Canon 3D makes clear that when a judge has personal knowledge, or concludes in a judicial decision, that an attorney has committed misconduct or violated the Rules of Professional Conduct, the judge must take "appropriate corrective action." The Advisory Committee's Commentary explains that such corrective action may range from direct communication with the attorney, to consultation with the attorney's supervisor, to confidential referrals, or to reporting the matter to the State Bar or other appropriate authority. See Cal. Code of Jud. Ethics, Canon 3; See also Formal Ethics Opinion No. 74 The Judicial Ethics Committee of the California Judges Association has issued the following formal opinions: Opinion No. 74 "Judicial Responsibilities When Discovering Attorney Misconduct (Canon 3D(2))".

This Court need not take any further action as corrective measures have already been taken by the Office of the District Attorney. The "appropriate corrective action" under these circumstances, the People respectfully submit, would be to have direct communication with the attorney or consult with the attorney's supervisor—the practical effects of which have already been achieved. Indeed, the prosecutor who filed the brief containing errors promptly informed their supervisors of the errors and has vowed to implement new strategies for managing a demanding caseload with accuracy and candor.

In turn, the Office of the District Attorney has taken significant internal corrective action. This includes enhanced training and supervisory guidance for all attorneys, with renewed emphasis on diligence, competence, and candor toward the Court, as required by the Rules of Professional Conduct. We have underscored the importance of thorough oversight in verifying the accuracy of all legal filings, and we have incorporated the lessons learned from this matter into office-wide training.

The Office has also taken the present opportunity to deepen its understanding of the dynamics and potential pitfalls of AI-assisted legal work, including errors that may occur even within verified research platforms. We have adopted appropriate guardrails, including an Office-wide AI Policy Directive modeled on guidance issued by the Judicial Branch of California and the California State Bar. All attorneys have acknowledged the policy, received AI-specific ethics training, and an AI Policy Coordinator has been appointed to provide ongoing oversight as this technology continues to evolve. (See Exhibit E, Declaration of Corrective Action)

The People welcome continued dialogue with the Court and with counsel in appropriate forums that promote transparency, responsible innovation, and a shared understanding of emerging technologies. In that spirit, and should the Court find it a further appropriate action, the People would be pleased to host a Brown Bag session for all justice partners on topics such as the Rules of Professional Conduct and the ethical use of AI in legal proceedings

In sum, any remedial effect that could be accomplished through appropriate corrective action by this Court has already been achieved. Moreover, the broader issues that Defendant seeks to raise are more properly addressed in other forums—such as through Counsel for Defendant's filing before the California Supreme Court or through the State Bar's disciplinary processes.

This trial court, however, is tasked with adjudicating the merits of the present matter, which concerns the Defendant's eligibility for community-based treatment following the fentanyl poisoning

of his minor child. The People respectfully submit the Court should proceed to the merits of the petition, rather than diverting its attention to collateral issues of sanctions or other remedial measures.

CONCLUSION

The People respectfully request the Court deny the Defendant's invitation to dismiss pursuant to 1538, exercise its discretion to find that sanctions pursuant to Civil Code of Procedure are not warranted, and find that the effect of any further appropriate remedial steps have been achieved. The People furthermore request that the Court decline to issue an Order to Show Cause subject to further hearing.

Date: November 17, 2025

JESSE WILSON
District Attorney

By:

Lydia Stuart
Assistant District Attorney

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Exhibit A

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

In re KYLE KJOLLER on Habeas Corpus.

C104445
Nevada County
No. CR0005981

BY THE COURT:

Petitioner's motion for sanctions and attorney's fees is denied.

HULL, Acting P.J.

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cc: See Mailing List

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: In re KYLE KJOLLER on Habeas Corpus
C104445
Nevada County Super. Ct. No. CR0005981

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Exhibit B

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

KYLE KJOLLER,
Petitioner,
v.
THE SUPERIOR COURT
OF NEVADA COUNTY,
Respondent;
THE PEOPLE,
Real Party in Interest.

C104445
Nevada County
No. CR0005981

BY THE COURT:

Petitioner's successive motion to issue an order to show cause why this court should not impose sanctions is denied.

The superior court having complied with this court's order of September 29, 2025, the petition for writ of mandate is dismissed as moot.

HULL, Acting P.J.

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cc: See Mailing List

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: Kjoller v. The Superior Court of Nevada County
C104445
Nevada County Super. Ct. No. CR0005981

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Exhibit C

Appellate Courts Case Information

3rd Appellate District

Change court

Case Summary
Docket
Briefs
Disposition
Parties and Attorneys
Trial Court

Docket (Register of Actions)

Kjoller v. The Superior Court of Nevada County
Case Number C104445

Date	Description	Notes
08/20/2025	Petition for a writ of habeas corpus filed.	Treated as a petition for writ of mandate per 09/29/2025 order.
08/21/2025	Opposition requested.	Due: 09/05/25. Petitioner's reply to the informal response, if any, is to be served and filed with this court within 15 days after the filing of the informal response.
08/26/2025	Substitution of attorneys filed for:	Respondent substituting the Nevada County District Attorney as sole counsel of record. By stipulation.
08/27/2025	Filed proof of service	Supplemental as to stipulation for substitution of counsel.
09/04/2025	Informal response filed by:	Real Party in Interest: The People Attorney: Jesse Daniel Wilson
09/17/2025	Reply filed to:	respondent's informal response by petitioner.
09/17/2025	Motion filed.	by petitioner for sanctions and attorneys' fees.
09/19/2025	Order filed.	Petitioner's motion for sanctions and attorney's fees is denied. HULL, Acting, P.J., DUARTE, J RENNER, J.
09/23/2025	Response filed:	by respondent to petitioner's informal reply. Filed with permission of the court.

09/29/2025	Palma sent. Response due:	This court is considering issuing a peremptory writ of mandate in the first instance, i.e., without first issuing an alternative writ. (See Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171.) Respondent court may avoid issuance of the writ by vacating its June 20, 2025, order denying bail and holding a new bail hearing that addresses the aforementioned considerations, in particular, by setting "forth the reasons for its decision on the record" (Humphrey, supra, 11 Cal.5th at p. 155; see id. at pp. 152-155) and issuing a new order. In the event respondent court is considering proceeding in this manner, it must afford the parties notice and an opportunity to be heard (if requested by a party) before vacating its earlier decision. (Brown, Winfield & Canzoneri, Inc. v. Superior Court (2010) 47 Cal.4th 1233, 1250 (Brown).) Respondent court is directed to inform this court of any relevant action taken consistent with this order and to provide a status update on or before October 14, 2025. If respondent court chooses to change its order in the manner described herein, this court will dismiss this petition for writ of mandate as moot. (Cf. Brown, supra, 47 Cal.4th at p. 1251.) HULL, Acting P.J., DUARTE, J., RENNER, J. (See order for full text.)
10/02/2025	Motion filed.	by petitioner to issue an order to show cause why this court should not impose sanctions.
10/07/2025	Received copy of	notice of setting bail review hearing filed 10/03/2025, minute orders dated 10/06/2025 and 10/07/2025, and minute addendum dated 10/07/2025 from Nevada County Superior Court.
10/20/2025	Petition denied or dismissed after alternative writ or palma issued.	Petitioner's successive motion to issue an order to show cause why this court should not impose sanctions is denied. The superior court having complied with this court's order of September 29, 2025, the petition for writ of mandate is dismissed as moot. Hull, Acting P.J., Duarte, J., Renner, J.
10/20/2025	Case complete.	
10/30/2025	Service copy of petition for review received.	Petitioner's. (S293723)
10/31/2025	Petition for review filed in Supreme Court.	By Petitioner (S293723).

Click here to request automatic e-mail notifications about this case.

Exhibit D

JESSE WILSON (SBN 281933)
Nevada County District Attorney
By: Madison Maxwell (SBN 355020)
Deputy District Attorney
201 Commercial Street
Nevada City, CA 95959
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **TAYLOR ANTHONY HILES MCGRATH** Defendant.	**Case No.: CR0005340** **NOTICE OF INTENT TO WITHDRAW FILING** Date: December 3, 2025 Time: 9:00 am Dept. 1

TO THE HONORABLE COURT and COUNSEL for DEEFNDANT:

PLEASE TAKE NOTICE that the People of the State of California, by and through the Office of the District Attorney of Nevada County, hereby notify the Court and opposing counsel of their intent to withdraw the following filing:

- Title of Filing: People's Opposition to Defendant's Petition For Mental Health Diversion Pursuant To Penal Code Section 1001.36.
- Date Filed: August 13, 2025.

This notice is made in good faith and in the interest of candor to the tribunal, following review and identification of citation and drafting errors within the above-referenced filing.

The People intend to withdraw the filing and submit a corrected and amended version to ensure accuracy and compliance with applicable ethical and procedural standards.

Pursuant to Code of Civil Procedure §128.7(c)(1), the People respectfully provide this notice within the statutory 21-day safe harbor period to avoid unnecessary motion practice and to permit voluntary correction of the record.

The People acknowledge their continuing duty of candor to the Court and affirm that this corrective action is undertaken to ensure full accuracy, transparency, and compliance with the Rules of Professional Conduct.

Date: November 12, 2025

JESSE WILSON
District Attorney

By:

Madison Maxwell
Deputy District Attorney

DA#: 05724-013999
Agency: NCSO
Report #: 12403583
MM/mm

Exhibit E

Declaration of Corrective Action

I, Lydia Stuart, declare as follows:

1. I am the Assistant District Attorney employed by the County of Nevada.

2. Upon receipt of the Petition for Review filed on October 30, 2025, in *Kyle Kjoller v. Superior Court of Nevada County*, California Supreme Court Case No. S293723—which placed the People on notice of the citation errors contained in the People's Opposition for Mental Health Diversion—the assigned prosecutor immediately alerted this supervisor of the errors and conferred regarding the appropriate corrective action. We promplty discussed the filing of an Erratum to alert the Court to the inaccuracies. However, because Defense was already aware of the errors, after further discussion, it was ultimately determined that the assigned prosecutor would address and correct the errors directly on the record at the hearing scheduled for the following week. This approach would allow the prosecutor to personally clarify the errors before the Court and reaffirm their candor to the tribunal, which was of significant concern. In hindsight, a contemporaneous written corrective filing should also have been promptly submitted to the Court.

3. On November 6, 2025, the People appeared before the Court and formally corrected the record, identifying and clarifying the erroneous citations.

4. On November 13, the People filed an Amended Opposition to the Motion for Mental Health Diversion.

5. On the same date, the People filed a Notice of Intent to Withdraw pursuant to the Code of Civil Procedure §128.7 Safe Harbor provisions.

6. Between September 7, 2025 to present, this supervisor has had multiple substantive conversations with the prosecutor assigned to *People v. McGrath* and *People v Kjoller* regarding the citation errors in their briefs filed surrounding a period of time in which the prosecutor was learning to navigate the demands of a heavy caseload to include a transition to felony cases. The prosecutor has consistently acknowledged their errors, expressed regret, and affirmed their commitment to maintaining candor to the Court

and accuracy in all future filings. This supervisor has provided guidance on caseload management, oversight, and best practices to ensure the accuracy and integrity of all submissions going forward.

7. On November 12, 2025, the undersigned, along with Supervising Deputy District Attorney Helenaz Hill and Supervising District Attorney Casey Ayer, reviewed the applicable Rules of Professional Conduct governing supervisory duties.

8. On November 13, 2025, the Office of the District Attorney conducted mandatory training for all prosecutors entitled *"The Prosecutor's Special Duty: California's Rules of Professional Conduct"* that addressed Rule 3.8, Rule 3.1 and Rule 3.3 in depth, emphasizing diligence, competence, and candor toward the Court, and underscoring the importance of thorough oversight in verifying all legal citations and filings.

9. On August 28, 2025, the People were admonished by Judge Bjerkhoel related to a filing that appeared to contain "hallucinated citations". The filing was withdrawn, and the matter proceeded to preliminary hearing on the merits.

10. Promptly thereafter, the issue was addressed both individually with the involved attorney and collectively with all prosecutorial staff.

11. On November 7, 2025, the Office Appointed Supervising Deputy District Attorney Helenaz Hill as the AI Policy Coordinator, responsible for policy compliance and for providing ongoing oversight and guidance as we adapt to this developing technology of AI in legal work.

12. On November 10, 2025, the Office of the District Attorney implemented a formal AI Policy Directive, modeled off guidance from the Judicial Branch of California and the California State Bar, requiring signed acknowledgment by every prosecutor.

13. On November 13, 2025, the Office of the District Attorney conducted a mandatory *AI in Prosecution Compliance and Ethics* training for all prosecutors, reinforcing the responsible, ethical use of generative technologies in legal practice.

14. The Office of the District Attorney will continue to monitor compliance with ethical and technological policies through supervisory review, staff training, and ongoing professional development initiatives to ensure continued adherence to the Rules of Professional Conduct.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Nevada City, California on this 17th Day of November.

JESSE WILSON
District Attorney

By: 
Lydia Stuart
Assistant District Attorney

LBS/lbs
D.A. # 23-009265

EXHIBIT K

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Thomas Angell S.B. #282107
Assistant Public Defender
Attorney for Taylor McGrath

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. TAYLOR ANTHONY HILES MCGRATH, Defendant	Case No.: CR0005340 REPLY TO PEOPLE'S RESPONSE TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE AND PEOPLE'S NOTICE AND REQUEST FOR JUDICIAL NOTICE

To the above-entitled Court, and to the District Attorney of Nevada County, State of California:

Taylor McGrath by and through counsel, Assistant Public Defender Thomas Angell, hereby respectfully submits this Reply to the Prosecution's "Response to Defendant's Request for Judicial Notice; People's Notice and Request for Judicial Notice" ("Opposition").

The District Attorney filed a brief in this case containing fabricated cases, holdings, and quotations, and inaccurate citations to real cases. At a November 6 hearing, DDA Maxwell, who authored the brief, offered different explanations for 15 errors and misstatements of law that she acknowledged were in the brief. The District Attorney's Office has maintained—both to this Court and in the press—that those misstatements were the result of DDA Maxwell's human error, and not negligent use of Artificial Intelligence ("AI"). *See* DDA Maxwell's statements at Mr. McGrath's November 6 hearing; *The Sacramento Bee* Article[1].

This is just one of four cases in recent weeks that the District Attorney's Office has submitted briefing citing to fabricated legal authority. The Defense asks this Court to take judicial notice of relevant records from those other cases because they offer critical context as this Court considers how to respond to the District Attorney's repeated citations to fabricated authority—including the Court's consideration of dismissal in the interests of justice (Cal. Penal Code § 1385, the imposition of sanctions, a finding of contempt of court, or any other measure).

Statement of Facts

We anticipate that the following facts are undisputed:

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[1] Bernstein, Sharon. "AI Caused Errors in a Criminal Case, Northern California Prosecutor Says." *The Sacramento Bee*, November 7, 2025. https://www.sacbee.com/news/local/article312815223.html.

1. The District Attorney's Office filed briefs riddled with erroneous legal citations in at least four cases: *People v. Turner* (Case No. CR0006300B) (brief filed August 8, 2025), *People v. McGrath* (Case No. CR0005340) (brief filed August 13, 2025), *Kjoller v. Superior Court* (Ct. App. Case No. C104445) (brief filed August 28, 2025) and *People v. Mosley* (Case No. CR0006184) (brief filed September 11, 2025).
2. No member of the District Attorney's Office has ever apologized, in any forum, to the Court, or to the accused, for these repeated, numerous misrepresentations of law.
3. On August 28, the Superior Court admonished, and impliedly ordered, the District Attorney's Office to be careful when using AI to draft briefing because of fabricated authority it had cited in *Turner.*
4. District Attorney Jesse Wilson finally admitted to *The Sacramento Bee* that his Office's *Turner*, *McGrath* and *Kjoller* briefs "contained references to nonexistent legal cases and precedents."[2] DA Wilson claimed that only the *Turner* brief (authored by DDA Vogt) resulted from the reckless use of Artificial Intelligence and asserted that the *McGrath* and *Kjoller* briefs (authored by DDA Maxwell)

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[2] Bernstein, Sharon. "AI Caused Errors in a Criminal Case, Northern California Prosecutor Says." *The Sacramento Bee*, November 7, 2025. https://www.sacbee.com/news/local/article312815223.html.

were the result of human error. DA Wilson has not publicly addressed the *Mosley* brief.

5. DDA Maxwell and ADA Stuart have offered various explanations for the errors in *McGrath* and *Kjoller* that are recorded[3] within the following documents:

   - Respondent's Response to Petitioner Kjoller's Informal Reply, including that DDA Maxwell "[c]ited [p]roper [a]uthority with [e]rrored [c]itations" (Response, *Kjoller v. Superior Court*, at 4) and "did not cite to fake cases and did not misrepresent the record." *Id.* at 7.
   - Petitioner Kjoller's Successive Motion for Sanctions, including that DDA Maxwell claimed to have been reading civil cases about things like employee arbitration agreements for other matters and attributed those reporter citations to real criminal cases because she had them both open in different browser tabs. Successive Motion for Sanctions, *Kjoller v. Superior Court*, at 46-47. DDA Maxwell also explained citations to cases for unsupported legal principles by claiming that, when citing to those cases without any explanatory parenthetical, she had not suggested their holdings supported the sentence that came before and was merely providing caselaw. *Id.*

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[3] As the prosecution correctly points out, the Court cannot—and should not—take judicial notice of the truth of any of these alleged explanations. We merely ask that the Court accept as evidence that these are the justifications offered by the prosecution.

- Transcript of *McGrath* proceedings on November 6, including that DDA Maxwell typed the wrong case name and incorrect case year of one citation herself; twice placed quotation marks around text she had actually meant to italicize; placed text in quotation marks when she did not intend to use quoted language; three times intended to cite to different cases, twice intended to cite to different constitutional provisions; and wrote, but intended to delete, a section of the brief before filing. DDA Maxwell told the Court that for her second wrong citation of "*People v. Sarmiento*" she pulled the citation from "another" (still unidentified) "brief and [she] did not check that cite." Reporter's Transcript, *People v. McGrath*, at 12:8-10. The Court can take judicial notice that the citation that DDA Maxwell allegedly pulled from another District Attorney's Office brief was "94 Cal. App.5th 447" (Opposition to Petition for Mental Health Diversion, *People v. McGrath,* at 10)—a pincite to the page of a case discussing whether the City of San Diego's Measure C is a citizen's initiative (*Alliance San Diego v. City of San Diego*, 94 Cal. App. 5th 419, 447 (2023)).

6. DDA Maxwell's brief in *Mosley* is nearly identical to her brief in *McGrath*. Without offering explanation or seeking leave from the Court, Maxwell filed an Amended Opposition in *Mosley* the day after defense counsel brought the *Mosley* brief to the attention of the California Supreme Court.

A more detailed timeline, which we anticipate is also undisputed, is laid out below:

August 8

7. *Turner*: The District Attorney's Office (DDA Vogt) files its Opposition to Defendant's Motion to Suppress in *People v. Turner*. *See* Successive Motion Attach. C, *Kjoller v. Superior Court*. The brief contains misleading and inaccurate statements of law, including fabricated holdings of real cases and fabricated quotations that do not appear in the cited cases or any other.

August 13

8. *McGrath*: The District Attorney's Office (DDA Maxwell) files its Opposition to Defendant's Petition for Mental Health Diversion in *People v. McGrath*. The brief contains numerous misleading citations, citations to nonexistent cases, nonexistent holdings, and nonexistent quotes.

August 28

9. *Turner*: Prior to Mr. Turner's Motion to Suppress hearing, the prosecution makes no attempt to correct the citations or withdraw the brief. Rather, when ADA Stuart appears in court, Hon. Judge Bjerkhoel raises the issue of the fabricated citations. ADA Stuart tells the Court that DDA Vogt, who authored the brief, was out ill and acknowledges only that while ADA Stuart did "agree that [the cited case law] is not on point . . . I have no further information at this time as to how it wound up in the brief." Successive Motion Attach. D, *Kjoller v. Superior Court*, at 4:11-17. The court orders the prosecution to be "on notice" and "be careful" of A.I.-created errors. *Id.* at 4:26-5:2.

September 4

10. *Kjoller*: DDA Maxwell files the District Attorney's Answer in the Court of Appeal containing numerous erroneous legal citations.

September 11

11. *Mosley*: DDA Maxwell files the Opposition to Mental Health Diversion containing the same misleading citations, citations to nonexistent cases, nonexistent holdings, and nonexistent quotes contained in the August 13 *McGrath* brief.

September 17

12. *Kjoller*: Defense files Motion for Sanctions in the Court of Appeal, putting the District Attorney's Office on notice that their Answer brief contained numerous erroneous legal citations and misstatements of law.
13. The sanctions motion is denied on September 19.

September 23

14. *Kjoller*: DDA Maxwell files a "Response" brief in the Court of Appeal, claiming she had "[c]ited [p]roper [a]uthority with [e]rrored [c]itations" (Response, *Kjoller v. Superior Court*, at 4) and "did not cite to fake cases and did not misrepresent the record." *Id.* at 7. The brief did not address several of the erroneous citations raised in the September 17 Sanctions Motion.

October 2

15. *Kjoller*: Defense files Successive Motion for Sanctions in *Kjoller v. Superior Court*, including the *Turner* brief and transcript, and an email exchange between

defense counsel, DDA Maxwell and ADA Stuart. In the exchange, ADA Stuart reiterated an implicit threat to pursue disciplinary proceedings against defense counsel if they continued asking the Court of Appeal to investigate the Office's citations to fabricated authority and confirmed that the Office had privately offered several explanations for how the citations were generated. Those explanations included that DDA Maxwell had been reading civil cases concerning things like arbitration clauses for other matters and, having them open in separate tabs along with relevant criminal cases, had mixed up the names and reporter citations by switching back and forth too quickly. Successive Motion for Sanctions, *Kjoller v. Superior Court*, at 46-47.

16. The Court of Appeal denied the motion on October 20.

October 30

17. *Kjoller*: Defense files Petition for Review in the California Supreme Court asking it to order the Court of Appeal to conduct an investigation into the District Attorney's filings. Defense also files a request that the California Supreme Court take judicial notice of DDA Maxwell's *McGrath* brief, which was attached, and detailed how, of the twelve authorities cited within, eleven did not exist, were miscited, misquoted, misdescribed, or some combination thereof.

November 6

18. *McGrath* hearing. DDA Maxwell addressed the errors raised in defense's *Kjoller* Request for Judicial Notice by claiming that she had, *inter alia*: typed the wrong

case name and incorrect case year of one citation herself; twice placed quotation marks around text she had actually meant to italicize; placed text in quotation marks when she did not intend to use quoted language; three times intended to cite to different cases, twice intended to cite to different constitutional provisions; wrote, but intended to delete, a section of the brief before filing; and pulled one fabricated citation from "another" yet unidentified "brief and [she] did not check that cite." Reporter's Transcript, *People v. McGrath*, at 12:8-10.

19. DDA Maxwell did not address several of the additional erroneous citations raised in the *Kjoller* Request for Judicial Notice which were not raised in the *McGrath* Notice of Errata.

November 12

20. *Kjoller*: Defense files a second Request for Judicial Notice in the California Supreme Court, attaching DDA Maxwell's *Mosley* brief and pointing out the numerous misstatements of law within. Defense also requested the California Supreme Court take notice of the November 6 *McGrath* court transcript and defense Notice of Errata.

November 13

21. *Mosley*: Two months after the original brief was filed, DDA Maxwell filed an "Amended Opposition" without explanation.

Argument

1. All the records at issue are official, public records of a California court.

Every document at issue here is a California court record under Evidence Code section 452(d). The court *must* judicially notice all such records under Evidence Code section 453 if the party requesting judicial notice gives sufficient notice and furnishes the court with sufficient information to enable it to take judicial notice of the matter.

2. The prosecution raises no objection to the Court taking judicial notice.

While the prosecution raises no objection to the Court taking judicial notice, and makes its own parallel requests, the prosecution mischaracterizes one of the two documents from the defense's request and requests judicial notice of only two documents from the Court of Appeal's *Kjoller* docket. For the sake of clarity, complete context and to prevent inaccurate inferences, Mr. McGrath raises no objection to the Court taking judicial notice of the four documents requested by the prosecution and asks the Court to take judicial notice of the following documents, including all attachments:

Kjoller v. Superior Court (Court of Appeal Case No. C104445)

Motion for Sanctions, filed September 17, 2025

People's Response, filed September 23, 2025

Successive Motion for Sanctions, filed October 2, 2025

Kjoller v. Superior Court (California Supreme Court Case No. S293723)

Petition for Review, filed October 30, 2025.

Request for Judicial Notice, filed October 30, 2025.[4]

(Second) Request for Judicial Notice, filed November 12, 2025.

3. Taking Judicial Notice of "the contents" of court filings and transcripts is not equivalent to the court accepting the contents for the truth of matters asserted therein.

The parties agree that courts cannot take judicial notice of *the truth of* any disputed hearsay statements contained in transcripts or other court records, nor was that the defense's request. But the prosecution argues that the Court cannot consider the contents of those official records at all, unless they are court rulings. *See generally*, Opposition. Not so. Courts routinely take notice of the contents of court records without assuming the truth of the assertions therein. In a prosecution for perjury, for example, a court would take judicial notice of the defendant's allegedly false prior testimony—i.e., the "contents" of a transcript—without accepting that the defendant's past testimony was truthful. *See also People v. Buckley*, 185 Cal. App. 3d 512, 525 (1986) (Court of Appeal took judicial notice of contents of transcript to determine that witness's testimony would have been cumulative without addressing truth of the testimony).

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[4] At the last hearing in this case, the defense requested the court take judicial notice of this filing (the RJN). The prosecution's Response misstates the document, referring to a different document, the defense Petition for Review filed in the same case. To ensure a complete evidentiary record, Mr. McGrath asks that the court take judicial notice of both documents.

Here, Mr. McGrath does not ask the Court to take judicial notice of any disputed fact alleged within the attached documents for the truth of the matter asserted.

i. The *Turner* Transcript

This Court should take notice of the August 28 transcript in *Turner* because it establishes that a Superior Court Judge ordered the District Attorney's Office to be careful about negligent use of AI and that the District Attorney's Office did not initially admit that the fabricated legal authority was generated by AI. The Court can take judicial notice that these statements were made without taking notice of the *truth* of them—i.e., that DDA Vogt actually was ill, that ADA Stuart actually had no information as to the source of the fabricated authority, or that the fabricated authority actually was, as Judge Bjerkhoel concluded and DA Wilson later admitted, generated by AI.

On August 28, ADA Stuart appeared in court for a motion to suppress in *Turner* and told the court that DDA Vogt, who had authored the brief opposing the motion which contained fabricated legal authority, was ill. When explicitly asked by the court about the erroneous authority, which the court noted appeared to be A.I.-generated, Stuart acknowledged only that while she did "agree that [the cited case law] is not on point . . . I have no further information at this time as to how it wound up in the brief." Reporter's Transcript, *People v. Turner*, at 4:11-17. The court ordered the prosecution to be "on notice" and "be careful" of A.I.-created errors. *Id.* at 4:24-5:2.

> THE COURT: I was just curious if it had to do with some sort of an AI brief bank that is drafting or helping draft these things. Obviously as we move into

> the next wave of the future and this becomes the legal norm or the norm in the legal profession, then that is something that certainly everybody should be on notice about and careful.

Id.

The Court of Appeal has held that "[j]udicial notice is . . . better described as a *substitute for [formal] proof*, 'a judicial shortcut, a doing away with the formal necessity for evidence.'" *Gravert v. DeLuse*, 6 Cal. App. 3d 576, 580 (1970) (emphasis added) (citing *Varcoe v. Lee*, 180 Cal. 338, 344 (1919)). In the case of Judge Bjerkhoel's warnings to the District Attorney's Office, it is far more efficient and convenient for the Court to take judicial notice of an official court transcript than the defense calling Judge Bjerkhoel to testify at any upcoming hearing in this matter.

More importantly, however, the accuracy of Judge Bjerkhoel's suggestion that the District Attorney's Office submitted AI-generated fabricated authority in *Turner* is not actually in dispute. DA Wilson admitted to media that the Office used generative AI to draft the *Turner* brief, which the prosecution now appears to concede in its Response to Defendant's Request for Judicial Notice, admitting that Judge Bjerkhoel's admonition was "warranted." (Response, *People v. McGrath*, at 7).

Judge Bjerkhoel's order is relevant to whether, under Code of Civil Procedure section 177.5, prosecutors in this case should be sanctioned "for any violation of a lawful court order by a person, done without good cause or substantial justification," because it establishes that the Office was on notice about the submission of fabricated legal

authority. It also establishes that the Office has previously failed to disclose when fabricated authority was generated by AI, even after pointed questioning from a court.

ii. The *Kjoller* Court of Appeal Documents

This Court should take notice of the Sanctions Motion, People's Response, and Successive Sanctions Motion because they establish that (1) the District Attorney's Office filed a brief containing similar misstatements of law as in this case; (2) the District Attorney's Office similarly waited a week after being put on notice to address those errors; (3) the District Attorney's Office initially denied citing to fabricated cases; and (4) as here, the District Attorney's Office provided explanations as to how the fabricated authorities and erroneous citations were generated without the use of AI including that DDA Maxwell had been reading civil cases concerning things like arbitration clauses for other matters, and had attributed those reporter citations to real criminal law cases because she had them open in different tabs and switched back and forth between them too quickly. Successive Motion for Sanctions, *Kjoller v. Superior Court*, at 46-47. DDA Maxwell also explained citations to cases for unsupported legal principles by claiming that, when citing to those cases without any explanatory parenthetical, she had not suggested their holdings supported the sentence that came before and was merely providing caselaw. *Id.*

The Defense agrees that the Court cannot, and should not, take judicial notice of the truth of disputed statements contained within those documents. Indeed, the explanations DDA Maxwell provided for the source of the fabricated authority in *Kjoller*

and in this case deserve much greater inquiry. But even at first glance, they shed great light on the important issues the court must consider in assessing whether to impose sanctions and whether to dismiss this case in the interests of justice. They establish a pattern. Mr. McGrath does not suggest that the Court should accept those explanations as true.

iii. The *Kjoller* California Supreme Court Briefing

This Court should take notice of the Petition for Review, Request for Judicial Notice, and Second Request for Judicial Notice filed in *Kjoller* because they establish that (1) the District Attorney's Office was served with a Request for Judicial Notice detailing a myriad of misrepresentations in its *McGrath* Brief on October 30—one week before the November 6 hearing in this case—and did not withdraw or correct the briefing; (2) that the Office was put on notice about errors in the *McGrath* brief beyond than those contained in the Notice of Errata, which the Office still has not corrected or addressed; and (3) that the Office submitted an amended *Mosley* brief the day after the Defense notified the California Supreme Court about the brief. None of this requires the Court to accept the truth of any statements contained within the documents. For example, after taking judicial notice of the filing, this Court should conclude that on October 30, the District Attorney was notified that their *McGrath* brief contained a myriad of erroneous citations. This Court need not take judicial notice of the *truth* of the statements in the Requests for Judicial Notice—indeed, the Requests for Judicial Notice extensively quotes

DDA Maxwell's misstatements of law—in order to take judicial notice of the fact that the Office was advised of these errors.

However, again, the truth of many of the allegations in the Requests for Judicial Notice both are easily verifiable by a simple inquiry and not actually in dispute. The Court can easily establish that neither "*People v. Sarmiento* (2022) 98 Cal.App.5th 882" nor "*People v. Sarmiento* (2024) 94 Cal.App.5th 447"—cited in the *Mosley* and *McGrath* briefs—accurately describe a real California court decision by consulting Westlaw or Lexis.

And the District Attorney appears to have conceded as much both at the November 6 hearing and by withdrawing and correcting those citations.

CONCLUSION

This Court should take judicial notice of the records from other cases in which the District Attorney's Office has filed briefs containing fabricated legal authority, not for the truth of any matter asserted within them, but because they offer critical context. The Office's repeated submission of fabricated authority represents an existential threat to the due process rights of Nevada County defendants and the integrity of the court. This Court deserves to have the full picture as it weighs how to respond.

Mr. McGrath moves for an evidentiary hearing in this matter.

Thomas Angell

Thomas Angell, attorney for Mr. McGrath

EXHIBIT L

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Katie Finch S.B. #302562
Deputy Public Defender
Attorney for Alvin Mosley

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ALVIN DEREK DOUG MOSLEY, Defendant	Case No.: CR0006184 REPLY TO PEOPLE'S AMENDED OPPOSITION TO DEFENDANT'S PETITION FOR MENTAL HEALTH DIVERSION; REQUEST FOR JUDICIAL NOTICE PURSUANT TO EVIDENCE CODE SECTION 452 DATE: DECEMBER 11, 2025 TIME: 9:00 AM DEPT: I OR II

To the above-entitled Court, and to the District Attorney of Nevada County, State of California:

Alvin Mosley by and through counsel, Deputy Public Defender Katie Finch, hereby respectfully submits this Reply to the People's Amended Opposition to Defendant's Petition for Mental Health Diversion Pursuant to Penal Code 1001.36 ("Amended Opposition") as well as a request for judicial notice pursuant to Evidence Code section 452(d).

Memorandum of Points and Authorities

The prosecution's original opposition brief as well as the amended opposition brief contains a slew of erroneous legal citations as well as fabricated cases, holdings, and quotations. Except for the discussion of the facts of the case, the brief is nearly identical to the brief that DDA Maxwell filed in *People v. McGrath* (Case No. CR0005340), scheduled for hearing on sanctions, motion to dismiss and potential diversion referral on January 7, 2026.

This is just one of four cases in recent weeks that the District Attorney's Office has submitted briefing citing to fabricated legal authority. The Defense asks this Court to take judicial notice of relevant records from those other cases because they offer critical context as this Court considers how to respond to the District Attorney's repeated citations to fabricated authority—including the Court's consideration of dismissal in the interests of justice (Cal. Penal Code § 1385) the imposition of sanctions, a finding of contempt of court, or any other measure as appropriate.

The District Attorney's Office filed the original *Mosley* brief on September 11, 2025: two weeks] after the trial court ordered the DA's Office to be careful with artificial intelligence's ("AI") potential for fabricating authority in *People v. Turner* (Case No. CR0006300B), and nearly one month after DDA Maxwell's *McGrath* brief was filed. Despite being on notice that the *McGrath* brief was filled with errors, the District Attorney's Office only filed an amended opposition in this case after the defense filed the

original *Mosley* brief in the California Supreme Court in a second Request for Judicial Notice. The initial *Mosley* brief was pending for two months with this Court.

Despite the extensive edits, the Amended Opposition is still riddled with inaccurate citations and misstatements of law. Therefore, this Court should not consider the prosecution's Amended Opposition. The defense also prays for an evidentiary hearing related to errors in briefing.

This is just one of four cases in recent weeks that the District Attorney's Office has submitted briefing citing to fabricated legal authority. The Defense asks this Court to take judicial notice of relevant records from those other cases because they offer critical context as this Court considers how to respond to the District Attorney's repeated citations to fabricated authority—including the Court's consideration of dismissal in the interests of justice (Cal. Penal Code § 1385, the imposition of sanctions, a finding of contempt of court, or any other measure).

Statement of Facts

We anticipate that the following facts are undisputed:

1. The District Attorney's Office filed briefs riddled with erroneous legal citations in at least four cases: *People v. Turner* (Case No. CR0006300B) (brief filed August 8, 2025), *People v. McGrath* (Case No. CR0005340) (brief filed August 13, 2025), *Kjoller v. Superior Court* (Ct. App. Case No. C104445) (brief filed August 28, 2025) and *People v. Mosley* (Case No. CR0006184) (brief filed September 11, 2025).

2. No member of the District Attorney's Office has ever apologized, in any forum, to the Court, or to the accused, for these repeated, numerous misrepresentations of law.

3. On August 28, the Superior Court admonished, and impliedly ordered, the District Attorney's Office to be careful when using AI to draft briefing because of fabricated authority it had cited in *Turner*.

4. District Attorney Jesse Wilson finally admitted to *The Sacramento Bee* that his Office's *Turner*, *McGrath* and *Kjoller* briefs "contained references to nonexistent legal cases and precedents."[1] DA Wilson claimed that only the *Turner* brief (authored by DDA Vogt) resulted from the reckless use of Artificial Intelligence and asserted that the *McGrath* and *Kjoller* briefs (authored by DDA Maxwell) were the result of human error. DA Wilson has not publicly addressed the *Mosley* brief.

5. DDA Maxwell and ADA Stuart have offered various explanations for the errors in *McGrath* and *Kjoller* that are recorded[2] within the following documents:

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[1] Bernstein, Sharon. "AI Caused Errors in a Criminal Case, Northern California Prosecutor Says." *The Sacramento Bee*, November 7, 2025. https://www.sacbee.com/news/local/article312815223.html.

[2] As the prosecution correctly points out, the Court cannot—and should not—take judicial notice of the truth of any of these alleged explanations. We merely ask that the Court accept as evidence that these are the justifications offered by the prosecution.

- Respondent's Response to Petitioner Kjoller's Informal Reply, including that DDA Maxwell "[c]ited [p]roper [a]uthority with [e]rrored [c]itations" (Response, *Kjoller v. Superior Court*, at 4) and "did not cite to fake cases and did not misrepresent the record." *Id.* at 7.
- Petitioner Kjoller's Successive Motion for Sanctions, including that DDA Maxwell claimed to have been reading civil cases about things like employee arbitration agreements for other matters and attributed those reporter citations to real criminal cases because she had them both open in different browser tabs. Successive Motion for Sanctions, *Kjoller v. Superior Court*, at 46-47. DDA Maxwell also explained citations to cases for unsupported legal principles by claiming that, when citing to those cases without any explanatory parenthetical, she had not suggested their holdings supported the sentence that came before and was merely providing caselaw. *Id.*
- Transcript of *McGrath* proceedings on November 6, including that DDA Maxwell typed the wrong case name and incorrect case year of one citation herself; twice placed quotation marks around text she had actually meant to italicize; placed text in quotation marks when she did not intend to use quoted language; three times intended to cite to different cases, twice intended to cite to different constitutional provisions; and wrote, but intended to delete, a section of the brief before filing. DDA Maxwell told

the Court that for her second wrong citation of "*People v. Sarmiento*" she pulled the citation from "another" (still unidentified) "brief and [she] did not check that cite." Reporter's Transcript, *People v. McGrath*, at 12:8-10. The Court can take judicial notice that the citation that DDA Maxwell allegedly pulled from another District Attorney's Office brief was "94 Cal. App.5th 447" (Opposition to Petition for Mental Health Diversion, *People v. McGrath,* at 10)—a pincite to the page of a case discussing whether the City of San Diego's Measure C is a citizen's initiative (*Alliance San Diego v. City of San Diego*, 94 Cal. App. 5th 419, 447 (2023)).

6. DDA Maxwell's brief in *Mosley* is nearly identical to her brief in *McGrath*. Without offering explanation or seeking leave from the Court, Maxwell filed an Amended Opposition in *Mosley* the day after defense counsel brought the *Mosley* brief to the attention of the California Supreme Court.

A more detailed timeline, which we anticipate is also undisputed, is laid out below:

August 8

7. *Turner*: The District Attorney's Office (DDA Vogt) files its Opposition to Defendant's Motion to Suppress in *People v. Turner*. *See* Successive Motion Attach. C, *Kjoller v. Superior Court*. The brief contains misleading and inaccurate statements of law, including fabricated holdings of real cases and fabricated quotations that do not appear in the cited cases or any other.

August 13

8. *McGrath*: The District Attorney's Office (DDA Maxwell) files its Opposition to Defendant's Petition for Mental Health Diversion in *People v. McGrath*. The brief contains numerous misleading citations, citations to nonexistent cases, nonexistent holdings, and nonexistent quotes.

August 28

9. *Turner*: Prior to Mr. Turner's Motion to Suppress hearing, the prosecution makes no attempt to correct the citations or withdraw the brief. Rather, when ADA Stuart appears in court, Hon. Judge Bjerkhoel raises the issue of the fabricated citations. ADA Stuart tells the Court that DDA Vogt, who authored the brief, was out ill and acknowledges only that while ADA Stuart did "agree that [the cited case law] is not on point . . . I have no further information at this time as to how it wound up in the brief." Successive Motion Attach. D, *Kjoller v. Superior Court*, at 4:11-17. The court orders the prosecution to be "on notice" and "be careful" of A.I.-created errors. *Id.* at 4:26-5:2.

September 4

10. *Kjoller*: DDA Maxwell files the District Attorney's Answer in the Court of Appeal containing numerous erroneous legal citations.

September 11

11. *Mosley*: DDA Maxwell files the Opposition to Mental Health Diversion containing the same misleading citations, citations to nonexistent cases, nonexistent holdings, and nonexistent quotes contained in the August 13 *McGrath* brief.

September 17

12. *Kjoller*: Defense files Motion for Sanctions in the Court of Appeal, putting the District Attorney's Office on notice that their Answer brief contained numerous erroneous legal citations and misstatements of law.

13. The sanctions motion is denied on September 19.

September 23

14. *Kjoller*: DDA Maxwell files a "Response" brief in the Court of Appeal, claiming she had "[c]ited [p]roper [a]uthority with [e]rrored [c]itations" (Response, *Kjoller v. Superior Court*, at 4) and "did not cite to fake cases and did not misrepresent the record." *Id.* at 7. The brief did not address several of the erroneous citations raised in the September 17 Sanctions Motion.

October 2

15. *Kjoller*: Defense files Successive Motion for Sanctions in *Kjoller v. Superior Court*, including the *Turner* brief and transcript, and an email exchange between defense counsel, DDA Maxwell and ADA Stuart. In the exchange, ADA Stuart reiterated an implicit threat to pursue disciplinary proceedings against defense counsel if they continued asking the Court of Appeal to investigate the Office's citations to fabricated authority and confirmed that the Office had privately offered several explanations for how the citations were generated. Those explanations included that DDA Maxwell had been reading civil cases concerning things like arbitration clauses for other matters and, having them open in separate

tabs along with relevant criminal cases, had mixed up the names and reporter citations by switching back and forth too quickly. Successive Motion for Sanctions, *Kjoller v. Superior Court*, at 46-47.

16. The Court of Appeal denied the motion on October 20.

October 30

17. *Kjoller*: Defense files Petition for Review in the California Supreme Court asking it to order the Court of Appeal to conduct an investigation into the District Attorney's filings. Defense also files a request that the California Supreme Court take judicial notice of DDA Maxwell's *McGrath* brief, which was attached, and detailed how, of the twelve authorities cited within, eleven did not exist, were miscited, misquoted, misdescribed, or some combination thereof.

November 6

18. *McGrath* hearing. DDA Maxwell addressed the errors raised in defense's *Kjoller* Request for Judicial Notice by claiming that she had, *inter alia*: typed the wrong case name and incorrect case year of one citation herself; twice placed quotation marks around text she had actually meant to italicize; placed text in quotation marks when she did not intend to use quoted language; three times intended to cite to different cases, twice intended to cite to different constitutional provisions; wrote, but intended to delete, a section of the brief before filing; and pulled one fabricated citation from "another" yet unidentified "brief and [she] did not check that cite." Reporter's Transcript, *People v. McGrath*, at 12:8-10.

19. DDA Maxwell did not address several of the additional erroneous citations raised in the *Kjoller* Request for Judicial Notice which were not raised in the *McGrath* Notice of Errata.

November 12

20. *Kjoller*: Defense files a second Request for Judicial Notice in the California Supreme Court, attaching DDA Maxwell's *Mosley* brief and pointing out the numerous misstatements of law within. Defense also requested the California Supreme Court take notice of the November 6 *McGrath* court transcript and defense Notice of Errata.

November 13

21. *Mosley*: Two months after the original brief was filed, DDA Maxwell filed an Amended Opposition.

22. *McGrath*: DDA Maxwell filed a Notice of Intent to Withdraw Filing, and an Amended Opposition.

Argument

1. All the records at issue are official, public records of a California court and this Court should take judicial notice of the records requested.

Every document at issue here is a California court record under Evidence Code section 452(d). The court *must* judicially notice all such records under Evidence Code section 453 if the party requesting judicial notice gives sufficient notice and furnishes the court with sufficient information to enable it to take judicial notice of the matter.

2. Taking Judicial Notice of "the contents" of court filings and transcripts is not equivalent to the court accepting the contents for the truth of matters asserted therein.

The parties agree that courts cannot take judicial notice of *the truth of* any disputed hearsay statements contained in transcripts or other court records, nor was that the defense's request. But the prosecution argues that the Court cannot consider the contents of those official records at all, unless they are court rulings. *See generally*, Opposition. Not so. Courts routinely take notice of the contents of court records without assuming the truth of the assertions therein. In a prosecution for perjury, for example, a court would take judicial notice of the defendant's allegedly false prior testimony—i.e., the "contents" of a transcript—without accepting that the defendant's past testimony was truthful. *See also People v. Buckley*, 185 Cal. App. 3d 512, 525 (1986) (Court of Appeal took judicial notice of contents of transcript to determine that witness's testimony would have been cumulative without addressing truth of the testimony).

Here, Mr. Mosley does not ask the Court to take judicial notice of any disputed fact alleged within the attached documents for the truth of the matter asserted.

i. The *Turner* Transcript

This Court should take notice of the August 28 transcript in *Turner* because it establishes that a Superior Court Judge ordered the District Attorney's Office to be careful about negligent use of AI and that the District Attorney's Office did not initially admit that the fabricated legal authority was generated by AI. The Court can take judicial notice that these statements were made without taking notice of the *truth* of them—i.e.,

that DDA Vogt actually was ill, that ADA Stuart actually had no information as to the source of the fabricated authority, or that the fabricated authority actually was, as Judge Bjerkhoel concluded and DA Wilson later admitted, generated by AI.

On August 28, ADA Stuart appeared in court for a motion to suppress in *Turner* and told the court that DDA Vogt, who had authored the brief opposing the motion which contained fabricated legal authority, was ill. When explicitly asked by the court about the erroneous authority, which the court noted appeared to be A.I.-generated, Stuart acknowledged only that while she did "agree that [the cited case law] is not on point . . . I have no further information at this time as to how it wound up in the brief." Reporter's Transcript, *People v. Turner*, at 4:11-17. The court ordered the prosecution to be "on notice" and "be careful" of A.I.-created errors. *Id.* at 4:24-5:2.

> THE COURT: I was just curious if it had to do with some sort of an AI brief bank that is drafting or helping draft these things. Obviously as we move into the next wave of the future and this becomes the legal norm or the norm in the legal profession, then that is something that certainly everybody should be on notice about and careful.

Id.

The Court of Appeal has held that "[j]udicial notice is . . . better described as a *substitute for [formal] proof*, 'a judicial shortcut, a doing away with the formal necessity for evidence.'" *Gravert v. DeLuse*, 6 Cal. App. 3d 576, 580 (1970) (emphasis added) (citing *Varcoe v. Lee*, 180 Cal. 338, 344 (1919)). In the case of Judge Bjerkhoel's

warnings to the District Attorney's Office, it is far more efficient and convenient for the Court to take judicial notice of an official court transcript than the defense calling Judge Bjerkhoel to testify at any upcoming hearing in this matter.

More importantly, however, the accuracy of Judge Bjerkhoel's suggestion that the District Attorney's Office submitted AI-generated fabricated authority in *Turner* is not actually in dispute. DA Wilson admitted to media that the Office used generative AI to draft the *Turner* brief, which the prosecution now appears to concede in its Response to Defendant's Request for Judicial Notice, admitting that Judge Bjerkhoel's admonition was "warranted." (Response, *People v. McGrath*, at 7).

Judge Bjerkhoel's order is relevant to whether, under Code of Civil Procedure section 177.5, prosecutors in this case should be sanctioned "for any violation of a lawful court order by a person, done without good cause or substantial justification," because it establishes that the Office was on notice about the submission of fabricated legal authority. It also establishes that the Office has previously failed to disclose when fabricated authority was generated by AI, even after pointed questioning from a court.

ii. The *Kjoller* Court of Appeal Documents

This Court should take notice of the Sanctions Motion, People's Response, and Successive Sanctions Motion because they establish that (1) the District Attorney's Office filed a brief containing similar misstatements of law as in this case; (2) the District Attorney's Office similarly waited a week after being put on notice to address those errors; (3) the District Attorney's Office initially denied citing to fabricated cases; and (4)

as here, the District Attorney's Office provided explanations as to how the fabricated authorities and erroneous citations were generated without the use of AI including that DDA Maxwell had been reading civil cases concerning things like arbitration clauses for other matters, and had attributed those reporter citations to real criminal law cases because she had them open in different tabs and switched back and forth between them too quickly. Successive Motion for Sanctions, *Kjoller v. Superior Court*, at 46-47. DDA Maxwell also explained citations to cases for unsupported legal principles by claiming that, when citing to those cases without any explanatory parenthetical, she had not suggested their holdings supported the sentence that came before and was merely providing caselaw. *Id.*

The Defense agrees that the Court cannot, and should not, take judicial notice of the truth of disputed statements contained within those documents. Indeed, the explanations DDA Maxwell provided for the source of the fabricated authority in *Kjoller* and in this case deserve much greater inquiry. But even at first glance, they shed great light on the important issues the court must consider in assessing whether to impose sanctions and whether to dismiss this case in the interests of justice. They establish a pattern.

iii. The *Kjoller* California Supreme Court Briefing

This Court should take notice of the Petition for Review, Request for Judicial Notice, and Second Request for Judicial Notice filed in *Kjoller* because they establish that (1) the District Attorney's Office was served with a Request for Judicial Notice detailing a

myriad of misrepresentations in its *McGrath* Brief on October 30—one week before the November 6 hearing in this case—and did not withdraw or correct the briefing; (2) that the Office was put on notice about errors in the *McGrath* brief beyond than those contained in the Notice of Errata; and (3) that the Office submitted an amended *Mosley* brief the day after the Defense notified the California Supreme Court about the brief. None of this requires the Court to accept the truth of any statements contained within the documents. For example, after taking judicial notice of the filing, this Court should conclude that on October 30, the District Attorney was notified that their *McGrath* brief contained a myriad of erroneous citations. This Court need not take judicial notice of the *truth* of the statements in the Requests for Judicial Notice—indeed, the Requests for Judicial Notice extensively quotes DDA Maxwell's misstatements of law—in order to take judicial notice of the fact that the Office was advised of these errors.

However, again, the truth of many of the allegations in the Requests for Judicial Notice both are easily verifiable by a simple inquiry and not actually in dispute. The Court can easily establish that neither "*People v. Sarmiento* (2022) 98 Cal.App.5th 882" nor "*People v. Sarmiento* (2024) 94 Cal.App.5th 447"—cited in the *Mosley* and *McGrath* briefs—accurately describe a real California court decision by consulting Westlaw or Lexis.

And the District Attorney appears to have conceded as much both at the November 6 hearing and by withdrawing and correcting those citations.

3. The prosecution's Amended Opposition brief fails to correct all the errors in the first Opposition.

Despite the changes, the Amended Opposition is still riddled with inaccurate citations and misstatements of law.

i. *Sarmiento v. Superior Court*, 98 Cal. App. 5th 882 (2024)

In the Initial Opposition, the District Attorney provided two cites for "*People v. Sarmiento*," neither of which exist. Initial Opp. at 5, 11. There is a real case called *Sarmiento v. Superior Court*, 98 Cal. App. 5th 882 (2024)—a different name, reporter citation, and year—but the holding and quotes DDA Maxwell attributes to the nonexistent "*People v. Sarmiento*" do not describe that case. The holdings and quotes from the nonexistent "*People v. Sarmiento*" appear to be completely fabricated. *See McGrath* Brief at 10 ("Most recently, in *People v. Sarmiento* (2024) 94 Cal.App.5th 447, 458-459, the Court of Appeal . . . held that suitability involves a discretionary judgment call, and denial is proper where 'the defendant's history, offense conduct, or ongoing risk factors make diversion inconsistent with the protection of the public or the interests of justice.'").

In the Amended Opposition, the District Attorney cites only to the existing case, *Sarmiento v. Superior Court* and significantly edits the description of that case:

> Most recently, in *Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, the Court confirmed that trial courts are not bound to grant diversion merely because a defendant meets the eligibility criteria. The court held that suitability involves a discretionary judgment call, so denial could be proper *where the defendant's history, offense conduct, or ongoing risk factors make diversion inconsistent with the protection of the public or the interests of*

> *justice*. *Sarmiento* reinforces that the "unreasonable risk" language in § 1001.36(c)(4) is not the sole basis for denial–the statute expressly allows the court to consider "any other factors" it finds relevant, which includes victim safety and the protection of vulnerable individuals.

Amended Opposition at 12.

This still does not accurately describe *Sarmiento v. Superior Court.* In *Sarmiento*, the Court of Appeal reversed the denial of mental health diversion where the lower court found the defendant's "behavior does pose an unreasonable risk of danger to the public" but did not find she was likely to commit a super-strike offense. *Sarmiento*, 98 Cal. App. 5th at 895. The court's holding is completely inapposite to what the District Attorney claims: "while it is clear a trial court retains 'residual' discretion to deny diversion even if all the threshold requirements are met, that does not mean, as the court suggested here, that it could reject a request for diversion based on an alternative meaning of 'public safety'" and "[e]xpanding the reasons to deny diversion would also be inconsistent with the legislative purposes sought to be achieved in enacting" the diversion statute. *Id.* at 896-897.

ii. *People v. Frahs*, 9 Cal.5th 618 (2020)

In the Initial Opposition, the District Attorney cited *Frahs* at pages 631-632 for the principle that, to warrant mental health diversion, "[t]he mental disorder must have been a 'significant factor' in the commission of the charged offense; mere temporal association is insufficient." Initial Opp. at 4. The words "significant factor" are contained in the mental health diversion statute and do not appear at pages 631-632. They do appear at a different page later in the opinion, but *Frahs* is chiefly concerned with whether the diversion statute applies retroactively. It cites "significant factor" from the statute only to

make explicitly clear that it would not define the term: "the statute does not define the term 'significant factor,' and we have no occasion here to do so." *People v. Frahs*, 9 Cal. 5th 618, 636 (2020).

In the Amended Opposition, the *Frahs* pincite is changed to 636-639, where the term "significant factor" does appear, but the brief still cites to *Frahs* for the unsupported proposition. Amended Opp. At 4.

iii. *People v. Braden*, 14 Cal.5th 791 (2023)

In the Initial Opposition, the District Attorney cited *Braden* five times as authority for how, and under consideration of which factors a court should evaluate a mental health diversion petition, and included one quote allegedly from the opinion: "[t]he California Supreme Court in *People v. Braden* (2023) 14 Cal.5th 791, 813 emphasized that the suitability determination is a holistic one, requiring consideration of 'the defendant's mental health history, criminal history, and circumstances of the charged offense.'" Initial Opp. at 10. That language does not appear in *Braden* or in any other opinion. The additional citations are also unsupported: *Braden* is a case about the timing of mental health diversion petitions. It does not discuss the criteria courts should use to evaluate petitions which are timely made.

The amended brief removes the quotation marks from the fabricated *Braden* quote and two of the citations to *Braden*. Amended Opp. at 11. But it still, three times, cites *Braden* as authority for how a court should evaluate a mental health diversion petition—a subject not discussed by *Braden*. *Id.* at 4, 5, 12.

iv. *People v. Oneal*, 64 Cal.App.5th 581, 588 (2021)

The District Attorney cites "*People v. Oneal* (2021) 64 Cal.App.5th 581, 588" for the principle that, in mental health diversion proceedings, "[t]he defendant bears the burden of proving eligibility and suitability by a preponderance of the evidence." Ammended Opp. at 3-4; Initial Opp. at 3. *Oneal* does not mention a preponderance of the evidence standard.

v. *People v. Qualkinbush,* 79 Cal.App.5th 879 (2022)

In the Initial Opposition, the District Attorney misrepresented the holding of *Qualkinbush,* included an inaccurate pincite, and cited the opinion for the principle that "[c]ourts weigh past compliance as an indicator of whether the defendant is likely to follow diversion requirements." Initial Opp. at 7, 8, 10. *Qualkinbush* does not mention past compliance with court orders.

In the Amended Opposition, the District Attorney has deleted the fabricated holding and corrected the pincite, but has left the inaccurate citation regarding past compliance. Amended Opp. at 9.

vi. *People v. Bunas*, 79 Cal.App.5th 840 (2022)

In the Initial Opposition, the District Attorney provided an inaccurate citation for the real case *People v. Bunas*, citing two pages in the opinion's fact section describing the procedural history on appeal as authority for a trial court's ability to "consider the nature and circumstances of the charged offense, including its severity, planning, and whether it involved violence." Initial Opp. at 6. Nowhere does the opinion enumerate

these or any other factors a court should consider when evaluating a mental health diversion petition. The Amended Opposition removes the pincite but leaves the inaccurate citation in place. Amended Opp. at 7.

The Amended Opposition also replaced inaccurate citations to *People v. Moine* and *People v. Braden* with citations to *Bunas*: In "*People v. Bunas* (2022) 79 Cal.App.5th 840"—previously *People v. Moine*—"the Court held that trial courts have *wide latitude* to weigh circumstances beyond the statutory 'public safety' definition when determining suitability factors"; and " The Court in *People v. Bunas* (2022) 79 Cal.App.5th 840"—previously *People v. Braden*—"emphasized that the suitability determination is a holistic one, thus requiring consideration of *the defendant's mental health history, criminal history, and the circumstances of the charged offense*." Amended Opp. at 11 (emphasis in original).

Neither of these principles are supported by *Bunas.* The Court in *Bunas* upheld denial of mental health diversion based on the court's determination that, solely due to the circumstances of the offense, the defendant was unsuitable. *Bunas,* 79 Cal.App.5th at 861-862. Far from granting courts "wide latitude" to make "holistic" suitability determinations, the court upheld an explicitly non-holistic review and only endorsed the circumstances of the charged offense as a permissible consideration. *Id.*

vii. *People v. Moine*, 62 Cal.App.5th 440 (2021)

In the Initial Opposition, the District Attorney claimed that, in *Moine,* "the Court of Appeal held that trial courts have 'wide latitude' to weigh circumstances beyond the

statutory 'public safety' definition when determining suitability" for mental health diversion. Initial Opp. at 10. The words "wide latitude," presented as a quote from the opinion, do not appear in the opinion. The District Attorney also cited *Moine* as authority requiring courts to consider "past compliance" when evaluating mental health diversion petitions, a topic not discussed in *Moine*. *Id.* at 8.

In the amended brief, the District Attorney removes the quotation marks around "wide latitude" and cites instead to *People v. Bunas* (2022) 79 Cal.App.5th 840. Amended Opp. at 11. The District Attorney left in place the unsupported citation about past compliance. *Id.* at 9.

viii. *People v. Pacheco*, 75 Cal.App.5th 207 (2022)

In the Initial Opposition, the District Attorney cites *Pacheco* at pages 214-215 as authority for requiring courts to "consider whether the proposed treatment plan and provider are adequate and feasible, ensuring the defendant can access and complete appropriate mental health care." Initial Opp. at 8. The *Pacheco* court did not discuss the adequacy, feasibility, or accessibility of treatment plans anywhere in the opinion and one of the *Pacheco* pages cited by the District Attorney discusses exclusively post-conviction fines and fees.

In the Amended Brief, the District Attorney removes the pincite to pages 214-215 but leaves the inaccurate citation in place. Amended Brief at 9.

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CONCLUSION

This Court should take judicial notice of the records from other cases in which the District Attorney's Office has filed briefs containing fabricated legal authority, not for the truth of any matter asserted within them, but because they offer critical context. The Office's repeated submission of fabricated authority represents an existential threat to the due process rights of Nevada County defendants and the integrity of the court. This Court deserves to have the full picture as it weighs how to respond.

Mr. Mosley moves for an evidentiary hearing in this matter to request appropriate findings and remedy related to the prosecution's repeated errors in briefing. Mr. Mosley requests that this hearing take place prior to the hearing on the merits of the defense petition as it is this very petition that prompted the prosecution's opposition and amended opposition that contain the fabricated legal authority on which the court is being asked to rely.

9th day of December, 2025.

Katie Finch, Deputy Public Defender

PROOF OF SERVICE

I am employed in the County of Nevada, State of California. I am over the age of 18 and am not a party to the within action; my business address is Nevada County Public Defender, 109 North Pine Street, Nevada City, California 95959.

On December 9, 2025, I caused service of the foregoing documents described as:

REPLY TO PEOPLE'S AMENDED OPPOSITION TO DEFENDANT'S PETITION FOR MENTAL HEALTH DIVERSION; REQUEST FOR JUDICIAL NOTICE PURSUANT TO EVIDENCE CODE SECTION 452

date: December 11, 2025
time: 9:00 am
Dept: I or II

In the case of **People of the State of California vs ALVIN MOSLEY,** Nevada County Superior Court Cases CR0006184 on the parties in this action delivering it as follows:

_____ (By Overnight Courier) I caused each envelope with postage fully prepaid, to be sent by_____.

_____ (By Mail) I placed the envelope, with postage thereon fully prepaid for first class mail, for collection and processing for mailing following this business' ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid to: **Nevada County District Attorney's Office, 201 Commercial St, Nevada City, CA.**

_____ (By Hand) I caused each document to be personally delivered by hand to: **Nevada County District Attorney's Office, 201 Commercial St, Nevada City, CA**

_____ (By Hand to Affixed Drop Box) I caused each document to be personally delivered by leaving in drop box outside their office: **Nevada County Probation, 109 N. Pine St., Nevada City, CA**

_____ (By Facsimile) I caused each document to be transmitted by facsimile machine to the numbers indicated after the addresses noted above and the transmission was reported as complete without error.

___X__ (By Email) I caused each document to be transmitted by email to the email address associated with filings in the Office of the Nevada County District Attorney and the transmission was reported as complete without error:

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed at Nevada City, California, on December 9, 2025.

EXHIBIT M

JESSE WILSON (SBN 281933)
Nevada County District Attorney
Lydia Stuart (SBN 288357)
Assistant District Attorney
201 Commercial Street
Nevada City, CA 95959
Telephone: (530) 265-1301

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

ALVIN DEREK DOUG MOSLEY

Defendant.

Case No.: CR0006184

PEOPLE'S RESPONSE TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE

Date: January 8, 2026
Time: 9:00am
Department: I or II

The People of the State of California, by and through its attorney, JESSE WILSON, District Attorney, respectfully submit the following Response to Defendant's Request for Judicial Notice.

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I. INTRODUCTION

On December 9, 2025, Counsel for Defendant filed a Reply to the People's Amended Opposition to Defendant's Petition for Mental Health Diversion and Request for Judicial Notice Pursuant to Evidence Code section 452. The People herein respond to the request for judicial notice, which lacks specificity and clarity, and fails on its merits. Counsel for Defendant blanketly states "every document at issue here is a California Court record Evidence Code section 452(d). The court *must* judicially notice all such records under Evidence Code section 453 if the party requesting judicial notice give sufficient notice and furnishes the court with sufficient information to enable it to take judicial notice of the matter." Reply at pg. 10.

First, the People respectfully submit that Counsel for Defendant has failed to provide sufficient notice as it is unclear what "every document at issue here" is. Second, the People respectfully submit that Counsel for Defendant improperly requests to deem the contents of filings in completely separate matters—the allegations, declarations and untested hearsay statements—as fact, and thus, such request should be denied. Judicial notice cannot be used as a vehicle for accepting disputed factual assertions or for relieving a party of its evidentiary burden. Third, the People respectfully submit that this Court should deny Counsel for Defendant's request for an evidentiary hearing on any matter extrinsic to the issue of the Defendant's eligibility and suitability for mental health diversion. Counsel for Defendant has failed to set forth a *prima facia* showing of detriment and has otherwise failed to set forth sufficient authority for its vague and unclear request.

II. LAW

California's judicial notice framework is governed by Evidence Code Sections 451, 452 and 453, which establishes both mandatory and permissive categories of judicial notice. Judicial notice can only be taken by a court when authorized by law. Evid. Code, § 450. A trial court must take judicial notice of the matters listed in Evidence Code section 451. This includes "[f]acts and propositions of generalized knowledge that are so universally known that they cannot reasonably be subject to dispute." Evid. Code, § 451, subd. (f).

The court also may, if certain circumstances are met (*see* Evid. Code, § 453) are required to, take judicial notice of the matters listed in Evidence Code section 452. This includes "[f]acts and circumstances that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Evid. Code, § 452, subd. (h).

In addition, Evidence Code section 452, subdivision (c) allows judicial notice of official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States, and subdivision (d) allows the trial court in its discretion to take judicial notice of its own records or "any court of this state."

A. Disputed Facts are Not a Proper Subject for Judicial Notice

A judicially noticed fact is treated as true for purposes of proof. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564. "Judicial notice" is a judicial short cut, a doing away, in the case of evidence, with the formal necessity for evidence, because there is no real necessity for it. *Varcoe v. Lee (1919) 180 Cal. 338,* 343. As such, it is improper to rely on judicially noticed documents to prove disputed facts because judicial notice, by definition, applies solely to undisputed facts. *Barri v. Workers' Comp.* Appeals Bd. (2018) 28 Cal.App.5th 428, 193.

B. A Court May Not Take Judicial Notice of the Truth of Allegations or Hearsay Statements within Court Records

A court may take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached in documents such as orders, statements of decision, and judgments, but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact. *Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 382; See also *Dominguez v. Bonta,* (2022) 87 Cal.App.5th 389, 399 (declining to take judicial notice of an "Accusation" filed before a different tribunal); *Williams v. Wraxall* (1995) 33 Cal.App.4th 120 *fn* 7, citing *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 418; *People v. Harbolt,* 61 Cal. App. 4th 123, 126–27.

A court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file. *Day v. Sharp* (1975) Cal.App.3d 904, 914; See also *Sosinsky v. Grant*, (1992) 6 Cal. App.4th 1548, 1566; *People v Surety Ins.Co.* (1982) 136 Cal.App.3d 556, 564. The court may not judicially notice the truth of the allegations in the pleadings and other documents filed with the superior court. *County of Los Angeles Child Support Services Dept. v. Superior Court*, (2015), 243 Cal.App.4th 230, *fn 4.* However, the court may take judicial notice of the existence of the documents, and the fact that certain arguments were made by the parties therein. *Id.*

C. Judicial Notice Can Not Be Properly Taken of the Truth of Comments Made at a Hearing by an Attorney and a Judge

Judicial notice cannot be properly taken of the truth of comments made at a hearing by an attorney and a judge that have not been subject to hearing or challenge. In *People v Surety Ins.Co.*, supra, the court record disclosed a dialogue between the trial judge and the attorney for the convicted defendant's father purporting to show that the company required the assets of the father to be pledged on behalf of the appeal bond, thus indicating facts relevant to the instant cause of action. *Id.* 136 Cal.App.3d at p. 564. The court held the statements in the dialogue on the record were hearsay and were made without any contest or adversary proceeding, and the court held that a trial court may not take judicial notice of hearsay allegations as being true just because they are part of a court record or file. *Id.*

Further, judicial notice cannot be taken of truth of factual findings by judge in previous case. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1551. See also *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1747 (court may not take judicial notice of truth of factual finding made in another action); *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112 (A court may not use judicial notice of another court's action to prove the truth of the facts found and recited).

D. The Existence of a Transcript May be Judicially Noticed, But Not its Contents, Unless it Contains an Official Act or Order Therein

The fact that a court may take judicial notice of its own records does not mean that it may judicially notice the truth of the statements contained in a transcript filed as part of its record. *Garcia v. Sterling,* (1985) 176 Cal. App. 3d 17, 21. A transcript itself is not an official act or record. *See In People ex rel. Schlesinger v. Sachs*, (2023) 97 Cal.App.5th 800, 822 (the court declined to take judicial notice of a transcript prepared by a certified court reporter of city council meeting excerpts, reasoning that the transcript was not an official act or record and does not otherwise fall within any subdivision of Evidence Code sections 451 and 452).

However, it is well accepted that when courts take judicial notice of the existence of court documents, the legal effect of the results reached in orders and judgments may be established. *White v. Davis,* (2015) 87 Cal. App. 5th 270, 276 *fn* 3, citing *Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors*, LLC (2015) 234 Cal.App.4th 166, 185.

III. ARGUMENT

A. Counsel for Defendant Fails to Properly Notice its Request for Judicial Notice.

Counsel for Defendant fails to provide proper specificity related to its request. Counsel for Defendant blanketly states "every document at issue here" is a California court record pursuant to Evidence Code section 452(d). Reply at Pg 10. Counsel for Defendant fails to specify with clarity "every document at issue" such to allow the People the opportunity to diligently and appropriately response. The Defendant's request for judicial notice therefore fails due to lack of proper notice.

B. The People Oppose Defendant's Request for Judicial Notice of the Contents of any Filings, to Include the Transcript in *People v Tuner*; The Request is not Proper.

The law is clearly established. The statutory authority under 452(d) extends only to taking notice of the record themselves, not the truth of contested allegations within them. A cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact. See *Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 382; *Dominguez v. Bonta*,

(2022) 87 Cal.App.5th 389, 399; *Williams v. Wraxall* (1995) 33 Cal.App.4th 120 fn 7, citing *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 418; *People v. Harbolt*, 61 Cal. App. 4th 123, 126–27.

Again, lacking specificity, Counsel for Defendant appears to request this Court to take judicial notice of pages and pages of allegations, out-of-court emails, untested declarations, and other statements offered as part of a broader dialogue within a judicial proceeding. This request is improper. The materials Counsel for Defendant seemingly seeks to have judicially noticed contain precisely the type of content that courts have consistently held to be improper for judicial notice. Judicial notice applies solely to undisputed facts. Accepting such statements as true would effectively bypass the adversarial process and deprive the People of the opportunity to test those assertions through the ordinary procedures of proof. Judicial notice cannot be used to establish the truth of factual allegations contained in filings, affidavits, or other documents, as doing so would undermine procedural due process and the parties' right to challenge and litigate those facts in a court of law.

i. Judge Bjerkhoel's Statements Within the Transcript in *People v Turner* Were Not Factual Findings, Judicial Determinations or Court Orders Pursuant to Evidence Code section 452(d)

The People offer that this Court can review the transcript in *People v Turner* for purposes of context without relying on its contents for the disputed factual assertions. A review of the transcript shows that Judge Bjerkhoel's statements were part of a dialogue with the People and a general warning on the use of AI, after which the People promptly withdrew the subject filing.

Counsel for Defendant seems to argue that the statements made by Judge Bjerkhoel amount to a court order subject to judicial notice pursuant to Evidence Code section 452(d). However, Judge Bjerkhoel's remarks, despite her role as a judicial officer, did not constitute a judicial determination, finding, or an order subject to judicial notice. Characterizing them as such would be inaccurate. There was no hearing on the issue, no sworn testimony, and no final adjudication. The minute order contains no record of any determination,

confirming that no official act or ruling occurred. Accordingly, the Court cannot take judicial notice of Judge Bjerkhoel's comments in the transcript and cannot accept them as true, as they do not reflect any conclusion of fact or law but are merely unsworn statements made during proceedings. These facts are akin to those in *People v Surety Ins.Co.*, supra, wherein the court record disclosed a dialogue between the trial judge and the attorney. *Id.* 136 Cal.App.3d at p. 564. The court held the statements in the dialogue on the record were hearsay and were made without any contest or adversary proceeding and that they were not subject to judicial notice just because they were part of a court record or file. *Id.*

Counsel for Defendant may contend the statements are not offered for their truth, but merely for notice purposes. Even so, this does not bring the statements within the statutory scope of judicial notice of a court order under Evidence Code section 452(d), nor would this asserted purpose obscure the reality that the "notice" sought would necessarily go to the truth of the matter asserted.

The People respectfully request this Court deny the Defendant's request to take judicial notice of any of the contents of any pleadings to include the transcript in *People v. Turner*.

C. Counsel for Defendant Has Failed to Show Prejudice or any other Threshold Basis for an Evidentiary Hearing.

i. This Court has Broad Discretion to Deny an Evidentiary Hearing, Particularly Where it Amounts to a Fishing Expedition

Counsel for Defendant moves for an evidentiary hearing to request "appropriate findings and remedy related" to the prosecution's repeated errors in briefing. Counsel has failed to meet a threshold basis for this request. Counsel for Defendant fails to specify any authority and fails to appropriately situate the "findings" or "remedies" that it seeks an evidentiary hearing to establish. Counsel for Defendant has failed to show any prejudicial misconduct, or any prejudice at all.

On the issue of holding an evidentiary hearing on the possibility of prejudicial misconduct, the Supreme Court held in *People v. Avila*, 38. Cal. 4th 491, 604:

> "Defendant is not, however, entitled to an evidentiary hearing as a matter of right. Such a hearing should be held only when the court concludes an evidentiary hearing is necessary

> to resolve material, disputed issues of fact. The hearing should not be used as a fishing expedition to search for possible misconduct, but should be held only when the defense has come forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred. Even upon such a showing, an evidentiary hearing will generally be unnecessary unless the parties' evidence presents a material conflict that can only be resolved at such a hearing.
>
> *Id. [citations omitted].*

Further, a trial court has wide latitude under state law to exclude evidence offered for impeachment that is collateral and has no relevance to the action. *People v. Contreras* (2013), 58 Cal.4th 123, 152, *citing People v. Homick* (2012) 55 Cal.4th 816, 865. A fact may bear on the credibility of a witness and still be collateral to the case. *Contreras,* 58 Cal.4th at 152, citing *People v. Rodriguez* (1999) 20 Cal.4th 1, 9.

Here, Counsel for Defendant has failed to set forth sufficient reason for this Court to hold an extensive evidentiary hearing on the issue of the source of an attorney's error, where litigating that fact bares no relevance as to the material issue of the prejudicial effect of the error. Counsel for Defendant has failed to show even a *prima facia* showing of prejudicial effect. Accordingly, the People respectfully request the Court exercise its due discretion to deny the request for an evidentiary hearing in order to develop the evidence that falls outside the scope of judicial notice.

CONCLUSION

The People respectfully request the Court grant deny the Defendant's request as set forth above.

Dated: December 26, 2025

Respectfully submitted,

JESSE WILSON
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By: Lydia Stuart
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EXHIBIT N

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IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF NEVADA

The People of the State of California, Plaintiff, v. **Taylor Anthony Hiles McGrath,** Defendant.	Court Case No. CR0005340 **PEOPLE'S SECOND AMENDED OPPOSITION TO DEFENDANT'S REQUEST FOR DIVERSION PURSUANT TO PENAL CODE § 1001.36** Date: January 7, 2026 Time: 9:00 am Dept: 1

TO THE PRESIDING JUDGE OF THE SUPERIOR COURT, THE DEFENDANT, AND HIS/HER ATTORNEY OF RECORD:

The People hereby submit their second amended opposition to the defendant's request for diversion pursuant to Penal Code section 1001.36. Please take notice that this second amended opposition supersedes and replaces all prior versions, which are hereby withdrawn and requested to be of no further force or effect.

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The People respectfully submit that the Defendant has failed to demonstrate suitability for diversion and has failed to present an adequate treatment plan that meets the specific needs of the Defendant and the community. The Defendant has a long history of substance abuse that must be treated with co-occurring mental health needs. The Defendant has previously been afforded community-based treatment opportunities and most recently failed to complete treatment only weeks before the instant offense. Given the seriousness of the offense and the extreme risk of harm presented, the Defendant poses an unreasonable risk to public safety and requires a level of supervision beyond that which pretrial diversion can provide. Accordingly, the People respectfully request that diversion pursuant to Penal Code section 1001.36 be denied.

I. RELEVANT FACTS

A. Facts Giving Rise to Charges in CR0005340

On or about December 10, 2024, the Defendant was visiting his mother's home at 12281 Rough and Ready Highway. The Defendant's mother was a frequent caretaker of the Defendant's minor son, S.L, age 2. Due to the Defendant's longstanding substance abuse, the Defendant did not have custody of S.L. and S.L. was not supposed to be alone with the Defendant. S.L.'s paternal grandmother's partner, Joseph Conterno, also resided in the home and was a frequent caretaker of S.L.

The Defendant came to his mother's home earlier in the day carrying a backpack and appeared to possibly under the influence of narcotics. At one point, he used the bathroom for a long period of time, causing Conterno to become suspicious. Later in the day, the Defendant left with an unknown female to go to the "grocery store" and returned approximately ten to fifteen minutes later. When the Defendant returned to the home, he retrieved a sleeping S.L. from the bedroom and brought him to the living room. S.L. woke up and he and the Defendant watched cartoons together.

Conterno was then summoned by a neighbor to assist in getting a vehicle unstuck. Within twenty minutes that Conterno was away, the Defendant had exposed S.L. to fentanyl, causing him to be poisoned and become unresponsive.

In a panic, the Defendant fled with the minor to the home of Nicolas McGrath, brother to the

Defendant and paternal uncle to S.L. S.L. was unresponsive, not breathing, and had blue lips. The Defendant frantically requested that Nicolas call their mother to determine where she kept the Narcan that was on hand to be used in the event of the Defendant's overdoes, given he was a known user of fentanyl. The two were able to find the Narcan and administer a full dose to S.L., temporarily reviving S.L.

The Defendant then attempted to dissuade Nicolas from summoning medical assistance, insisting that S.L. would be fine. Nicolas frantically called law enforcement over the Defendant's objection. When law enforcement and medics arrived, the Defendant would not allow medics into the house, indicating that nothing had happened and they did not need help.

It took several minutes for the Defendant to allow medics access to S.L. and to begin life saving measures on S.L. Medics attempted to get information from the Defendant regarding what S.L. was exposed to, but the Defendant denied the use of fentanyl and denied exposing the minor to fentanyl. Medics implored the Defendant to provide accurate information, telling the Defendant it was pertinent for his son's safety to have the accurate information. The Defendant refused to provide accurate or specific information to the paramedic. Medics noted that S.L needed to get to the hospital right way as his vital signs were dropping. Medics administered two more rounds of Narcan on the way to the hospital.

The Defendant was arrested on felony child abuse charges in violation of Penal Code section 273a(a). In the Defendant's pocket was a homemade pipe with white residue on the inside, as well tin foil with white residue and another homemade pipe in separate pockets.

A search of the home revealed several pieces of paraphernalia, to include pipes, burnt pieces of foil and syringes, as well as containers containing methamphetamine and cannabis.

On the floor in the living room, accessible to a small child, was a small container that contained fentanyl.

S.L.'s urine tested positive for fentanyl and amphetamines.

B. Criminal History

In 2010, the Defendant was arrested for driving under the influence and ultimately convicted of a "wet reckless" in violation of Vehicle Code section 23103(a) in Santa Cruz County Case No. MS289175A.

Also in 2010, the Defendant was arrested for burglary in violation of Penal Code section 459 and ultimately convicted of tampering with a fire alarm in violation of Penal Code section 148.4 in Santa Cruz County Case No. MS286731B.

In 2017, the Defendant was arrested for embezzlement in violation of Penal Code section 503 and ultimately convicted of petty theft in violation of Penal Code section 490.5 in Nevada County Case No. M17-000713.

In 2018, the Defendant was arrested on violations of Health and Safety Code sections 11550 and 11364 in Placer County Case No 62-149294B. The Defendant was granted deferred entry of judgement pursuant to Penal Code section 1000, but appears to have been unsuccessful as the matter in warrant status since 2022.

C. Defendant's Long-Standing Substance Abuse

The Defendant has a long-standing substance use disorder. He reported beginning heroin, methamphetamine, and fentanyl use at approximately age 21 and stated that his substance use escalated from intermittent to daily. He reported daily methamphetamine and fentanyl use for several years and acknowledged that fentanyl and methamphetamine were his drugs of choice.

D. Prior Opportunities for Treatment

The Defendant has had at least three prior opportunities for community-based substance abuse treatment, which must be addressed in conjunction with any co-occurring mental health needs.

In 2018, the Defendant was granted Deferred Entry of Judgement pursuant to Penal Code Section 1000 a part of Placer County Case No 62-149294B in which the Defendant was charged with violations of Health and Safety Code sections 11550 and 11364. While his progress in treatment is unknown, it appears the Defendant has been in warrant status in this matter since July of 2022.

On December 21, 2023, the Defendant completed 40 day treatment program at Bella Nirvana Center.

Most recently, within weeks of the instant offense, the Defendant was engaged in residential treatment. Details are unknown, except that the Defendant remained in the program less than one week and left without completing.

II. PENAL CODE SECTION 1001.36 LAW AND PROCEDURE

A. Diversion is Discretionary

The Court may, in its discretion, and after considering the positions of the defense and the prosecution, grant pretrial diversion pursuant to Penal Code section 1001.36 if the defendant satisfies the eligibility and suitability requirements set forth in subdivisions (b) and (c). *Id.* Diversion under section 1001.36 is discretionary, not mandatory, even if all the statutory requirements are met. *People v. Qualkinbush*, (2022) 79 Cal. App. 5th 879, 887.

A defendant is *eligible* if (1) the defendant suffers from a qualifying mental disorder; and (2) the mental disorder was a significant factor in the commission of the charged offense. Penal Code section 1001.36(b)(1)-(2). A defendant is *suitable* for pretrial diversion if: (1) a qualified mental health expert opines the defendant's symptoms will respond to treatment; (2) the defendant consents to diversion and waives his or her speedy trial rights; (3) the defendant agrees to comply with the treatment as a condition of diversion; and (4) the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. Penal Code section 1001.36(c)(1)-(4)

The defendant carries a prima facie burden with respect to both eligibility and suitability, and there is nothing in the statute mandating the order in which the trial court is to consider these issues. *People v. Bunas*, (2022) 79 Cal. App. 5th 840, 859–60. .Since courts may deny diversion based on either suitability or eligibility, if the court determines unsuitable, "it makes no difference whether the defendant is eligible." *Id.* at 60.

B. This Court Has Broad Discretion to Determine Suitability and Can Consider Factors to Include Circumstances of the Offense and History of Treatment.

A trial court has "broad discretion to determine whether a given defendant is a good candidate for mental health diversion." *People v. Whitmill,* (2022) 86 Cal. App. 5th 1138, 1147; *People v. Watts,* (2022) 79 Cal. App. 5th 830, 834. Even if a defendant meets the six statutory threshold eligibility requirements for pretrial mental health diversion, a trial court may still exercise its discretion to deny

mental health diversion if it finds that the defendant or the offense are not suitable for diversion. *People v. Whitmill,* 86 Cal. App. 5th at 1149; *People v. Qualkinbush*, (2022) 79 Cal. App. 5th 879, 888.

In determining eligibility and suitability, the court may consider a broad range of factors to include: the nature of the offense (*see People v. Bunas*,79 Cal.App.5th 840, 862); history of non-compliance with treatment (*see People v. Watts*, 79 Cal.App.5th 830, 837); history of substance abuse, (*see People v. Pacheco*, 75 Cal. App. 5th 207, 214); and criminal history of the defendant (*see People v. Qualkinbush,* 79 Cal.App.5th 879, 890).

C. Penal Code Section 1001.36(c)(4)'s "Unreasonable Risk of Danger to Public Safety" is Defined by Statute, but this Court Can Consider Other Indications of Dangerousness in its General Determination of Suitability

Pursuant to Penal Code section 1001.36(c)(4), the Defendant must show they will not pose an unreasonable risk of public safety, as defined by Penal Code section 1170.18, if treated in the community. Section 1170.18(c), in turn, defines "unreasonable risk of danger to public safety" as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of Section 667(e)(2)(C)(iv). The violent felonies encompassed in this definition "are known as 'super strikes' and include murder, attempted murder, solicitation to commit murder, assault with a machine gun on a police officer, possession of a weapon of mass destruction, and any serious or violent felony punishable by death or life imprisonment. *People v. Moine,* (2021) 62 Cal.App.5th 440 at 450, *citing People v. Jefferson*, 1 Cal.App.5th at 242. They also include sexually violent offenses and sexual offenses committed against minors under the age of 14. *See Id.;* Penal Code section 667(e)(2)(C)(iv).

Section 1001.36 expressly provides that in determining whether defendant will pose an unreasonable risk of danger to public safety if treated in the community, the trial court may consider "the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate." Penal Code section 1001.36 (c)(4).

Beyond the statutory definition of "unreasonable risk to public safety" set forth in Penal Code section 1170.18 that would make a defendant statutorily ineligible for diversion as a matter of law,

this Court can consider factors indicating dangerousness generally in determining suitability. In exercising its broad discretion, the trial court may consider factors demonstrating dangerousness and may evaluate any circumstance relevant to whether the defendant is an appropriate candidate for diversion.

> "There may be times, because of the defendant's circumstances, where the interests of justice do not support diversion of the case. *The defendant's criminal or mental health history may reflect a substantial risk the defendant will commit dangerous crimes beyond the 'super strikes' identified in section 1001.36, subdivision (b)(6)(former).* It may be that because of the defendant's level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate the defendant is now unsuitable. […] The court may consider whether the defendant and the community will be better served by the regimen of mental health court. (See § 1001.36, subd. (c)(1)(B) [the court may consider interests of the community in selecting a program].) Clearly the court is not limited to excluding persons only because of the risk of committing a 'super strike'—*the right to exclude because of dangerousness goes well beyond that limited list*. In short, the court may consider any factor relevant to whether the defendant is suitable for diversion."

People v. Qualkinbush, 79 Cal. App. 5th 879 at 889-90, *citing Couzens et al.,* (2021) Sentencing California Crimes (*emphasis added*)**.**

III. THE NATURE OF THE OFFENSE AND THE DEFENDANT'S PRIOR OPPORTUNITIES AT COMMUNITY-BASED TREATMENT RENDER HIM UNSUITABLE FOR DIVERSION

A. The Nature of the Offense is Unsuitable for Treatment in the Community

This Court can consider the circumstances of the offense in determining eligibility and suitability for diversion. *See People v. Bunas*, *supra*, 79 Cal. App. 5th 840, 861-862. The fact that the legislature enumerated a list of offenses that render a defendant ineligible *as a matter of law* for mental health diversion does not demonstrated the Legislature intended to preclude a trial court from relying solely on the *circumstances* of an offender or offenses in determining either eligibility or suitability for diversion. *Id.*

Here, the circumstances of the offense are egregious. The Defendant endangered his two-year-old son by exposing him to fentanyl, poisoning him to the point of near death. What is more, is that the Defendant then withheld medical care, seeming to show more concern as to the legal consequences than to the safety of this child. These facts demonstrate that the Defendant requires a level of supervision beyond that which mental health diversion can provide in order to promote the Defendant's rehabilitation and deter future harm.

B. Given the Defendant's Prior Opportunities at Community-Based Treatment, The Defendant Requires a Higher Level of Supervision than Pretrial Diversion

The Defendant has previously been afforded three separate opportunities for community-based treatment, yet has failed to successfully complete or benefit from those interventions. This pattern demonstrates that less-restrictive treatment models have been ineffective in addressing the Defendant's underlying substance-use issues or in deterring criminal conduct. The Defendant's substance use must be treated along with co-occurring mental health needs.

It is the People's position that more structured supervision—such as felony probation with a suspended sentence, or participation in a collaborative court—is necessary to incentivize compliance, ensure accountability and protect public safety, particularly where prior rehabilitative efforts have failed.

This principal is espoused in the court's reasoning in *People v. Pacheco*, supra, 75 Cal. App. 5th 207, 214, in which the court noted that "Mental health diversion may provide some motivation for remaining drug free and compliant with treatment for mental illness. In theory, felony probation with state prison "hanging over his head," will provide even more motivation. *Id.*

The mandatory 48-month period of supervision for a violation of Penal Code section 273a(a) itself underscores the seriousness of the offense and reflects the Legislature's determination that extended, structured oversight is necessary to protect vulnerable victims and deter future harm. *See* Penal Code section 273a(c)(1). In contrast, community-based treatment—capped at a maximum of two years under mental health diversion—lacks the enforcement mechanisms necessary to ensure accountability in a case of this severity. Accordingly, the Defendant and the offense are not suitable for mental health diversion.

C. The Defendant Poses an Unreasonable Risk of Danger to Public Safety Pursuant to 1001.36(c)(4)

Pursuant to Penal Code section 1001.36(c)(4), the Defendant must show they will not pose an unreasonable risk of public safety, as defined by Penal Code section 1170.18, if treated in the community. Section 1170.18(c), in turn, defines "unreasonable risk of danger to public safety" as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of Section 667(e)(2)(C)(iv), which includes any homicide offense.

In the present case, the Defendant engaged in conduct that directly endangered his two-year-old child and created a substantial risk of serious injury or death. Not only did the Defendant cause the minor to because poisoned by fentanyl, but he failed to promptly summon medical assistance and actively argued against calling 911. He then physically withheld the minor from medics and knowingly withheld accurate and pertinent information.

This conduct demonstrates a conscious disregard for human life, which is the hallmark of implied malice theory of homicide. This is precisely the type of conduct that could foreseeably lead to death. The fact that the present offense, violation of Penal Code section 273a(a) is not included on the enumerated list of "superstrikes" is not determinative. The list speaks to crimes that may be committed in the future. *See People v. Pacheco*, supra, 75 Cal.App.5th 207, 213 (reasoning that while arson was not on listed of enumerated crimes, if the conduct continued, a person would commit a superstrike—first degree murder—if intentionally set fire to forest land and an unintended death occurred as a result of arson).

Thus, given the Defendant's longstanding history of substance use and present acts showing conscious disregard for life, the Defendant poses an unreasonable risk to public safety within the meaning of 1001.36(c)(4). This renders the Defendant unsuitable for mental health diversion as a matter of law.

D. The Defendant is of Substantial Risk of Endangering Others if Not Supervised

The Defendant's history reflects a substantial risk the defendant will commit dangerous crimes beyond the enumerated 'super strikes' identified in Penal Code section 1001.36(c)(4).

The Defendant suffers from longstanding substance use, which has persisted despite criminal

justice intervention and multiple community-based treatment options. The defendants use of a highly dangerous and lethal substance, to wit, fentanyl, in such close proximity to his minor son, while temporarily acting as the child's sole caretaker, demonstrates both a capacity and willingness to engage in highly dangerous conduct. Community-based treatment has thus far failed to deter this conduct. Community-based treatment without supervision is insufficient to mitigate the substantial risk that the Defendant will commit future dangerous and endangering crimes. Accordingly, the Defendant is not suitable for mental health diversion.

IV. THE DEFENDANT FAILS TO PRESENT A TREATMENT PLAN THAT WILL MEET THE NEEDS OF THE DEFENDANT AND COMMUNITY

Pursuant to Penal Code section 1001.36(f)(1)(A)(i), this Court must be satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant. Pursuant to 1001.36(f)(1)(A)(ii), before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community.

A. The Defendant Fails to Provide a Treatment Plan that Will Meet the Specialized Needs of the Defendant or the Interest of the Community Pursuant to (f)(1)(A)(i) and (ii)

Here, the treatment plan proposed by the defendant is insufficient to meet the specific needs of both the defendant and the community. The plan fails to set forth a specific, structured, or comprehensive course of treatment. It does not articulate clear terms for participation in mental health or psychiatric services, nor does it identify any defined treatment components to address the defendant's substance use and opioid use disorder. Further, although the evaluating mental health professional suggests random drug testing, the plan provides no details regarding the frequency, metho, or enforcement of testing. The People submit that random testing is critical for deterrence, accountability and rehabilitation, and that this term itself suggests that a higher level of supervision—to effectuate the testing and any appropriate sanctions—is necessary.

Moreover, a legally adequate treatment plan would include a parenting course that is mandated by Penal Code section 273a(c)(3)(1) for 273a(a). The absence of this component further demonstrates that the proposed plan is inadequate and does not meaningfully address the risks

presented by Defendant's conduct.

The Defendant has failed to present a treatment plan that would allow the Court to make its necessary findings pursuant to 1001.36(f)(1)(A)(i). This is fatal to the Defendant's petition.

V. THE INTERESTS OF JUSTICE DO NOT SUPPORT DIVERSION; THE DEFENDANT FALLS OUTSIDE THE PURPOSE OF THE STATUTE.

Mental-health-diversion program can be viewed as a specialized form of probation, that is intended to offer a second chance to offenders who are minimally involved in crime and maximally motivated to reform.

The People respectfully submit that the Defendant has failed to demonstrate suitability for diversion and has failed to present an adequate treatment plan that meets the specific needs of the Defendant and the community. Accordingly, the People respectfully request that diversion pursuant to Penal Code section 1001.36 be denied.

Dated: January 5, 2026

Respectfully submitted,

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EXHIBIT O

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IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF NEVADA

The People of the State of California, Plaintiff, v. **Alvin Derek Doug Mosley,** Defendant.	Court Case No. CR0006184 **PEOPLE'S SECOND AMENDED OPPOSITION TO DEFENDANT'S REQUEST FOR DIVERSION PURSUANT TO PENAL CODE § 1001.36** Date: February 10, 2026 Time: 9:00 am Dept: 1

TO THE PRESIDING JUDGE OF THE SUPERIOR COURT, THE DEFENDANT, AND HIS/HER ATTORNEY OF RECORD:

The People hereby submit their second amended opposition to the defendant's request for diversion pursuant to Penal Code section 1001.36. Please take notice that this second amended opposition supersedes and replaces all prior versions, which are hereby withdrawn and requested to be of no further force or effect.

The People respectfully submit that the Defendant has failed to meet its prima facie burden to show suitability for pretrial diversion and the Court should summarily deny the petition. The Defendant has failed to set forth any factors as to suitability, and indeed, he is wholly unsuitable

given: his criminal history, the nature of the offense, factors indicating dangerousness, and his inability to comply with the terms of any level supervision let alone pretrial diversion. Despite already being on one of the highest forms of community supervision following a prison term, the Defendant continues to commit offenses, to include acts of violence. The Defendant falls far outside the scope of the statue to offer a second chance to offenders who are minimally involved in crime and maximally motivated to reform.

As such, the People respectfully request the Court find, pursuant to Penal Code section 1001.36(e), that the Defendant has failed to make a prima facie showing of the minimum requirements for suitability and summarily deny the petition for pretrial diversion.

I. PEOPLE'S EXHIBITS

The following exhibits shall be submitted for the Court's consideration.

Exhibit A – Police Reports C2500261 CR0006184 dated 5/14/25

Exhibit B – Pre-Sentencing Report Yuba County Case No 23CF03469 dated 12/13/2023

Exhibit C - Post Release Community Supervision Orders in CR6176A dated 8/24/25

Exhibit D – Post Release Community Supervision Orders in CR6176A dated 9/29/25

Exhibit E – Police Reports G2502953 dated 12/24/25

Exhibit F – Police Reports G2600029 dated 1/4/25

II. RELEVANT FACTS AND CIRCUMSTANCES

A. Facts Giving Rise to Charges in CR0006184

On or about May 14, 2025, two civilians in Nevada County called 911 to report that a male and a female were in a fight that was "disturbing" and that the male was throwing things at the female. Law enforcement contacted a civilian witness who indicated that she heard the Defendant threaten to kill the female and the dog they had with them.

When law enforcement arrived, the Defendant was agitated and heightened, yelling profanities at the victim and squaring up his body towards her while clenching his fist. Once the

Defendant and victim were separated, the Defendant remained escalated and continued to yell, complaining to law enforcement about carrying the victim's belongings. While another officer spoked with the victim, the Defendant preemptively offered to law enforcement that if the victim said anything about the bruises on her body, she had caused the injuries herself.

The victim was tearful and explained to law enforcement that she asked the Defendant to stop yelling at her, and that he threatened to hurt her. She stated that he was a "real abusive person" and he told her he wanted to kill her. The victim then described that two days prior, the Defendant was jealous, accusing her of wanting to be with another man. In his rage, he threw the victim to the ground and "almost snapped [her] neck". The victim showed bruises to law enforcement on her arm from the abuse. When law enforcement asked clarifying questions about the bruises from the Defendant grabbing her, the victim clarified "he didn't grab me, he threw me on the ground". The victim clarified that the bruises were from hitting the ground when he threw her, explaining that he grabbed her hair and threw her on the ground and "kept pulling [her] hair and pulled [her] in circles." He then told her that if she called the cops he would never speak to her again and he would "kill [her]" "when he got out".

Upon arrest, the Defendant continued to state that the victim hit herself. The Defendant submitted to a urinalysis as part of mandated terms of Post Release Community Supervision, which was presumptive positive for methamphetamine and alcohol in violation of his terms of supervision.

When asked about the allegations as part of the CalAIM Assessment conducted on July 16, 2025, the Defendant continued to blame the victim, indicating that she had a temper and "uncontrollable emotional nature"—now explaining her bruises from carrying heavy bags. The Defendant admitted to having an "anger problem" but denied ever getting physical or threatening the victim. The Defendant stated that he consumed "a small amount" of vodka and methamphetamine earlier in the day, because he "knew he wouldn't have to go back to probation for another two weeks". The Defendant furthermore acknowledged that he tends to become "more easily upset/angered" when he consumes methamphetamine.

B. Defendant's Extensive History of Domestic Violence to Include Prior Prison Terms

The Defendant has a documented history of domestic violence involving multiple intimate partners, marked by a consistent pattern of minimizing or denying his conduct and blaming victims.

Despite corroborating injuries, independent witness statements, and resulting convictions, the Defendant engages in a dangerous pattern wherein he denies culpability and demonstrates little insight into his abusive behavior.

i. 2015 Misdemeanor Domestic Violence Conviction

In 2015, the Defendant was arrested for criminal threats in violation of Penal Code § 422 and misdemeanor battery in violation of Penal Code § 243(e)(1)), and was ultimately convicted of a violation of Penal Code section 243(e)(1) in Yuba County Case No. 154802. The underlying facts are unknown at this time

ii. 2018 Misdemeanor Domestic Violence Conviction

In May of 2018, the Defendant was arrested on domestic violence charges of causing corporal injury of a dating partner in violation of Penal Code section 273.5 and misdemeanor battery of a dating partner in violation of Penal Code section 243(e)(1). He ultimately pled to a violation of Penal Code section 243(e)(1) in Yuba County Case No. CRM18-00938. The underlying facts are unknown at this time.

iii. Prison Prior 2 – Domestic Violence Conviction Yuba County Case No CRF180164

At this time, the People have limited information regarding the underlying facts of the offense for which the Defendant served his second prison term. The Defendant's RAP sheet indicates that on August 27, 2018, the Defendant was initially arrested for causing corporal injury in violation of Penal Code section 273.5, and subsequently charged with assault with force likely to cause great bodily injury, in violation of Penal Code sections 245(a)(4), and dissuading a witness in violation of Penal Code section 136.1(c)(1) in Yuba County Case No. CRF18-1614. The Defendant ultimately pled to a violation of Penal Code section 136.1(c)(1), a strike offense, and was sentenced to two years in state prison.

In the CalAIM assessment dated July 16, 2025, the Defendant described the underlying facts. He reported that he threw a "plastic tote/bag" at his girlfriend's head after he believed she had thrown a "boulder" at him.

Of note, the Defendant was on domestic violence probation in Yuba County Case No. CRM18-00938 when the above offense was committed.

iv. Prison Prior 3– Domestic Violence Conviction Butte County Case No 23CF03469

In a CalAIM assessment dated July 16, 2025, the Defendant described this offense, which occurred on or about August 23, 2022, as an incident in which he became upset and broke the windows of a vehicle he had recently purchased but that was titled in his girlfriend's name.

The police report reflects substantially different facts. On August 26, 2023, the victim—the Defendant's then girlfriend—reported that the Defendant yelled and screamed at her, and headbutted her while they were seated in a vehicle. The argument continued at a second location, where the Defendant punched the passenger-side window, shattering it, then walked to the driver's side and punched that window as well. Glass from the shattered driver's-side window caused cuts to the victim's left arm. The victim reported that the Defendant then entered the nearby residence to "do drugs." When contacted by law enforcement, the Defendant appeared to have a blank stare, denied headbutting the victim or causing her injuries, and claimed that any mark on his forehead was from him hitting his head on a pole.

The Defendant was arrested for violations of Penal Code sections 273.5 and 594, ultimately pleading to violation of Penal Code section 594 with dismissal of the prior strike allegation from CRF180164. In a statement to probation, the Defendant disparaged the victim, provided an account inconsistent with his statement to law enforcement, and accepted no responsibility for the injuries he caused.

In his presentencing report to Probation at the time, the Defendant stated that he was not under the influence of drugs or alcohol at the time of the incident. However, in his recent CalAIM assessment, the Defendant reported that substance use was involved in all of his prior offenses resulting in prison terms to include this offense.

The Defendant requested probation; however, the Probation Department concluded he was statutorily ineligible under California Rules of Court, rule 4.413, based on his six prior felony convictions, and further determined that the case was neither unusual nor one in which a grant of probation would serve the interests of justice.

v. Allegations of Strangulation - Nevada County Case No M10-001087

On September 1, 2010, law enforcement responded to the residence shared by the Defendant and his then-wife. Upon arrival, officers observed the victim to be visibly upset and crying to the extent that she was initially unable to communicate coherently. The victim later reported that since the death of the Defendant's mother approximately six months earlier, his behavior had progressively worsened and become increasingly violent.

Earlier that evening, while the victim was washing dishes, the Defendant approached her from behind and strangled her with both hands, accusing her of infidelity. He continued yelling and accusing her of adultery while strangling her and, during the assault, placed his hand inside her mouth and pulled downward, causing bleeding inside her mouth.

A neighbor reported hearing an argument and a female voice stating what sounded like, "stop choking me," followed by the victim exiting the apartment, gasping for air, and yelling for someone to call for help. Law enforcement observed bleeding inside the victim's mouth. The Defendant fled the scene prior to officers' arrival.

The Defendant was arrested the following day after returning to the victim. The victim was crying as he was arrested, stating that the Defendant had returned back to their house shortly after police left and apologized and she accepted his apology. The Defendant initially denied anything had happened, later acknowledging that he got in a fight with his wife but did not do anything wrong.

On September 3, 2023, the Defendant was charged with misdemeanor violation of Penal Code section 273.5 in Nevada County Case M10-001087. On October 6, 2010, the victim provided a statement to defense investigator indicating that she had fabricated the accusations against her husband, and that her injuries were from a fight with women at a bar, and the matter was ultimately dismissed.

C. Further Evidence Demonstrating Dangerousness and Entrenched Criminality

The Defendant has served four prior prison terms and has sustained and escalating criminal history beginning at age 18. His record reflects repeat crimes of violence, possession of deadly weapons, property destruction, theft, and drug charges.

In 2005, the Defendant suffered a felony conviction for vehicle theft in violation of Penal Code section 10851 in Nevada County Case No. SF04502A.

In 2011, the Defendant suffered a felony conviction for possession of a firearm by a felon in violation of former Penal Code section 12021 in Yuba County Case No. CR11-2252.

In 2016, he was convicted in Yuba County Case No. CRF16-48 of possession of a firearm by a felon in violation of Penal Code section 29800 and manufacturing a weapon while incarcerated in violation of Penal Code section 4502 and was sentenced to 16 months in state prison.

In 2020, the Defendant was convicted of misdemeanor assault with a deadly weapon in violation of Penal Code section 245(a)(1) in Yuba County Case No. CRF20-01761.

Also in 2020, the Defendant was convicted of being under the influence of a controlled substance and possession of paraphernalia, in violation of Health and Safety Code sections 11550 and 11364 in Yuba County Cas No CRM20-01702.

In 2021, he was arrested for exhibiting a deadly weapon in violation of Penal Code section 417 and felony vandalism in violation of Penal Code section 594(b). He ultimately pled to violation of Penal Code section 594 and was sentenced to 16 months in state prison in Yuba County Case No. CRFF21-00945, following an unsuccessful opportunity on probation. In his Cal AIM Assessment, the Defendant describes this offense as an incident in which he "smashed the windows" of his uncle's vehicle. As with other offenses, the Defendant minimized his conduct and attributed blame to others, asserting that his actions were justified by an alleged prior incident involving his uncle.

The Defendant's criminal history further includes a 2006 misdemeanor conviction for burglary and vandalism in violation of Penal Code sections 459 and 594 and resisting arrest in violation of Penal Code section 148 in Placer County Case No. 62-31744, for which he was sentenced to 270 days in custody.

D. Offenses Committed While on PRCS in CR6176A, Pretrial Release in CR6184, and While this Motion Pends

i. GVPD G2502953 – Nevada County Superior Court Case No CR0007521 – 12/24/25

On December 24, 2025, the Defendant was contacted by law enforcement when law enforcement was investigating ongoing trespassing and camping problems. The Defendant told law enforcement that he was on PRCS and that he had recently failed to meet with his probation officer. The Defendant was searched pursuant to his terms of PRCS and had a methamphetamine pipe in his

pocket. At the order of his Probation officer, the Defendant was arrested on a PRCS violation. Upon arrest, the Defendant was combative, escalated quickly in agitation and uncooperative behavior, and became extremely hostile. He kicked the patrol vehicle multiple times. As officers attempted to put him in a WRAP restraint device, the Defendant made numerous attempts to resist and escape. After his arrest, the residue on the pipe was tested and the results were presumptive positive for methamphetamine.

On December 29, 2025, the Defendant was charged with a Resisting Arrest in violation of Penal Code section 148(a)(1) and possession of a controlled substance, in violation Health and Safety Code section 11354 in Nevada County Superior Court Case CR007521.

ii. GVPD G2600029 – Nevada County Superior Court Case No CR007628 - 1/4/2026

On January 4, 2025, law enforcement was called to a scene where the Defendant engaged in a physical fight. The Defendant had blood on his shirt and knuckles and the other party had visible black and blue bruising and swelling around his eye. The Defendant showed objective signs of being under the influence and was a .075 blood alcohol content on a preliminary alcohol screen in violation of his terms of PRCS to refrain from alcohol. The Defendant was arrested on a violation of probation. The Defendant became very agitated and hostile toward law enforcement. He made statements such as "someone needs to tear your f***ing head off…I would tear your f****ing head off my f***ing goddamn self if I could get away with it" and "I'm gonna f*** you up" as well as other numerous other degrading expletives. The Defendant repeatedly used his body weight to slam on the cage of the patrol vehicle as well as stomp on the backseat, causing the backseat of the patrol vehicle to crack inwards and damage to cage, causing an estimate of $2000 in damages.

On January 7, 2026, the Defendant was arraigned on a second violation of PRCS in CR6176A and on January 8, 2026 was arraigned on fresh charges to include felony vandalism in violation of Penal Code section 594(b)(1) and resisting an executive officer through threat or violence, in violation of Penal Code section 69 along with special allegations in Nevada County Superior Court Case No CR007628.

E. Defendant's Chronic Substance Abuse

In a CalAIM assessment conducted on July 16, 2025, the Defendant reported periods of heavy cannabis and alcohol use and identified methamphetamine as his drug of choice, stating that he first used methamphetamine at age 14. In his presentencing report in the Post-Release Community Supervision matter, the Defendant further reported long-term and sustained substance use, including alcohol consumption beginning at age 12 and continuing until approximately age 33, daily marijuana use from age 12 through at least 2024, and methamphetamine use from age 14 through 2024, and continued to the present offenses.

F. Prior Opportunities for Treatment and Facts Demonstrating Inability to Comply with Terms of Diversion

The Defendant has been afforded numerous opportunities for treatment and intervention over the course of his life and criminal history. As reflected in the Defendant's Yuba County Presentence Report in 23CRF03469, he participated in counseling as early as age 12 for anger management issues and ADHD. Around age 18, he received services through Alta Regional and resided in a group home for over a year, where he was provided living-skills training. In 2014 or 2015, the Defendant received acute treatment referenced in the Yuba County Presentence Report in 23CRF03469.

The Defendant has received multiple opportunities for court-ordered outpatient treatment. What is specifically known, as stated in his CalAIM Assessment dated July 16, 2025, the Defendant acknowledged participating in outpatient services for substance abuse and 12-step meetings as conditions of one of his grants of probation but admitted that he did not remain substance-free after probation ended. This Court can reasonably infer, given the Defendant's multiple grants of probation or supervision, that he has been afforded repeat opportunities for court-ordered treatment. Further, because the Defendant has received at least two separate 36-month domestic-violence probation grants, this Court may specifically infer that he was ordered to complete a batterer's intervention program pursuant to Penal Code section 1203.097 on more than one occasion.

Most recently, the Defendant has been on Post Release Community Supervision with Nevada County Probation since August 28, 2024, with treatment mandates including substance use counseling and compliance with prescribed medication. On September 29, 2025, the terms of PRCS were further modified to require participation in cognitive behavioral therapy as directed by probation.

The Defendant has expressed a willingness to engage in rehabilitative services but has repeatedly failed to engage, despite being subject to the most structured forms of supervision and the consequence of incarceration. In the Yuba County PSR in 23CRF03469 dated 2023, the Defendant stated that he intended to refrain from substance use and acknowledged that, at the time of the offense, he lacked effective tools to manage his anger. He claimed that by the time of sentencing in 2023 that he had developed those tools to control his anger. The Defendant indicated that he planned to further his education and intended to continue building coping strategies to avoid future offenses.

Yet less than one year after his release from prison, the Defendant committed another act of domestic violence, against a new victim, while under the influence of substances. The Defendant now reports in the CalAIM Assessment in support of this petition that he is open to engage in substance-use treatment and medication management. But, he is *already* court-ordered to engage in substance-use treatment and medication management terms as part of PRCS, but he has failed to comply and continues to reoffend.

The Defendant reported in his CalAIM Assessment in July 2025 that he was meeting with a jail therapist, reading coping-skills materials, and attempting to "get better" while in custody. However, notwithstanding these statements, the Defendant has been rearrested and charged with substance use violations and acts of destruction and violence.

III. PENAL CODE SECTION 1001.36 LAW AND PROCEDURE

A. Diversion is Discretionary; This Court May Summarily Deny the Petition Where the Defendant Fails to Make a Prima Facie Showing on Either Eligibility or Suitability

The Court may, in its discretion, and after considering the positions of the defense and the prosecution, grant pretrial diversion pursuant to Penal Code section 1001.36 if the defendant satisfies the eligibility and suitability requirements set forth in subdivisions (b) and (c). *Id.* Diversion under section 1001.36 is discretionary, not mandatory, even if all the statutory requirements are met. *See People v. Qualkinbush*, (2022) 79 Cal. App. 5th 879, 887.

At any stage in the proceeding, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirement of eligibility for diversion and that

the defendant and the offense are suitable for diversion. Penal Code section 1001.36(e). If a prima facie showing is not made, the court may summarily deny the request for diversion. *Id.*

A defendant is *eligible* if (1) the defendant suffers from a qualifying mental disorder; and (2) the mental disorder was a significant factor in the commission of the charged offense. Penal Code section 1001.36(b)(1)-(2). A defendant is *suitable* for pretrial diversion if: (1) a qualified mental health expert opines the defendant's symptoms will respond to treatment; (2) the defendant consents to diversion and waives his or her speedy trial rights; (3) the defendant agrees to comply with the treatment as a condition of diversion; and (4) the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. Penal Code section 1001.36(c)(1)-(4)

The defendant carries a prima facie burden with respect to both eligibility and suitability, and there is nothing in the statute mandating the order in which the trial court is to consider these issues. *People v. Bunas*, (2022) 79 Cal. App. 5th 840, 859–60. Since courts may deny diversion based on either suitability or eligibility, if the court determines unsuitable, "it makes no difference whether the defendant is eligible." *Id.* at 860.

B. This Court Has Broad Discretion to Determine the Suitability and Can Consider Factors to Include Circumstance of the Offense, Criminal History and History of Compliance.

A trial court has broad discretion to determine whether a given defendant is a good candidate for mental health diversion. *People v. Whitmill,* (2022) 86 Cal. App. 5th 1138, 1147; *People v. Watts*, (2022) 79 Cal. App. 5th 830, 835. Even if a defendant meets the six statutory threshold eligibility requirements for pretrial mental health diversion, a trial court may still exercise its discretion to deny mental health diversion if it finds that the defendant or the offense are not suitable for diversion. *People v. Whitmill,* 86 Cal. App. 5th at 1149; *People v. Qualkinbush*, (2022) 79 Cal. App. 5th 879, 888.

In determining eligibility and suitability, the court may consider a broad range of factors to include: the nature of the offense (*see People v. Bunas*, 79 Cal.App.5th 840, 862); history of non-compliance with treatment (*see People v. Watts*, 79 Cal.App.5th 830, 837); history of substance abuse, (*see People v. Pacheco*, 75 Cal. App. 5th 207, 214); and criminal history of the defendant (*see People v. Qualkinbush,* 79 Cal.App.5th 879, 890).

C. Penal Code Section 1001.36(c)(4)'s "Unreasonable Risk of Danger to Public Safety" is Defined by Statute, but this Court Can Consider Other Indications of Dangerousness in its General Determination of Suitability

Pursuant to Penal Code section 1001.36(c)(4), the Defendant must show they will not pose an unreasonable risk of public safety, as defined by Penal Code section 1170.18, if treated in the community. Section 1170.18(c), in turn, defines "unreasonable risk of danger to public safety" as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of Section 667(e)(2)(C)(iv). The violent felonies encompassed in this definition "are known as 'super strikes' and include murder, attempted murder, solicitation to commit murder, assault with a machine gun on a police officer, possession of a weapon of mass destruction, and any serious or violent felony punishable by death or life imprisonment. *People v. Moine,* (2021) 62 Cal.App.5th 440 at 450, *citing People v. Jefferson*, 1 Cal.App.5th at 242. They also include sexually violent offenses and sexual offenses committed against minors under the age of 14. *See Id.;* Penal Code section 667(e)(2)(C)(iv).

Section 1001.36 expressly provides that in determining whether defendant will pose an unreasonable risk of danger to public safety if treated in the community, the trial court may consider "the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate." Penal Code section 1001.36 (c)(4).

Beyond the statutory definition of "unreasonable risk to public safety" set forth in Penal Code section 1170.18 that would make a defendant statutorily ineligible for diversion as a matter of law, this Court can consider factors indicating dangerousness generally in determining suitability. In exercising its broad discretion, the trial court may consider factors demonstrating dangerousness and may evaluate any circumstance relevant to whether the defendant is an appropriate candidate for diversion.

> "There may be times, because of the defendant's circumstances, where the interests of justice do not support diversion of the case. *The defendant's criminal or mental health history may reflect a substantial risk the defendant will commit dangerous crimes beyond the 'super strikes' identified in section 1001.36, subdivision (b)(6).* It may be that because of the defendant's level of

> disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate the defendant is now unsuitable. […] The court may consider whether the defendant and the community will be better served by the regimen of mental health court. (See § 1001.36, subd. (c)(1)(B) [the court may consider interests of the community in selecting a program].) Clearly the court is not limited to excluding persons only because of the risk of committing a 'super strike'—*the right to exclude because of dangerousness goes well beyond that limited list*. In short, the court may consider any factor relevant to whether the defendant is suitable for diversion."

People v. Qualkinbush, 79 Cal. App. 5th 879 at 889-90, *citing Couzens et al.,* (2021) Sentencing California Crimes (*emphasis added*)**.**

IV. THE DEFENDANT HAS FAILED TO MAKE A PRIMA FACIE SHOWING OF SUITABILITY; THIS COURT SHOULD SUMMARILY DENY THE REQUEST FOR DIVERSION

At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate. Penal Code section 1001.36(e).

A. The Defendant Fails to Make a Prima Facie Showing of Suitability

The Defendant fails to meet his prima facie burden of demonstrating suitability for mental health diversion under Penal Code section 1001.36. The Defendant's petition, filed August 15, 2025, contains no articulated facts establishing how the Defendant satisfies the statutory suitability criteria. Rather, the Defendant offers only a conclusory assertion that he is "eligible and suitable" for diversion, purportedly based on unspecified preliminary information relayed to counsel from behavioral health.

Penal Code section 1001.36 places the burden squarely on the Defendant to affirmatively demonstrate both eligibility and suitability. A bare assertion of unsupported suitability does not satisfy

that burden. The Defendant's petition makes no attempt to engage with standards of suitability and therefore falls far short of the prima facie showing required to trigger consideration of diversion.

B. The Defendant is Wholly Unsuitable for Pretrial Diversion

Mental-health-diversion program can be viewed as a specialized form of probation, that is intended to offer a second chance to offenders who are minimally involved in crime and maximally motivated to reform. *People v. Qualkinbush*, 79 Cal. App. 5th 879, 886.

Here, the Defendant cannot be considered minimally involved in crime. The Defendant has a sustained and escalating criminal history that includes multiple felony convictions, acts of violence, a prior strike offense, and multiple prison commitments.

Nor can the Defendant be deemed maximally motivated to reform. While the People acknowledge the Defendant's stated desire to rehabilitate and indeed applaud his desires to lead a crime-free and productive life, those assertions are not borne out by his conduct. Despite being afforded multiple opportunities for treatment, and despite existing court orders to participate in treatment, the Defendant has repeatedly failed to meaningfully engage or follow through.

C. The Defendant Has Already Demonstrated an Inability to Comply with Treatment As a Condition of Pretrial Diversion Pursuant to 1001.36(c)(3) and Requires a Higher Level of Supervision

The Defendant asserts that he will comply with treatment as a condition of diversion, as required by Penal Code section 1001.36(c)(3). However, the Defendant has already demonstrated an inability and unwillingness to comply with court-ordered conditions. The Defendant promised to abide by the terms of pretrial release in this case and previously agreed to comply with the terms of PRCS yet he has failed to do so.

Indeed, the Defendant has admitted that he deliberately sought to circumvent court-imposed conditions of release. In his CalAIM assessment, the Defendant reported that on the date of the instant offense he consumed methamphetamine and alcohol because he knew he would not be required to report back to probation for another two weeks. This admission reflects not only noncompliance, but calculated disregard for court supervision.

Moreover, while this case remains pending, the Defendant has been charged with additional

criminal conduct reflecting a continued propensity for violence. Such conduct would independently warrant termination of pretrial diversion pursuant to Penal Code section 1001.36(g)(1) and (3).

The People respectfully submit that the Defendant has shown an inability to abide by terms of pretrial diversion and requires a higher level of supervision if he were to remain in the community.

D. The Defendant Poses an Unreasonable Risk of Danger to Public Safety Pursuant to 1001.36(c)(4)

The People respectfully submit that the Defendant's criminal and treatment history indicate too unreasonable of a risk to public safety should the Defendant continue to on the same course of unsupervised community-based treatment. The factors in this case indicate a risk well beyond what mere community-based treatment could mitigate.

Pursuant to Penal Code section 1001.36(c)(4), the Defendant must show that he will not pose an unreasonable risk of public safety, as defined by Penal Code section 1170.18, if treated in the community. Section 1170.18(c), in turn, defines "unreasonable risk of danger to public safety" as "an unreasonable risk that the petitioner will commit a new violent felony within the meaning of Section 667(e)(2)(C)(iv).

Here, although the Defendant has not yet committed a "super strike," the risk is not hypothetical. The Defendant's conduct reflects a patterned and escalating course of domestic violence—a well-documented dynamic that can culminate in lethal outcomes. A death occurring in the course of such escalating domestic violence would constitute a super-strike homicide offense.

This risk is further heightened by the Defendant's explicit threats to kill the victim if the offense was disclosed or reported to law enforcement. When coupled with the Defendant's documented history of violence and his continued methamphetamine use—which he acknowledges exacerbates his aggression—the Defendant presents an unreasonable risk of committing a super-strike offense if treated in the community on pretrial diversion.

As the Court reasoned in *People v. Pacheco* (2022) 75 Cal.App.5th 207, 213, the fact that the present offense is not itself an enumerated "super strike" is not determinative. The statutory list speaks to crimes that may be committed in the future. (*Id.* at p. 213.)

E. The Defendant is of Substantial Risk of Committing a Dangerous Offense Beyond an Enumerated Super Strike, Particularly if Not Supervised.

In considering suitability, this Court may consider that the defendant's criminal or mental health history may reflect a substantial risk the defendant will commit dangerous crimes beyond the 'super strikes' identified in section 1001.36, subdivision (b)(6). *See People v. Qualkinbush*, 79 Cal. App. 5th 879 at 889-90, *citing Couzens et al.,* (2021) Sentencing California Crimes.

The Defendant's sustained criminality and escalating violence, despite recent treatment efforts and ongoing criminal justice intervention, demonstrate a substantial risk that he will commit dangerous crimes, including crimes beyond a super-strike offense. His history of committing offenses involving violence or threats of violence while under court supervision further establishes that risk.

For example, in Nevada County Superior Court Case No. CR007628, which was committed while the present diversion application pends, the Defendant threatened to cause substantial harm to a law enforcement officer who was acting in the course of their official duties. This conduct underscores the Defendant's continued disregard for legal constraints and supports a finding that he poses a risk of danger to the community and is not suitable for pretrial diversion.

F. This Court Should Scrutinize the Basis of the Mental Health Expert's Opinion that the Defendant Would Benefit from the Support and Structure of Pretrial Diversion Pursuant to 1001.36(b)(2); The Opinion is Based on Limited Information Regarding the Defendant's History and Does not Consider that he has Continued to Reoffend.

In the CalAIM Assessment, the evaluator opines that the Defendant "meets criteria for the program and would benefit from the support and structure that the mental health diversion program can provide," further stating that "Mr. Mosley has already taken steps to receive therapeutic support and engage in self-improvement while in custody and expresses a willingness to continue to engage in mental health treatment."

Elsewhere in the report, however, the evaluator acknowledges that "due to his reportedly frequent jail sentences in various counties, a legal search for cases in Nevada County revealed limited information." As a result, the assessment relies heavily on the Defendant's self-reported history—accounts that materially minimize his conduct and are inconsistent with police reports obtained by the People. Notably, Nevada County Behavioral Health did not request prior case materials from the

People, which could have allowed for a more complete and accurate assessment of the Defendant's criminal history and suitability for diversion.

The Defendant's four prior prison commitments, of which the evaluator was aware, combined with his current terms of supervision and documented noncompliance, should have raised significant concerns regarding his ability to meaningfully engage in a program that requires sustained participation, accountability, and compliance with court-ordered treatment. The Defendant's history reflects an inability to benefit from structured intervention despite repeated opportunities.

Moreover, the Defendant's acquisition of new criminal matters since the preparation of the assessment further undermines the evaluator's conclusions and calls into question whether the opinion would remain unchanged. In particular, a factual predicate for the evaluator's opinion—namely, that "Mr. Mosley has already taken steps to receive therapeutic support and engage in self-improvement while in custody and expresses a willingness to continue to engage in mental health treatment"—is no longer supported by the Defendant's post-assessment conduct.

V. THE COURT NEED NOT REACH THE ISSUE OF WHETHER THE DEFENDANT IS ELIGIBLE FOR PRETRIAL DIVERSION

Pursuant to *People v. Bunas*, 79 Cal.App.5th 840, 860 the Court need not reach the issue of statutory eligibility if it determines the Defendant is unsuitable for diversion. *Id.* The Defendant carries a prima facie burden with respect to both eligibility and suitability, and there is nothing in the statute mandating the order in which the trial court is to consider these issues. *Id.* at 860-861.

Here, the Defendant has failed to meet a prima facie burden of suitability, and thus, the Court need not reach the issue of eligibility.

VI. THE DEFENDANT FAILS TO PRESENT A TREATMENT PLAN THAT WILL MEET THE NEEDS OF THE DEFENDANT AND COMMUNITY

A. The Defendant Fails to Provide a Treatment Plan that Will Meet the Specialized Needs of the Defendant or the Interest of the Community Pursuant to 1001.36 (f)(1)(A)(i) and (ii).

Pursuant to Pen. Code 1001.36(f)(1)(A)(i), this Court must be satisfied that the recommended

inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant. Pursuant to Pen. Code 1001.36(f)(1)(A)(ii), before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community.

Here, the Defendant has failed to present a treatment plan sufficient to permit the Court to make the required findings under Penal Code section 1001.36(f)(1)(A)(i) and (ii). This failure is fatal to the Defendant's petition. The proposed treatment plan is vague, lacks individualized or specialized components, and does not meaningfully expand beyond the conditions of PRCS to which the Defendant is already subject.

The Defendant has been on PRCS with Nevada County Probation since August 28, 2024, with mandatory conditions that include substance use counseling and compliance with prescribed medication. On September 29, 2025, those conditions were further modified to require participation in cognitive behavioral therapy as directed by probation. Despite these existing treatment mandates, the Defendant has reoffended, and there is no showing that he has meaningfully engaged in—or complied with—the treatment requirements of PRCS.

Under these circumstances, the Defendant has failed to demonstrate that a diversion treatment plan that is substantially duplicative of existing PRCS conditions will address his treatment needs or protect public safety under this pretrial diversion statute. Accordingly, the Defendant has not met his burden of establishing that the proposed plan is adequate to meet the needs of the Defendant and the community.

VII. THE DEFENDANT FALLS OUTSIDE THE PURPOSE OF THE STATUTE.

A trial court's denial of mental health diversion using its residual discretion should be limited to those situations where the purposes of the statute would not be achieved. *Vaughn v. Superior Ct.*, (2024) 105 Cal. App. 5th 124, 138. Mental health diversion program can be viewed as a specialized form of probation, that is intended to offer a second chance to offenders who are minimally involved in crime and maximally motivated to reform. *People v. Qualkinbush*, 79 Cal. App. 5th 879, 886.

For the reasons set forth above, the People respectfully submit that the Defendant falls outside the intended scope of the mental health diversion statute. The Defendant is wholly unsuitable for this

"second-chance" remedy, which is reserved for individuals who are minimally involved in criminal activity and who demonstrate a genuine capacity and commitment to reform.

Accordingly, the People respectfully request that the Court find the Defendant has failed to meet his prima facie burden of establishing both eligibility and suitability for mental health diversion and deny the Defendant's petition.

Dated: January 15, 2026

Respectfully submitted,

JESSE WILSON
DISTRICT ATTORNEY
By: Lydia Stuart
Deputy District Attorney

EXHIBIT P

JESSE WILSON (SBN 281933)
Nevada County District Attorney
By: Madison Maxwell (SBN 355020)
Deputy District Attorney
201 Commercial Street
Nevada City, CA 95959
Telephone: (530) 265-1301

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **TAYLOR ANTHONY HILES MCGRATH** Defendant.	**Case No.: CR0005340** **NOTICE OF INTENT TO WITHDRAW FILING** Date: December 3, 2025 Time: 9:00 am Dept. 1

TO THE HONORABLE COURT and COUNSEL for DEEFNDANT:

PLEASE TAKE NOTICE that the People of the State of California, by and through the Office of the District Attorney of Nevada County, hereby notify the Court and opposing counsel of their intent to withdraw the following filing:

- Title of Filing: People's Opposition to Defendant's Petition For Mental Health Diversion Pursuant To Penal Code Section 1001.36.
- Date Filed: August 13, 2025.

This notice is made in good faith and in the interest of candor to the tribunal, following review and identification of citation and drafting errors within the above-referenced filing.

The People intend to withdraw the filing and submit a corrected and amended version to ensure accuracy and compliance with applicable ethical and procedural standards.

Pursuant to Code of Civil Procedure §128.7(c)(1), the People respectfully provide this notice within the statutory 21-day safe harbor period to avoid unnecessary motion practice and to permit voluntary correction of the record.

The People acknowledge their continuing duty of candor to the Court and affirm that this corrective action is undertaken to ensure full accuracy, transparency, and compliance with the Rules of Professional Conduct.

Date: November 12, 2025

JESSE WILSON
District Attorney

By:

Madison Maxwell
Deputy District Attorney

DA#: 05724-013999
Agency: NCSO
Report #: 12403583
MM/mm

EXHIBIT Q

JESSE WILSON (SBN 281933)
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **TAYLOR MCGRATH** Defendant.	**Case No.: CR0005340** **PEOPLE'S NOTICE OF ADVERSE AUTHORITY** Date: January 22, 2026 Time: 9:00am Dept: One

The People of the State of California, by and through its attorney, JESSE WILSON, District Attorney, respectfully submit the following Notice of Adverse Authority pursuant to California State Bar Rule of Professional Conduct 3.3(a)(2).

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I. NOTICE OF ADVERSE AUTHORITY

On November 13, 2025 the People filed a Response to Defendant's Request for Judicial Notice and People's Request for Judicial Notice. The People requested the Court take judicial notice, pursuant to Evidence Code section 452(d), of: the Denial of Petitioner's Motion for Sanction and Attorney's Fees in *In re Kyle Kjoller,* Court of Appeals Case No C10445, issued on 9/19/25 (attached to said motion as Exhibit B); and Denial of Petitioner's Successive Motion to Issue and Order to Show Cause in *In re Kyle Kjoller*, Court of Appeals Case No C10455, issued 10/20/2025 (attached to said motion as Exhibit C).

On January 14, 2026, the Supreme Court of California granted review in Case S293723. The Supreme Court transferred the matter to the Third District Court of Appeal with direction to vacate its order dated October 20, 2025 summarily denying the motion for sanctions, and to issue an order directing the District Attorney of Nevada County to show cause before it why sanctions should not be imposed, pursuant to California Rules of Court Ruled 8.528(d). The Supreme Court granted petitioner's request for judicial notice as to defendant's attachments A through C, and declined to take judicial notice of attachment D, namely August 28, 2025, transcript in *People v. Turner*, CR0006300B.

California Rule of Professional Conduct 3.3(a)(2) requires all attorneys to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. California State Bar Rule of Professional Conduct 3.3(a)(2). The California Supreme Court affirmed this foundational principle in *In re Reno*, 55 Cal.4th 428, 510, stating that attorneys are officers of the court and have an ethical obligation to advise the court of legal authority that is directly contrate to a claim being pressed. Id. (*overruled on other grounds, superseded by statute as stated in In re Friend*, 11 Cal.5th 720.)

Accordingly, the People hereby provide notice to this Court that the Third District Court of Appeal's denial of sanctions *in In re Kyle Kjoller*, Court of Appeals Case No C10445, issued on September

19, 2025 and October 20, 2025—both of which relied upon by the People in its request for judicial notice—have been vacated by the Supreme Court on January 14, 2026 in S293723. Attached as Exhibit A is the letter from the Supreme Court received by the People on January 16, 2026.

CONCLUSION

The People respectfully request the Court take notice that the Third District Court of Appeal rulings relied upon by the People in its request for judicial notice have been vacated by the Supreme Court. The People respectfully submit that this continues to show that the issue remains under litigation in a more appropriate forum than in the present case.

Dated: January 20, 20256

Respectfully submitted,

JESSE WILSON
DISTRICT ATTORNEY
By: Lydia Stuart
Assistant District Attorney

Exhibit A

Court of Appeal, Third Appellate District - No. C104445

S293723

IN THE SUPREME COURT OF CALIFORNIA

En Banc

KYLE KJOLLER, Petitioner,

v.

SUPERIOR COURT OF NEVADA COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

The request for judicial notice filed October 30, 2025, is granted. The request for judicial notice filed November 12, 2025, is granted as to defendant's Attachments A through C and denied as to Attachment D.

The petition for review is granted. The matter is transferred to the Court of Appeal, Third Appellate District, with directions to vacate its order dated October 20, 2025, summarily denying the motion for sanctions, and to issue an order directing the District Attorney of Nevada County to show cause before it why sanctions should not be imposed. (Cal. Rules of Court, rule 8.528(d).) The Court of Appeal may appoint a referee to hear evidence and make findings on certain specified questions. (*Holt v. Kelly* (1978) 20 Cal.3d 560, 562.)

GUERRERO
Chief Justice

CORRIGAN
Associate Justice

LIU
Associate Justice

KRUGER
Associate Justice

GROBAN
Associate Justice

EVANS
Associate Justice

Associate Justice

Supreme Court of California
Clerk of the Court
350 McAllister Street
San Francisco, CA 94102-4797

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EXHIBIT R

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- **TAYLOR MCGRATH** Defendant.	**Case No.: CR0005340** **PEOPLE'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S REQUEST FOR DISMISSAL PURSUANT TO PC 1385 AND OTHER REMEDIES** Date: April 24, 2026 Time: 9:00 am Dept. 1

The People of the State of California, by and through its attorney, JESSE WILSON, District Attorney, respectfully submit the following Supplemental Response to Defendant's Request for Dismissal Pursuant to Penal Code 1385 or Other Remedies.

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SUPPLEMENTAL RESPONSE

On November 18, 2025, the People filed a Response to Defendant's Request for Dismissal Pursuant to 1385 and Other Remedies. The People acknowledged that there were many errors in its Opposition to Mental Health Diversion in this matter, but argued that there had been no showing of prejudice or detriment to the Defendant such to warrant dismissal in the furtherance of justice under Penal Code section 1385. The People further acknowledged that though the Rules of Professional Conduct may have been implicated in filing a legal brief containing citations that were not thoroughly verified prior to filing, sanctions or further action of this Court was not necessary given the corrective actions already taken by the People to ensure the prevention of similar errors going forward.

Since filing the initial Response to Defendant's Request for Dismissal Pursuant to Penal Code 1385 and Other Remedies, the People have further scrutinized the Opposition to Mental Health Diversion filed in this case on August 13, 2025 and the Amended Opposition filed on November 13, 2025. The People acknowledge that the pleadings contain what appear to be the markings of errors created by generative artificial intelligence (AI) tools and can assure that the matter is under further investigation. On January 5, 2026, the People filed a Second Amended Opposition to withdraw the prior pleadings and correct the errors, prior to adjudication of the motion on its merits.

The analysis for this Court remains the same. There has been no demonstration of prejudice to the Defendant such to warrant dismissal pursuant to Penal Code section 1385 and this Court can trust that corrective and remedial actions have been taken internally by the Office of the District Attorney. In addition to the corrective actions set forth in the People's prior response, the Office of the District Attorney has implemented an Ethics Policy,

acknowledged by all attorneys, to reinforce and ensure strict compliance with the Rules of Professional Conduct. We have, on multiple occasions, emphasized the ethical duties we embrace and fulfill as prosecutors.

It is anticipated that Counsel for Defendant will cite *People v. Velasco-Palacios* (2015) 235 Cal.App.4th 439 in furtherance of its request for dismissal. In that case, a prosecutor intentionally inserted a fabricated confession to rape into a translated transcript of a defendant's interrogation and distributed the transcript to defendant's counsel while negotiations regarding settlement were taking place. *Id*. at 442-445. The Court found that the prosecutor's egregious misconduct had prejudiced the defendant's constitutional rights and warranted dismissal of the case. *Id.* at 450-452.

Here, this Court can readily see the factual differences between the misconduct in *Velasco-Palacios* and the circumstances here. There has been no showing that the prosecution has committed an act with the intent to intentionally prejudice the Defendant's constitutional rights, and there has been no showing that the errors prejudiced the Defendant's rights on the merits of his petition pursuant to Penal Code section 1001.36. The errors have been corrected prior to adjudication on the merits. It is a fundamental principle that reversal for prosecutorial misconduct is not required unless the defendant can show that he has suffered prejudice. *People v. Uribe* (2011) 199 Cal.App.4th 836, 873; *People v. Arias* (1996) 13 Cal.4th 92; see also *In re Martin* (1987) 44 Cal.3d 1, 54-55 (dismissal unwarranted where no showing that prosecutorial misconduct "prejudiced the defense by undermining the defendant's ability to mount a defense").

Sanctions can be appropriate to enforce court rules and to discourage similar conduct in the future. (See *Noland v. Land or the Free*, (2025) 114 Cal. App.5th 426, 433, citations omitted.)

However, sanctions should be issued with restraint and are not mandatory even where warranted. (See *Peake v. Underwood*, (2014) 227 Cal.App.4th 428, 448, citing *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal. App. 4th 408, 412; *Schlaifer Nance & Co. v. Est. of Warhol*, (2d Cir. 1999), 194 F.3d, 334 [Although decision to impose sanctions is uniquely within the province of a district court, Court of Appeals nevertheless must ensure that any such decision is made with restraint and discretion.].)

The People respectfully submit that no further action is needed by this Court to discourage similar conduct in the future. The People have taken significant steps to establish comprehensive corrective action, including policies on the use of AI, trainings on AI, trainings on the rules of professional conduct and the ethical responsibilities of prosecutors, trainings and review of supervisory duties, and implementation of an ethics policy. This Court can be assured that internal action, subject to due process, is ongoing to investigate and address any specific violations of the Rules of Professional Conduct, and that the effect of any "appropriate corrective action" mandated by the California Code of Judicial Ethics, Canon 3D, such as reporting to a supervisor or appropriate authority, has already been achieved. This Court can further be assured that attention to important issue of the appropriate use of AI in the legal field is being addressed in the judicial forum of the Third District Court of Appeals in *In re Kyle Kjoller*, Court of Appeals Case No C10445 where the Nevada County District Attorney is subject to an Order to Show Case on the issue of sanctions. See *People's Notice of Adverse Authority* filed on January 27, 2026.

The People deeply regret the submission of filings with inaccurate information and citations, and deeply regret any reliance this Court placed on those filings. The People furthermore regret that opposing counsel expended time and effort to identify and correct these inaccuracies, and we regret the consumption of judicial resources that has resulted from this corrective process. We are fully committed to upholding the highest legal and ethical standards in all aspects of our work, and through

internal corrective action, will work to diligently ensure that our actions reflect the integrity, professionalism, and responsibility that the public and this Court expect.

The People respectfully submit that no further action is needed by this Court, other than to proceed to the merits of the matter. There has been no showing of prejudice to the Defendant that would warrant dismissal of the matter, and the remedial and deterrent purposes of sanctions have already been achieved.

Date: March 20, 2026

JESSE WILSON
District Attorney

By:

Lydia Stuart
Assistant District Attorney

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