Attorneys for Petitioner SAMUEL A. PERRONI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

SAMUEL A. PERRONI,	Case No. BS 159430
Petitioner) (Assigned for All Purposes to the
) Honorable James C. Chalfant, Dept. 85)
VS.) PETITIONER'S MEMORANDUM
vs.	
	BRIEF IN SUPPORT OF HIS
	MOTION FOR ENFORCEMENT OF
MARK A. FAJARDO,) THIS COURT'S PRIOR ORDER OR,
M.D., IN HIS OFFICIAL) IN THE ALTERNATIVE, FOR
CAPACITY AS CHIEF MEDICAL) ENFORCEMENT OF THIS COURT'S
EXAMINER-CORONER; LOS) FINAL JUDGMENT
ANGELES COUNTY	
DEPARTMENT OF MEDICAL) HEARING DATE/TIME:
EXAMINER-CORONER; JIM) , 2020 AT P.M.
MCDONNELL, IN HIS OFFICIAL)
CAPACITY AS SHERIFF; AND	DEPARTMENT NO. 85
THE COUNTY OF LOS ANGELES)	
SHERIFF'S DEPARTMENT	HEARING JUDGE CHALFANT
Respondents.)
r	
)

Petitioner initiated this action against the Respondents in 2015 pursuant to the California Public Records Act ("CPRA"), seeking from the Los Angeles County Sheriff's Department ("LACSD") and Medical Examiner's Office various records relating to the death of actress Natalie Wagner a/k/a Natalie Wood. Petitioner – through both orders of this Court and settlement – prevailed in this action, receiving some records that Respondents had failed to produce in response to CPRA requests. Petitioner now files the instant motion to enforce this Court's prior order regarding one subset of requested records: the LACSD's 1981 file that had been disclosed to members of the public and, in particular, author Suzanne Finstad. This Court has ruled that, because of CPRA waiver law, whatever portions of the LACSD file that Ms. Finstad (or any other author or member of the public) had been given, the same records must be produced to Petitioner. As a result, the LACSD produced to Petitioner certain, discrete portions of its file regarding Ms. Wood, but not the entire file.

Earlier this year, however, Ms. Finstad published a book claiming that, in 2000, she had been given access to the *entire* 1981 LACSD file, what she referred to as the LACSD's "murder book." Petitioner now moves that the LACSD be directed to comply with this Court's prior ruling and produce to Petitioner the entire LACSD file – or murder book – that had been given to Ms. Finstad.

I. BACKGROUND

A. THIS COURT RULED THAT, IF MS. FINSTAD HAD BEEN GIVEN ACCESS TO THE ENTIRE LACSD FILE, THE ENTIRE FILE IS DISCLOSABLE TO PETITIONER UNDER CPRA WAIVER LAW.

Petitioner has consistently maintained that the LACSD waived its right to refuse disclosure of any portions of its file regarding the death of Ms. Wood that has been disclosed to Ms. Finstad or disclosed to any other member of the public. At the September 2016 hearing in this action, this Court agreed with Petitioner's waiver argument, ruling that whatever portions of the file a member of the public was given, Petitioner is entitled to the production of the same. Specifically, if a member of the public had been given access to the "whole" file, then whole file should be produced to Petitioner:

COURT: However, 60 - -- now we get to 6254.5, which provides that whenever a local agency discloses a public record which is otherwise exempt to any member of the public, this disclosure is waived. And that codifies the court of appeal

	decision in Black Panther Party versus Kehoe, K-E-H-O-E, which stated that the CPRA does not permit selective disclosure, that is, disclosure to one person, or member of the public, and not to all.
PETITIONER:	I understand, Judge. But here's the state of the record. The state of the record is that in 2000 and 2001 they allowed two authors to rummage through those files.
COURT:	Did they?
PETITIONER:	Okay.
COURT:	Did they? I'm not aware that the authors were given the files to rummage through. I am aware that they were given documents from the file.
PETITIONER:	No. They were given access to the file.
COURT:	If they [authors Ms. Finstad and Sam Kashner] were given the file to look through, the whole file is disclosable.

Sept. 27, 2016, Hearing, at 5:4-11, 34:13-25 (emphasis added). At the trial, Petitioner emphasized – and the Court agreed – that Petitioner did not have to prove waiver by direct evidence and that waiver may be proven by circumstantial evidence. *Id.* at 25:4-8.

On November 10, 2016, this Court entered its earlier, tentative decision on the various issues presented by this action, including the waiver ruling. This Court wrote that "Section 6254.5 provides that "whenever...a local agency discloses a public record which is otherwise exempt [under the CPRA] to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254, 6254.7, or other similar provisions of law." Tentative Decision at p. 11. That is because, "disclosure by an agency to one member of the public requires disclosure to all." *Id.* (citing *Black Panther Party v. Kehoe*, 42 Cal. App.3d 645 (1974); *Ardon v. City of Los Angeles*, 62 Cal.4th 1176, 1185 (2016)).

B. LACSD TOOK THE POSITION THAT IT HAD ONLY PROVIDED TO MS. FINSTAD AND MR. KASHNER PORTIONS OF THE 1981 FILE.

The LACSD asserted that it had only provided to Ms. Finstad and Mr. Kashner with

"access to portions of the 1981 files" but not the entire file itself. On this basis, the LACSD

produced to Petitioner only specifically identified portions of its records. The LACSD based its

production on the declaration of Deputy Sheriff Ralph Hernandez. See Ralph Hernandez

Declaration (July 15, 2016) ¶¶ 6-7. Specifically, Deputy Hernandez testified:

6. I have determined that access to portions of the 1981 files have been provided to persons, including Suzanne Finstad and Sam Kashner. These individuals were provided access to portions of the 1981 file in the years between the Sheriff's Department closing of its investigation into the Natalie Wood (Wagner) death in 1981 and its reopening of its investigation.

7. I was able to determine that the persons who were provided access to the Sheriff's Department's 1981 files were provided access to the following items: the first complaint report from the 1981 investigation by the Sheriff's Department (Officer Kroll); the supplementary report from the 1981 investigation by the Sheriff's Department (Office Rasure¹); photographs of the Splendour without photographs of Natalie Wood (Wagner) remains; telephone messages; and Investigator's notebooks. From the 1981 file, no access to autopsy photographs, [or] photographs of Wood's remains . . . was ever provided to anyone in the general public by the Los Angeles County Sheriff's Department.

Id. These same "portions" of the 1981 file were all that the LACSD produced to Petitioner.

C. THE LACSD'S POSITION ON WHAT IT PROVIDED TO MS. FINSTAD WAS BASED SOLELY ON WHAT DETECTIVE HERNANDEZ RECALLED MS. FINSTAD TELLING HIM.

After Deputy Hernandez gave his declaration, he was deposed by Petitioner. Deputy

Hernandez conceded in his deposition testimony that he was only able to testify as to what Ms.

Finstad received because he was simply recalling a conversation that he had with her, a

conversation that he could not remember "exactly":

Q: Relating to paragraph 6, how do you know exactly what Suzanne Finstad and Sam Kashner were given access to the 1981 files for Natalie Wood Wagner?

¹ LACSD Detective Duane Rasure

A: Because I asked Suzanne Finstad and she told me that she had been given this access and she told me that Sam Kashner had also been given access to portions of the file.

. . .

Q: So the answer to that question is you talked to Suzanne Finstad and she told you that she and Sam Kashner had been given access?

A: Correct.

. . .

Q: Now, my next question is: How do you know exactly what documents that Ms. Finstad and Mr. Kashner had access to as stated in paragraph 7 of your declaration?

. . .

A: I can only go off of what Ms. Finstad told me.

Q: Well, why don't you just tell us what Ms. Finstad told you?

. . .

A: Well, she said that she was given access to the first report; Rasure's supplemental report; the notebooks; and the photos of the Splendour.

Q: You have testified that she also said that Sam Kashner was given access to these files, to this file, the 1981 file?

A: Correct.

Q: Now, how do you know what Sam Kashner saw in this file?

A: Well, I don't know and I don't recall – I don't recall what Suzanne told me exactly. It has been a while and it has been a while since I filled this out. I believe it is based on my conversation with her, but I don't know for a fact because I never spoke to Sam Kashner about this.

•••

Q: Did you mean to state under oath in paragraph 7 of that declaration that the items referred to in that paragraph are the only things that Suzanne Finstad was given access to?

A: They are the only things that she said she was given access to.

• • •

Q: Now, let's talk about this word "access." Tell me what you mean by "access" in your declaration. You said that you determined that persons, including Suzanne Finstad and Sam Kashner, were given access and that you determined what they were given access to, and you have told us how you determined what Suzanne Finstad was given access to. So now I want to know, what is your definition of "access"?

A: From what Finstad told me, they were allowed to look at the reports and look at all of this stuff. So, to me, that is access.

Q: Okay. So what you are telling me is that when you executed this declaration and said "access," you did so because Suzanne Finstad said that she was allowed to look at things; right?

A: Correct.

Q: In the file?

A: Look at things from the file.

Hernandez Deposition (Nov. 8, 2016) at 7:19-13:18.

Importantly, Deputy Hernandez acknowledged in his deposition that the LACSD had no

way of knowing exactly what it had given to Ms. Finstad, beyond Deputy Hernandez's apparent

recollection of her statements to him.

Q: Are there any documents in the file that support any of this?

•••

A: No.

Id. at 9:21-25. Thus, the LACSD's entire position regarding what it was to produce in response to Petitioner's CPRA request and this Court's waiver ruling was based only on what Deputy Hernandez recalls Ms. Finstad telling him. It was not based on any records maintained by the LACSD or any firsthand knowledge of anyone in the department. This Court concluded that

there was "no credible evidence as to what precisely" Ms. Finstad and Mr. Kashner "received" beyond what Deputy Hernandez testified to. Tentative Decision at p. 11.

II. MS. FINSTAD NOW CONFIRMS THAT THE LACSD PROVIDED HER WITH ACCESS TO THE ENTIRE 1981 FILE (A/K/A THE "MURDER BOOK") REGARDING MS. WOOD'S DEATH.

A. IN MARCH 2020, MS. FINSTAD RE-PUBLISHED HER 2001 BOOK WITH A NEW SECTION REGARDING WHAT RECORDS SHE RECEIVED FROM THE LACSD IN 2000.

We now have written clarification directly from Ms. Finstad regarding what records she received from the LACSD. In March 2020, Ms. Finstad republished her book *Natasha* under the new title *Natalie Wood: The Complete Biography*. The republished book includes 36 new pages detailing exactly what the LACSD gave to her (and to her mother) in November 2000, before the book *Natasha* was published in June 2001. Ms. Finstad wrote that she received "access" to the entire "murder book" regarding Ms. Wood's death, which she described as containing "all the evidence":

Homicide detectives in the L.A. Sheriff's Department keep what they call a "murder book," the official record of a homicide investigation. I was given access to Natalie Wood's murder book. There I found the buried clues as to what really happened on the last weekend of her life...

Of all Natalie Wood's secrets that I held in 2001, *that* secret was the reason for my urgency: I had come to realize the unimaginably horrible reason that she had drowned, and I needed to make public the dark and twisted facts of her drowning and its aftermath. I had uncovered the facts using the Sheriff's murder book....

At some point in our conversation, [Detective] Rasure mentioned the possible existence of a **murder book**, <u>the file of all the evidence in a homicide</u> <u>investigation</u>, including a summary of the case, all interviews, investigative reports, field and lab reports, photographs, and printouts. I needed to see Natalie Wood's murder book.

On a tip from the genial Rasure, I dropped his name to an LAPD detective, Louis Danoff, with the nickname "Sweet Lou," and persuaded him to let me see the murder book for the Wood investigation, which did, in fact, exist. Within a week, I met Sweet Lou at a Sheriff's Department office on the outskirts of downtown. My mother, who was in Los Angeles for Thanksgiving, came along, a camera tucked into her purse.

Sweet Lou escorted both of us to a small spare room. Inside were a long table and several chairs. I set up my laptop on the table and **Sweet Lou returned with one or two boxes he identified as Natalie Wood's murder book**. Then he left the room and closed the door.

Uncertain how long I would have, what I was permitted to see, or whether I could document it, I began to enter the contents of the murder book into my laptop as quickly as I could type. I asked my mother to take photographs. We both kept an eye on the door, anxious that Sweet Lou might return with restrictions. Neither of us said anything. We both got the sense that we were looking at something that was not meant to be seen.

Suzanne Finstad, Natalie Wood: The Complete Biography, at pp. 452, 458-59 (italicized

emphasis in original; bolded and underlined emphasis added).

Ms. Finstad thus explains that Detective Danoff of the LACSD provided to her (and her mother) "access" to the entire "murder book" regarding Ms. Wood's death, consisting of one or two "boxes" of records. What is contained in the murder book? Ms. Finstad wrote that it contained "**the file of all the evidence** in a homicide investigation, including a summary of the case, all interviews, investigative reports, field and lab reports, photographs, and printouts." *Id.* (emphasis added).

B. DETECTIVE DANOFF CONFIRMED TO PETITIONER WHAT IS CONTAINED IN A MURDER BOOK.

Upon reading Ms. Finstad's new book pages, Petitioner knew that the LACSD had not fully complied with this Court's ruling that he was entitled to receive anything that Ms. Finstad had received. To further clarify Ms. Finstad's description of the murder book, Petitioner communicated in writing with the person that Ms. Finstad claimed gave her access to the "murder book," Detective Danoff. Petitioner and Detective Danoff e-mailed with one another. Detective Danoff explained that he had worked for the LACSD from 1966 through 2007 and is now retired. *See* Danoff E-Mail (Apr. 18, 2020). Detective Danoff "was part of a two man team that set up the first Homicide Library to house all of the case files generated by Homicide Bureau." *Id.* "This system was operational and served the Bureau through 2002, when a new automated library system was activated." *Id.*

This library that Detective Danoff had set up in 1981 contained the department's murder books. *See id.* Detective Danoff explained that the LACSD "Homicide Bureau handles all death investigations: Murder, Suicides, Suspicious Circumstance, Work Place, and Accidental Deaths." *Id.* Thus, the parlance *murder book* notwithstanding, not every murder book dealt with an actual murder. Detective Danoff explained:

The "Murder Book" was originally called a "Blue Book" due to the blue cover that is used to contain the information. In the late 70's, 80's and 90's the LA County Homicide rate exploded and we started to call any investigation that was booked for presentation a "Murder Book", out of convenience. Yes, you are right, there are a lot of investigations that are not "murders", but if we book it, it is still called a murder book or "Shooting Book["] for Officer Involved incidents, even if they do not involve a gun.

Id. As a result of these procedures, the LACSD had accumulated the records regarding Ms. Wood's death into a murder book. Indeed, any such death was "supposed to be 'booked' with reports that detail the investigation to the point where the investigation is handled to conclusion or to the last point wherein it was actively investigated," according to Detective Danoff. *Id.*

Consistent with Ms. Finstad's written explanation of what is contained in a murder book,

Detective Danoff described a murder book as containing the following items:

- "REPORTS: By the handling Investigators who detail the steps taken in the investigation to support a filing of charges."
- "ATTACHMENTS: All supporting reports related to the investigation, maps, drawings[,] Search Warrants, Transcripts, etc."

- "SUSPECT [I]NFORMATION: Personal information, photo, criminal history,
 booking slip, Filing information and Arrest Warrant if issued."
- "VICTIM INFORMATION: "Personal information, photo."
- "CORONER'S REPORT: The packet of reports and drawings provided by the person handling the autopsy."
- "There is a lot of other information collected during an investigation that is pertinent to the prosecution and Discoverable by the Defense during a trial. These include, but are not limited to: The investigator note books, crime scene photos, autopsy photos, subjects developed during the investigation but eliminated, clues called in and work to a negative conclusion, etc."
- "These items are house (sic??) in a manilla folder, boxes, or file cabinets, depending on the scope of the investigation."

Id. These contents could certainly fill a box or boxes, as Ms. Finstad wrote.

C. AUTOPSY PHOTOS ARE CONTAINED IN MS. WOOD'S MURDER BOOK.

Deputy Hernandez made a point to testify to this Court that, "[f]rom the 1981 file, no access to autopsy photographs" or "photographs of Wood's remains" were given to the public. *See* Hernandez Declaration (July 15, 2016) ¶¶ 6-7. In other words, Deputy Hernandez makes clear that autopsy photographs exist and are actually contained in Ms. Wood's murder book, as Detective Danoff wrote they would be.² Deputy Hernandez's sworn testimony is consistent with Ms. Finstad's and Detective Danoff's independent descriptions of what all is contained in a murder book.

² This Court has reviewed the file pertaining to Ms. Wood *in camera* and knows its contents.

Ms. Finstad confirms the existence of autopsy photos in the possession of the LACSD in another new passage in her republished book. She wrote that a person named Vidal Herrera took photographs of Ms. Wood's body for the coroner and that these photographs were later reviewed by Deputy Hernandez. Finstad, *Natalie Wood: The Complete Biography*, at p. 481. The autopsy photos are part of the murder book that the LACSD gave access to Ms. Finstad.

Moreover, it is evident from other written accounts of Ms. Wood's death that photographs of Ms. Wood's remains exist and are part of the 1981 LACSD file. Detective Rasure's 22-page official report confirms he attended the autopsy and thereafter stated, "During the entire examination from beginning to end, numerous color photographs were taken of all abrasions, contusions and concerned vital organs by the Medical Examiner/ Coroner's photographer. These photographs will also be obtained and made a part of this file." See page 13, paragraph 4.

In 2009, Marti Rulli and Dennis Davern published a book titled *Goodbye Natalie*, *Goodbye Splendour*.³ In their account, they wrote that Detective Rasure of the LACSD showed a photograph of Ms. Wood's remains to a person named Josh Paris, at the time a producer with *Inside Edition. See* Martin Rulli & Dennis Davern, *Goodbye Natalie, Goodbye Splendour*, at p. 261. Again, this is consistent with the indications that such photos are contained in the LACSD's murder book regarding Ms. Wood's death that were selectively disclosed.

D. MS. FINSTAD IDENTIFIED OTHER RECORDS THAT SHE RECEIVED FROM LACSD THAT WERE NOT PRODUCED TO PETITIONER.

Beyond Ms. Finstad's new passages about receiving access to the entire murder book in November 2000, other portions of her book identify specific records she received from the

³ Mr. Davern captained the boat, *The Splendour*, on the night of Ms. Wood's death.

LACSD that have not been provided to Petitioner. First, Ms. Finstad wrote that the LACSD provided to her a phone message from Marilyn Wayne. Finstad, *Natalie Wood: The Complete Biography*, at p. 462. This record was not produced to Petitioner. Second, Ms. Finstad wrote that she received a copy of a statement from Vidal Herrera to the LACSD. *See id.* at pp. 481, 554. This record was not produced to Petitioner, either. It is clear that, beyond the entire murder book itself, Ms. Finstad identifies specific records that were selectively disclosed to her from the LACSD's murder book that Petitioner did not receive.

III. ARGUMENT

A. THIS COURT SHOULD ENFORCE ITS EARLIER RULING.

This Court has already ruled that, if Ms. Finstad was "given the file to look through, the whole file is discoverable" and should be produced to Petitioner. Sept. 27, 2016, Hearing, at 34:13-25. Ms. Finstad, by her own account and not the secondhand account from Deputy Hernandez, was given access to a box or boxes consisting of the murder book. She and her mother were left alone to peruse and photograph the contents of the box or boxes that held the murder book at their liesure. Thus, Ms. Finstad was given access to many more records than that identified by Deputy Hernandez. Moreover, Ms. Finstad's republished book identifies two specific records from the LACSD files that she was provided that Petitioner was not provided. Petitioner is not required to demonstrate direct evidence of what was provided to Ms. Finstad, since she obviously took what she wanted in the form of photographs and notes. The circumstantial evidence contained in Ms. Finstad's books passages are inherently more reliable than Deputy Hernandez's recollection of an oral conversation that he had with Ms. Finstad at

some unspecified date. This Court should order LACSD to comply with this Court's prior waiver ruling.

A final judgment has not been entered in this action. *See Perroni v. Fajardo*, 2017 WL 6350527, No. B281167, at *6 (Cal. Ct. App. Dec. 13, 2017) (unpublished) ("We conclude that the discovery orders are not reviewable here. . . . An order granting or denying a CPRA petition is reviewable only by extraordinary writ. (§ 5259, subd. (c).) It cannot serve as a final judgment under Code of Civil Procedure section 904.1, subdivision (a)(1)."). Because no final judgment has been entered, this Court may order enforcement of its waiver ruling and entry of a final judgment.

B. WHETHER A FINAL JUDGMENT HAS BEEN ENTERED OR NOT, THIS COURT HAS THE POWER TO ENFORCE ITS EARLIER RULING.

Counsel for Petitioner reached out to counsel for Respondents in an effort to have the murder book regarding Ms. Wood produced without judicial intervention, offering for the counsel to work together regarding the submission of a proposed, agreed final judgment. *See* Letter. Respondents refused to produce any new documents and asserted that a final judgment has already been entered. *See* Letter. Whether a final judgment has been entered is immaterial for purposes of Petitioner's motion. This Court has the statutory power to enforce both its judgments and orders. *See* Cal. Code §§ 128(a)(4) ("Every court shall have the power to . . . compel obedience to its judgments, orders, and process. . . .") ; 680.010 - 724.260. Beyond statutory authority, this Court always has the inherent power to enforce both its own judgments and its own orders. *See Security Trust & Sav. Bank v. Southern Pac. R. Co.*, 45 P.2d 268, 270, 6 Cal. App. 2d 585, 588 ("It is a well-established principle of law that a court possesses power to enforce its judgments."); *Machado v. Myers*, 39 Cal. App. 5th 779, 796 n.13, 252 Cal. Rptr. 3d 493, 506 n.13 (2019) ("Trial courts have the inherent authority to enforce their rulings.") (noting

further that "non-monetary judgments are enforceable by invoking the trial court's contempt powers").

IV. CONCLUSION

This Court should grant Petitioner's motion for enforcement of this Court's prior order or, in the alternative, for enforcement of this Court's final judgment. This Court should compel the LACSD to produce the entire murder book and any other records regarding Ms. Wood's death that the LACSD disclosed to Ms. Finstad.

Dated: June ____, 2020

[INSERT LLEWLLYN SIGNATURE BLOCK]

PROOF OF SERVICE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On June _____, 2020, I served the foregoing document on the interested parties in this action by placing [X] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

Daniel P. Barer	Anna L. Birenbaum
Pollak, Vida & Fisher	Pollak, Vida & Fisher
11150 W. Olympic Blvd, Suite 980	11150 W. Olympic Blvd, Suite 980
Los Angeles, CA 90064-1839	Los Angeles, CA 90064-1839

[X] (**BY MAIL**) I deposited such envelopes in the mail at Little Rock, Arkansas. The envelope was mailed with postage thereon fully prepaid, as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Little Rock, Arkansas in the ordinary course of business.

[] (**BY PERSONAL SERVICE**) I delivered such envelope by hand to the offices of the addresses above.

[] (**BY FEDERAL EXPRESS**) I caused said envelope to be sent by Federal Express to the addressee(s) identified.

[X] (**BY EMAIL**) With the permission of the above-identified addressees, I transmitted the attached document via the email addresses provided.

[] (**BY FACSIMILE**) At the time indicated on the transmission report from fax phone number ______, the facsimile machine I used complied with Rule 2003(3) and the transmission was reported as complete and without error. Pursuant to Rule 2008(e)(4), the attached transmission report was properly issued by the transmitting facsimile machine.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June _____, 2020, at ______.

[INSERT LLEWELLYN]