

(SPACE BELOW FOR FILING STAMP ONLY)

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff

versus

CYNTHIA SOMMER,

Defendant

CASE NO. SCD195202
DA NO.

NOTICE OF AND REQUEST FOR
DISCOVERY

DATE: January 30, 2009

TIME: 9:00 a.m.

DEPT: Superior 58

Judge: Hon. JOHN EINHORN

TO THE DISTRICT ATTORNEY OF THE COUNTY OF SAN DIEGO, please take notice that on the above date and time, the defendant will move to the court to issue an order the prosecution is provide the following:

- ALL DOCUMENTS AND NOTES GENERATED BY ANY INDIVIDUAL OR LABORATORY WHO TESTED ANY TISSUES OR CONDUCTED ANY EXPERT EVALUATION OF OR WERE CONSULTED REGARDING ANY EVIDENCE IN THIS CASE AFTER THE TRIAL:** All notes, in any form in any media, including but not limited to all computerized recordations, timelog notations, emails, and raw data of the evaluation and analysis performed by any person or agency that your office asked to evaluate any or all of the paraffin tissues of Sgt. Sommers since the completion of the trial of Ms. Sommer's case in January, 2007, including but not limited to all such materials from Dr. Jean-Phillipe Weber, Dr. Kosnett, CTQ Laboratory

and their employees or agents, and Alain LeBlanc. This includes copies of all materials that any of the above persons received from the District Attorneys Office, NCIS, or any law enforcement agency in the furtherance of their evaluation of any evidence in this case.

1. **ALL DOCUMENTS AND NOTES GENERATED BY OR IN THE POSSESSION OF THE D.A.'S OFFICE, NCIS, OR ANY PROSECUTORIAL AGENCY REGARDING ANY TESTING, EVALUATION, OR CONSULTATION OF ANY EVIDENCE IN THIS CASE BOTH BEFORE AND AFTER THE TRIAL:** All notes, in any form, including all computerized recordations and all time log notations and all communications, including records of phone calls, copies of emails, computerized recordations, between any member or agent of the plaintiff in this case, including the D.A., including all notes and timelog entries by any attorney in the District Attorney's office, including, but not limited to Bonnie Dumanis and Laura Gunn, NCIS, the San Diego County Coroner's Office, and all persons, including experts regarding any evidence in this case, including arsenic results in this case, including but not limited to communications between the DA office, any NCIS representative and Drs. Alphonse Poklis, Lee Cantrell, Robert Fitzgerald, Laura Labay, and any person affiliated with NMS, Dr. Centeno, Dr. Tudor Tudorov, Jerry Spencer, any person affiliated with the Armed Forces Institute of Pathology, Dr. Glen Wagner, Dr. Stanley Adams, any person affiliated with Balboa Naval Hospital, Dr. Steven Robinson, Lynn Flagherty, NMS, Cardiologist, Dr. Allen Burke from February, 2002 to the present.

1. **ALL FINANCIAL RECORDS REGARDING ANY PAYMENT FOR SERVICES BY ANY LAW ENFORCEMENT AGENCY, INCLUDING THE DISTRICT ATTORNEY'S OFFICE, AND ANYONE CONSULTED REGARDING AN EVALUATION OF OR TESTING FOR THE PRESENCE OF ARSENIC IN THIS**

CASE: All financial records, including letters of engagements, contracts of engagement, statements or bills for services, records of payments, including canceled checks, of all financial arrangements between the D.A.'s office, their agents, and any member of the plaintiff investigating team including NCIS and anyone consulted regarding the arsenical findings in the above case, including, but not limited to Drs. Alphonse Poklis, Lee Cantrell, Robert Fitzgerald, Laura Labay, and any person affiliated with NMS, Dr. Jose Centeno, Dr. Tudor Tudorov and person affiliated with the AFIP, Dr. GlenWagner, Dr. Kosnett, Dr. and any member of the CTQ lab.

1. **ALL D.A. OFFICE COMMUNICATIONS BETWEEN DISTRICT ATTORNEY BONNIE DUMANIS AND/OR DEPUTY DISTRICT ATTORNEY LAURA GUNN AND ANY OTHER MEMBERS OF THE D.A.'S OFFICE, INCLUDING D.A. COMMUNICATIONS / PUBLIC RELATIONS PERSONNEL, REGARDING LAW ENFORCEMENT'S KNOWLEDGE OF THE EXISTENCE OF THE EXONERATING TISSUES IN THIS CASE, INCLUDING ANY COMMUNICATION REGARDING MS. DUMANIS' INITIAL STATEMENT THAT "THE DISTRICT ATTORNEY'S OFFICE NEVER KNEW OF THE EXONERATING TISSUES PRIOR TO MARCH 20, 2008" AND HER SUBSEQUENT STATEMENT RETRACTING HER PRIOR STATEMENT WHEREIN SHE STATED THAT SHE "MISPOKE WHEN SHE SAID THAT THE D.A.'S OFFICE DID NOT KNOW ABOUT THESE TISSUES"**“ Copies of all records, including but not limited to all email, hard copies, phone notes, computerized records of all *intra*-office communications between any member of the District Attorney's Office of the county of San Diego, including but not limited to District Attorney Bonnie Dumanis, Deputy District Attorney Laura Gunn, any member of the Public Relations or communications division of the District Attorney's Office, regarding the Sommer case from the time of the jury's verdict in the case (January, 2007) and the present, including,

but not limited to, any record of any communication between any member of the District Attorney's Office as to whether Bonnie Dumanis and/or Laurie Gunn "mis-spoke" regarding their March, 2008 statement regarding their knowledge of the existence of the paraffin tissues tested in the above case

2. **ALL D.A. RECORDS REGARDING THEIR KNOWLEDGE OF ALL AUTOPSY TISSUES OF SGT. SOMMER INCLUDING THE EXONERATING PARAFFIN TISSUES FROM 2002 TO THE PRESENT:** All notes, in any form, of all communications, including, but not limited to emails (whether on the D.A.'s email server or any agency of the County of San Diego), hard copies, record of phone conversations, time logs, etc., reflecting the knowledge of any member of the plaintiff or their agents, including but not limited to District Attorney Bonnie Dumanis, Deputy District Attorney Laura Gunn, and any member of the NCIS, as to the existence and availability of all tissues taken from the autopsy of Sgt Sommer, including the contents of the box wherein the paraffin tissue samples were preserved and which were ultimately tested and determined to not have any arsenic therein, including all tissues listed on the autopsy report in this case, as well as discovery page 1169.

1. **ALL RECORDS OF ANY COMMUNICATION BETWEEN THE D.A. AND THE DEFENSE REGARDING AUTOPSY TISSUES:** All notes, in any form, of all communications, including, but not limited to emails, hard copies, cords of phone conversations, time logs entries, etc., from the plaintiff or their agents, including but not limited to Deputy District Attorney Laura Gunn, regarding the availability and/or existence of the paraffin tissue samples taken by Dr. Robinson at the autopsy of Sgt. Todd Sommer and listed on the autopsy report prepared by Dr. Robinson, and stored at Balboa Hospital as noted on discovery pages 1169 and any member of the defense team for the defendant, including but not limited to Mr. Robert Udell, his investigator Venus OLEYOURRYK, and Mr. Allen Bloom.

- 1. ALL DOCUMENTS AND NOTES GENERATED BY ANY INDIVIDUAL ON THE PROSECUTION TEAM including but not limited to DDA Laura Gunn, any D.A. Investigator, or any NCIS Investigator indicating that witness Mitchell Sommer, decedent's father, received any death benefits relating to the death of Todd Sommer.**

This motion will be based on this Notice, the attached Points and Authorities, and any further evidence adduced at the hearing.

DATED: January 20, 2009 _____

Allen Bloom
Attorney for Defendant