

1 GIRARDI | KEESE
Thomas V. Girardi, Bar No. 36603
2 Robert W. Finnerty, Bar No. 119775
1126 Wilshire Boulevard
3 Los Angeles, CA 90071
Telephone: (213) 977-0211
4 Facsimile: (213) 481-1554

5 **Attorneys for Plaintiffs**

6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10
11 KIMBERLY ARCHIE, as survivor of
decedent Paul Bright Jr., JO
12 CORNELL, as survivor of decedent
Tyler Cornell, on behalf of themselves
13 and all others similarly situated

14 Plaintiffs,

15 v.

16 POP WARNER LITTLE SCHOLARS,
17 INC., a nonprofit corporation;
and DOES 1-100

18 Defendants.
19

Case No. 2:16-cv-06603-PSG-PLA

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
QUASH SUBPOENAED
RECORDS FROM WEST
COVINA POLICE
DEPARTMENT;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF;
DECLARATION OF ROBERT W.
FINNERTY**

The Hon. Judge Phillip S. Gutierrez

Date: August 20, 2018
Time: 1:30 P.M.
Crtm: 6A

Action Filed: September 1, 2016

26 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

27 **PLEASE TAKE NOTICE** that on August 20, 2018 at 1:30 P.M., or as soon
28 thereafter as the matter may be heard, in Courtroom 6A of the above-captioned

1 court, located at 350 West 1st Street, Los Angeles, California 90012, PLAINTIFFS
2 will and hereby does move for an Order quashing the records in the Subpoena
3 issued by DEFENDANT POP WARNER LITTLE SCHOLARS, INC. requested
4 on June 21, 2018, and served upon CUSTODIAN OF RECORDS FOR WEST
5 COVINA POLICE DEPARTMENT.

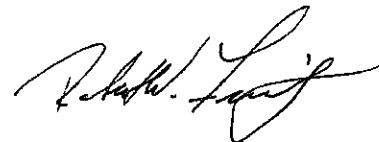
6 This motion will be made pursuant to Federal Rules of Civil Procedure Rule
7 45 on the grounds that Defendant Pop Warner Little Scholars, Inc. ("POP
8 WARNER") Subpoena upon the above named location is an unreasonable,
9 irrelevant and oppressive demand and, further, is an unreasonable violation of
10 plaintiff's right of privacy.

11 Said motion will be based upon this notice, the Memorandum of Points and
12 Authorities, and Declaration of Robert W. Finnerty, attached hereto, the documents
13 on file herein, and upon such other oral and documentary evidence as may be
14 presented at the time of the hearing on this matter.

15
16 DATED: July 5, 2018

GIRARDI | KEESE

17
18
19 By:



20 ROBERT W. FINNERTY
21 Attorneys for Plaintiffs
22
23
24
25
26
27
28

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
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Defendant POP WARNER subpoenaed records of Plaintiff Tyler Winston Cornell, decedent, from WEST COVINA POLICE DEPARTMENT ("WEST COVINA"). The Subpoena requests documents that far exceeds permissible discovery. Defendant POP WARNER has requested "[a]ny and all documents pertaining to a suicide that occurred on 4/3/2014 at 1228 S. Montezuma Way, West Covina, CA 91791, involving Decedent, TYLER WINSTON CORNELL (DOB: 02/18/1989); ... including but not limited to witness statements, investigative reports, color photographs or digital photographs, ... written and recorded interviews, case disposition, and supplemental reports." Clearly this overbroad request for WEST COVINA records exceeds permissible discovery and invades Plaintiff's right to privacy. As the records pertain to a suicide, there would be highly graphic photographs of the decedent that are irrelevant and invasive of Plaintiff's right to privacy. Records from WEST COVINA surrounding the tragic passing of Plaintiff's deceased child are irrelevant to this action and have no bearing on this CTE case.

It is well established in California that a motion to quash is the procedurally appropriate method of testing the validity of a subpoena. (People v. Younger (1970) 5 Cal.App.3d 575.) Further, as set forth in Code of Civil Procedure § 1987.1:

"When a subpoena requires the . . . production of books, documents or other things. . . at the taking of a deposition, the court, upon motion reasonably made by the party, or any other consumer, . . . may make an Order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare. In addition, the court may make any other order as may be appropriate to protect the parties, the witness, or the consumer from unreasonable or oppressive demands including

1 unreasonable violations of a witness's or consumer's
2 right of privacy."

3 **II. THE SUBPOENA IS OVERLY BROAD AND NOT LIMITED IN**
4 **SCOPE TO THE ACTION AT HAND**

5 Moreover, the Subpoena is wholly overbroad and seeks records not related
6 to the injuries and damages sustained by Plaintiff in connection with this action.
7 Defendant POP WARNER'S Subpoena for records from WEST COVINA
8 attempts to obtain all documents which include records that are highly irrelevant to
9 Plaintiff's CTE, and brain injuries alleged in this action. Such a disclosure of these
10 records would be an invasion of Plaintiff's constitutional right to privacy. (Cal.
11 Const. Art. 1 §1.) Defendant POP WARNER has shown no reason as to why this
12 serious invasion of Plaintiff's privacy is warranted. (*Snibbe v. The Superior Court*
13 (2014) 224 Cal.App.4th 184.) Furthermore, in *Snibbe* the court indicated that "[i]f
14 the invasion of privacy is serious, then the court must balance the privacy interest
15 at stake amongst other competing interests..." (*Ibid.*) Defendant POP WARNER
16 seeks records which constitute a serious invasion of Plaintiff's privacy and records
17 which bear no weight on Plaintiff's case but rather invade her constitutional right
18 to privacy.

19 As cited in *Jennifer Hill, et al. v. National Collegiate Athletic Association,*
20 *et al.* (1994) 7 Cal.4th 1 [7 Cal.4th 1, 865 P.2d 633, 26 Cal.Rptr.2d 834, 62] and
21 discussed in *Pioneer Electronics (USA), Inc. v. Superior Court of Los Angeles*
22 *County* (2007) 40 Cal.4th 360 [53 Cal.Rptr.3d 513], the court noted that "making
23 intimate personal decisions... should be made "without observation, intrusion, or
24 interference." In this instance, Plaintiff's records from WEST COVINA relating to
25 her son's tragic passing contains intimate personal information that a reasonable
26 person would not want to share with others, and includes information that should
27 be "without observation, intrusion, or interference" from the general public and
28 others. (*Ibid.*) This Subpoena, if allowed, will harass and demean Plaintiff as

1 others will review intimate personal information that should remain private.
2 Furthermore, as cited in *Hill* and discussed in *Pioneer*, the court stated "[a]
3 'reasonable' expectation of privacy is an objective entitlement founded on broadly
4 based and widely accepted community norms." (*Hill v. National Collegiate*
5 *Athletic Association, supra*, 7 Cal.4th 1 at p.37; *Pioneer v. Superior Court of Los*
6 *Angeles County, supra*, 40 Cal.4th 360.) The information subpoenaed by Defendant
7 POP WARNER will not provide a "reasonable expectation of privacy" as intimate
8 information will be released. Plaintiff and any reasonable person would want these
9 records and their privacy protected. It is widely accepted that records irrelevant to
10 the claims at issue are to remain very private and not to be released or discussed
11 among others.

12 Plaintiff understands that the parties may obtain documents which are not
13 privileged, relevant, or reasonably calculated to lead to the discovery of admissible
14 evidence, Defendant POP WARNER's Subpoena of WEST COVINA's records are
15 wholly overbroad as it seeks records irrelevant to this action (Cal C.C.P §
16 2017.010).

17 **III. CONCLUSION**

18 As detailed above, Defendant POP WARNER'S Subpoena of police records
19 is an invasion of Plaintiff's right to privacy and is wholly overbroad in scope as it
20 requests records that are irrelevant to this action. The fact that Plaintiff has filed a
21 lawsuit does not grant Defendants open access to private files which are entirely
22 unrelated to the present action. The subpoena at issue serves no purpose other than
23 to embarrass, harass, and annoy Plaintiff. Such conduct constitutes an abuse of the
24 discovery process and is improper. As the subpoenaed records pertain to a suicide,
25 there would be highly graphic photographs that are irrelevant and highly invasive
26 of Plaintiff's right to privacy.

27 ///

28 ///

1 For all the foregoing reasons, Plaintiff respectfully requests that this court quash,
2 in its entirety, any and all records requested in the Subpoena issued by Defendant
3 POP WARNER LITTLE SCHOLARS, INC. to WEST COVINA POLICE
4 DEPARTMENT.

5 DATED: July 5, 2018

GIRARDI | KEESE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: 

ROBERT W. FINNERTY
Attorneys for Plaintiffs

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
28

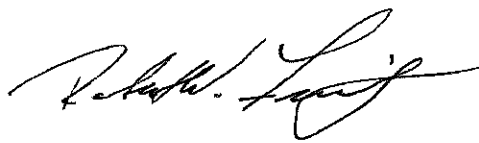
DECLARATION OF ROBERT W. FINNERTY

I, ROBERT W. FINNERTY, declare as follows:

1. I am an attorney at the law firm of Girardi | Keese and one of the attorneys of record herein for Plaintiffs KIMBERLY ARCHIE, as survivor of decedent Paul Bright Jr., JO CORNELL, as survivor of decedent Tyler Cornell, on behalf of themselves and all others similarly situated, in the above-captioned matter. Unless otherwise indicated, I have personal knowledge of the matters stated in this declaration, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of Plaintiff's Notice Of Motion And Motion To Quash Subpoenaed Records From West Covina Police Department.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Subpoena for Custodian of Records for West Covina Police Department.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on this 5th day of July, 2018 in Los Angeles, California.



ROBERT W. FINNERTY

EXHIBIT 1

AO 88 (Rev. 12/07) Subpoena in a Civil Case

W.O. # 49567-0002

**Issued by the
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KIMBERLY ARCHIE, AS SURVIVOR OF DECEDENT PAUL BRIGHT JR., ET AL **SUBPOENA IN A CIVIL CASE**

v.

CASE NUMBER:(1) **2:16-CV-06603-PSG-PLA**

POP WARNER LITTLE SCHOLARS, INC., A NONPROFIT CORPORATION, ET AL

**TO: CUSTODIAN OF RECORDS FOR WEST COVINA POLICE DEPARTMENT
1444 W. GARVEY AVENUE S, WEST COVINA, CA 91790**

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

SEE ATTACHMENT 3, attached hereto.

RECORDS FOR: TYLER WINSTON CORNELL, DECEDENT D.O.B.: 02/18/1989 SSN: UNKNOWN

Continued on Attachment 3.

PLACE JJ Photocopy Services, Inc. 1545 Wilshire Blvd., Suite 300 Los Angeles, CA 90017 Tel.: 213-484-2282 Fax: 213-484-3852 request@jjphotocopy.com	DATE AND TIME 07/13/2018 10:00 AM
---	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) ATTORNEY(S) FOR DEFENDANT(S) <i>Michelle L. Young</i>	DATE June 21, 2018
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Tel: (213) 443-5100	MICHELLE L. YOUNG, ESQ. BAR NO.: 302535 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP 555 S. FLOWER ST., #2900 LOS ANGELES, CA 90071

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

(1) If action is pending in district other than district of issuance, state district under case number

W.O. # 49567-0002

ATTACHMENT 3.

Any and all police reports and documents pertaining to a suicide that occurred on 4/3/2014 at 1228 S. Montezuma Way, West Covina, CA 91791, involving Decedent, TYLER WINSTON CORNELL (DOB: 02/18/1989; SSN: Unknown; Last known Address: 12858 Abra Drive, San Diego, CA 92128) including, but not limited to witness statements, investigative reports, color photographs or digital photographs (costs of photocopying to be reimbursed by subpoenaing party), written and recorded interviews, case disposition, and supplemental reports.

W.O. # 49567-0002

PROOF OF SERVICE
United States District Court
UNITED STATES DISTRICT COURT

I, Hiwot Getaneh declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen (18) years, and not a party to the action(s); and that I am employed in the county of Los Angeles, CA in which county the within mailing occurred. My business is at: 1545 Wilshire Blvd., #300, Los Angeles, Ca 90017

On June 21, 2018, I served the copies of the SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION; ATTACHMENT 3; ENCLOSURE, on all the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

GIRARDI | KEESE
ATTN: ROBERT W. FINNERTY
1126 WILSHIRE BLVD.
LOS ANGELES, CA 90017
REPRESENTING Plaintiff(s) KIMBERLY ARCHIE, AS SURVIVOR OF
DECEDENT PAUL BRIGHT JR., ET AL

BOORNAZIAN, JENSEN & GARTHE
ATTN: ROBERT B. LUECK
555 12TH ST., SUITE 1800
OAKLAND, CA 94607
REPRESENTING DEFENDANT(S) POP WARNER LITTLE SCHOLARS, INC

DENTONS US LLP
ATTN: MICHAEL B. POTERE
601 S. FIGUEROA ST., SUITE 2500
LOS ANGELES, CA 90017
REPRESENTING DEFENDANT(S) NATIONAL OPERATING COMMITTEE ON
STANDARDS FOR ATHLETIC EQUIPMENT (NOCSAE®)

LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
ATTN: DANA A. FOX
633 W. 5TH ST., SUITE 4000
LOS ANGELES, CA 90071
REPRESENTING DEFENDANT(S) POP WARNER LITTLE SCHOLARS, INC

BUCHALTER, A PROFESSIONAL CORPORATION
ATTN: GARY A. WOLENSKY
18400 VON KARMAN AVE., SUITE 800
IRVINE, CA 92612
REPRESENTING USA FOOTBALL

JENNIFER PHELPS, ATTORNEY AT LAW
ATTN: JENNIFER PHELPS
45 N. PENNSYLVANIA STREET, SUITE 700
INDIANAPOLIS, IN 46204
REPRESENTING USA FOOTBALL

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail on June 21, 2018 at Los Angeles, CA. 'I am readily familiar' with the practice of collecting and processing of correspondence for mailing. It is deposited with the United States Postal Service on that day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing contained in the affidavit.

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

Executed on June 21, 2018, at Los Angeles, CA



(Signature)

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
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1126 Wilshire Boulevard, Los Angeles, CA 90017-1904.

On July 5, 2018, I served true copies of the following document(s) described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO QUASH SUBPOENAED RECORDS FROM WEST COVINA POLICE DEPARTMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF ROBERT W. FINNERTY** on the interested parties in this action as follows:

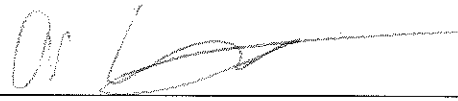
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Girardi | Keese for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

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

Executed on July 5, 2018, at Los Angeles, California.



Alexi Carlton

SERVICE LIST

- 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
- 28

SENT VIA MAIL ONLY:
West Covina Police Department, Custodian of Records
1444 W. Garvey Avenue S
West Covina, CA 91790