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SAN LUIS OBISPO SUPERIOR COURT

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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

14 THE STATE OF CALIFORNIA,

15 Plaintiff,

16 vs.

17 PAUL RUBEN FLORES,

18 Defendant.

Case No. 21F-02402-A

**NOTICE OF MOTION AND
MOTION FOR CHANGE OF
VENUE (PEN. CODE, § 1033);
MEMORANDUM OF POINTS
AND AUTHORITIES;
DECLARATION OF COUNSEL**

Evidentiary Hearing Requested

Date: March 30, 2022

Time: 8:30 a.m.

Dept.: 5

Hon. Craig B. Van Rooyen

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1 TO THE CLERK OF THE ABOVE-ENTITLED COURT, THE
2 DISTRICT ATTORNEY OF THE COUNTY OF SAN LUIS OBISPO, AND
3 DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE:

4 PLEASE TAKE NOTICE THAT Defendant Paul Ruben Flores hereby
5 moves and will move on March 30, 2022 at 8:30 a.m., or as soon thereafter as
6 the matter may be heard, in Department 5 of the above-entitled Court for an
7 order changing the venue of his trial to a county other than San Luis Obispo
8 County, or for such other and further relief as the Court may deem just and
9 proper, on the grounds that there is a reasonable likelihood that a fair and
10 impartial trial cannot be had in San Luis Obispo County pursuant to Penal
11 Code section 1033, subdivision (a) and California Rules of Court 4.150 et seq.,
12 and to protect the defendant's rights to due process, a fair trial, and a fair
13 and impartial jury under the Fifth, Sixth and Fourteenth Amendments to the
14 United States Constitution and article I, sections 7 and 15 of the California
15 Constitution.

16 This motion will be based on this Notice of Motion, the attached
17 Memorandum of Points and Authorities, supporting declarations, such
18 supplemental memoranda of points and authorities as hereafter may be filed
19 with the Court, all pleadings and documents heretofore filed with the Court
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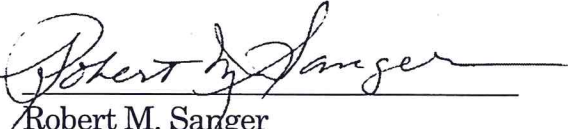
26 ///
27 ///
28 ///

1 and such evidence and argument as may be presented at the hearing on the
2 motion.

3 Dated: March 9, 2022

Respectfully submitted,

4
5 SANGER SWYSEN & DUNKLE
6 Robert M. Sanger
7 Sarah S. Sanger

8
9 By: 
10 Robert M. Sanger
11 Attorneys for Defendant
12 Paul Ruben Flores
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 **I. A MOTION FOR CHANGE OF VENUE MUST BE GRANTED IF**
4 **THERE IS A REASONABLE LIKELIHOOD THAT A FAIR AND**
5 **IMPARTIAL TRIAL CANNOT BE HAD IN THE COUNTY**

6 Under Penal Code section 1033, subdivision (a), change of venue is
7 appropriate if there is a “reasonable likelihood that a fair and impartial trial
8 cannot be had in the county.” A reasonable likelihood “in this context
9 “means something less than ‘more probable than not’” and ‘something more
10 than merely “possible.’” (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1075
11 (*McCurdy*), quoting *People v. Zambrano* (2007) 41 Cal.4th 182, 1124-1125.)

12 The Supreme Court has set forth the following factors to consider: “the
13 nature and gravity of the offense, the nature and extent of the news coverage,
14 the size of the community, the status of the defendant in the community, and
15 the popularity and prominence of the victim.” (*People v. Williams* (1989) 48
16 Cal.3d 1112, 1125 (*Williams*)). All of these factors are present in this case.

17 **II. THERE IS A REASONABLE LIKELIHOOD THAT THE**
18 **DEFENDANT WILL NOT RECEIVE A FAIR AND IMPARTIAL**
19 **TRIAL IN SAN LUIS OBISPO COUNTY AND, THEREFORE, A**
20 **CHANGE OF VENUE TO ANOTHER COUNTY IS REQUIRED**

21 The disappearance of Kristin Smart has been a topic of emotional
22 concern in the San Luis Obispo County community since 1996, almost 26
23 years ago. Over those 26 years, the local community has been exposed to a
24 steady stream of news articles, memorials, and billboards. From the
25 beginning, Paul Flores has been the focus of narratives speculating that he
26 murdered Kristin Smart. Attitude in the community towards Paul Flores
27 and his family have been vicious and relentless. The press has contributed to
28 this along with private individuals, podcasters, bloggers, websites managers

1 and public relations efforts on the part of the Sheriff's Office and the District
2 Attorney's Office.

3 Every search related to the case has been covered by the press and
4 other media. Members of the San Luis Obispo County community, whether
5 in the City of San Luis Obispo, other cities and communities within the
6 County, or in the rural areas of the County, have been exposed to billboards,
7 bumper stickers and other signs with Kristin Smart's picture on them and a
8 call for information. From the beginning, Paul Flores has been accused by
9 law enforcement and the public as the only suspect in the disappearance and
10 his name and photographs have been widely disseminated urging his arrest
11 and conviction.

12 For almost 26 years, this case has truly been "embedded in the public
13 consciousness." (*Williams, supra*, 48 Cal.3d at p. 1129.) Ian Parkinson, the
14 Sheriff of San Luis Obispo County, stated in his "Behind the Badge" column
15 in the January 2022 issue of the Central Coast Journal: "There probably was
16 no bigger story this past year than we made an arrest in the almost 25-year-
17 old case of missing Cal Poly student Kristin Smart."¹ (Exhibit A.)

18 **A. The Nature and Extent of Media Coverage**

19 The nature and extent of the media coverage regarding this case is one
20 of the five factors identified by the Supreme Court to be considered in change
21 of venue. (*McCurdy, supra*, 59 Cal.4th at p. 1075.) Here, the nature and
22 extent of media coverage has saturated the San Luis Obispo County
23 community for almost 26 years. This factor alone requires a change of venue.

24 Local television stations, newspapers and online news sources have
25 written stories about the Kristin Smart disappearance and about Paul Flores

26 _____
27 ¹ Sheriff Parkinson, continuing to violate the gag order in this case, went on to state: "I would like to
28 talk to you more about this; however, I am still bound by the court's gag order in the case. All I can
say at this point is that this case is now proceeding to trial. The trial is expected to start in April."
(Exhibit A.)

1 as the only suspect in the case since 1996. There have been thousands of
2 articles in various publications in San Luis Obispo County about the case.
3 Many of the articles over recent years are still available in online archives for
4 the news agencies. Representative articles are attached to this Motion. It
5 would not be practical to reproduce and attach all or even a substantial
6 portion of the media coverage in this case. The defense reserves the right to
7 submit additional materials at the evidentiary hearing or upon request by
8 the Court.

9 Recent coverage has been spurred by searches by law enforcement to
10 which the press was invited. Similarly, when defendants were arrested, the
11 press was alerted and on scene to take photographs and videos. The
12 subsequent court proceedings including the seven-week preliminary hearing
13 have generated detailed reports either in news or “infotainment” media
14 stories. For example, the local news station, KSBY, has a tab on its home
15 page dedicated solely to stories on this case. (Exhibit B.)

16 While there has been constant media attention over the last 26 years,
17 there have been a number of search warrants issued and executed in the last
18 six years. Every time there is a search relating to this case, the local media
19 covers it. For example:

- 20 • September 2016, San Luis Obispo Tribune, “Kristin Smart may
21 be buried near Cal Poly ‘P,’ sheriff says as excavation begins”
22 (Exhibit C)
- 23 • September 2016, San Luis Obispo Tribune, “Searches for Kristin
24 Smart spanned from Cal Poly to Paul Flores’ home” (Exhibit D)
- 25 • September 2016, San Luis Obispo Tribune, “New ‘item of interest’
26 found in Kristin Smart search (Exhibit E)

- 1 • February 2018, San Luis Obispo Tribune, “SLO County sheriff
2 issues 4 search warrants in Kristin Smart investigation” (Exhibit
3 F)
- 4 • March 2021, San Luis Obispo Tribune, “SLO County sheriff
5 searches home tied to suspect in Kristin Smart’s disappearance,
6 car seized” (Exhibit G)
- 7 • March 2021, San Luis Obispo Tribune, “Update: Kristin Smart
8 investigators wrap up search of Ruben Flores’ home after 2 days”
9 (Exhibit H)
- 10 • April 2021, San Luis Obispo Tribune, “Remains, clothes, weapon?
11 Here’s what Kristin Smart investigators were likely searching
12 for” (Exhibit I)
- 13 • Updated September 2021, San Luis Obispo Tribune, “Searches
14 for Kristin Smart spanned from Cal Poly to Paul Flores’ home
15 (Exhibit J)
- 16 • May 2021, Atascadero News, “Search Concludes at Flores Home
17 in Relation to Kristin Smart Case” (Exhibit QQQQ)
- 18 • July 2021, Atascadero News, “Investigators Reportedly Searching
19 Rural Arroyo Grande for Kristin Smart’s Remains” (Exhibit
20 RRRR)
- 21 • September 2016, A-Town News, “Update: Investigators find
22 ‘items of interest’ in Kristin Smart excavations at Cal Poly”
23 (Exhibit II)
- 24 • February 2020, A-Town News, “Update: Search warrants served
25 for evidence in relation to Kristin Smart case” (Exhibit JJ)
- 26 • April 14, 2020, A-Town News, “New search warrant served in
27 Kristin Smart case (Exhibit KK)
- 28

- 1 • May 15, 2021, A-Town News, “Search warrant issued in Kristin
2 Smart investigation (Exhibit LL)
- 3 • September 2016, Paso Robles News, “Update: Investigators find
4 ‘items of interest’ in Kristin Smart excavations at Cal Poly”
5 (Exhibit PP)
- 6 • January 2020, Paso Robles News, “Possible break reported in the
7 case of Kristin Smart’s disappearance” (Exhibit QQ)
- 8 • February 2020, Paso Robles News, “New photogs and video:
9 Search warrants served for evidence in relation to Kristin Smart
10 case (Exhibit RR)
- 11 • April 2020, Paso Robles News, “New search warrant served in
12 Kristin Smart case” (Exhibit SS)
- 13 • March 2021, Paso Robles News, “Update: Sheriff’s office
14 concludes investigation at Flores residence” (Exhibit TT)
- 15 • September 2016, New Times San Luis Obispo, “Search for Kristin
16 Smart’s body begins on Cal Poly campus” (Exhibit SSSS)
- 17 • February 2020, New Times San Luis Obispo, “SLO County
18 Sheriff’s Office serves four search warrants in relation to the
19 Kristin Smart investigation” (Exhibit ZZ)
- 20 • March 2021, New Times San Luis Obispo, “Police search ‘prime
21 suspect’s’ father’s home in Kristin Smart case” (Exhibit AAA)
- 22 • September 6, 2017, KSBY News, “1 year since excavation at Cal
23 Poly in search of clues into Kristin Smart disappearance”
24 (Exhibit RRR)
 - 25 ▪ <https://www.youtube.com/watch?v=5415fpMuY2k>
- 26 • February 5, 2020, KSBY News, “Search warrants served in
27 Kristin Smart case” (Exhibit DDD)
 - 28 ▪ <https://www.youtube.com/watch?v=hnR2NEO0ESs>

- 1 • April 22, 2020, KSBY News, “Another search warrant served in
2 connection with Kristin Smart disappearance” (Exhibit EEE)
 - 3 ▪ <https://www.youtube.com/watch?v=0L7759mkWi8>
- 4 • March 16, 2021, KSBY News, “Investigators wrap up search of
5 Flores home after serving warrants in Kristin Smart case”
6 (Exhibit FFF)
 - 7 ▪ <https://www.youtube.com/watch?v=aLoeMgi7O E>
- 8 • April 13, 2021, KSBY News, “Search warrant served again at
9 Arroyo Grande home of Ruben Flores” (Exhibit GGG)
 - 10 ▪ <https://www.youtube.com/watch?v=XRmxqeZJThe>

11 Many of the articles related to the searches include information that
12 Paul Flores is a person of interest or suspect in the case. None of the articles
13 mention any other potential suspects other than occasionally casting
14 aspersions on other members of the Flores family based on speculation that
15 they assisted Paul Flores. For example, a typical statement implicating Paul
16 Flores is taken from the February 2018 San Luis Obispo Tribune article:
17 “Flores was the last person Smart was seen with in 1996 after she left a party
18 to return to her dorm. He is considered a person of interest in the case, but
19 has never been charged with a crime in connection with it.” (Exhibit F.)

20 In the article “Investigators Reportedly Searching Rural Arroyo Grande
21 for Kristin Smart’s Remains” printed in the Atascadero News, it states that
22 “Citizens reportedly have seen Flores family return to the area repeatedly.”
23 (Exhibit RRRR.) That article also includes a photograph of a billboard for
24 Kristin Smart with the podcast website listed. (Exhibit RRRR.)

25 In the A-Town News article, “New search warrant served in Kristin
26 Smart case,” it states that “Flores continues to be a person of interest in the
27 disappearance of Kristin Smart in 1996.” (Exhibit KK.) No other potential
28

1 suspects or persons of interest are mentioned.

2 Local news sources also reported extensively on the arrest of Paul and
3 Ruben Flores. The articles often included photographs of Paul and Ruben
4 Flores being arrested. For example:

- 5 • February 2022, San Luis Obispo Tribune, “I literally burst into
6 tears.’ SLO County residents react to Kristin Smart arrests
7 (Exhibit K)
- 8 • April 2021, San Luis Obispo Tribune, “It took 24 years for an
9 arrest in the disappearance of Kristin Smart. Here’s how it
10 happened (Exhibit L)
- 11 • April 2021, Atascadero News, “Justice Begins for Kristin Smart
12 After Almost 25 Years” (Exhibit TTTT)
- 13 • April 2021, Atascadero News, “BREAKING: Sheriff Announces
14 Press Conference Amid Arrest, and Second Search Warrant
15 Issued in Kristin Smart Case” (Exhibit UUUU)
- 16 • April 2021, A-Town News, “Update: Paul Flores and father
17 Ruben in custody as suspects in Kristin Smart case” (Exhibit
18 MM)
- 19 • April 2021, Paso Robles News, “Update: Paul Flores and father
20 Ruben in custody as suspects in Kristin Smart case” (Exhibit UU)
- 21 • February 2021, KSBY, “Kristin Smart family attorney says Paul
22 Flores arrest is ‘good thing’ for civil case” (Exhibit HHH)
 - 23 ○ <https://www.youtube.com/watch?v=YKsVlcAXkQI>

24 Sheriff Parkinson and District Attorney Dan Dow also gave press
25 conferences after the defendants’ arrests and before the arraignment. Both
26 were surrounded by large photographs of Kristin Smart and of Paul and
27 Ruben Flores being arrested:
28

- 1 • SLO County Sheriff announces arrests in Kristin Smart case
2 (Exhibit III) <https://www.youtube.com/watch?v=pvPoqSyu5B8>
- 3 • DA: Paul Flores alleged to have killed Kristin Smart during rape
4 attempt (Exhibit JJJ)
5 <https://www.youtube.com/watch?v=ilpUvacdVuA>

6 Local news sources also periodically published articles giving an
7 overview of the Kristin Smart disappearance that included Paul Flores as the
8 suspect:

- 9 • May 2011, San Luis Obispo Tribune, “Kristin Smart’s family still
10 waiting for closure” (Exhibit M)
- 11 • June 2016, San Luis Obispo Tribune, “Kristin Smart’s
12 disappearance remains a mystery, 20 years later” (Exhibit N)
- 13 • September 2021, San Luis Obispo Tribune, “Cal Poly student
14 Kristin Smart went missing 25 years ago. Here’s what’s
15 happened since” (Exhibit O)
- 16 • May 2021, Atascadero News, “25th Anniversary of Kristin
17 Smart’s Disappearance” (Exhibit VVVV)
- 18 • September 2021, Atascadero News, “History of the Kristin Smart
19 Case Part II” (Exhibit WWWW)

20
21 The media also published other stories related to the Kristin Smart
22 disappearance including stories about vigils, fundraisers and the Kristin
23 Smart scholarship.

- 24 • November 2019, San Luis Obispo Tribune, “It’s important that
25 she’s not forgotten.’ Hundreds turn out for Kristin Smart vigil”
26 (Exhibit P)

- 1 • April 2021, San Luis Obispo Tribune, “Cal Poly students to hold
2 candlelight vigil for Kristin Smart: ‘We wanted to honor her’”
3 (Exhibit Q)
- 4 • April 2021, Atascadero News, “Hundreds Attend Candlelight
5 Vigil for Kristin Smart in Paso Robles” (Exhibit XXXX)
- 6 • May 2021, Atascadero News, “Arroyo Grande Shops Donate
7 Memorial Day Sales to Kristin Smart Scholarship” (Exhibit
8 YYYY)
- 9 • February 2020, Atascadero News, “Supporters Host Candlelight
10 Vigil for Kristin Smart” (Exhibit ZZZZ)
- 11 • April 2021, A-Town News, “Candlelight vigil for Kristin Smart
12 happening Saturday in Paso Robles” (Exhibit NN)
- 13 • November 2020, Paso Robles News, “Two days left: Signed jersey
14 to be auctioned for Kristin Smart scholarship fund” (Exhibit VV.)
- 15 • April 2021, Paso Robles News, “Candlelight Vigil for Kristin
16 Smart happening Saturday in Paso Robles” (Exhibit WW)
- 17 • May 2021, Paso Robles News, “South County fundraiser for
18 Kristin Smart scholarship this weekend” (Exhibit XX)

19 The local media published stories regarding the billboards around San
20 Luis Obispo County regarding Kristin Smart’s disappearance and requesting
21 information. Moreover, articles about other aspects of this case include
22 photographs of the billboards:

- 23 • February 2020, San Luis Obispo Tribune, “Will new Kristin
24 Smart billboard help solve her case? This SLO County resident
25 hopes so” (Exhibit R)

- 1 • August 2020, San Luis Obispo Tribune, “Find Kristin Smart’
2 group says it’s serious about buying home next to Paul Flores’
3 mom” (Exhibit S)
- 4 • April 2021, San Luis Obispo Tribune, “New Kristin Smart
5 billboards go up at 2 SLO County locations. Who’s behind them?”
6 (Exhibit T)
- 7 • July 2021, Atascadero News, “Investigators Reportedly Searching
8 Rural Arroyo Grande for Kristin Smart’s Remains” (Exhibit
9 RRRR)

10 While news coverage of the disappearance has been steady since 1996,
11 the preliminary hearing was given particular attention by the local media.
12 The San Luis Obispo Tribune had detailed summaries of the testimony from
13 the preliminary hearing. (Exhibits U, V, W-HH.) Other news agencies
14 frequently reported on the evidence introduced at the preliminary hearing.
15 (Exhibits AAAAA, BBBBB, CCCCC, OO, YY, BBB.) In addition, KSBY had
16 programming regarding the preliminary hearing which are also posted on the
17 television channel’s YouTube page, for example:

- 18 • August 2, 2021, “Flores preliminary hearing Day 1 wrap”
19 (Exhibit KKK)
 - 20 ○ <https://www.youtube.com/watch?v=ZOt8q27NXAc>
- 21 • August 3, 2021, “Fifth witness takes stand in preliminary
22 hearing for Paul, Ruben Flores” (Exhibit LLL)
 - 23 ○ <https://www.youtube.com/watch?v=DulsjI3W8-M>
- 24 • August 3, 2021, “Flores preliminary hearing Day 2 wrap”
25 (Exhibit MMM)
 - 26 ○ <https://www.youtube.com/watch?v=v0CUGn7RFU0>

- 1 • August 4, 2021, “Flores preliminary hearing Day 3 wrap”
2 (Exhibit NNN)
 - 3 ○ <https://www.youtube.com/watch?v=a32yu-h5WJI>
- 4 • August 12, 2021, “Witness in preliminary hearing believes she
5 heard Paul Flores confess to burying Kristin Smart” (Exhibit
6 OOO)
 - 7 ○ <https://www.youtube.com/watch?v=JhwL0SiKJpQ>
- 8 • August 20, 2021, Preliminary hearing for Paul, Ruben Flores
9 continues Friday” (Exhibit PPP)
 - 10 ○ <https://www.youtube.com/watch?v=mnyFdPfkSIE>
- 11 • August 23, 2021, “Week 4 of Flores preliminary hearing kicks off
12 with testimony from former investigator” (Exhibit QQQ)
 - 13 ○ <https://www.youtube.com/watch?v=qWZPdadTcVE>

14 From the representative examples of the media coverage set forth
15 above, the nature and extent of that coverage alone requires a change of
16 venue.

17 **B. The Popularity and Prominence of the Missing Person**

18 Another of the five factors to be considered is the missing person’s
19 status in the community. As the California Supreme Court has recognized,
20 frequently the victim’s status emerges as a product of the publicity itself. In
21 *Odle v. Superior Court* (1982) 32 Cal.3d 932, 940, the Court noted that “by
22 virtue of the events and media coverage after the crimes, [one victim] became
23 a posthumous celebrity . . .” That is the case here. An otherwise unknown
24 college student has been constantly promoted in the public consciousness, not
25 only by media stories but by orchestrated efforts on the part of her family,
26 supporters, podcasters and law enforcement itself.

27 As mentioned in the newspaper articles referenced above and based on
28

1 personal observations, there are several billboards and signs around the
2 County, some of which have been in place over 20 years and new ones
3 continue to appear to the present. The billboards feature a large flattering
4 picture of Kristin Smart including her name and a call for information. The
5 billboards also often include website addresses for the Lambert podcast or
6 kristinsmart.org. (Declaration of Ramona Messina, ¶¶6, 8, 9; Exhibits
7 EEEE-GGGG.)

8 In addition, a company based in Arroyo Grande, Brand Creative, sells
9 bumper stickers that say, “Justice for Kristin Smart.” (Messina Decl, ¶11;
10 Exhibit III.) There is also a memorial for Kristin Smart at Dinosaur Cave
11 Park in Pismo Beach within the County of San Luis Obispo. (Messina Decl,
12 ¶10; Exhibit HHHH.)

13 Many of the billboards and articles related to Kristin Smart direct
14 people to kristinsmart.org. This website relates to the scholarship in Kristin
15 Smart’s name. One of the main tabs on the site is about “Kristin’s
16 Disappearance.” Under this tab, it states in part:

17 “Kristin’s life, dreams and future were stolen on May 25, 1996,
18 when she was abducted by another student (suspect Paul Rueben
19 Flores) on the Cal Poly, San Luis Obispo campus around 2 am. . .
20 . Paul Flores, the only suspect and last person to be seen with
21 Kristin, continues to be uncooperative and is hiding behind the
22 5th Amendment.” (Exhibit CCC.)

23 There also has been a podcaster, Chris Lambert, who has made a
24 career out of Kristin Smart’s disappearance, including interviewing
25 witnesses, going to private property to find “clues,” and advancing theories as
26 to why Paul Flores is guilty. Since Paul Flores’s arrest in April 2021,
27 numerous people not associated with the case in the San Luis Obispo County
28 community have approached members of the defense team and told them to
watch the podcast. There are ten podcast episodes uploaded to the internet

1 from September 29, 2019 to July 6, 2021 remaining accessible for viewing on
2 <https://www.yourownbackyardpodcast.com/episodes>. (Declaration of Ramona
3 Messina, ¶ 4.)

4 There are numerous posts on the social media pages for Sheriff
5 Parkinson, the San Luis Obispo Sheriff's Office, District Attorney Dow and
6 the San Luis Obispo County District Attorney. For example:

- 7 • April 2, 2018, Sheriff Ian Parkinson Facebook (Exhibit SSS)
- 8 • March 15, 2021, San Luis Obispo Sheriff's Office Instagram, post
9 regarding the agency serving a search warrant at the Arroyo
10 Grande home of Ruben Flores and stating Paul Flores "remains
11 the prime suspect in the disappearance of Kristin Smart in 1996."
12 (Exhibit TTT; see also Exhibits UUU, VVV and WWW.)
- 13 • February 20, 2018, District Attorney Dan Dow Facebook, a post
14 regarding Kristin Smart's birthday with a link to a YouTube
15 video titled "Kristin Smart-A life cut short" (Exhibit XXX)
- 16 • February 20, 2021, District Attorney Dan Dow Facebook, another
17 post regarding Kristin Smart's birthday with a link to
18 kristinsmart.org (Exhibit YYY)
- 19 • May 24, 2021, District Attorney Dan Dow Facebook, a post with a
20 picture of Kristin Smart and a link to kristinsmart.org (Exhibit
21 ZZZ)
- 22 • April 14, 2021, San Luis Obispo County District Attorney
23 Instagram, a post with the booking photos of Paul and Ruben
24 Flores (Exhibit AAAA)

25 April 15, 2021, San Luis Obispo County District Attorney Facebook,
26 post announcing arrest of Paul and Ruben Flores (Exhibit BBBB)

27 In addition to the Sheriff, District Attorney and their offices posting
28

1 about the Kristin Smart case to their social media pages, members of the
2 prosecution team wore purple attire in court during the preliminary hearing
3 at the direction of the Facebook page, Justice for Kristin Smart, which,
4 according to the lead detective in the case, is dedicated to seeing Paul Flores
5 convicted of murder. (RT 6 RT 1511-1513; see also Motion to Disqualify the
6 District Attorney's Office (Penal Code § 1424) filed on August 11, 2021.)

7 There are Facebook pages regarding the Kristin Smart investigation,
8 including the "Justice for Kristin Smart" page referenced above. (See
9 Exhibits 121-123 [Justice for Kristin Smart Facebook page]; Exhibits 113-120
10 [Find Kristin Smart Facebook and Instagram posts].)

11 All of this publicity, both from news media and infotainment sources as
12 well as from individuals and organizations pushing for the conviction of Paul
13 Flores, have given Kristin Smart celebrity status within the County of San
14 Luis Obispo. This factor, standing on its own, weighs strongly in favor of a
15 change of venue.

16 **C. The Status of the Accused**

17 As stated above, from the beginning, Paul Flores has been portrayed by
18 law enforcement and the media as the only suspect in the investigation of
19 Kristin Smart's disappearance. Not only has he been characterized as the
20 only suspect, but he has been disparaged and demonized as indicated in the
21 materials referred to in the prior sections and below.

22 Paul Flores and his parents have been subjected to harassment in the
23 community over the past 26 years. In 1996 and 1997, flyers were stapled to
24 telephone poles near Susan and Ruben Flores's homes in Arroyo Grande
25 along with dozens of flyers around the County. These flyers offered a reward
26 for any information about Kristin Smart's disappearance and displayed
27 Paul's name and photograph directly below the word "Warning."
28 (Declaration of Susan Flores, ¶5, Exhibits MMMM and NNNN.)

1 Over the years, people would leave painted rocks in front of Susan
2 Flores's home in Arroyo Grande. The rocks had messages such as "Surrender
3 Paul Flores," "Find Kristin Smart," or "We're watching Paul Flores." (Susan
4 Flores Decl., ¶3, Exhibits JJJJ and KKKK.)

5 Starting in 2008, people would often come by Susan Flores's house in
6 Arroyo Grande and honk their horns. On several occasions, people would
7 gather outside the home and direct comments towards her house using a
8 bullhorn. Susan Flores wrote down the incidents in a log at or near the time
9 they occurred. (Susan Flores Decl., ¶4, Exhibit LLLL.)

10 Susan, Paul and Ruben have also been harassed in public places. For
11 example, when Susan and Ruben were dining in a restaurant in Shell Beach,
12 within the County of San Luis Obispo, a woman approached our table and
13 started yelling, "You are parents of a killer!" (Susan Flores Decl., ¶6.)

14 Other examples are depicted in a video on YouTube. A group of people
15 came to the Clark Center in Arroyo Grande where Ruben was volunteering
16 and yelled, "Where is Kristin?" This video can be found on YouTube at
17 <https://www.youtube.com/shorts/G5Pje0DvcYw>. (Susan Flores Decl., ¶7,
18 Exhibit OOOO.) Another video on YouTube shows someone filming Paul
19 while at the store in Arroyo Grande. This video can be found on YouTube at
20 <https://www.youtube.com/watch?v=yRE25QNhZk>. (Susan Flores Decl., ¶8,
21 Exhibit PPPP.)

22 The nature and intensity of the depictions of Paul Flores as the only
23 suspect establish his status in the community as not only an accused but a
24 pariah. This constant characterization in and of itself requires a change of
25 venue.

26 **D. The Size of the Community**

27 Another of the five factors to be considered is the size of the
28 community. San Luis Obispo County has less than half the population of the

1 average county population in California.² According to the United States
2 Census Bureau, the approximate population of San Luis Obispo County is
3 282,424 people and approximately 232,152 are over the age of 18.³ The
4 average population per county in California is 681,693

5 This places San Luis Obispo at 23rd on the list of California Counties
6 by total population. It follows Placer County, which is number 22 and which
7 has a significantly higher total population of 404,739.⁴ San Luis Obispo
8 County's population places it among the smaller counties which weighs
9 strongly in favor of a change of venue.

10 In addition, when the Court is considering the size of the County, it
11 must take into account the saturation of the entire County with publicity
12 promoting Kristin Smart and accusing Paul Flores. This case is so
13 "embedded in the public consciousness" throughout the County that the
14 defendants cannot find an impartial jury anywhere within the County.
15 (*Williams, supra*, 48 Cal.3d at p. 1129.)

16 **E. The Nature and Gravity of the Offense Alleged**

17 The final factor to be considered is the nature and gravity of the
18 offense. As the California Supreme Court stated in *Martinez v. Superior*
19 *Court*:

20 The peculiar facts or aspects of a crime which make it
21 sensational, or otherwise bring it to the consciousness of
22 the community define its "nature"; the term "gravity" of the
23 crime refers to its seriousness in the law and to the possible
consequences to an accused in the event of a guilty verdict.

24 _____
25 ² United States Census Bureau, CALIFORNIA: 2020 Census, State Profile,
<https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html> [last accessed March 8, 2022].

26 ³ United States Census Bureau, San Luis Obispo County, California,
<https://data.census.gov/cedsci/profile?g=05000000US06079> [last accessed March 8, 2022].

27 ⁴ United States Census Bureau, CALIFORNIA: 2020 Census, State Profile,
28 <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html> [last accessed March 8, 2022].

1 (*Martinez v. Superior Court* (1981) 29 Cal.3d 574, 582.)

2 The offense charged, murder in the course of a rape, is one of the most
3 grave charges that can be alleged. The nature of the allegations has also
4 been sensationalized as set forth in the preceding sections. The possible
5 consequences to the accused in the event of a guilty verdict is life in prison.
6 Therefore, the nature and gravity of the offense alleged and the possible
7 consequences to the accused weigh substantially in favor of a change of
8 venue.

9 **III. VOIR DIRE OF POTENTIAL JURORS WILL NOT DISPEL THE**
10 **REASONABLE LIKELIHOOD THAT DEFENDANTS WILL BE**
11 **UNABLE TO RECEIVE A FAIR TRIAL ABSENT A CHANGE OF**
12 **VENUE**

13 Given the factors discussed above, it would be unreasonable to expect
14 members of the San Luis Obispo County community to be able to serve on a
15 jury in this case and be impartial. The extent of the news coverage has been
16 constant throughout the years and has increased this past year due to the
17 preliminary hearing which was reported in detail. Moreover, the prominence
18 of Kristin Smart in the community due not only to the publicity but also to
19 billboards, memorials and social media posts, and the harassment of Paul
20 Flores and his family indicate that the disappearance and the accusations
21 against Paul Flores are deeply embedded in the public consciousness.

22 Given the saturation of the adverse publicity into the public
23 consciousness, it would be futile to attempt to obtain assurances from the
24 prospective jurors that they could be fair and impartial. The Court of Appeal
25 recognized in *Corona v. Superior Court* (1972) 24 Cal.App.3d 872, 879, fn. 6
26 (*Corona*) that “[w]hen prejudicial publicity has been injected into jurors’
27 consciousness, the courts do not give dispositive effect to jurors’ assurances of
28 impartiality. [Citations.]”

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 222 E. Carrillo St., Ste. 300, Santa Barbara, California, 93101.

On March 9, 2022, I served the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR CHANGE OF VENUE (PEN. CODE, § 1033); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF COUNSEL** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

X **BY ELECTRONIC TRANSMISSION** -I caused the above-referenced document(s) to be transmitted via electronic transmission to the interested parties at the email addresses referenced in the attached service list.

_____ **BY U.S. MAIL** - I am readily familiar with the firm’s practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

_____ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address referenced on the attached service list.

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 March 9, 2022, at Santa Barbara, California.



Jake Swanson

SERVICE LIST

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