

1 **Travis Kiger**
2 834 North Woods Ave.
3 Fullerton, CA 92832
4 Telephone: (714) 240-6778

5 Representative Respondent *In Pro Se*

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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **IN AND FOR COUNTY OF ORANGE**
11 **CENTRAL JUSTICE CENTER/ UNLIMITED JURISDICTION**

12
13 CHERYL SANDERS,
14 Plaintiff,

15 v.
16 JOHN DOE 1, aka "Kerry W.", et al.,
17 Defendants.

18
19 CHERYL SANDERS,
20 Subpoena Proponent,

21 v.
22 TRAVIS KIGER, as Section 382
23 representative respondent of Friends for
24 Fullerton's Future, an Unincorporated
25 Association,
26 Respondent.

CASE NO: 30-2010-00435218

EX PARTE APPLICATION FOR ORDER
QUASHING "DEPOSITION SUBPOENA
FOR PRODUCTION OF BUSINESS
RECORDS"; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF
TRAVIS KIGER CONCERNING
IRREPARABLE HARM; DECLARATION
OF TONY BUSHALA CONCERNING
SERVICE OF NOTICE

Hearing on *Ex Parte* Application:
DATE: Monday, January 10, 2011
TIME: 1:30 PM
DEPT: C20 – Civil Panel Floor 6
JUD. OFFICER: Hon. David R. Chaffee

27 *EX PARTE* APPLICATION FOR ORDER QUASHING "DEPOSITION SUBPOENA"

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TO THE COURT, AND TO PLAINTIFF CHERYL SANDERS:

TRAVIS KIGER, as Representative Respondent for Friends For Fullerton's Future, an unincorporated association, hereby applies *ex parte* for an order quashing Deposition Subpoena, a copy of which proposed Order is served along with these application papers.

The hearing on this Application will be on **Monday, January 10, 2011, at 1:30 PM**, or as soon thereafter as the matter may be heard, in Department C20 of the above court located at 700 Civic Center Drive, West, in the City of Santa Ana, California.

The Application is brought *ex parte*, pursuant to the authority of Code of Civil Procedure section 1987.1.

The legal or technical ground for the Application for Order to Quash is that the subject Deposition Subpoena does not comport with the requirement of Code of Civil Procedure section 1985 that a subpoena be supported by an attached affidavit that demonstrates the relevance of the information sought by the subpoena.

The equitable ground for the Application will be that the unincorporated association, of which moving respondent TRAVIS KIGER is the subject subpoena's responding officer, will suffer the irreparable harm of damage to journalistic reputation caused by breach of duty of confidentiality, if the Motion to Quash cannot be heard before the prospective "production" date of **Wednesday, January 12, 2011**.

EX PARTE APPLICATION FOR ORDER QUASHING "DEPOSITION SUBPOENA"

1 The Application will be based upon this Application and Notice of
2 Hearing; the attached Memorandum of Points and Authorities in support
3 thereof; the attached Declaration of TRAVIS KIGER concerning irreparable
4 harm; and the attached Declaration of TONY BUSHALA, concerning his service
5 of notice of the Application's hearing.

6 DATED: January 7, 2011

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8 **TRAVIS KIGER**

9 Representative Respondent *In Pro Se*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

The records of the court in this case show that the Complaint in the above-styled case was filed sometime in 2010.

On or about December 22, 2010, Plaintiff CHERYL SANDERS caused the court's issuance of a Deposition Subpoena directed to the unincorporated association Friends For Fullerton's Future, which maintains a website named fullertonsfuture.org. **A true copy of that Deposition Subpoena is attached hereto as Exhibit "A".** The Subpoena requires production of certain confidential information by **10:00 AM on Wednesday, January 12, 2011.** Applicant especially asks the court to note that the subject Deposition Subpoena is totally lacking in any supporting Affidavit or Declaration, as required by Code of Civil Procedure section 1985.

As established by the attached "Declaration of Travis Kiger re Irremediable Harm", unless a quashing of said Deposition Subpoena is granted before then on an *ex parte* basis, Representative Respondent TRAVIS KIGER will be forced to obey the subpoena and produce the information, and that may turn out to be a wrongful act on his part, even though performed pursuant to a court order.

As further established by the attached Declaration of TRAVIS KIGER, the unincorporated association of which he is an officer and representative member, Friends for Fullerton's Future, will suffer irreparable harm, if he, as custodian of records, is coerced by the subject subpoena to improperly reveal

EX PARTE APPLICATION FOR ORDER QUASHING "DEPOSITION SUBPOENA"

1 the identity of the "blog commenter" or columnist whose statements have
2 provoked this lawsuit.

3 As established by the attached Declaration of TONY BUSHALA, he gave
4 telephonic notice of the *ex parte* Application's hearing on Friday, January 7,
5 2011; he gave faxed notice of the moving papers for this *Ex Parte* Application
6 on Friday, January 7, 2011. The service here has complied with that which is
7 required by the codes and the rules of court.

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10 **II.**

11 **AS AN OFFICER OF THE UNINCORPORATED ASSOCIATION, RESPONDENT**
12 **KIGER HAS STANDING TO SUE OR DEFEND ON BEHALF OF ITS MEMBERS.**

13 When parties in interest are numerous and it is impracticable to bring
14 them all before the court, one or more may sue or defend for the benefit of all.
15 Code of Civil Procedure section 382.

16 California's Court has held several times that this statute applies to
17 unincorporated associations composed of numerous members. *Florence v.*
18 *Helms* (1902), 136 Cal. 613; *Jellen v. O'Brien* (1928), 89 Cal.App. 505
19 [permitting suit by the secretary of a furniture dealers' association]; *Scott v.*
20 *Donahue* (1928), 94 Cal.App. 795 [one who sues on behalf of his or her
21 associates to discover or preserve common trust funds may charge such funds
22 for his or her costs].

23 For the purposes of this Application, the Applicant would assume
24 *arguendo* that the Deposition Subpoena has been directed to the "custodian of
25 records" for the unincorporated association which sponsors
26 "fullertonsfuture.org", namely, Friends For Fullerton's Future. As such, he

27 EX PARTE APPLICATION FOR ORDER QUASHING "DEPOSITION SUBPOENA"
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1 ought to have direct standing to bring this motion. Nonetheless, in the event
2 that such a reading is not adopted by the court in this action, then
3 alternatively he proceeds as a "representative member or officer", as
4 discussed earlier above.

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8 **III.**
9 **THE COURT HAS POWER TO GRANT AN ORDER QUASHING A SUBPOENA,**
10 **AND UPON AN *EX PARTE* APPLICATION.**

11 Code of Civil Procedure subsection 1008(b) gives generally applicable
12 deadlines for the giving of notice of a hearing on a motion, which is "at least 16
13 court days before the hearing." But Code of Civil Procedure section 1987.1
14 states that "the court, upon motion *reasonably made* by the party, the witness,
15 or any consumer described in Section 1985.3, or upon the court's own motion
16 after giving counsel notice and an opportunity to be heard, may make an order
17 quashing the subpoena entirely, modifying it, or directing compliance with it
18 upon such terms or conditions as the court shall declare, including protective
19 orders." [*Emphasis added.*]

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21 **IV.**
22 **THE SUBJECT DEPOSITION SUBPOENA IS TECNICALLY DEFICIENT, AND**
23 **MAY BE QUASHED, BECAUSE IT LACKS A SUPPORTING AFFIDAVIT.**

24 Code of Civil Procedure subsection 1985(b) states that "[a] copy of an
25 affidavit shall be served with a subpoena duces tecum issued before trial,
26 showing good cause for the production of the matters and things described in
27 the subpoena, specifying the exact matters or things desired to be produced,

28 *EX PARTE* APPLICATION FOR ORDER QUASHING "DEPOSITION SUBPOENA"

1 setting forth in full detail the materiality thereof to the issues involved in the
2 case, and stating that the witness has the desired matter or things in his or her
3 possession or under his or her control.”

4 The subject Deposition Subpoena is completely lacking in any affidavit
5 or declaration whatsoever. Nor is there any “unsworn” document, either,
6 which makes the showing as required by section 1985. The subject
7 Deposition Subpoena would seem to be facially void for that reason, but that
8 determination is left up to the court upon this *ex parte* Application.

9
10 **V.**

11 **THE UNINCORPORATED ASSOCIATION COULD**
12 **SUFFER IRREDEMIABLE HARM**

13 Applicant is not convinced that the quashing of a summons involves
14 anything more than any court’s inherent power, and he has not yet found any
15 law to the effect that an equitable showing must be made, in order for a court
16 to quash a Deposition Subpoena under section 1987.1 or its predecessors.

17 Nonetheless, this Application having been hastily prepared, the
18 Applicant out of an abundance of caution has attached a “Declaration of Travis
19 Kiger re Irremediable Harm” to the unincorporated association of which he is
20 the custodian of records.

21 **CONCLUSION**


22
23 The Application should be granted on the merits, because of the clear
24 nonconformity of the subject Deposition Subpoena with the statute. It should
25 be granted as an *ex parte* matter, because of the emergency nature of the need
26

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1 to resolve the application before the deadline on Wednesday, January 12,
2 2011. Accordingly, this Application should be granted without further delay.

3 Respectfully submitted,

4 DATED: January 7, 2011



5 TRAVIS KIGER
6 Representative Respondent *In Pro Se*

DECLARATION OF TRAVIS KIGER RE: IRREMEDEABLE HARM

I, TRAVIS KIGER, declare as follows:

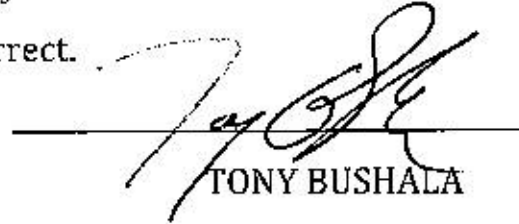
1. I am a representative respondent *in pro se* in the above defamation proceeding. I offer this declaration in support of my *Ex Parte* Application for Order Quashing Deposition Subpoena. If called to testify, I could and would testify competently to the matters set forth herein:
2. The Deposition Subpoena which is the subject of this *ex parte* application has a production due date of January 12, 2011. That is only in two days from the date of this hearing. If I bring a "regularly-noticed" motion to quash under Code of Civil Procedure section 2008, then it will take almost a whole month before the matter could be heard, after the giving of regular service. Accordingly, unless the matter is heard and resolved before the due date of January 12, 2011, then I will be placed in a situation where I must choose between violating a subpoena and violating my duty to preserve privacy of the blog commenter whose statements have engendered the litigation at-hand.
3. If I fail, under pressure of a contempt citation for disobedience to a subpoena, to protect journalistic anonymity, then there will be a resulting professional reputational damage to the reputation of the fullertonsfuture.org website. I am informed and believe that it would be effectively impossible to measure the economic damage to the website's reputation, as a result of an improvident revelation of one its blog

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1 Again, this number had been provided to me by Ms. Sanders several
2 weeks ago.

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

5 DATED: January 7, 2011

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TONY BUSHALA

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27 EX PARTE APPLICATION FOR ORDER QUASHING "DEPOSITION SUBPOENA"

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| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Cheryl Sanders P.O. Box 79444 Corona, CA 92877 TELEPHONE NO.: 951-733-8730 FAX NO. (Optional): 951-735-8642 E-MAIL ADDRESS (Optional): cherylsandersc@aol.com ATTORNEY FOR (Name): In Pro Per | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center | |
| PLAINTIFF/PETITIONER: Cheryl Sanders DEFENDANT/RESPONDENT: John Doe 1 aka "Kerry W.", et al. | |
| DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS | CASE NUMBER: 30-2010-00435218 |

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Custodian of Records for fullertonsfuture.org, 834 North Woods Ave., Fullerton, CA 92832

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): **Cheryl Sanders**
 On (date): **January 12, 2011** At (time): **10:00 a.m.**
 Location (address): **1191 Magnolia Ave., Ste. D318, Corona, CA 92879**

Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows:

Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: **12/22/10**

Alan Carlson
(TYPE OR PRINT NAME)



Alan Carlson
(SIGNATURE OF PERSON ISSUING SUBPOENA)

Chief Executive Officer
(TITLE)

(Proof of service on reverse)

Page 1 of 2

| | |
|--|----------------------------------|
| PLAINTIFF/PETITIONER: Cheryl Sanders | CASE NUMBER: 30-2010-00435218 |
| DEFENDANT/RESPONDENT: John Doe 1 aka "Kerry W", et al. | |

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR
PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1) Witness fees were paid.

Amount: \$ _____

(2) Copying fees were paid.

Amount: \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. California sheriff or marshal.

c. Registered California process server.

d. Employee or independent contractor of a registered California process server.

e. Exempt from registration under Business and Professions Code section 22360(b).

f. Registered professional photocopier.

g. Exempt from registration under Business and Professions Code section 22451.

h. Name, address, telephone number, and, if applicable, county of registration and number:

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

Date:

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

(SIGNATURE)

| | |
|---|--|
| SHORT TITLE: Sanders v. John Doe 1 aka "Kerry W", et al. | CASE NUMBER: 30-2010-00435218-CU-DF-CJC |
|---|--|

ATTACHMENT (Number): 3*(This Attachment may be used with any Judicial Council form.)*

Please produce the following:

1. IP Connection Log Data for December 12, 2010 as it relates to "Elizabeth K."
2. The IP address used by "Elizabeth K." on December 12, 2010.
3. The registration data for "Elizabeth K."
4. The email address for "Elizabeth K."
5. Any and all records regarding the identification of "Elizabeth K."

*The specific statement posted on December 12, 2010 by "Elizabeth K." is attached hereto as Exhibit "1" for your reference.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1*(Add pages as required)*

EXHIBIT "I"

1. by Potter Boy on January 22, 2010
Email Callaway - Linda Anderson - e-representing lower

2. by 11up Cub on January 22, 2010

How does a house end up not being bonded for residential

3. by Wilkinson Reiter on January 22, 2010

1 reply

It gets re-coded. Check out all those former single family houses along the north side of what
Chapman between Venice and Levee.

In the case of that Amherst deal, those old houses were re-coded into a separate lot in the corner of
Lipault and East that was probably already zoned for some kind of commercial use

BTW, how the hell do you get a house that is not bonded for residential

4. by Saucorrell on January 22, 2010

This must still appear on the County and the Regular Commission. But the track will go to the Fullerton
blog.

5. by Johnny N on January 22, 2010

What a joke this is. This is Franchi who didn't want to run in the 4th City seat.

6. by AINE BOY on January 22, 2010

Just typical. These people are so passive about all these crazy salaries they cranked up for the rest of us to
pay for.

And then they get a new Executive. Instead of the Big Family it going to vote to vote to the Gilbreath
person.

But another Executive Board taking the money on somebody else's dime. Now who does that entice
you to follow?

7. by BARRON K. on December 12, 2010

Well from what the community is saying, these City Council members is the hell in what's cheating and one
of the worst employees receiving and asking taking advantage of you for doing. They had a
possible internal investigation? If so then I may be able to help someone and their daily income
prior and their job is brought to justice. I'm so tired of public employees mistaking their position

Name
E-Mail (will not be published)
Website

Official Comment

Notify me of followup comments via e-mail

Subscribe without commenting
E-Mail

612 11/22/2010 11:16

EXHIBIT "I"

NO NEWS IS BAD NEWS

HOODS

OK FAIL

OC REGISTER

OC'S FOURTH DISTRICT
GRANCE COUNTY CENTRAL
COMMITTEE

CHANGE EQUITY
GOVERNMENT

OUR TOWN

PAIN KILLER

PARKS AND TRAILS

PAT ACRASHON

PHOTO RUK

REDEVELOPMENT

REPLICANIN

SETTING THE BAR LOW

SHARON QUINN

SRAWN NELSON

SEABOARD STUFF

SUSTAINABLE DESIGN

THE FULLERTON RECALL

THE OBSERVER

TOM DAILY

UNION GOONS

VICTORY

WATCH YOUR WALLET

RECENT COMMENTS

See response on BUCKLE UP! by
Linda Franchi

Anonymous on FRENCH BUSHING

Color Unit

Comment on Amherst by
Linda Franchi

OC

advice on Fullerton by
Linda Franchi

OC

Reply on a house on
Linda Franchi

ZONES

Bob on Fullerton by
Linda Franchi

OC

Member on Seaboard by
Linda Franchi

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[PROPOSED] ORDER QUASHING
"DEPOSITION SUBPOENA FOR
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22 TRAVIS KIGER, as Section 382
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27 **[PROPOSED] ORDER QUASHING "DEPOSITION SUBPOENA"**

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THE COURT, having read and considered the Application for Order Quashing Deposition Subpoena brought by Applicant TRAVIS KIGER, as Representative Respondent for Friends For Fullerton's Future, an unincorporated association,

And having considered written responses by Plaintiff SANDERS,

And having considered the oral arguments thereon by Applicant KIGER and Plaintiff SANDERS, each appearing *in pro se*,

The court now finds that the Subpoena is deficient and void, for failure to include the affidavit or declaration which is required by Code of Civil Procedure subsection 1985(b),

And the court ORDERS that the subject Deposition Subpoena issued to FullertonsFuture.org, and its sponsoring unincorporated association, Friends for Fullerton's Future, be QUASHED.

Each side to bear its own costs.

DATED: January 7, 2011

(Area for judge's use and signature)