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BY FAX

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Department of Corrections and Rehabilitation*

Exempt From Filing Fees  
Government Code § 6103

FILED

APR 23 2018

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: E. Chais, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN

JARVIS JAY MASTERS and WITNESS  
TO INNOCENCE,  
  
Plaintiffs,  
  
v.  
  
SCOTT KERNAN, Secretary of the  
California Department of Corrections and  
Rehabilitation, et al.,  
  
Defendants.

Case No. CIV 1800580

NOTICE OF DEMURRER AND  
DEFENDANTS' DEMURRER TO  
PLAINTIFFS' COMPLAINT

Date: MAY 30 2018  
Time: 1:30 PM  
Dept: B  
Judge: The Honorable Roy O. Chernus  
Trial Date:  
Action Filed: February 21, 2018

TO PLAINTIFFS JARVIS JAY MASTERS AND WITNESS TO INNOCENCE, AND  
THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT the demurrer of defendants Kernan, Davis, and the  
California Department of Corrections and Rehabilitations has been set for hearing on 5-30-18  
at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department B of the Superior

1 Court of California, County of Marin, located at 3501 Civic Center Drive, San Rafael, California,  
2 94903.

3 **PLEASE TAKE FURTHER NOTICE** that by 2:00 p.m. on the court business day  
4 preceding the hearing date, a tentative ruling will be available online at the court's website. If  
5 you wish to appear for oral argument, you must notify the court and opposing counsel by 4:00  
6 p.m. one court day before the scheduled hearing, pursuant to California Rule of Court 3.1308.  
7 Absent a request for oral argument, the tentative ruling will be adopted as final at the time set for  
8 hearing.

9 **PLEASE TAKE FURTHER NOTICE** that Superior Court of California, County of Marin  
10 Local Rule 8.20 governs the appearance of parties telephonically through CourtCall.<sup>1</sup> CourtCall  
11 arrangements may be made by contacting CourtCall, LLC at the toll free telephone number 1-  
12 888-882-6878.

13 **DEMURRER**

14 Defendants Kernan, Davis, and the California Department of Corrections and Rehabilitation  
15 generally demur to plaintiffs' complaint under Code of Civil Procedure, section 430.10,  
16 subdivisions (a) and (e) on the grounds that: (1) Plaintiffs fail to state a cause of action because  
17 under the rules of statutory construction, the exemption from compliance with the Administrative  
18 Procedure Act provided for in California Penal Code section 3604.1 subdivision (a) applies to  
19 the entire set of File and Print regulations pertaining to administration of the death penalty by  
20 lethal injection adopted by the California Department of Corrections and filed with the Secretary  
21 of State on March 1, 2018; and (2) There is no jurisdiction as to plaintiff Masters, a state prisoner,  
22 who failed to plead that he exhausted his administrative remedies before he filed suit.

23 This demurrer is based upon this notice of demurrer and demurrer, the supporting  
24 memorandum of points and authorities, request for judicial notice, the pleadings and papers on  
25 file in this action, and on such other materials as may properly come before this court.

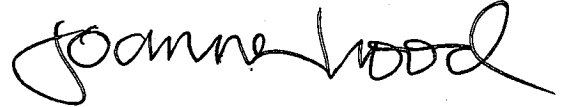
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28 <sup>1</sup> A copy of this local rule was served on plaintiff with this motion to strike.

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Dated: April 23, 2018

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
JAY M. GOLDMAN  
Supervising Deputy Attorney General



JOANNA B. HOOD  
Deputy Attorney General  
*Attorneys for Defendants Scott Kernan,  
Ronald Davis, and California Department of  
Corrections and Rehabilitation*

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Masters v. Kernan, et al.**  
No.: **CIV 1800580**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On April 23, 2018, I served the attached **NOTICE OF DEMURRER AND DEFENDANTS' DEMURRER TO PLAINTIFFS' COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Bradley S. Phillips  
Attorney at Law  
Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071-1560  
Attorneys for Plaintiffs,  
Jarvis Masters, C-35169

Linda Lye, Esq.  
American Civil Liberties Union  
Foundation of Northern California  
39 Drumm St., 2<sup>nd</sup> Floor  
San Francisco, CA 94111  
Attorneys for Plaintiffs,  
Jarvis Masters, C-35169

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 23, 2018, at Sacramento, California.

M. Schwarzkopf  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature