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PHILLIP S. CRONIN  
County Counsel  
J. WESLEY MERRITT  
Chief Deputy SBN 071939  
FRESNO COUNTY COUNSEL  
2220 Tulare Street, Fifth Floor  
Fresno, California 93721

Telephone: (559) 488-3479  
Facsimile: (559) 488-1900

Attorneys for Fresno County Sheriff's Department

FRESNO COUNTY  
SUPERIOR COURT  
2004 MAR 26 AM 8:30  
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

**CRIMINAL DIVISION**

PEOPLE OF THE STATE OF  
CALIFORNIA

Case No. F049017856

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
TELEPHONE AND VISITATION  
RESTRICTIONS**

Plaintiffs,

v.

MARCUS WESSON,

Defendant.

The Fresno County Sheriff's Department Detention Bureau offers the following points and authorities in support of telephone and visitation restrictions placed upon defendant Marcus Wesson.

**FACTS**

The accompanying declaration of Detention Bureau Captain Michael Leonardo attests to the following facts:

On March 14, 2004, a person requesting confidentiality telephoned jail inmate information and expressed concern for the safety of her daughter. The person suggested Marcus Wesson should not be allowed family visits in jail because family members were going to visit him in jail for the purpose of getting permission to commit

1 suicide. The person remarked, "This could turn out like the Jones family massacre,"  
2 and she indicated she did not want the Wesson family to know that she called.

3 When Captain Leonardo became aware of the above information, he telephoned  
4 Fresno Police Department Detective Doug Reese, one of the principal investigators in  
5 the criminal case against Wesson. Detective Reese indicated he believed the suicide  
6 threat to be credible.

7 As a result of the above events, Captain Leonardo placed the following restrictions  
8 on Wesson:

9 a) Visitation and telephone access are limited to Wesson contacting an attorney  
10 and/or attorney staff. Wesson is under 24-hour daily observation, and he can request  
11 the observing officer to wheel up a telephone to his cell at any time. The officer will dial  
12 the call to Wesson's attorney. Obviously these calls will not be monitored.

13 b) Except for legal mail, all of Wesson's outgoing and incoming mail is opened  
14 and read to protect against communications threatening the well-being of any persons.

15 Captain Leonardo and other Detention Bureau personnel desire to keep the above  
16 restrictions in place until April 16, 2004, a period of approximately thirty (30) days after  
17 Wesson was booked into the County jail. At that time, Captain Leonardo will seek the  
18 Fresno Police Department's opinion on the stability of Wesson's family and other  
19 relevant circumstances. Absent any substantive concern, the above restrictions or  
20 some portion may then be lifted or modified.

21 I.

22 **THE RESTRICTIONS PLACED ON WESSON ARE**  
23 **REASONABLY RELATED TO LEGITIMATE PENOLOGICAL INTERESTS**

24 Less than two years ago, the California Supreme Court established a revised  
25 standard for a court passing on restrictions placed on jail inmate activities. *People v.*  
26 *Lloyd* (2002) 27 Cal.4th 997 (hereinafter "*Lloyd*"). The case factually deals with the  
27 secret monitoring and recording of an inmate's unprivileged jail conversations with her  
28 visitors. However, the standard for court review applies to all inmate restrictions,  
including those placed on telephone access and visiting.

1 Prior to the *Lloyd* case, the controlling authority was *De Lancie v. Superior Court*  
2 (1982) 31 Cal.3rd 865, 868, 870 (hereinafter "*De Lancie*"), holding restrictions must be  
3 "necessary in order to provide for the reasonable security of the institution." See *Lloyd*,  
4 *supra*, 27 Cal.4th at 1007.

5 Subsequently, the United States Supreme Court held more liberally that a  
6 restriction or regulation must be "reasonably related to legitimate penological interests."  
7 *Turner v. Safely* (1987) 482 U.S. 78, 89, 107 S.Ct. 2254, 2261 (hereinafter "*Turner*").<sup>1</sup>

8 The California Legislature adopted the *Turner* standard in its 1994 amendment to  
9 Penal Code section 2600: "A person sentenced to imprisonment in a state prison may  
10 ... be deprived of such rights, and only such rights, as is reasonably related to legitimate  
11 penological interest." In *Lloyd, supra*, 27 Cal.4th at 1008, the California Supreme Court  
12 stated:

13 The amendment reflected the Legislature's desire to repeal  
14 the expansive protections afforded California inmates and  
15 replace them with the more limited protections available  
under federal law as described in *Turner* ...<sup>2</sup>

16 Given the current standard, it is patently a penological interest that Detention  
17 Bureau officials protect against threats or harm against persons orchestrated by inmates.  
18 The restrictions placed on this defendant are clearly reasonably related to that interest.  
19 *Overton v. Bazzetta* (2003) 539 U.S. 126, 123 S.Ct. 2162 (prison regulations restricting  
20 visiting bore a rational relation to legitimate penological interests, including preventing  
21 future crimes); *Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1685-87  
22 (prison regulation excluding from family visits inmates convicted of violent offenses  
23 involving a minor or family member was rationally related to a legitimate state purpose).

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> *Turner* dealt with prison regulations and not County jail regulations. However, in *De Lancie*, the  
27 California Supreme Court determined that pretrial inmates deserved "rights at least equivalent" to those  
28 enjoyed by convicted felons. *De Lancie, supra*, 31 Cal.3rd at 872; *Lloyd, supra*, 27 Cal.4th at 1006,  
footnote 9.

<sup>2</sup> In 1996, the Legislature made another change by repealing the section 2601, subdivision (d) right to  
visits. *Lloyd, supra*, 27 Cal.4th at 1009, footnote 15.

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**II.  
CONCLUSION**

For all the aforementioned reasons, the Sheriff's Department Detention Bureau prays that the court uphold the telephone and visitation restrictions placed upon Marcus Wesson.

Dated: March 25, 2004

Respectfully submitted,

**PHILLIP S. CRONIN**  
County Counsel



By **J. WESLEY MERRITT**  
Chief Deputy County Counsel

1 **PROOF OF SERVICE**

2 **PEOPLE V. MARCUS WESSON**  
3 **Fresno County Superior Court No. F049017856**

4 I, URSULA BUFE, declare as follows:

5 I am a resident of the State of California, over the age of eighteen years, and  
6 not a party to the within action. I am employed at the Fresno County Counsel's Office,  
2220 Tulare Street, Fifth Floor, Fresno, California, 93721.

7 On March 25, 2004, I served a copy(ies) of the within

8 **Memorandum of Points and Authorities in Support**  
9 **of Telephone and Visitation Restrictions**

10 on the interested party(ies) in said action addressed as follows:

11 **PETER JONES** Counsel for Defendant  
12 **FRESNO COUNTY PUBLIC DEFENDER**  
13 **2220 TULARE STREET, 4TH FLOOR**  
**FRESNO, CA 93721** Personal Delivery

14 **LISA GAMOIAN** Prosecutor  
15 **CHIEF DEPUTY DISTRICT ATTORNEY**  
16 **2220 TULARE STREET, 10TH FLOOR**  
**FRESNO, CA 93721** Personal Delivery

17 **Courtesy Copy:**

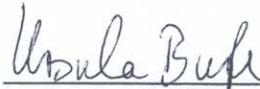
18 **HONORABLE COMMISSIONER BRANT BRAMER**  
19 **FRESNO COUNTY SUPERIOR COURT**  
20 **DEPARTMENT 96**  
**FRESNO, CA 93721** Personal Delivery

- 21  by placing the document(s) listed above for mailing in the United States mail at  
Fresno, California, in accordance with my employer's ordinary practice for  
collection and processing of mail, and addressed as set forth above.
- 22  by transmitting via facsimile the above listed document(s) to the fax number(s)  
23 set forth above on this date before 5:00 p.m. pacific standard time.
- 24  by personally delivering the document(s) listed above to the person(s) at the  
25 address(es) set forth above.
- 26  by placing the document(s) listed above in a sealed envelope, and placing the  
27 same for overnight delivery by Federal Express at Fresno, California.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 25, 2004, at Fresno, California.

  
\_\_\_\_\_  
URSULA BUFO