

1 JAN I. GOLDSMITH, City Attorney
DANIEL F. BAMBERG, Assistant City Attorney
2 JOHN RILEY, Chief Deputy City Attorney
California State Bar No. 144268
3 BEVERLY A. ROXAS, Deputy City Attorney
California State Bar No. 298582
4 Office of the City Attorney
1200 Third Avenue, Suite 1100
5 San Diego, California 92101-4100
Telephone: (619) 533-5800
6 Facsimile: (619) 533-5856

7 Attorneys for Defendants NEAL N. BROWDER
and CITY OF SAN DIEGO
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9
10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 S.R. NEHAD, an individual, K.R.
12 NEHAD, an individual, ESTATE OF
FRIDOON RAWSHAN NEHAD,

13 Plaintiffs,

14 v.

15 NEAL N. BROWDER, an individual,
16 CITY OF SAN DIEGO, a municipality,
and DOES 1 through 10, inclusive,

17 Defendants.
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) Case No. 15cv1386 WQH (NLS)

) **DECLARATION OF WILL**
) **ROUNTREE AND ALEXIS**
) **FORBES, OIS OF THE CITY OF**
) **SAN DIEGO'S OPPOSITION TO**
) **PLAINTIFFS' MOTION TO**
) **CHANGE VENUE**

) Judge: Hon. William Q. Hayes
) Court Room: 14B Annex
) Trial: Not Set

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1 1. This is a declaration to be submitted to the court by Will Rountree, and
2 Alexis A. Forbes in response to the Plaintiffs’ Motion of Notice and Notice to
3 Change Venue, Declaration of Scott J. Street, (hereafter referred to as “the
4 Plaintiffs’ Change of Venue Motion.”) The Plaintiffs have claimed that a change of
5 venue is warranted because “the San Diego District Attorney has made dishonest,
6 inflammatory and gratuitous statements about this case in the press, including
7 improper and inadmissible attacks on the victim (Fridoon) and praise for the
8 shooter (Officer Neal Browder).” (Plaintiffs’ Change of Venue Motion at p.1) The
9 Plaintiffs’ Change of Venue Motion goes on to say that the “DA’s media campaign
10 has irreparably tainted the jury pool and denied the Plaintiffs their constitutional
11 right to a fair trial.” We believe that the Plaintiffs’ Motion for Change of Venue is
12 deficient for the following reasons:

- 13 a. It ignores the fact that the District Attorneys’ November 9, 2015 Press
14 Conference was filtered through the media, thus the media coverage
15 should be the basis of analysis for a change of venue motion, not
16 simply the content of the District Attorneys’ Press Conference;
- 17 b. It ignores the fact that most of the media coverage has been critical
18 toward the Defendants in this case, and not the Plaintiffs;
- 19 c. It confuses the “Good Cause” standard of Rule 26(c)(1) regarding
20 Release of Evidence to the Media with the Presumption of Prejudice
21 analysis for a Change of Venue;
- 22 d. It does not include any measures of case recognition, and actual public
23 opinions about Fridoon Nehad; as such, it assumes that a substantial
24 portion of the public has been paying attention to the case, and that
25 there are widespread biases against the Plaintiff because of the DA’s
26 November 9, 2015 statements.

27 In the response to the Plaintiffs’ Motion for a Change of Venue, we offer an
28 analysis of the media’s coverage of the case, and data from actual surveys we have

1 conducted to demonstrate that a change of venue due to biases against the
2 Plaintiffs' is not warranted.

3 **2. Problems with the Plaintiffs' Analysis:** Scott J. Street, who drafted the
4 Plaintiffs' Motion for Change of Venue, is an associate at the law firm representing
5 the Plaintiffs, and did not provide his qualifications for conducting a publicity
6 content analysis. Publicity content analysis requires a systematic coding of
7 publicity, and it is better when done by individuals who have training and
8 experience in the social science techniques of content analysis. Mr. Street did not
9 apply a content analysis to the media's coverage of the case. Instead, he isolated
10 one event, one source of content – the District Attorney's November 9, 2015 press
11 conference – from the content of the subsequent media coverage. He did not
12 provide any information about the extent of the media coverage, nor did he provide
13 a qualitative assessment of the nature of the coverage. From this one event, he
14 concludes that the jury pool has been "irreparably tainted." He comes to this
15 conclusion in spite of the fact that, comprehensively, the media coverage of the
16 shooting incident has been critical of the police and the District Attorney's handling
17 of the case.

18 **3. Media Analysis:** The Plaintiffs' Change of Venue Motion asserts that the
19 DA's November 9, 2015 statements created biases against the Plaintiffs. However,
20 an analysis of the media coverage demonstrates that there are more biases
21 expressed in the media against the Defendants in this case than the Plaintiffs. In
22 our prior declaration, we conducted a high-level content analysis of the articles
23 published between April 30, 2015, the day of the incident, and August 30, 2015.
24 Our analysis found that 8.8% of the articles (5 out of 57) published were
25 characterized as "Positive" toward Officer Browder's actions, 29.8% of the articles
26 (17 out of 57) were categorized as "Neutral," and 61.4% of the stories (35 out of
27 57) were categorized as "Negative." Thus, as our prior declaration demonstrated, to
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1 the extent that biases existed in the media coverage between April 30, 2015 and
2 August 30, 2015, those biases favored the Plaintiffs.

3 4. To prepare our response to the Plaintiffs' Change of Venue Motion, we
4 continued our publicity content analysis and coded an additional 61 articles that
5 were published in the period between September 1, 2015, and December 23, 2015,
6 the last day that our media analysis was conducted. A log of these articles appears
7 as Exhibit 1 of this Declaration.

8 5. We used the following query to obtain these articles:

9 <https://www.google.com>: "nehad" "browder" ~shooting -tumblr.com. This search
10 query yielded approximately 275 web pages/news stories that contained the names,
11 "Browder" and "Nehad," made some mention of a shooting or other words related
12 to the word "shooting," and excluded web pages on the popular blogging site,
13 tumblr.com. Due to both time and expense constraints, we reduced the number of
14 web pages/news stories from approximately 275 to 61 by focusing on the media
15 sources that we used in the analysis for our prior Declaration. The articles that
16 were included in our content analysis are provided in Exhibit 3.

17 6. Our content analysis of the articles published between September 1, 2015 and
18 December 23, 2015 shows that 44% (27 out of 61) were categorized as "Negative"
19 against the Defendants, 43% (26 out of 61) were characterized as "Neutral," and
20 only 13% (8 out of 61) were characterized as "Positive" toward the Defendants.

21 7. Further, approximately 20% of the articles (12 out of 61) reported between
22 September 1, 2015 and December 23, 2015, the Plaintiffs' attorney, Daniel "Skip"
23 Miller, issued statements to the media. These statements are likely to have been
24 made by Mr. Miller to benefit the Plaintiffs' case.

25 8. The timeline of news stories (Exhibit 2 of this Declaration) shows that the
26 news coverage has increased since December 22nd, the date that the KECO videos
27 were released. Twelve news stories were published on December 22nd, and an
28 additional seven news stories were published on December 23rd. The news stories

1 released during that period were significantly more than the five news stories
2 released on the day of Dumanis’s November 9th press conference that the Plaintiffs
3 argue created biases within the Southern District of California’s jury pool. Three
4 additional news stories were published on November 10th, the day after the
5 Dumanis’s press conference. Therefore, the coverage that occurred after Dumanis’
6 November 9th press conference was not as significant media coverage of the story
7 was in the month of December.

8 **9. Media Coverage is Will Fluctuate between Now and the Time of Trial:**

9 Our timeline shows that the news coverage of the incident has fluctuated
10 significantly. The trial date for this case has not yet been set. Any determination of
11 jury bias must be made by an analysis of the media at the time of trial. Further,
12 courts typically allow counsel to present evidence of jury bias in the weeks leading
13 up to jury selection. Levels of case recognition and bias against either party would
14 be best addressed, shortly before trial.

15 **10. The Plaintiffs are asking the Court to Conclude that the Media Coverage**
16 **of this Case Creates a Presumption of Prejudice against the Plaintiffs, but**
17 **Supreme Court Case Law Demonstrates that the Presumption of Prejudice**
18 **“Attends Only in Extreme Cases.”** In *United States v. Skilling*, 130 S. Ct. 2896
19 (2010), the U.S. Supreme Court addressed the question of whether news coverage
20 in the Houston area about the Enron scandal created a presumption of prejudice
21 against the defendants. The Court in *Skilling* recognized that the “size and
22 characteristics of the community” are relevant factors in determining whether a
23 presumption of prejudice exists. There were approximately 4,000 articles published
24 about the Enron case in the Houston Chronicle leading up to its bankruptcy
25 (*Skilling*, at 2943), and Houston was “the 4th most populous city in the nation.”¹

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27 ¹ The U.S Census reports that Harris County, one of the counties that comprises Southern
28 District of Texas, Houston Division, had a population of 4,093,011 in 2010. See
<http://quickfacts.census.gov/qfd/states/48/48201.html> The population for San Diego County in
2010 is 3,095,308. See <http://quickfacts.census.gov/qfd/states/06/06073.html>

1 (*Skilling*, at 2915) Though the coverage was extensive, the Court concluded that
2 *Skilling*, “did not establish that a presumption of juror prejudice arose.” (*Skilling*,
3 at 2907).

4 **11. The Plaintiffs’ Change of Venue Motion Confuses the “Good Cause”**
5 **Standard of Rule 26(c)(1) Regarding Release of Evidence to the Media with the**
6 **“Presumption of Prejudice” Analysis for a Change of Venue:** The “good cause”
7 standard of Rule 26(c)(1) of the Federal Rules of Civil Procedure allows courts to
8 issue orders that “protect a party or person from annoyance, embarrassment,
9 oppression, or undue burden or expense, including forbidding the disclosure,
10 specifying terms, including time and place, for such disclosure, or limiting the
11 scope of disclosure to certain matters.” A “presumption of prejudice” analysis is an
12 analysis done by courts to determine whether the nature and extent of the publicity
13 is such that it can be presumed that prejudice against a party is created as a result of
14 the pretrial publicity. There was disagreement between the courts in deciding
15 whether a presumption of prejudice attached to the Defendant as a result of the
16 pretrial publicity in the Enron case. Prior to jury selection, in the Defendants’
17 change of venue motion, the District Court concluded that a presumption of
18 prejudice did not attach to the case. In an appeal of the District Court’s decision,
19 the 5th Circuit disagreed with the District Court and concluded that the presumption
20 of prejudice did indeed arise from the pretrial publicity. However, the 5th Circuit
21 concluded that the presumption was a rebuttable presumption that could be
22 overcome by evidence that the jurors seated in the case did not harbor actual biases
23 against the Defendant. The Supreme Court concluded the presumption of
24 prejudice, “attends only in extreme cases.” (*Skilling*, at 2901) Further, “prominence
25 does not necessarily produce prejudice, and juror impartiality does not require
26 ignorance.” (*Skilling*, *Ibid.*, citing *Irvin v. Dowd*, 366 U.S. 717, 722, 81 S. Ct.
27 1639, 6 L. Ed. 2d 751.)

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1 12. The Plaintiffs' Change of Venue Motion asks the court to attach the
2 presumption of prejudice to the case based solely on the content of the District
3 Attorney's November 9, 2015 press conference. The Supreme Court concluded in
4 *Skilling* that this presumption only applies in extreme cases. Given that the extent of
5 the coverage in this case is significantly less than the coverage in the Enron case,
6 the Plaintiffs have failed to demonstrate that the media coverage creates a
7 presumption of prejudice against the Plaintiffs.

8 **13. The Media Coverage Has Not Resulted In Any Biases Against The**
9 **Plaintiffs:** The Plaintiffs' Motion for Change of Venue suggests that the DA's
10 press conference has created biases against Fridoon Nehad. Based on our analysis
11 of the media coverage, we do not believe that the DA's statements to the media
12 created biases against the Plaintiff. Further, as demonstrated in our content analysis
13 of the most recent news stories, the news stories are more likely to express biases
14 against the Defendants than biases against Mr. Nehad.

15 **14. Surveys Conducted Between December 23, 2015 and December 27, 2015**
16 **Demonstrate that there are Low Levels of Case Recognition and Bias within**
17 **the Venue:** The Plaintiffs' Motion for Change of Venue relies exclusively on
18 statements made by the District Attorney, Bonnie Dumanis, during her November
19 9, 2015 press conference. The Plaintiffs' Motion does not provide any data
20 regarding levels of case recognition, and biases of jury-eligible individuals within
21 the Southern District of California's jury pool. In order to uncover the levels of
22 case recognition within the jury pool, we conducted two online surveys to ascertain
23 whether the potential jurors within the Southern District have heard about the case,
24 and whether they harbor biases against Mr. Nehad, as the Plaintiffs claim. Online
25 surveys are a cost-effective way to obtain public opinion among a targeted sample
26 of the population. As required in the Jury Plan for the Southern District of
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1 California, we limited all of our survey respondents to registered voters in San
2 Diego and Imperial Counties.²

3 15. In the first survey, we sought assistance from Pacific Market Research
4 (PMR), a market research firm based in Renton, Washington. This survey was
5 designed to explore the biases of those potential jurors who had heard about the
6 case – which means that they answered “Yes” to Question 2 below. The entire
7 survey included the following questions:

8 1. Are you registered to vote in San Diego or Imperial counties?

9 Yes (Proceed to next question)
10 No (Not eligible for the survey)

11 2. Have you heard any news stories about a police shooting in San Diego
12 where an individual named Fridoon Nehad was shot by a police officer
13 named Neal Browder?

14 Yes (Proceed to next question)
15 No (Not eligible for the survey)

16 3. Based on what you’ve heard, would you say that you have positive,
17 neutral or negative opinions about Mr. Nehad?

18 Positive
19 Neutral
20 Negative

21 4. If you were asked to be a juror in a civil case where Mr. Nehad’s
22 family was suing the City of San Diego and Officer Browder, how
23 likely are you likely to favor Mr. Nehad?

24 Very Likely to Favor Mr. Nehad
25 Somewhat Likely to Favor Mr. Nehad
26 I am not sure whom I would favor
27 Somewhat Unlikely to Favor Mr. Nehad
28 Very Unlikely to Favor Mr. Nehad

² The jury selection process for the Southern District of California provides that, “...persons whose names appear on the registered voter lists represent a fair cross-section of the community in the Southern District of California. Accordingly, names of grand and petit jurors serving on or after the effective date of this Plan must be selected at random from the registered voter lists of San Diego and Imperial Counties.” See CivLR 83.10(c)(4).

16. All of the 200 respondents from the PMR survey had answered “Yes” to Questions 1 and 2, which means that they were jury-eligible, and that they had heard about the case. Question 3 asked whether survey respondents had “Positive,” “Neutral,” or “Negative” opinions about Mr. Nehad. Almost three-quarters of respondents reported that they were “Neutral” toward Mr. Nehad. Twenty-two percent reported that they had “Negative” opinions about Mr. Nehad, and 7.5% reported that they had “Positive” opinions about Mr. Nehad.

Based on what you’ve heard, would you say that you have positive, neutral or negative opinions about Mr. Nehad?

| | Frequency | Percent | Cumulative Percent |
|------------|-----------|---------|--------------------|
| 1 Positive | 15 | 7.5 | 7.5 |
| 2 Neutral | 141 | 70.5 | 78.0 |
| 3 Negative | 44 | 22.0 | 100.0 |
| Total | 200 | 100.0 | |

17. On the final question, respondents were asked, if they were a juror in a civil case where Mr. Nehad’s family was suing the City of San Diego and Officer Browder, how likely are they to favor Mr. Nehad? Almost half of the jurors (47%) said that they are not sure whom they would favor. About 28.5% reported that they were either “very unlikely” (13%) or “somewhat unlikely” (15.5%) to favor Mr. Nehad. Conversely, 24.5% reported that they were either “somewhat likely” (15%) or “very likely” (9.5%) to favor Mr. Nehad.

If you were asked to be a juror in a civil case where Mr. Nehad’s family was suing the City of San Diego and Officer Browder, how likely are you likely to favor Mr. Nehad?

| | Frequency | Percent | Cumulative Percent |
|--|-----------|---------|--------------------|
| 1 Very Unlikely to Favor Mr. Nehad | 26 | 13.0 | 13.0 |
| 2 Somewhat Unlikely to Favor Mr. Nehad | 31 | 15.5 | 28.5 |
| 3 I am not sure whom I would favor | 94 | 47.0 | 75.5 |
| 4 Somewhat Likely to Favor Mr. Nehad | 30 | 15.0 | 90.5 |
| 5 Very Likely to Favor Mr. Nehad | 19 | 9.5 | 100.0 |
| Total | 200 | 100.0 | |

1 18. We conducted a second online survey to measure levels of case recognition.
2 In other words, we did not exclude participants who had not heard about the case
3 from participating in this survey. The questions on this second survey were the
4 same as the questions in the first survey mentioned above. However, since we did
5 not screen out respondents who had not heard about the case, we added the
6 response option, "I have never heard of Mr. Nehad" for Questions 3 and 4. The
7 questions and response options from this second online survey are as follows:

8 1. Are you registered to vote in San Diego or Imperial counties?

9 Yes (Proceed to next question)
10 No (Not eligible for the survey)

11 2. Have you heard any news stories about a police shooting in San Diego
12 where an individual named Fridoon Nehad was shot by a police officer
13 named Neal Browder?

14 Yes (Proceed to the next question)
15 No (Proceed to the next question)

16 3. Based on what you've heard, would you say that you have positive,
17 neutral or negative opinions about Mr. Nehad?

18 Positive
19 Neutral
20 Negative
21 I have never heard of Mr. Nehad

22 4. If you were asked to be a juror in a civil case where Mr. Nehad's
23 family was suing the City of San Diego and Officer Browder, how
24 likely are you likely to favor Mr. Nehad?

25 Very Likely to Favor Mr. Nehad
26 Somewhat Likely to Favor Mr. Nehad
27 I am not sure whom I would favor
28 Somewhat Unlikely to Favor Mr. Nehad
Very Unlikely to Favor Mr. Nehad
I have never heard of Mr. Nehad

19. The participants for this survey were recruited from a pool of online
respondents who live in California and were only included if they were registered
voters in either San Diego or Imperial Counties. We screened 5,838 California

1 residents in order to obtain the 214 registered voters from San Diego and Imperial
 2 Counties. The frequencies for each of the four questions of the second survey
 3 follow below.

4 20. The frequency from the first question shows that 3.7% of the 5,838
 5 respondents who began the questionnaire were registered voters in San Diego or
 6 Imperial Counties.

7 **Question 1. Are you registered to vote in San Diego or Imperial Counties?**

| | Frequency | Percent | Cumulative Percent |
|---|-----------|---------|--------------------|
| 1 Yes | 214 | 3.7 | 3.7 |
| 2 No | 4335 | 74.3 | 77.9 |
| 3 No, but I am registered in another county | 1289 | 22.1 | 100.0 |
| Total | 5838 | 100.0 | |

13 21. Question 2 from this survey asked whether respondents have heard any news
 14 stories about a police shooting in San Diego where an individual named Fridoon
 15 Nehad was shot by a police officer named Neal Browder. The frequency chart for
 16 this question shows that only one-third of the 214 jury-eligible respondents had
 17 heard about the case. This demonstrates that, in spite of the Plaintiffs' claims that
 18 the District Attorney's press conference has "irreparably tainted" the jury pool,
 19 approximately two-thirds of the jury eligible respondents in the District have not
 20 even heard about the case.

21 **Question 2. Have you heard any news stories about a police shooting in San Diego where an individual
 22 named Fridoon Nehad was shot by a police officer named Neal Browder?**

| | | Frequency | Percent | Valid Percent | Cumulative Percent |
|---------|--------|-----------|---------|---------------|--------------------|
| Valid | 1 Yes | 71 | 1.2 | 33.2 | 33.2 |
| | 2 No | 143 | 2.4 | 66.8 | 100.0 |
| | Total | 214 | 3.7 | 100.0 | |
| Missing | System | 5624 | 96.3 | | |
| Total | | 5838 | 100.0 | | |

22. Question 3 asked those 214 jury-eligible respondents whether they had positive, neutral or negative opinions about Mr. Nehad. The frequency chart below shows that 120, or just over half, of the 214 jury-eligible respondents within the District, say that they have never heard of Mr. Nehad. Further, 22.9% of the respondents have “Neutral” opinions about Mr. Nehad, 11.7% of respondents have “Positive” opinions about him, and only 9.3% have “Negative” opinions about Mr. Nehad.

Question 3. Based on what you have heard, would you say that you have positive, neutral, or negative opinions about Mr. Nehad?

| | | Frequency | Percent | Valid Percent | Cumulative Percent |
|---------|-----------------------------------|-----------|---------|---------------|--------------------|
| Valid | 1 Positive | 25 | .4 | 11.7 | 11.7 |
| | 2 Neutral | 49 | .8 | 22.9 | 34.6 |
| | 3 Negative | 20 | .3 | 9.3 | 43.9 |
| | 4 I have never heard of Mr. Nehad | 120 | 2.1 | 56.1 | 100.0 |
| | Total | 214 | 3.7 | 100.0 | |
| Missing | System | 5624 | 96.3 | | |
| Total | | 5838 | 100.0 | | |

23. The final question on this survey asked, if the respondents were a juror in a civil case where Mr. Nehad’s family was suing the City of San Diego and Officer Browder, how likely are they to favor Mr. Nehad? Nearly half of the jurors, or 106 out of 214, said that they have never heard of Mr. Nehad.³ Further, 56 out of the 214, or 26.2%, said that they are not sure who they would favor. This means that, in spite of the Plaintiffs’ claim that the jury pool is “irreparably tainted” due to the District Attorney’s November 9, 2015 press conference, over three-quarter of the jury eligible respondents either never heard of Mr. Nehad, or voted that they are not sure who they would favor in this case.

³ Some of the jurors who responded that they have never heard of Mr. Nehad in Question 3 are likely to have responded that they were not sure who they would favor in Question 4.

Question 4. If you were asked to be a juror in a civil case where Mr. Nehad’s family was suing the City of San Diego and Officer Browder, how likely are you to favor Mr. Nehad?

| | | Frequency | Percent | Valid Percent | Cumulative Percent |
|---------|--|-----------|---------|---------------|--------------------|
| Valid | 1 Very Unlikely to Favor Mr. Nehad | 21 | .4 | 9.8 | 9.8 |
| | 2 Somewhat Unlikely to Favor Mr. Nehad | 6 | .1 | 2.8 | 12.6 |
| | 3 I am not sure who I would favor | 56 | 1.0 | 26.2 | 38.8 |
| | 4 Somewhat Likely to Favor Mr. Nehad | 9 | .2 | 4.2 | 43.0 |
| | 5 Very Likely to Favor Mr. Nehad | 16 | .3 | 7.5 | 50.5 |
| | 6 I have never heard of Mr. Nehad | 106 | 1.8 | 49.5 | 100.0 |
| | Total | 214 | 3.7 | 100.0 | |
| Missing | System | 5624 | 96.3 | | |
| Total | | 5838 | 100.0 | | |

24. **Alternative Remedies to a Change of Venue are Available:** In the event that the court concludes that biases against either side have become so pervasive as to create a reasonable likelihood that a fair and impartial jury cannot be impaneled, there are remedies that the court could utilize that do not require moving the case out of the Southern District of San Diego. For example, the court could decide to draw the jury from outside the San Diego media market, but remain in the venue by drawing jurors exclusively from Imperial County. Further, 28 USCS § 1404(c) states that, “A district court may order any civil action to be tried at any place within the division in which it is pending.” Section 1404(c) has been interpreted as

1 giving district courts the discretion to determine which division in a given district
2 may host a trial.⁴

3 **25. Summary of Our Opinion:** The Plaintiffs’ Motion for a Change of Venue
4 is arguing that the November 9, 2015 press conference has “irreparably tainted” the
5 jury pool within the Southern District of California. It is our opinion that the
6 Plaintiffs’ Motion for Change of Venue does not offer sufficient evidence to justify
7 a change of venue. The Plaintiffs’ Motion does not include an analysis of the
8 media coverage of the case. Instead, it relies exclusively on the content of the
9 District Attorney’s November 9, 2015 press conference, and ignores the filter that
10 the media coverage of the event provides to the general public. Our content
11 analysis of the media demonstrates that the media coverage has been less favorable
12 to the Defendants to this case, and that media coverage has been more negative
13 toward the Defendants than toward the Plaintiffs and Mr. Nehad.

14 **26.** The Plaintiffs’ Motion for Change of Venue is, in effect, arguing that the
15 Court should conclude that the coverage is so negative toward the Plaintiffs that a
16 presumption of prejudice should apply. The Plaintiffs argue that this presumption
17 should apply simply because the District Attorney’s November 9, 2015 press
18 conference allegedly created biases against Mr. Nehad. The U.S. Supreme Court
19 case, *Skilling v. United States* holds that the presumption of prejudice attends in
20 only the most extreme cases. The *Skilling* case included 4,000 articles in the years
21 leading up to the trial, yet the Supreme Court concluded that the presumption of
22 prejudice did not apply in the *Skilling* case. Given that there was significantly more
23 coverage in the *Skilling* case, and yet the presumption of prejudice did not exist
24 there, then it certainly does not apply here.

26 ⁴ See *Johnson v Merchant (2009, ND Miss) 628 F Supp 2d 695*. This case held that 28
27 *USCS § 1404(c)* had to be read in light of repeal of 28 *USCS § 1393*, and resulting implicit
28 invitation for district courts to establish their own individualized practices regarding divisional
venue, and the use of “may” in §1404(c) did not indicate that such trials could only be held in that
division.

1 27. The Plaintiffs’ Motion for Change of Venue did not offer any actual
2 measures of case recognition or bias against Mr. Nehad or the Plaintiffs. The first
3 of two online surveys that we conducted shows that almost three-quarters of the
4 survey participants who had heard about the case were “neutral” toward Mr. Nehad,
5 and nearly 50% of the survey participants would not favor either side if they were
6 asked to be a juror in the civil case against Officer Browder and the City of San
7 Diego. The second survey we conducted did not exclude those jurors who had not
8 heard about the case. As a result, we were learned that approximately two-thirds of
9 the jury-eligible population has not heard about the case. Survey participants were
10 then asked whether they had a positive, neutral, or negative opinions about Mr.
11 Nehad, or whether they have never heard of Mr. Nehad. Approximately half of the
12 respondents reported that they have never heard of Mr. Nehad, and roughly one-
13 quarter reported that they were “neutral” toward him. Finally, we asked the survey
14 participants how likely they were to favor Mr. Nehad if they were asked to be a
15 juror in a case where Mr. Nehad’s family was suing the City of San Diego and
16 Officer Browder. Again, nearly half of the survey participants have never heard of
17 Mr. Nehad, and just over a quarter, or 26.2%, reported that they are not sure whom
18 they would favor.

19 28. The court could pursue alternatives to a change of venue. For example,
20 rather than moving the case out of the District, the court could instead draw the jury
21 from Imperial County, outside of the San Diego media market.

22 29. The levels of case recognition and bias do not create a presumption of
23 prejudice against either party in this case at this time.
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1 I declare under penalty of perjury that the foregoing is true and correct, except as to
2 those matters stated on information and belief, and as to those matters, I believe
3 them to be true.

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5 Executed on this twenty-eighth day of December, 2015 in Chicago, Illinois.

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WILLIAM R. ROUNTREE

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I declare under penalty of perjury that the foregoing is true and correct, except
as to those matters stated on information and belief, and as to those matters, I believe
them to be true.

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Executed on this twenty-eighth of December, 2015 in New York, NY.

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ALEXIS A. FORBES

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