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		CONFORMED COPY ORIGINAL FILED Superior Court of California Superior Court of California			
1	MICHAEL N. FEUER, City Attorney JULIE SAN JUAN, Supervising Deputy City Att	torney APR 2 1 2014			
2	ELIZABETH GERTZ, Deputy City Attorney (SI	Sherri R. Carter, Executive Officer/Cleri			
3	11701 South La Cienega Boulevard, Suite 430 Los Angeles, California 90045	Sherri R. Garter, Exceditive Environment By: Lisa King, Deputy			
4	Telephone: (310) 202-3800				
5	Facsimile: (310)643-0185				
6	Attorneys for Plaintiff PEOPLE OF THE STATE OF CALIFORNIA	×.			
7	ψ.				
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
9	COUNTY OF LOS ANGELES				
10	PEOPLE OF THE STATE OF CALIFORNIA,	Case No.: 2WA00673			
11	Plaintiff,	MEMORANDUM OF POINTS AND			
12	vs.	AUTHORITIES IN SUPPORT OF REQUEST TO FIND DEFENDANT IN VIOLATION OF PROBATION			
13					
14	FRANCIS SHIVERS,	CONDITIONS			
15	Defendant	Date of Hearing: May 1, 2014			
16		Time of Hearing: 8:30 A.M. Department: D			
17					
18	TO: DEFENDANT FRANCIS SHIVERS AND HIS ATTORNEY OF RECORD:				
19					
20	PLEASE TAKE NOTICE that PLAINTIFF, THE PEOPLE OF THE STATE OF				
21	CALIFORNIA, hereby submit the following Memorandum of Points and Authorities in support				
22	of the People's Request to find Defendant in violation of his conditions of probation.				
23	Dated this 21 <sup>st</sup> day of April, 2014.				
24		Clizaleeth Secte			
25	· · · ·	ELIZABETH GERTZ			
26		а. А.			
27	//				
28	//				
		,			

## STATEMENT OF FACTS

2				
3	Defendant Francis Shivers (hereinafter referred to as "Defendant") was convicted by a			
4	jury on February 25, 2013 of violating one count of Penal Code Section 273.6a, commonly			
5	known as violation of a restraining order, and one count of Penal Code Section 653.2a,			
7	commonly known as cyber-harassment. He was further found to have violated conditions of			
8	probation that were imposed upon him in Case Number 9WA03080 (where he was convicted of			
9	violating one count of Penal Code Section 653m(b)).			
10	Defendant was sentenced on May 31, 2013. The portion of his sentence that is pertinent			
11 12	to this discussion is as follows:			
12	1. He was ordered to obey the protective order issued in this or any other case			
14	regarding Laura Perrett (also known as Pauley Perrette) and was served with a copy of the			
15	protective order in open court.			
16	2. He was ordered not to Tweet at all on any subject.			
17	3. He was ordered not to directly or indirectly refer to Ms. Perrett as his stalker			
18 19	by any form of communication.			
20	4. He was ordered not to annoy, harass or molest any person or witness involved			
21	in this case, especially Laura Perrett.			
22	5. He was ordered to obey all laws, rules and orders of the Court.			
23	Since Defendant was sentenced, he has violated the above probation conditions multiple			
24				
25 26	times through numerous postings on his Facebook page. The trial/sentencing judge, the			
20	Honorable Kathryn Solórzano, has expressed some concern regarding whether the First			
28	Amendment protects the Defendant's Facebook comments. This Memorandum of Points and			

Authorities will address that concern and establish that the Defendant's activities are not protected by the First Amendment.

# THE PROBATION CONDITIONS IMPOSED IN THIS CASE ARE NOT OVERLY RESTRICTIVE

"When granting probation, courts have broad discretion to impose restrictive conditions to foster rehabilitation and to protect public safety... [and] to impose any 'reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, ...and specifically for the reformation and rehabilitation of the probationer."" *In re Bushman* (1970), 1 Cal.3d 767, 776; *In re Mannino* (1971), 14 Cal.App.3d 953, 958. If a condition of probation has a relationship to the crime of which a defendant was convicted, or is reasonably related to future criminality, it is proper even though it may relate to conduct that is not itself criminal. *In re Mannino, supra*, at 960, fn. 4 (restricting defendant's campus protest activities); *People v. Harrisson* (2005), 134 Cal.App.4<sup>th</sup> 637, at 641 (banning defendant from the Internet after a conviction for possession of child pornography).

Moreover, conditions of probation prohibiting Internet access have been upheld in cases that involved use of the Internet in the underlying crimes. *In re Victor L. (2010)*, 182 Cal.App.4<sup>th</sup> 902 at 923. *Harrisson, supra,* at p. 647.

In this case, the Defendant was convicted of (1) violating a civil restraining order by being within 100 yards of Ms. Perrette (hereafter referred to as the "victim") and (2) cyberharassment, by posting several posts on his Twitter account soliciting others to possibly do harm to the victim and placing her in fear of suffering such harm, referring to her on numerous occasions as his "stalker". The probation conditions ordering him to obey the protective order, not to Tweet and not to refer to the victim as his stalker are clearly related to the conduct of which he was convicted. They further relate to an attempt to prevent future criminality by preventing the Defendant from engaging in similar conduct.

Unfortunately, the Defendant has violated these conditions on numerous occasions. Stalking is defined in Penal Code section 646.9(a) as "willfully, maliciously and repeatedly" following or harassing another person, and making a "credible threat with the intent to place that person in reasonable fear for his or her safety..." On January 28, 2014, the Defendant accused the victim on his Facebook page of working with a private investigator and making threats of illegally deporting the Defendant, having him arrested, and committing actual physical violence (Exhibit 1, attached hereto). By accusing the victim of engaging in several of these acts, the Defendant has accused her of being involved in a course of conduct prohibited by section 646.9(a). A comment by Defendant to the January 28 Facebook post refers to this type of conduct, where Defendant alleges that he has been threatened by the victim in writing (Exhibit 2, attached hereto). None of these accusations have any basis in fact or have ever been supported by anything other than the Defendant's own words. It was a violation of his probation conditions to do that to the victim.

Defendant has further violated his probation conditions by failing to adhere to the requirement that he "obey all laws" and that he not harass or disturb the peace of the victim. Many of his posts violate Penal Code section 653.2(a), in that they are electronic communications calculated to incite third parties to instill fear in or harass the victim. This is clear from the comments that appear after the posts, and subsequent exchanges that the Defendant has with each of the commenters. See the February 7 post, where he posts a call for

information from people who have had "bad experiences" with the victim and the posting of her photograph as a member of the Three Stooges (Exhibit 3, attached hereto); one of the comments in response to the January 28 post (Exhibit 1, supra), where another poster writes, "The fact you're still dealing with her crazy ass infuriates me!!" Exhibit 4, attached hereto); the February 6 post next to the State Bar complaint filed by Defendant against the prosecutor, encouraging third parties to research the victim and the case and to "share this information at will" (Exhibit 5, attached hereto); and his February 11 call for civil attorneys and the link to an article on another site entitled "Hissy fits predicted in the Perrette camp and the L.A. courts", which prompted a response from a third party: "I can't wait to watch this go down. There's not enough popcorn in the world" as well as "Give 'em shit Brother" and "Expose the corruption! Or, as Pink Floyd would say, "Tear down the wall!" (Exhibit 6, attached hereto). See also a comment posted in response to Defendant's February 16 post referring to victim's former private investigator, stating, "I wish you justice, so you can move forward with your life and be truly happy and free of PP and all her evil shenanigans for good." (Exhibit 7, attached hereto). The effect of Defendant's postings has, indeed, been to instill fear in and harass the victim.

Yet another February 6 posting in the comments violates the spirit of the restriction on references to the victim as "my stalker", talking about the victim committing perjury and being obsessed (Exhibit 8, attached hereto).

Finally, there are posts accusing the victim of committing crimes, which could also encourage third parties to take action against her. This is exactly the type of activity which was the basis of the Defendant's criminal conviction, resulting in the probation condition restricting his use of the term "my stalker". See the February 6 comments made by Defendant accusing the

victim of cyber-bullying (Exhibit 9, attached hereto).

All of the above postings by the Defendant can clearly be shown to be harassing to and disturbing the peace of the victim, since it is obvious that he is on a campaign to defame her and destroy her reputation.

## NOT ALL SPEECH IS PROTECTED BY THE FIRST AMENDMENT

"[T]here are categories of communication and certain special utterances to which the majestic protection of the First Amendment does not extend because they 'are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.' *Chaplinsky v. New Hampshire* (1942), 315 U.S. 568, 572. Libelous speech has been held to constitute one such category, *see Beauharnais v. Illinois* (1952), 343 U.S. 250; others that have been held to be outside the scope of the freedom of speech are fighting words, *Chaplinsky v. New Hampshire*, supra, incitement to riot, *Brandenburg v. Ohio* (1969), 395 U.S. 444, obscenity, *Roth v. United States* (1957), 354 U.S. 476, and child pornography, *New York v. Ferber* (1982), 458 U.S. 747. In each of these areas, the limits of the unprotected category, as well as the unprotected character of particular communications, have been determined by the judicial evaluation of special facts that have been deemed to have constitutional significance." *Bose Corp. v. Consumers Union* (1984), 466 U.S. 485, 504-05.

The People contend that many of Defendant's Facebook posts include language that has no social value whatsoever and does not purport to present any exposition of ideas; rather, the words are aimed simply at harassing or disturbing the peace of the victim and are violative of both the civil restraining order and the criminal protective order. For example, Defendant on numerous occasions has accused the victim of having conspired with the prosecutor to procure a wrongful conviction and refers to her as the "serial False Accuser Pauley Perrette" (Exhibit 9, attached hereto).

# PROHIBITING DEFENDANT'S FACEBOOK POSTS DOES NOT CONSTITUTE AN IMPERMISSIBLE PRIOR RESTRAINT ON SPEECH

It is well established that where conduct has already been adjudicated as criminal or defamatory, an order prohibiting a defendant from repeating similar statements is not an unconstitutional prior restraint. *Balboa Island Village Inn, Inc. v. Lemen* (2007), 40 Cal. 4<sup>th</sup> 1141 (holding that an injunction prohibiting a defendant from repeating statements deemed at trial to be defamatory was not an unconstitutional prior restraint because the expression had already been judicially determined to be unlawful); *Aguilar v. Avis Rent A Car System, Inc.* (1999), 21 Cal. 4<sup>th</sup> 121 (holding that an injunction precluding use of derogatory racial or ethnic epithets at Hispanic employees was not an invalid prior restraint because it "was issued only after the jury determined that defendants had engaged in employment discrimination, and the order simply precluded defendants from continuing their unlawful activity." *Ibid.*, at 138).

Both California Supreme Court and U.S. Supreme Court decisions have long held that once a court has found that a specific pattern of speech is unlawful, as here, in the Twitter posts and the references to the victim as a "stalker", "an injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited 'prior restraint' of speech." (See cases collected in *Aguilar v. Avis Rent A Car System, Inc., supra*, 21 Cal. 4<sup>th</sup> 121, 140; see also *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4<sup>th</sup> 1090, 1114.) Consequently, due to Defendant's criminal convictions, his conduct in violation of the probation order which bans his undertaking acts similar to that for which he was already convicted, is not protected by the First Amendment to the United States Constitution (*Aguilar* at 138-142) or by the similar provision of the California Constitution. (*Aguilar* at 142-145).

## CONCLUSION

After reviewing all of the Defendant's Internet activity as a whole and looking at the totality of the circumstances, it is readily apparent that his activities are clearly violative of numerous conditions of probation that were imposed upon him after being found guilty by a jury of crimes involving court orders and Internet misuse. Those probationary conditions are reasonable under the circumstances. The Court in this case clearly considered the First Amendment when it initially fashioned the sentence conditions. They are sufficiently related to the proven unlawful conduct as required by established First Amendment law.

It is certainly true that the Defendant has the right to formally complain about whether or not his conviction was proper; in fact, he has filed a Notice of Appeal. However, when he publicly, on the Internet, accuses the victim of committing perjury and other crimes including threats and conspiracy without supplying any credible supporting evidence, he is harassing her, disturbing her peace and cyber-stalking her. He is inciting unknown third parties, whose intent and capabilities he cannot know, to take action against the victim. He is in violation of the probation orders and it would not violate his First Amendment rights under these circumstances to punish him for those violations. His original crimes involved the same types of words and allegations he continues to use in violation of the probation order; his theme has never changed. The Internet is a tool which can be utilized for good and for evil. "...[W]hen such a beneficial tool is put to evil use, there is no constitutional impediment to restrictions calculated to forestall a recurrence." *People v. Harrisson, supra*, at 647. The Defendant should be found in violation of his conditions of probation and punished accordingly. His First Amendment rights still exist, but are justifiably curtailed in the limited manner previously ordered by the court, due to Defendant, so own actions constituting crimes for which a jury found him guilty. Thus, enforcement of the Court's orders restricting his conduct in the limited manner crafted by the Court does not impermissibly violate the Defendant's First Amendment rights. To fail to enforce the orders would in effect allow the Defendant to ignore any protective order or probation order restricting speech or prohibiting the very conduct for which he was convicted. Such a result has never been contemplated by the First Amendment or by any published decision discussing it.

Respectfully submitted,

ELIZABETH GERTZ Deputy City Attorney ATTORNEY FOR THE PLAINTIFF



Coyotee Shivers shared a link. January 28 💉

Yes it's true, Pauley Perrette's personal P.I. and spokesperson John Nazarian, has been caught tampering with evidence, trying to destroy evidence, and now IN WRITING intimidating the main witness (me) in a Grand Jury Inquiry in which he and his employer/cohort Perrette are implicated, through threats of illegally having me deported, illegally having me arrested, and actual physical violence. ALL of this is true and unraveling as I type...

http://www.avoiceformen.com/mens-rights/family-courts/john-nazarian-tries-tochange-the-subject/



John Nazarian tries to change the subject www.avoiceformen.com

John Nazarian thought, for whatever insame reason, that presenting himself to the world as a corrupt profiteer on the misery of destroyed families would endear him to everyone and make him a big sh...

Like · Share

56 people like this.

同1



**Coyotee Shivers** Haha Corey, funny but its actually quite serious. I have had my life threatened IN WRITING by Perrette, and been threatened illegally, both with violence and with other methods of witness intimidation such as this latest documentation regarding pulling string to have me deported, etc. by 3 or 4 of Perrette's co-defendants in the Grand Jury inquiry, one of which has already admitted to sending threats to manufacture criminal charges against me if I speak publicly or testify about the unraveling Pauley Perrette scandal. All evidence is in secure locations ready for any action needed should anything happen to me, including if i "disappear". We have made sure to tripwire this thing from so many angles that if ANYTHING happens to me now, physically, legally, anything, it triggers investigations from the federal, state, and local levels, media, etc, and a whole slew of things I can't discuss. It's actually a very small number of players involved, but the depth of corruption involved is so egregious they are getting desperate, as these latest unfolding events reveal. Also, other witnesses who've been similarly intimidated are coming out of the woodwork...

January 29 at 1:09pm - Like - 🖒 3

-----EXHIBIT 2-----



Coyotee Shivers shared National Coalition for Men's photo. February 7 🦽

The National Coalition For Men is interested in hearing from people who have had bad experiences with the following people, especially if your experiences include issues related to divorce, false allegations, intimidation, threats, coercion, blackmail or anything similar:

NCIS actor Laura "Pauley" Perrette

Los Angeles Deputy City Attorney Elizabeth Biderman Gertz, State Bar License #93523

John Nazarian, Private Investigator

If please share your story here or send us a private message. You can also email us at ncfm @ ncfm.org or call us at 619-231-1909.



Like · Share

14 people like this.



\$1

Claudia Morales The fact you're still dealing with her crazy ass infuriates mel! January 28 at 8:16pm · Like · 🖧 4

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#### Via Certified U.S. Mail, Tracking # 7809 2820 0802 1922 1473 January 30, 2014

State Bar of California, Office of the Chiof Trial Counsel, Intake Unit 845 S. Figueron Street, Los Angoles, CA 90017-2515

### Official Complaint: Elizabeth Biderman Gertz, State Bar #93523 (Deputy City Attorney, City of Los Angeles) PROSECUTORIAL MISCONDUCT

The information contained in this document and it's attachments shall be considered an official Complaint to the State Bar of California, and provides unequivocal proof of gross prosecutorial misconduct and criminal acts committed by Elizabeth Biderman Gertz, State Bar #93523.

These violations include, but are not limited to the following:

- Subarnation of Periary, California Penal Code Section 127
- Subornation of Perjury, California Penal Code Section 127 Conspiracy, California Penal Code Section Reveal California Sine Ibar Rules of Professional Conduct Rule 5-100 Frid Conduct Rule 5-200 Suppression of Evidence Violations of the California State Bar Act Violations of the American Bar Association, Professional Rules of Cenduct Violations of Federal Civil Rights under Color of Law

The State Bar is advised this document is also provided to the Los Angeles Grand Jury as supplemental information to the formal Public Corruption Compliant Heil independently by a collaboration of International Human Rights organizations on July 31, 2013, specifically naming Elizaboth Biderman Gertz, State Bar (#93523

The State Bar is distinctly advised that the protectional misconduct and criminal acts of Elizabeth Bikkmann Gettz detailed herein are <u>not isolated incidents</u>. They are part of a sustained pattern and course of misconduct warrant criminal conviction, and necessitate <u>permanent diabannent to protect the psyche of Lox Ameles and California</u>.

A substantial amount of supplemental documentation of this will further be provided to the State Bar, fite Lox Angeles Grand Jury, the Center for Prosecutor Integrity, and other Human Rights organizations investigating Elizabeth Biderman Clertz, State Bar #93.524



P + Covoice Shiven

Coyotee Shivers

PAGE 1 of 8 Hey Los Angeles! Calling all attorneys!

Currently interviewing civil litigators and attomeys for immediate action in extremely lucrative and sensational case involving celebrity scandal and public corruption in Los Angeles.

The California State Bar has just received this Official Complaint providing undeniable proof of criminal acts committed by Los Angeles Deputy City Attorney Elizabeth Gertz, with and on behalf of, "NCIS" actress Pauley Perrette.

These criminal acts, now proven irrefutably, are a small part of a pattern and practice of celebrity/public corruption, spanning years, escalating into the current unraveling scandal of public and community concern.

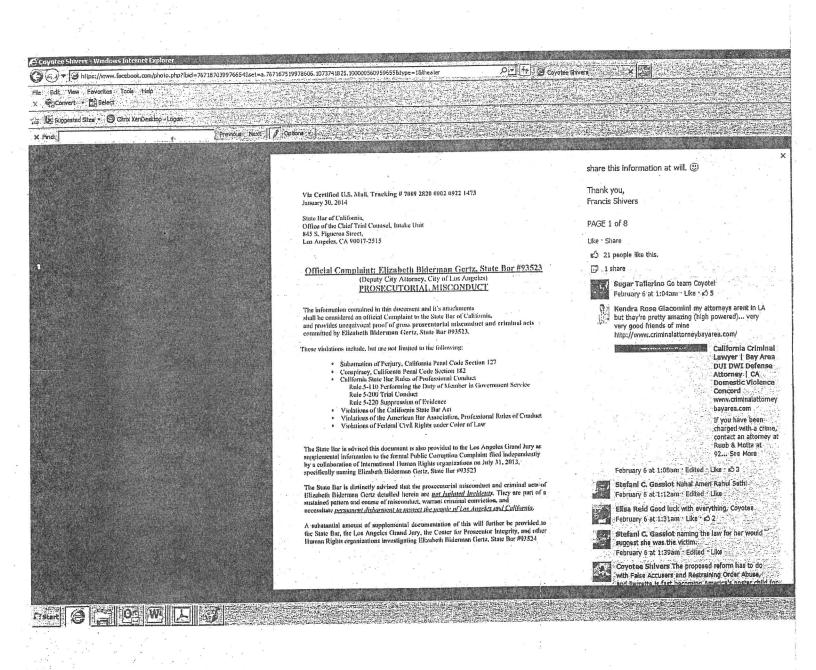
For more information google "Pauley Perrette" and phrases such as:

"grand jury", "public corruption" "schmooze police" or "star crazy"

Potential Defendants include:

Laura "Pauley" Perrette **CBS** Television Network "NCIS" and its producers Elizabeth Biderman Gertz, State Bar #93523 The City of Los Angeles Los Angeles County

Coyotes Shivers - Windows Internet Explorer Coyotes Shivers - Windows Internet Explorer Coyotes Shivers - Windows Internet Explorer File Edit View Favorites Tools Help Covert - Bissect Statistics - County Action - Logon		te Sivers X 🔯
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## EXHIBIT 5



Coyotee Shivers shared a link. February 11

## Los Angeles ATTORNEYS!!! High profile CELEBRITY/PUBLIC CORRUPTION case currently interviewing attorneys

and civil litigators. http://www.avoiceformen.com/allbulletins/hissy-fits-predicted-in-the-perrettecamp-and-the-l-a-courts/



Hissy fits predicted in the Perrette camp and the L.A. courts www.avoiceformen.com

Francis (Coyote) Shivers, beleaguered ex husband of NCIS' Star Crazy star Pauley Perrette, has posted a message on his Facebook page, one that will likely give rise to several screeching tantrums. ...

#### Like Share

30 people like this.



Roman Dirge I can't wait to watch this go down. There's not enough popcorn in the world....

February 11 at 8:33pm · Like · £ 1 Ken Burley Give 'em shit Brother



February 11 at 9:27pm · Like · 🖧 2 Elyse Strandberg (🙂)

February 11 at 10:16pm · Like · 🖒 1



Coyotee Shivers Roman I'm sending your quote to the documentary producers. "There's not enough popcorn in the world..." - Roman Dirge, internationally acclaimed writer and artist.

February 12 at 12:34am · Like · 🖒 2



Angela Parish I can't believe she hasn't gotten bored yet. What a pathetic life she leads..... Especially when compared with your full beautiful life with your fabulous wife! Your one of a kind dude. Keep it up! February 12.at 2:53am · Like · 2 2



Kevin Moran Expose the corruption! Or, as Pink Floyd would say, "Tear down the wall!"

February 12 at 6:41am / Like / 🖒 1



Coyotee Shivers shared a link. February 16 🤞

BUSTED! Here's the video Pauley Perrette's personal P.I. Is working overtime trying to coverup. He and Perrette would walk into court together practically hand in hand. This video makes it obvious why. Now he's threatening me because this video was discovered and publicized. I guess the Perrette camp isn't happy this is being exposed. This is just one of the insane little dramas I am forced to endure in this unraveling celebrity/public corruption scandal. http://youtu.be/aLowHT\_ytBs



Jules Davis I wish you justice, so you can move forward with your life and be truly happy and free of PP and all her evil shenanigans for good. February 17 at 1:16am · Like · 🖒 2



Coyotee Shivers No kidding Jaclyn, my family can't wait to be left alone. Imagine having Americas Most Famous False Accuser obsessed with you like this. The lead detective testified Pauley Perrette has phoned him "Well over 50 times" trying to have me arrested. Talk about not letting it go. Well, this is the underliable proof that she committed gross perjury in her vindictive quest to get back at me for refusing to take her back and filing for divorce. Hell hath no fury like a woman scorned.

February.6 at 8:24am Like 🖒 1



Coyotee Shivers Yes Jaclyn, I've always just felt being happy is the best way to be, but unfortunately that drives her crazy and makes it worse. She started all this because i had happily moved on and filed for divorce. THATS when she went crazy, when i moved on and started dating other people. Now that ive been happily married for longer than i was married to her, she just cant let it go. When the entire transcripts are published you'll see Perrette is so obsessed with our marriage she couldn't even spit out the word "wife" when talking about my wife. She referred to her as my "wife slash girlfriend". Yes for real! We have even married for YEARS and Perrette STILL hasn't come to terms with it, and STILL has to say "wife slash girlfriend", instead of just "wife". That really says it all right there.

February 6 at 9:14am · Like · 🖒 3



**Coyotee Shivers** Jaclyn, I actually feel similar. While of course I hate what she does, and has done, to me and my family, I actually don't hate her like many people do. I pity her. She is a sad sad shell of a person, spending what little sanity she has putting on a fake front and covering up her lies and crimes. She's stuck with my old bartender and clearly can not let go of whatever connection to me it is she has. She will never find the peace and happiness I have when I wake up and see my wife. I could go on and on but I won't. However, I DO VERY MUCH blame the small handful of corrupt public officials who. Rather than 5150-ing Perrette like they should have, instead ENABLED her insanity. Those are the ones who we are making sure are never able to work again and never able to be a danger to the people of Los Angeles again.

FXHIBIT 8-----

February 6 at 9:23am Like 1 24



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Coyotee Shivers By the way, there's also a 12 year old victim, a young NCIS fan, who Perrette bullied online by using the official NCIS franchise name to incite a wave of hatred against her, and this is another case where Perrette, CBS, and NCIS are civilly liable for a lot of money to the victim and her family, so it's likely attorneys who are involved in this case will also be able to represent this young female and her family. February 6 at 12:26pm · Like · 🕰 3



Coyotee Shivers Re: the 12 year old. As it was explained to me, there is a 12 year old Coyotee Shivers Re: the 12 year old. As it was explained to me, there is a 12 year of NCIS fan that accidentally got caught up in Perrettes jealousy about her NCIS co-star

Cote De Pablo. Perrette gets upset that since Cote left the fans want their favorite back, and apparently she's been sending private messages saying Cote "hated her fans" and is a "spoiled rich girl" who didnt appreciate being on NCIS. Stuff like that. So the 12 year old girl posted the inside story from Perrette online, and Perrette then tweeted that she was leaving twitter all because of this 12 year old. Well, you can imagine what this poor girl endured, having been blamed for the big celebrity "leaving twitter". For those who remember, Perrette did this to me too, claiming she was "leaving NCIS" because of me, inciting violent threats against me from crazed NCIS fans. Of course, she never left NCIS, nor did she "leave twitter", its just her way of using her job and the CBS/NCIS franchise name to manipulate and incite fans into doing her dirty work. Assuming she fights these claims in court, you'll be hearing a LOT about it in the coming months.

February 6 at 2:31pm · Like · 🖧 3