

Case No. 10-15152

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Before the En Banc Panel
(Opinion filed February 23, 2012)

ELIZABETH AIDA HASKELL, REGINALD ENTO, JEFFREY PATRICK LYONS, JR., and AAKASH DESAI, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

v.

KAMALA D. HARRIS, Attorney General of California; EVA STEINBERGER, Assistant Bureau Chief for DNA Programs, California Department of Justice,

Defendants-Appellees.

PLAINTIFFS-APPELLANTS' MOTION FOR JUDICIAL NOTICE

On Appeal from the United States District Court
for the Northern District of California
The Honorable Charles R. Breyer
Case No. C 09-04779 CRB

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MOTION FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Plaintiffs-Appellants Elizabeth Aida Haskell, Reginald Ento, Jeffrey Patrick Lyons, Jr., and Aakash Desai (collectively, “Plaintiffs-Appellants”), on behalf of themselves and others similarly situated, hereby request that the Court take judicial notice of the following in further support of the Supplemental Brief of Appellants:

1. The data contained in Exhibit 1 to the Declaration of Michael Risher in Support of Plaintiffs-Appellants’ Motion for Judicial Notice (“Risher Declaration”), which comprises true and correct copies of the Jan Bashinski DNA Laboratory Monthly Statistics Reports from January 2010 through July 2012, as provided by the California Department of Justice on behalf of Defendant-Appellee Harris.
2. The yearly averages of the number of profiles added to California’s DNA databank per month, the number of forensic unknown profiles in that system, and the average number of hits per month, for the years 2010, 2011, and 2012 to date, as contained in Exhibit 3 to the Risher Declaration, and as calculated from the data contained in Exhibit 1.

Under Federal Rule of Evidence 201(d), judicial notice may be taken at any stage of the proceeding, including by an appellate court during the pendency of an appeal. Fed. R. Evid. 201(d); *see also Lowry v. Barnhart*, 329 F.3d 1019, 1024

(9th Cir. 2003); *Bryant v. Carleson*, 444 F.2d 353, 357-58 (9th Cir. 1971); Circuit Advisory Committee Note Seven to Ninth Circuit Rule 27-1. The Court may take judicial notice of any matter “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

The monthly reports included in Exhibit 1 are the proper subject of judicial notice. A court may take judicial notice of figures contained in official documents, including documents appearing on a government website. *See, e.g., Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (judicial notice of information displayed on school district website); *Sinaloa Lake Owners Ass’n v. City of Simi Valley*, 864 F.2d 1475, 1479-80 & n.2 (9th Cir. 1989) (“We take judicial notice of these figures, contained in the reports of a public body, pursuant to Fed. R. Evid. 201(b)(2).”). The monthly reports included in Exhibit 1 are official reports of the California Department of Justice, Office of the Attorney General. *See* Cal. Penal Code § 295(h)(4). They are authenticated because they were obtained directly from that office or its website. *See* Declaration of Michael Risher ISO Mot. for Judicial Notice (“Risher Decl.”), ¶¶ 2-6 & Ex. 2, filed concurrently; *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980, 998 (N.D. Cal. 2010) (“The Court may properly take judicial notice of the documents appearing on a

governmental website.”). These data are relevant because they support Appellants’ position that it is the size of the forensic-unknown database, rather than the increase in the number of known samples taken from arrestees, that has been responsible for the increasing number of hits in California’s DNA database (specifically, that the number of hits has increased with the number of forensic unknown samples in the database, even as the number of new samples taken from arrestees has dropped precipitously). And the Defendants-Appellees can hardly object to this Court’s taking notice of the data that they themselves published on their website and rely upon. *See Cota*, 688 F. Supp. 2d at 998. Thus, the Court should “take judicial notice of these figures, contained in the reports of a public body[.]” *Sinaloa Lake Owners Ass’n*, 864 F.2d at 1479-80 & n.2.

The Court should also take judicial notice of the 2010, 2011, and 2012 averages of the monthly number of new profiles uploaded into the databank, the number of forensic unknown samples in the database, and the monthly number of hits (as well as the percentage changes). *See Risher Decl.* ¶¶ 9-14 & Ex. 3. Courts properly take judicial notice of the results of simple mathematical calculations, because they are easily verified. *See Miller v. Fed. Land Bank of Spokane*, 587 F.2d 415, 422 (9th Cir. 1978) (“This is a matter of mathematics, of which the court could and should have taken judicial notice.”); *see, e.g., United States v. Sowards*, -- F.3d --, 2012 WL 2386605, *4 (4th Cir. June 26, 2012) (taking judicial notice of

mathematical formula for average speed and reversing trial court finding that contradicted what that average demonstrated); *Drake v. Holstead*, 757 S.W.2d 909, 911 (Tex. App. 1988) (discussing Fed. R. Evid. 201 and holding that trial court erred in failing to take judicial notice of counsel's "simple mathematical computation"); *Warboys v. Proulx*, 303 F. Supp. 2d 111, 116-17 (D. Conn. 2004); Wright & Miller, 21B Fed. Prac. & Proc. Evid. § 5105, "Combinatorial Common Knowledge" (2d ed.). Taking an average of a set of figures is a simple calculation, much simpler than the calculations that courts routinely use in determining attorneys' fees, sentences under the federal guidelines, and damages. *See, e.g., Leeward Capital, L.P. v. Archon Corp.*, 759 F. Supp. 2d 1249, 1255-58 (D. Nev. 2010). And the results of such a calculation are not subject to dispute. Thus, because the Court may judicially notice the government's data, it may also judicially notice the yearly averages of those data, as they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

Finally, these averages are relevant because they, even more than the individual monthly figures, make it clear that the government is wrong when it claims that the increase in database hits is a result of the addition of more and more arrestee samples. Far from showing that more testing of known persons (arrestees and convicted offenders) leads to more hits, these averages show an *inverse*

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Defendants-Appellees.

**DECLARATION OF MICHAEL RISHER IN SUPPORT OF PLAINTIFFS-
APPELLANTS' MOTION FOR JUDICIAL NOTICE**

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DECLARATION OF MICHAEL RISHER

I, Michael T. Risher, declare and state as follows:

1. I am an attorney at law admitted to practice before this Court. I am a staff attorney at the American Civil Liberties Union Foundation of Northern California, Inc. (“ACLU-NC”), counsel of record, along with Paul Hastings LLP, for Plaintiffs-Appellants Elizabeth Aida Haskell, Reginald Ento, Jeffrey Patrick Lyons, Jr., and Aakash Desai (“Plaintiffs-Appellants”), on behalf of themselves and others similarly situated. This declaration is submitted in support of Plaintiffs-Appellant’s Motion for Judicial Notice. I have personal knowledge of the matters set forth below and, if called upon, could and would competently testify thereto.

2. The California Department of Justice, Office of the Attorney General’s website features a webpage entitled “Proposition 69 (DNA),” currently located at <http://oag.ca.gov/bfs/prop69>. This webpage includes a link to the Jan Bashinski DNA Laboratory Monthly Statistics. The monthly statistics link, currently <http://oag.ca.gov/sites/all/files/pdfs/bfs/Monthly.pdf?>, is updated each month to report the statistics for the prior month. The statistics for previous months are taken down from the Office of the Attorney General’s Proposition 69 (DNA) webpage.

3. On April 6, 2012, I requested copies of these reports from California’s Jan Bashinski DNA laboratory “for each month from January 2007 to

the present.” In response, I received the requested reports in electronic form, from the California Department of Justice. The reports in Exhibit 1 dated from January 2010 through March 2012 are true and accurate copies of reports I received from the Department of Justice. A copy of the cover letter that accompanied them is attached as Exhibit 2.

4. I visited the Office of the Attorney General’s Proposition 69 (DNA) webpage every month from May 2012 through August 2012, with the exception of June 2012, and downloaded the Jan Bashinski DNA Laboratory Monthly Statistics for the months immediately prior, downloading the monthly statistics for April 2012 through July 2012, with the exception of May 2012. The reports in Exhibit 1 dated April, June, and July 2012 are true and accurate copies of the reports I downloaded from this site.

5. I did not download the Jan Bashinski DNA Laboratory Monthly Statistics for the month of May 2012 from the Office of the Attorney General’s Proposition 69 (DNA) webpage. I did, however, find the May 2012 Jan Bashinski DNA Laboratory Monthly Statistics available online at another website maintained by the California Attorney General’s office, at http://oag.ca.gov/sites/all/files/pdfs/bfs/Monthly_june.pdf (last visited Aug. 30, 2012). The report in Exhibit 1 dated May 2012 is a true and accurate copy of the report I downloaded from this webpage.

6. Thus, each of the reports in Exhibit 1 is a true and accurate copy of a report published by, or provided to me by, the Office of the Attorney General of California.

7. These data show, for example, that in January 2010, the State uploaded 21,285 new samples into its database and obtained 255 hits; the total number of crime-scene samples in the database that month was 29,885.

8. The most recent report shows that in July 2012 the State uploaded 15,559 (roughly 1/3 less than in January 2010) new samples into its database and obtained 403 hits (approximately 58% more than in January 2010); the total number of crime-scene samples in the database that month was 48,132 (approximately 61% more than in 2010).

9. Attached as Exhibit 3 is a spreadsheet that shows the data from the reports contained in Exhibit 1. I have reviewed the spreadsheet contained within Exhibit 3 to ensure that it accurately reflects the data in the monthly reports published by, or provided to me by, the Office of the Attorney General of California.

10. The final column of the spreadsheet for each year shows the yearly average of the indicated category of data. I used Microsoft Excel to calculate these averages and confirmed them using a calculator, dividing the sum of the data by the number of data entries (12 for 2010 and 2011; 7 for 2012).

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 31, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Nanette Cosentino
NANETTE COSENTINO

LEGAL_US_W # 72570325

EXHIBIT 1



Jan Bashinski DNA Laboratory Monthly Statistics

Month	January 2010 <small>(as of January 31, 2010)</small>
Starting Backlog	48,553
New Samples Added	19,839
Profiles Uploaded into CODIS	21,285
Newly Removed from Backlog <small>(Overall Total of 25,829 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	391
Ending Backlog	46,716
Total Forensic Unknown Profiles in CODIS	29,885
Total Data Bank (Offender) Profiles in CODIS	1,450,157
Hits This Month	255
Total Data Bank Hits	11,476



Jan Bashinski DNA Laboratory Monthly Statistics

Month	February 2010 <small>(as of February 28, 2010)</small>
Starting Backlog	46,716
New Samples Added	20,645
Profiles Uploaded into CODIS	21,835
Newly Removed from Backlog <small>(Overall Total of 26,087 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	258
Ending Backlog	45,268
Total Forensic Unknown Profiles in CODIS	30,335
Total Data Bank (Offender) Profiles in CODIS	1,471,992
Hits This Month	256
Total Data Bank Hits	11,732



Jan Bashinski DNA Laboratory Monthly Statistics

Month	March 2010 <small>(as of March 31, 2010)</small>
Starting Backlog	45,268
New Samples Added	22,260
Profiles Uploaded into CODIS	23,025
Newly Removed from Backlog <small>(Overall Total of 26,642 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	555
Ending Backlog	43,948
Total Forensic Unknown Profiles in CODIS	30,888
Total Data Bank (Offender) Profiles in CODIS	1,495,017
Hits This Month	405
Total Data Bank Hits	12,137



Jan Bashinski DNA Laboratory Monthly Statistics

Month	April 2010 <small>(as of April 30, 2010)</small>
Starting Backlog	43,948
New Samples Added	21,045
Profiles Uploaded into CODIS	21,500
Newly Removed from Backlog <small>(Overall Total of 26,677 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	35
Ending Backlog	43,458
Total Forensic Unknown Profiles in CODIS	31,307
Total Data Bank (Offender) Profiles in CODIS	1,516,517
Hits This Month	288
Total Data Bank Hits	12,425



Jan Bashinski DNA Laboratory Monthly Statistics

Month	May 2010 <small>(as of May 31, 2010)</small>
Starting Backlog	43,458
New Samples Added	20,305
Profiles Uploaded into CODIS	14,392
Newly Removed from Backlog <small>(Overall Total of 27,209 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	532
Ending Backlog	48,839
Total Forensic Unknown Profiles in CODIS	31,898
Total Data Bank (Offender) Profiles in CODIS	1,530,909
Hits This Month	258
Total Data Bank Hits	12,683



Jan Bashinski DNA Laboratory Monthly Statistics

Month	June 2010 <small>(as of June 30, 2010)</small>
Starting Backlog	48,838
New Samples Added	21,174
Profiles Uploaded into CODIS	22,056
Newly Removed from Backlog <small>(Overall Total of 28,603 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	1,393
Ending Backlog	46,563
Total Forensic Unknown Profiles in CODIS	32,434
Total Data Bank (Offender) Profiles in CODIS	1,552,965
Hits This Month	383
Total Data Bank Hits	13,066



Jan Bashinski DNA Laboratory Monthly Statistics

Month	July 2010 <small>(as of July 31, 2010)</small>
Starting Backlog	46,563
New Samples Added	20,639
Profiles Uploaded into CODIS	21,222
Newly Removed from Backlog <small>(Overall Total of 28,947 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	344
Ending Backlog	45,636
Total Forensic Unknown Profiles in CODIS	33,125
Total Data Bank (Offender) Profiles in CODIS	1,574,187
Hits This Month	316
Total Data Bank Hits	13,382



Jan Bashinski DNA Laboratory Monthly Statistics

Month	August 2010 <small>(as of August 31, 2010)</small>
Starting Backlog	45,636
New Samples Added	21,589
Profiles Uploaded into CODIS	22,104
Newly Removed from Backlog <small>(Overall Total of 29,645 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	698
Ending Backlog	44,423
Total Forensic Unknown Profiles in CODIS	33,688
Total Data Bank (Offender) Profiles in CODIS	1,596,291
Hits This Month	408
Total Data Bank Hits	13,790



Jan Bashinski DNA Laboratory Monthly Statistics

Month	September 2010 <small>(as of September 30, 2010)</small>
Starting Backlog	44,423
New Samples Added	21,152
Profiles Uploaded into CODIS	21,232
Newly Removed from Backlog <small>(Overall Total of 30,207 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	562
Ending Backlog	43,781
Total Forensic Unknown Profiles in CODIS	34,487
Total Data Bank (Offender) Profiles in CODIS	1,617,523
Hits This Month	372
Total Data Bank Hits	14,162



Jan Bashinski DNA Laboratory Monthly Statistics

Month	October 2010 <small>(as of October 31, 2010)</small>
Starting Backlog	43,781
New Samples Added	20,235
Profiles Uploaded into CODIS	23,633
Newly Removed from Backlog <small>(Overall Total of 30,939 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	732
Ending Backlog	39,651
Total Forensic Unknown Profiles in CODIS	35,083
Total Data Bank (Offender) Profiles in CODIS	1,641,156
Hits This Month	420
Total Data Bank Hits	14,582



Jan Bashinski DNA Laboratory Monthly Statistics

Month	November 2010
Starting Backlog	39,651
New Samples Added	18,273
Profiles Uploaded into CODIS	18,869
Total Removed from Backlog <small>(Overall total of samples removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested.)</small>	28,315
Ending Backlog	41,679
Total Forensic Unknown Profiles in CODIS	35,800
Total Data Bank (Offender) Profiles in CODIS	1,660,025
Hits This Month	343
Total Data Bank Hits	14,925



Jan Bashinski DNA Laboratory Monthly Statistics

Month	December 2010
Starting Backlog	41,679
New Samples Added	18,461
Profiles Uploaded into CODIS	20,013
Newly Removed from Backlog <small>(Overall Total of 29,125 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this month's number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	810
Ending Backlog	39,317
Total Forensic Unknown Profiles in CODIS	36,667
Total Data Bank (Offender) Profiles in CODIS	1,680,038
Hits This Month	625
Total Data Bank Hits	15,550



Jan Bashinski DNA Laboratory Monthly Statistics

Month	January 2011
Starting Backlog	39,317
New Samples Added	17,303
Profiles Uploaded into CODIS	17,999
Newly Removed from Backlog <small>(Overall Total of 29,854 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	729
Ending Backlog	37,892
Total Forensic Unknown Profiles in CODIS	37,568
Total Data Bank (Offender) Profiles in CODIS	1,698,037
Hits This Month	484
Total Data Bank Hits	16,034



Jan Bashinski DNA Laboratory Monthly Statistics

Month	February 2011
Starting Backlog	37,892
New Samples Added	16,054
Profiles Uploaded into CODIS	18,234
Newly Removed from Backlog <small>(Overall Total of 30,157 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	303
Ending Backlog	35,409
Total Forensic Unknown Profiles in CODIS	38,074
Total Data Bank (Offender) Profiles in CODIS	1,716,271
Hits This Month	405
Total Data Bank Hits	16,439



Jan Bashinski DNA Laboratory Monthly Statistics

Month	March 2011
Starting Backlog	35,409
New Samples Added	19,703
Profiles Uploaded into CODIS	19,145
Newly Removed from Backlog <small>(Overall Total of 30,918 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	761
Ending Backlog	35,206
Total Forensic Unknown Profiles in CODIS	38,809
Total Data Bank (Offender) Profiles in CODIS	1,735,416
Hits This Month	394
Total Data Bank Hits	16,833



Jan Bashinski DNA Laboratory Monthly Statistics

Month	April 2011
Starting Backlog	35,206
New Samples Added	17,122
Profiles Uploaded into CODIS	17,104
Newly Removed from Backlog <small>(Overall Total of 32,002 removed from backlog – including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	1,084
Ending Backlog	34,140
Total Forensic Unknown Profiles in CODIS	39,497
Total Data Bank (Offender) Profiles in CODIS	1,752,520
Hits This Month	395
Total Data Bank Hits	17,228



Jan Bashinski DNA Laboratory Monthly Statistics

Month	May 2011
Starting Backlog	34,140
New Samples Added	18,418
Profiles Uploaded into CODIS	19,401
Newly Removed from Backlog <small>(Overall Total of 29,828 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months change is negative because successful results were obtained on samples and uploads were made on samples previously removed from the backlog due to qualification status (now changed as a result of manual record reviews), inadequate sample, or two or more analytical failures.)</small>	-2,174
Ending Backlog	35,331
Total Forensic Unknown Profiles in CODIS	40,001
Total Data Bank (Offender) Profiles in CODIS	1,771,921
Hits This Month	374
Total Data Bank Hits	17,602



Jan Bashinski DNA Laboratory Monthly Statistics

Month	June 2011
Starting Backlog	35,331
New Samples Added	18,312
Profiles Uploaded into CODIS	19,294
Newly Removed from Backlog <small>(Overall Total of 30,919 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	1,091
Ending Backlog	33,258
Total Forensic Unknown Profiles in CODIS	40,775
Total Data Bank (Offender) Profiles in CODIS	1,791,215
Hits This Month	501
Total Data Bank Hits	18,103



Jan Bashinski DNA Laboratory Monthly Statistics

Month	July 2011
Starting Backlog	33,258
New Samples Added	17,432
Profiles Uploaded into CODIS	17,966
Newly Removed from Backlog <small>(Overall Total of 31,304 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	385
Ending Backlog	32,339
Total Forensic Unknown Profiles in CODIS	41,337
Total Data Bank (Offender) Profiles in CODIS	1,809,181
Hits This Month	349
Total Data Bank Hits	18,452



Jan Bashinski DNA Laboratory Monthly Statistics

Month	August 2011
Starting Backlog	32,339
New Samples Added	17,047
Profiles Uploaded into CODIS	17,484
Newly Removed from Backlog <small>(Overall Total of 32,351 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	1,047
Ending Backlog	30,855
Total Forensic Unknown Profiles in CODIS	41,817
Total Data Bank (Offender) Profiles in CODIS	1,826,665
Hits This Month	348
Total Data Bank Hits	18,800



Jan Bashinski DNA Laboratory Monthly Statistics

Month	September 2011
Starting Backlog	30,855
New Samples Added	10,026
Profiles Uploaded into CODIS	15,737
Newly Removed from Backlog <small>(Overall Total of 32,802 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	451
Ending Backlog	24,693
Total Forensic Unknown Profiles in CODIS	42,251
Total Data Bank (Offender) Profiles in CODIS	1,842,402
Hits This Month	283
Total Data Bank Hits	19,083



Jan Bashinski DNA Laboratory Monthly Statistics

Month	October 2011
Starting Backlog	24,693
New Samples Added	7,398
Profiles Uploaded into CODIS	8,943
Newly Removed from Backlog <small>(Overall Total of 33,110 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	308
Ending Backlog	22,840
Total Forensic Unknown Profiles in CODIS	42,715
Total Data Bank (Offender) Profiles in CODIS	1,851,345
Hits This Month	351
Total Data Bank Hits	19,434



Jan Bashinski DNA Laboratory Monthly Statistics

Month	November 2011
Starting Backlog	22,840
New Samples Added	11,328
Profiles Uploaded into CODIS <small>(*In total 11,536 were uploaded, but 1,805 were results for samples previously listed as removed from the backlog.)</small>	9,731*
Removed from Backlog <small>(Overall Total of 31,305 removed from backlog, *1,805 less than last month due to obtaining successful results on specimen previously removed—This category includes samples Expunged, Removed or Failed twice, as well as where a new Sample has been requested)</small>	*
Ending Backlog	24,437
Total Forensic Unknown Profiles in CODIS	43,291
Total Data Bank (Offender) Profiles in CODIS	1,862,881
Hits This Month	428
Total Data Bank Hits	19,862



Jan Bashinski DNA Laboratory Monthly Statistics

Month	December 2011
Starting Backlog	24,437
New Samples Added	11,683
Profiles Uploaded into CODIS	7,946
Newly Removed from Backlog <small>(Overall Total of 31,967 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	662
Ending Backlog	27,512
Total Forensic Unknown Profiles in CODIS	43,768
Total Data Bank (Offender) Profiles in CODIS	1,870,827
Hits This Month	215
Total Data Bank Hits	20,077



Jan Bashinski DNA Laboratory Monthly Statistics

Month	January 2012
Starting Backlog	27,512
New Samples Added	14,041
Profiles Uploaded into CODIS	8,031
Newly Removed from Backlog <small>(Overall Total of 33,340 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested--Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	1,373
Ending Backlog	32,149
Total Forensic Unknown Profiles in CODIS	44,366
Total Data Bank (Offender) Profiles in CODIS	1,878,858
Hits This Month	350
Total Data Bank Hits	20,427



Jan Bashinski DNA Laboratory Monthly Statistics

Month	February 2012
Starting Backlog	32,149
New Samples Added	13,121
Profiles Uploaded into CODIS	12,965
Newly Removed from Backlog <small>(*In total 13,116 were uploaded, but 151 were results for samples previously listed as removed from the backlog.)</small>	*
Ending Backlog	32,305
Total Forensic Unknown Profiles in CODIS	44,845
Total Data Bank (Offender) Profiles in CODIS	1,891,974
Hits This Month	379
Total Data Bank Hits	20,796



Jan Bashinski DNA Laboratory Monthly Statistics

Month	March 2012
Starting Backlog	32,305
New Samples Added	17,171
Profiles Uploaded into CODIS	9,931
Newly Removed from Backlog <small>(Overall Total of 33,872 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested)</small>	683
Ending Backlog	38,862
Total Forensic Unknown Profiles in CODIS	45,516
Total Data Bank (Offender) Profiles in CODIS	1,901,905
Hits This Month	364
Total Data Bank Hits	21,160



Jan Bashinski DNA Laboratory Monthly Statistics

Month	April 2012
Starting Backlog	38,862
New Samples Added	15,272
Profiles Uploaded into CODIS	10,588
Newly Removed from Backlog <small>(Overall Total of 34,275 removed from backlog - including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested--Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	403
Ending Backlog	43,143
Total Forensic Unknown Profiles in CODIS	46,222
Total Data Bank (Offender) Profiles in CODIS	1,912,493
Hits This Month	412
Total Data Bank Hits	21,572



Jan Bashinski DNA Laboratory Monthly Statistics

Month	May 2012
Starting Backlog	43,143
New Samples Added	14,828
Profiles Uploaded into CODIS	13,101
Newly Removed from Backlog <small>(Overall Total of 34,973 removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	698
Ending Backlog	44,172
Total Forensic Unknown Profiles in CODIS	46,863
Total Data Bank (Offender) Profiles in CODIS	1,925,594
Hits This Month	490
Total Data Bank Hits	22,062



Jan Bashinski DNA Laboratory Monthly Statistics

Month	June 2012
Starting Backlog	44,172
New Samples Added	13,225
Profiles Uploaded into CODIS	13,231
Newly Removed from Backlog <small>(Overall Total of 35,115 removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	142
Ending Backlog	44,024
Total Forensic Unknown Profiles in CODIS	47,540
Total Data Bank (Offender) Profiles in CODIS	1,938,825
Hits This Month	378
Total Data Bank Hits	22,440



Jan Bashinski DNA Laboratory Monthly Statistics

Month	July 2012
Starting Backlog	44,024
New Samples Added	15,705
Profiles Uploaded into CODIS	15,559
Newly Removed from Backlog <small>(Overall Total of 36,001 removed from backlog—including any samples Expunged, Removed or Failed twice, as well as where a New Sample has been requested—Note: this months number is negative because successful results were obtained on samples previously removed from the backlog due to inadequate sample or two or more analytical failures.)</small>	886
Ending Backlog	43,284
Total Forensic Unknown Profiles in CODIS	48,132
Total Data Bank (Offender) Profiles in CODIS	1,954,384
Hits This Month	403
Total Data Bank Hits	22,843

EXHIBIT 2

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
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April 18, 2012

SENT VIA EMAIL AND U.S. MAIL

Michael T. Risher, Staff Attorney
American Civil Liberties Union
Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
mrisher@aclunc.org

Re: California Public Records Act Request

Dear Mr. Risher:

This letter is in response to your correspondence dated April 6, 2012, which was received by the Attorney General’s Office on April 6, 2012, in which you sought various records pursuant to the Public Records Act as set forth in Government Code section 6250 et seq. Specifically, you requested:

Copies of the Jan Bashinski DNA Laboratory Monthly Statistics, for each month from January 2007 to the present. The current copy of this document is posted each month on your website at <http://oag.ca.gov/sites/all/files/pdfs/bfs/Monthly.pdf>

If you have historical data stored electronically in a format that is easily accessible (e.g., in a spreadsheet or standard database format) I would also like a copy of that file.

The Department has conducted a search of its files and located reports titled “Jan Bashanski DNA Laboratory Monthly Statistics,” for the following months:

Jan 2007	Jan 2008	Jan 2009	Jan 2010	Jan 2011	Jan 2012
Feb 2007	Feb 2008	Feb 2009	Feb 2010	Feb 2011	Feb 2012
March 2007	March 2008	March 2009	March 2010	March 2011	March 2012

Michael T. Risher
 April 18, 2012
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April 2007	April 2008	April 2009	April 2010	April 2011	
May 2007	May 2008	May 2009	May 2010	May 2011	
June 2007	June 2008	June 2009	June 2010	June 2011	
July 2007	July 2008	July 2009	July 2010	July 2011	
August 2007	August 2008	August 2009	August 2010	August 2011	
Sept. 2007	Sept. 2008	Sept. 2009	Sept. 2010	Sept. 2011	
October 2007	October 2008	October 2009	October 2010	October 2011	
Nov 2007	Nov 2008	Nov 2009	Nov 2010	Nov 2011	
Dec 2007	Dec 2008	Dec 2009	Dec 2010	Dec 2011	

Pursuant to Government Code section 6253, subdivision (b), our office charges \$.10/page as the direct cost for duplication of public records. However, you indicated in your request that you would prefer that the Department provide you electronic records if they are stored in a format that is easily accessible (e.g., in a spreadsheet or standard database format). Because these documents are already maintained electronically, we have provided a CD-ROM containing the responsive documents with this letter. As such, the Department waives the duplication and/or postage charge in this matter.

Sincerely,



NATHAN DAVALLE
 Acting Special Agent in Charge
 Professional Standards Group
 Division of Law Enforcement

For KAMALA D. HARRIS
 Attorney General

EXHIBIT 3

	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10
Starting Backlog	48,553	46,716	45,268	43,948	43,458	48,838	46,563
New Samples Added	19839	20645	22,260	21045	20,305	21174	20639
Profiles Uploaded into CODIS	21285	21835	23025	21500	14392	22056	21222
Samples Removed from Backlog	391 (25829)	258(26087)	555 (26,642)	35 (26,677)	532 (27209)	1393 (28603)	344(28947)
Ending Backlog	46,716	45,268	43,948	43,458	48,839	46,563	45,636
Total Forensic Unknown Profiles in CODIS	29885	30335	30888	31307	31898	32434	33125
Total Data Bank Profiles in CODIS	1,450,157	1,471,992	1,495,017	1,516,517	1,530,909	1,552,965	1,574,187
Hits This Month	255	256	405	288	258	383	316
Total Data Bank Hits	11476	11,732	12,137	12,425	12,683	13,066	13,382

	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	2010 Average
Starting Backlog	45,636	44,423	43,781	39,651	41,679	
New Samples Added	21589	21,152	20,235	18,273	18461	
Profiles Uploaded into CODIS	22104	21232	23633	18869	20013	20,931
Samples Removed from Backlog	698 (29,645)	562 (30,207)	732 (30,939)	28,315	810 (29,125)	
Ending Backlog	44,423	43,781	39,651	41,679	39,317	
Total Forensic Unknown Profiles in CODIS	33688	34487	35083	35800	36667	32,966
Total Data Bank Profiles in CODIS	1,596,291	1,617,523	1,641,156	1,660,025	1,680,038	
Hits This Month	408	372	420	343	625	361
Total Data Bank Hits	13,790	14,162	14,582	14,925	15,550	

	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11
Starting Backlog	39,317	37,892	35,409	35,206	34,140	35,331	33,258
New Samples Added	17303	16054	19,703	17122	18,418	18312	17432
Profiles Uploaded into CODIS	17999	18234	19145	17104	19401	19294	17966
Samples Removed from Backlog	729 (29854)	303 (30157)	761 (30918)	1084 (32002)	-2174 (29828)	1091 (30919)	385 (31304)
Ending Backlog	37,892	35,409	35,206	34,140	35,331	33,258	32,339
Total Forensic Unknown Profiles in CODIS	37568	38074	38809	39497	40001	40775	41337
Total Data Bank Profiles in CODIS	1,698,037	1,716,271	1,735,416	1,752,520	1,771,921	1,791,215	1,809,181
Hits This Month	484	405	394	395	374	501	349
Total Data Bank Hits	16034	16,439	16,833	17,228	17,602	18,103	18,452

2011
Average

	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	2011 Average
Starting Backlog	32,339	30,855	24,693	22,840	24,437	
New Samples Added	17047	10,026	7,398	11,328	11683	
Profiles Uploaded into CODIS	17,484	15,737	8,943	9,731	7,946	15,749
Samples Removed from Backlog	1047 (32,351)	451 (32,802)	308 (33,110)	*662 (31305)	662 (31967)	
Ending Backlog	30,855	24,693	22,840	24,437	27,512	
Total Forensic Unknown Profiles in CODIS	41,817	42,251	42,715	43,291	43,768	40,825
Total Data Bank Profiles in CODIS	1,826,665	1,842,402	1,851,345	1,862,881	1,870,827	
Hits This Month	348	283	351	428	215	377
Total Data Bank Hits	18,800	19,083	19,434	19,862	20,077	

	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	2012 Average
Starting Backlog	27,512	32,149	32,305	38,862	43,143	44,172	44,024	
New Samples Added	14041	13121	17171	15272	14,828	13,225	15,705	
Profiles Uploaded into CODIS	8031	12965	9931	10588	13101	13231	15559	11,915
Samples Removed from Backlog	1373 (33340)	neg. 151 (33872)	683 (34,275)	403 (34,973)	698 (35,115)	142 (36,001)	886	
Ending Backlog	32,149	32,305	38,862	43,143	44,172	44,024	43,284	
Total Forensic Unknown Profiles in CODIS	44366	44845	45516	46222	46863	47540	48132	46,212
Total Data Bank Profiles in CODIS	1,878,858	1,891,974	1,901,905	1,912,493	1,925,594	1,938,825	1,954,384	
Hits This Month	350	379	364	415	490	378	403	397
Total Data Bank Hits	20427	20796	21,160	21572	22062	22440	22843	