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ARGUMENT AND CITATION OF AUTHORITY

The criminal records relating to Mr./Ms. \_\_\_\_\_, the Petitioner, are inaccurate, incomplete and misleading because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The records, as a result, should be purged pursuant to O.C.G.A. § 35-3- 37(c). Alternatively, the records should be modified by \_\_\_\_\_

Further, the records should be purged because of their potential harm which outweighs the state's interest in keeping them and because retention of the records violates Mr./Ms. \_\_\_\_\_'s rights of privacy and due process. Finally, Mr./Ms. \_\_\_\_\_ is entitled by statute to the return of his/her fingerprint records. Each of these matters is discussed below.

I. Mr./Ms. \_\_\_\_\_'s Criminal Records are Inaccurate, Misleading and Incomplete and Thus Should Be Expunged Pursuant to O.C.G.A. § 35-3-37(c).

O.C.G.A. § 35-3-37(c) provides a remedy for a person who believes that his criminal records are inaccurate and incomplete and who cannot obtain relief from the law enforcement agency having custody of the records. Such a person is entitled to a de novo hearing before a superior court, which is empowered to "order such relief as it finds to be required by law." If the record in question is found to be "inaccurate, incomplete, or misleading, the court shall order it to be appropriately expunged, modified, or supplemented by an explanatory notation." O.C.G.A. § 35-3-37(c).

Mr./Ms. \_\_\_\_\_ contends that his records are inaccurate, incomplete and misleading:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Alternatively, an explanatory notation should be made, such as "Prosecution dismissed the charges."

It should be emphasized that Mr./Ms. \_\_\_\_\_ is not contending that all records relating to prosecutions which are later dismissed are misleading and thus subject to expungement. Nor is s/he challenging the Attorney General's opinion that expungement should be reserved for the unusual or extreme case. 1982 Op. Atty. Gen. 82-8. Rather, Mr./Ms. \_\_\_\_\_'s position is that his case is unusual because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ the charges against him were made without cause by an angry \_\_\_\_\_ for the purpose of harassing him/her

II. Regardless of Whether Mr./Ms. \_\_\_\_\_'s Records are Inaccurate or Misleading, this Court Should Order Expungement.

Regardless of whether Mr./Ms. \_\_\_\_\_'s records are "inaccurate, incomplete, or misleading" within the meaning of O.C.G.A. § 35-3-37(c), this Court should order that the records be expunged. The scope of the remedy provided by that section is not limited to inaccurate, incomplete or misleading records. Rather, under the section a court is generally empowered to "order such relief as it finds to be required by law" upon consideration of a request that a criminal record be expunged.

Furthermore, although there is apparently no Georgia law directly on point, courts in other jurisdictions have used their inherent equitable powers to expunge criminal records in unusual cases such as this one. See, e.g., Bradford v. Mahan, 548 P. 2d at 1231; Natwig v. Webster, 562 F. Supp. 225 (D. R.I. 1983); United States v. Bohr, 406 F. Supp. 1218 (E. D. Wis. 1976); see generally O'Neal v. State, 185 Ga. App. 838, 365 S. E. 2d 894 (1988) (superior courts have authority to exercise all powers appertaining to their jurisdiction); Johnson v. State, 177 Ga. 881, 171 S. E. 699 (1933) (superior courts possess "inherent powers" not specifically granted by law). In deciding what constitutes the unusual or extreme case justifying expungement, courts have balanced the government's needs for the records against the harm that results from maintaining the records. Natwig v. Webster, 562 F. Supp. at 228.

There is good reason for this Court to exercise its general authority under O.C.G.A. § 35-3-37(c) and its inherent equitable power to expunge Mr./Ms. \_\_\_\_\_'s records. The impact on Mr./Ms. \_\_\_\_\_ of having a criminal record is enormous. It has been noted that notwithstanding an acquittal, a criminal record often works as a serious impediment and basis of discrimination in the search for employment and in securing certain licenses. E.g., Davidson v. Dill, 180 Colo. 123, 503 P. 2d 157, 159 (1972). Moreover, it is common knowledge that a man with a record is much more apt to be subject to police scrutiny--the first to be questioned and the last eliminated as the suspect in an investigation. If he is subsequently arrested, his previous record may result in denial of bail and influence the prosecutor in deciding how to handle the case. And if the man is convicted, his previous record may be considered in sentencing. E.g., Menard v. Mitchell, 430 F. 2d 486, 490-91 (D. C. Cir. 1970).

In contrast to the potential harm to Mr./Ms. \_\_\_\_\_, there is no legitimate law enforcement purpose that justifies retention of his records. The value of a person's criminal records to law enforcement agencies depends on two assumptions: (1) that the person in fact committed the crime for which he was accused and (2) that commission of the crime indicates a likelihood that he will commit other crimes. See Eddie v. Moore, 5 Wash. App. 334, 487 P. 2d 211 (1971), rev. denied, 79 Wash. 2d 1012 (1971). Neither of these assumptions has any validity in a case such as this one where the prosecution was based entirely upon an unfounded complaint by a disgruntled employee attempting to harass his employer. See Commonwealth v. Malone, 244 Pa. Super. 62, 366 A. 2d 584, 589 n. 9 (1976) (if "the testimony of the complainant was so insubstantial so that the [State] could not even make out a prima facie case, its interest [in retaining records] would seem relatively insignificant").

Expungement of Mr./Ms. \_\_\_\_\_'s records is thus appropriate. In addition, to provide full relief to Mr./Ms. \_\_\_\_\_, this Court should enter an order directing that in the future Mr./Ms. \_\_\_\_\_ may answer in the

negative to any inquiry regarding whether he was ever prosecuted for the offense of simple battery as alleged by Mr./Ms. \_\_\_\_\_. See *Natwig v. Webster*, 562 F. Supp. at 232 (entering such an order).

III. Expungement of Mr./Ms. \_\_\_\_\_'s Records is Necessary to Protect his Constitutional Rights of Privacy and Due Process.

Courts have also found a basis for ordering expungement of criminal records in the constitutional rights of privacy, see e.g., *Davidson v. Dill*, 503 P. 2d at 161; *Eddie v. Moore*, 487 P. 2d at 217, and of due process, e.g., *Commonwealth v. Malone*, 366 A. 2d at 587. Under the rationale of these decisions, expungement is appropriate whenever the government is not able to show that its interest in retaining the records outweighs the resulting potential harm to the person whose records are being retained. E.g., *Eddy v. Moore*, supra. Since, as set forth above, the potential harm to Mr./Ms. \_\_\_\_\_ exceeds the State's interest in retaining his records, expungement is necessary to protect his rights of due process.

IV. Mr./Ms. \_\_\_\_\_ is Entitled to the Return of his/her Fingerprint Cards Pursuant to O.C.G.A. § 35-3-36(c).

O.C.G.A. § 35-3-36(c) provides in part as follows:

Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order....

Since Mr./Ms. \_\_\_\_\_ was cleared of the offense of simple battery through \_\_\_\_\_, the State has no legitimate reason to keep the fingerprint records. Consequently, it is appropriate for this Court to enter an order requiring that his fingerprint records taken in connection therewith be returned to him. This conclusion follows regardless of whether his records are inaccurate, incomplete, or misleading or whether he is otherwise entitled to an order of expungement.

## CONCLUSION

For the reasons stated in this brief, Mr./Ms. \_\_\_\_\_ requests that this Court enter an order expunging all criminal records relating to his prosecution for the offense of simple battery and directing that all agencies to which these records have been disseminated be informed of the order. Further, the order should provide that if asked, Mr. \_\_\_\_\_ can respond that the prosecution never took place. Alternatively, Mr./Ms. \_\_\_\_\_ seeks an order striking the words " \_\_\_\_\_ " from his/her records maintained by \_\_\_\_\_ and adding an explanatory notation to the records such as " \_\_\_\_\_ ". Finally, Mr./Ms. \_\_\_\_\_ is entitled to the return of his fingerprint records.

\_\_\_\_\_  
Petitioner *pro se*

Address \_\_\_\_\_

Phone number \_\_\_\_\_

(See certificate of service)







ordered to obtain and return to Mr. \_\_\_\_\_'s counsel all such fingerprint records in the possession of any individuals or agencies to whom such records have been disseminated, including the Georgia Crime Information Center and the Federal Bureau of Investigation. All fingerprint records shall be returned within thirty days of the date of this Order.

(4) It is further ordered that the "prosecution" referred to herein shall not, in the future, prevent Mr. \_\_\_\_\_ from answering in the negative to any inquiry regarding whether he has ever been arrested or prosecuted for any criminal offense.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge, Superior Courts

\_\_\_\_\_ County Superior Court

\_\_\_\_\_  
(Name of attorney presenting order)

\_\_\_\_\_  
(Attorney's address & phone number)

\_\_\_\_\_  
(Attorney's State Bar number)