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6 Attorneys for Defendants,
7 COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT, SHERIFF LEROY BACA, SCOTT WALKER, RICK RECTOR,
8 DONALD NICHIPORUK, RICHARD SCHLEGEL, (erroneously sued as M.
SCHLEGEL), DEPUTY BRICE STELLA (erroneously sued as D. STELLA), JACK
9 DEMELLO, (erroneously sued as J. DERNELLO), DAVID O'SULLIVAN, JAMES
RITENOUR, IAN STADE, ROBERT J. LAWRENCE and CURT
10 MESSERSCHMIDT

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

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15 AUGUSTA MILLENDER, BRENDA) Case No. CV 05-2298 DDP (RZx)
MILLENDER, WILLIAM JOHNSON,)
16) **DEFENDANTS' EX PARTE**
Plaintiffs,) **APPLICATION FOR STAY OF**
17) **TRIAL PROCEEDINGS PENDING**
vs.) **PETITION FOR CERTIORARI TO**
18) **UNITED STATES SUPREME**
COUNTY OF LOS ANGELES, LOS) **COURT; MEMORANDUM OF**
19 ANGELES COUNTY SHERIFF'S) **POINTS AND AUTHORITIES**
DEPARTMENT, LEROY BACA; et al.,)
20) **[Declaration of Julie Fleming and**
Defendants.) **proposed order filed concurrently]**
21)

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23 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:
24 Defendants COUNTY OF LOS ANGELES, LOS ANGELES COUNTY
25 SHERIFF'S DEPARTMENT, SHERIFF LEROY BACA, SCOTT WALKER, RICK
26 RECTOR, DONALD NICHIPORUK, RICHARD SCHLEGEL, DEPUTY BRICE
27 STELLA JACK DEMELLO, DAVID O'SULLIVAN, JAMES RITENOUR, IAN
28 STADE, ROBERT J. LAWRENCE and CURT MESSERSCHMIDT apply, ex parte, to

1 the court, pursuant to Local Rule 7-19, for an order staying the trial proceedings pending
2 disposition of Defendants' Petition for Certiorari to the United States Supreme Court for
3 review of the Ninth Circuit's Opinion of August 24, 2010, affirming the district court's
4 denial of qualified immunity to Defendants with respect to the alleged overbreadth of
5 the search warrant.

6 This application is made on the ground that Defendants' Petition for Certiorari
7 will present legitimate issues of law for review, and a stay of the trial proceedings
8 pending disposition of the review to the United States Supreme Court will be judicially
9 efficient.

10 Ex parte relief is necessary because a status conference is scheduled for October
11 14, 2010, at which time Defendants wish to move the court for the stay in lieu of setting
12 a trial date.

13 This application is based upon this Ex Parte Application, the attached Declaration
14 of Julie Fleming, the Proposed Order and upon such further argument or evidence
15 deemed appropriate by the Court at the hearing on this matter.

16 Pursuant to Local Rule 7-3, this ex parte application is made following the
17 conference of counsel on October 12, 2010. Notice of this ex parte was given on
18 October 12, 2010, to plaintiff's counsel, Don Cook. (Fleming Decl., ¶2.)

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20 Dated: October 12, 2010

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

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By: /s/ Eugene P. Ramirez
Eugene P. Ramirez

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Attorneys for Defendants,
COUNTY OF LOS ANGELES, LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT, SHERIFF LEROY BACA,
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JAMES RITENOUR, IAN STADE, ROBERT
J. LAWRENCE and CURT
MESSERSCHMIDT

MEMORANDUM OF POINTS AND AUTHORITIES

1. STATEMENT OF FACTS

On March 19, 2007, the Court entered its Order granting in part and denying in part Plaintiffs and Defendants' cross-motions for summary judgment. The Court denied qualified immunity on the challenged scope of the warrant.

On April 10, 2007, Defendants COUNTY OF LOS ANGELES, ROBERT J. LAWRENCE and CURT MESSERSCHMIDT timely filed a Notice of Appeal to the Ninth Circuit Court of Appeals from the order denying, in part, their motion for summary judgment on grounds of qualified immunity as to the alleged overbreadth of the warrant.

On June 14, 2007, the Court granted Defendants' ex parte application for an order staying the trial proceedings pending disposition of their appeal of the Court's March 19, 2007, Order denying qualified immunity on the challenged scope of the warrant. The Court made a specific finding that Defendants' appeal was nonfrivolous.

On May 6, 2009, the Ninth Circuit vacated the district court's denial of qualified immunity, and remanded the case with instructions to grant Defendants qualified immunity on the challenged scope of the warrant.

On August 24, 2010, the Ninth Circuit affirmed the district court's determination that Defendants were not entitled to qualified immunity with respect to the alleged overbreadth of the search warrant.

Defendants seek an Order staying further district court proceedings in this case, pending disposition of Defendants' Petition for Certiorari to the United States Supreme Court for review of the Ninth Circuit's Opinion of August 24, 2010, affirming the district court's denial of qualified immunity to Defendants with respect to the alleged overbreadth of the search warrant.

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1 **2. THE TRIAL SHOULD STAY THE ENTIRE PROCEEDINGS IN THE**
2 **INTERESTS OF JUDICIAL ECONOMY.**

3 Defendants will file a Petition for Certiorari to the United States Supreme Court
4 for review of the Ninth Circuit's Opinion of August 24, 2010, affirming the district
5 court's denial of qualified immunity to Defendants, within the 90-day statutory deadline.
6 28 U.S.C. §2101(c). Defendants' Petition for Certiorari is a nonfrivolous disagreement
7 with the Court's legal ruling on qualified immunity as to the overbreadth of the warrant
8 issue. The warrant affidavit stated that Messerschmidt believed the items sought would
9 be in Bowen's possession and the recovery of the weapon could be invaluable in the
10 successful prosecution of the suspect, and the curtailment of further crimes being
11 committed. Valid warrants commonly allow police to search for "firearms and
12 ammunition" as well as documents and effects which tend to show possession,
13 occupancy, ownership and/or control over the residence to be searched. *See United*
14 *States v. McLaughlin*, 851 F.2d 283, 286 (9th Cir. 1988) ("A search warrant may be
15 used, not only to gather evidence of a criminal activity, but also to gather evidence of
16 who controlled the premises suspected of connection with criminal acts.")

17 The Court has the power to stay the proceedings in the interests of judicial
18 economy:

19 "A district court has inherent power to control the disposition of the causes
20 on its docket in a manner which will promote economy of time and effort
21 for itself, for counsel, and for litigants. The exertion of this power calls for
22 the exercise of a sound discretion. Where it is proposed that a pending
23 proceeding be stayed, the competing interests which will be affected by the
24 granting or refusal to grant a stay must be weighed. Among these
25 competing interests are the possible damage which may result from the
26 granting of a stay, the hardship or inequity which a party may suffer in
27 being required to go forward, and the orderly course of justice measured
28 in terms of the simplifying or complicating of issues, proof, and questions

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3. CONCLUSION.

Based on the foregoing, Defendants request an Order staying further district court proceedings in this case, pending Defendants' Petition for Certiorari based on the denial of qualified immunity on the overbreadth issue.

Dated: October 12, 2010

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

By: /s/ Eugene P. Ramirez
Eugene P. Ramirez

Attorneys for Defendants,
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