

1 Eugene P. Ramirez, State Bar No. 134865  
L. Trevor Grimm, State Bar No. 186801  
2 MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP  
3 15th Floor at 801 Tower  
801 South Figueroa Street  
4 Los Angeles, CA 90017  
Telephone: (213) 624-6900  
5 Facsimile: (213) 624-6999  
Email: epr@mmker.com

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 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

14 AUGUSTA MILLENDER, BRENDA ) Case No. CV 05-2298 DDP (RZx)  
15 MILLENDER, WILLIAM JOHNSON, )  
16 Plaintiffs, ) **DECLARATION OF JULIE**  
17 vs. ) **FLEMING IN SUPPORT OF**  
18 ) **DEFENDANTS' EX PARTE**  
COUNTY OF LOS ANGELES, LOS ) **APPLICATION FOR STAY OF**  
19 ANGELES COUNTY SHERIFF'S ) **TRIAL PROCEEDINGS PENDING**  
DEPARTMENT, LEROY BACA; et al., ) **PETITION FOR CERTIORARI TO**  
20 Defendants. ) **UNITED STATES SUPREME**  
 ) **COURT**

21  
22 I, Julie Fleming, declare as follows:

23 1. I am an attorney at law, duly authorized to practice before all the courts in  
24 the State of California, and I am admitted to practice in the United States District Court,  
25 Central District of California. I am an associate for Manning & Marder, Kass, Ellrod,  
26 Ramirez, LLP, attorneys of record for defendants herein. The following facts are of my  
27 personal knowledge and if called as a witness, I could and would competently testify  
28 thereto.

1           2. Pursuant to Local Rule 7-3, this ex parte application is made following the  
2 conference of counsel on October 12, 2010. Notice of this ex parte was given on  
3 October 12, 2010, to plaintiff's counsel, Don Cook. As of the time of this writing, I  
4 have not heard back as to whether plaintiff's counsel opposes this application.

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

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

13           5. On June 14, 2007, the Court granted Defendants' ex parte application for  
14 an order staying the trial proceedings pending disposition of their appeal of the Court's  
15 March 19, 2007, Order denying qualified immunity on the challenged scope of the  
16 warrant. The Court made a specific finding that Defendants' appeal was nonfrivolous.  
17 Attached hereto as Exhibit A is a true and correct copy of the 6-14-07 Order.

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

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

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

