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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

DOROTHY McKAY, DIANA
KILGORE, PHILLIP WILLMS,
FRED KOGEN, DAVID WEISS, and
THE CRPA FOUNDATION,

Plaintiffs,

v.

SHERIFF SANDRA HUTCHENS,
individually and in her official
capacity as Sheriff of Orange County,
California, ORANGE COUNTY
SHERIFF-CORONER
DEPARTMENT, COUNTY OF
ORANGE, CALIFORNIA, and
DOES 1-10,

Defendants.

CASE NO.: SACV 12-1458JVS (JPRx)
REQUEST FOR CERTIFICATION OF
PLAINTIFFS' POTENTIAL
CONSTITUTIONAL CHALLENGE
TO THE STATE ATTORNEY
GENERAL

Judge: James V. Selna
Date Action Filed: September 5, 2012

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION:**

Federal Rule of Civil Procedure 5.1 obliges the *party* raising a constitutional challenge to a state statute to file notice of that challenge with the court and to serve the notice on the state attorney general if a state actor is not a party to the action.

28 U.S.C. § 2403(b), however, imposes on *courts* the statutory duty to certify the challenge to the state attorney general. *See* Fed. R. Civ. P. 5.1 advisory committee's note (the party's notice requirement under Rule 5.1 "supplements the court's duty to certify a constitutional challenge" to the state attorney general); 1-5.1 Moore's Federal Practice-Civil § 5.1.04 (2012) (Rule 5.1 notwithstanding, under 28 U.S.C. § 2403(b) "the court itself retains its statutory duty to certify the challenge to the relevant attorney general.").

Because Plaintiffs have filed a notice of potential constitutional challenge pursuant to Rule 5.1,¹ this Court is respectfully requested to certify this fact to the Attorney General of the State of California pursuant to its duty under 28 U.S.C. § 2403(b).

Dated: December 10, 2012

MICHEL & ASSOCIATES, PC

/s/ C. D. Michel
C. D. MICHEL
Attorney for Plaintiffs

¹ Plaintiffs reiterate that while they do not believe they are under any duty to notify the state Attorney General because this case primarily challenges the official policy of a local officer and/or a specific exercise of delegated power rather than state law, the Ninth Circuit's interest in this issue in the related cases of *Peruta v. County of San Diego*, Ninth Circuit Case No. 10-56971, and *Richards v. Prieto*, Ninth Circuit Case No. 11-16255, has prompted Plaintiffs' Rule 5.1 notice of potential constitutional challenge. *See* Notice of Potential Claim of Unconstitutionality, Dec. 5, 2012.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of

**REQUEST FOR CERTIFICATION OF PLAINTIFFS'
POTENTIAL CONSTITUTIONAL CHALLENGE
TO THE STATE ATTORNEY GENERAL**

on the following party by electronically filing the foregoing with the Clerk of the U. S. D.C. using its CM/ECF System, which electronically notifies them.

Nicholas S. Chrisom, County Counsel
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Kamala D. Harris,
California Attorney General,
Office of the Attorney General,
1300 "I" Street
Sacramento, CA 95814

Served Via U. S. Certified Mail

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 10, 2012.

/s/ C. D. Michel

C. D. Michel

Attorneys for Plaintiffs