

1 CHARLES F. ROBINSON #113197
 charles.robinson@ucop.edu
 2 ERIC K. BEHRENS #79440
 eric.behrens@ucop.edu
 3 University of California
 Office of the General Counsel
 4 1111 Franklin Street, 8th Floor
 Oakland, CA 94607-5200
 5 Telephone: 510-987-9800
 Facsimile: 510-987-9757
 6

Attorneys for Respondent
 7 THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA
 8

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9
 COUNTY OF ALAMEDA
 10

11 IN RE SEARCH WARRANT ISSUED
 12 DECEMBER 12, 2009,

CASE NO. 2009-2775

13 **MEMORANDUM OF POINTS AND**
 14 **AUTHORITIES IN SUPPORT OF EX**
 15 **PARTE MOTION TO CONTINUE**
 16 **HEARING ON MOTION TO QUASH**
 17 **SEARCH WARRANT AND RETURN OF**
 18 **PROPERTY**

Current Date Scheduled: June 4, 2010
 Time: 2:00 p.m.
 Dept. 115
 Requested Continuance Date: June 16, 2010

19 **EXEMPT FROM FEES PURSUANT TO**
 20 **GOV. CODE §6103**

21
 22 **INTRODUCTION**

23 The First Amendment Project (hereafter FAP) originally filed its Motion to Quash Search
 24 Warrant and [to] Return Property when a criminal case was pending against David Morse. The
 25 Regents of the University of California (hereafter the University) was told that the District
 26 Attorney's office would oppose the Motion to Quash and therefore did not appear at the original
 27 hearing on that motion which was scheduled for May 11, 2010. The May 11, 2010 hearing was
 28

1 apparently continued to June 4, 2010 but the FAP failed to notice the University of this
2 continuance.

3 The University first learned of the continued hearing yesterday (May 25, 2010) and left a
4 message for David Greene of the FAP on the following morning to request that he stipulate to a
5 continuance of the hearing to allow the University to file a substantive opposition to the FAP's
6 Motion. (Behrens Declaration in Support of Ex Parte Motion to Continue Hearing at paragraphs
7 3 and 4) (hereafter Behrens Decl.). Mr. Geoffery King of the FAP responded on behalf of Mr.
8 Greene and argued that the FAP was not required to give the University notice of the continued
9 hearing since the University had not appeared at the initial hearing. (Behrens Decl. at paragraph
10 5). He also argued that his client had been deprived of the use of the photos which the University
11 had, whereupon the University offered to allow him to use the photos pending the hearing.
12 (Behrens Decl. at paragraph 6). Nevertheless, FAP refused to grant the University a continuance
13 and the University stated that it would file an ex parte motion the next day to obtain an order
14 continuing the hearing. (Behrens Decl. at paragraph 7)

15 **ARGUMENT**

16 It is elementary due process and statutorily required that a party seeking relief against
17 another party provide written notice of the date and time of the hearing. CCP section 1005(a). A
18 party should not be allowed (as FAP is attempting to here) to "sandbag" another party by failing
19 to provide notice of a continued hearing in the hopes that its motion will be inadvertently
20 unopposed. It was purely by chance that the University discovered that FAP's Motion to Quash
21 was scheduled to be heard on June 4th, when it was too late for the University to file a timely
22 opposition. Most counsel would have readily stipulated to a continuance of a motion which
23 affects the parties' substantive rights, but FAP apparently is hoping it can take advantage of its
24 own failure to notify the University of the continued hearing.

25 \\
26 \\
27 \\
28 \\
29

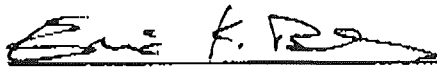
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Since CCP 1005(b) requires that papers must be "served and filed at least 16 court days before the hearing" and the University just learned of the June 4, 2010 hearing on May 25, 2010, it is appropriate to give the University the full 16 days notice it is entitled to which requires that the hearing on FAP's project be postponed to June 16, 2010.

Respectfully submitted,

Dated: May 26, 2010

CHARLES F. ROBINSON
ERIC K. BEHRENS

By: 
Eric K. Behrens
Attorneys for Respondent
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

200964.1