

COPY

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

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

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

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

CASE NO. 2009-2775

13 **DECLARATION OF ERIC K. BEHRENS
 14 IN SUPPORT OF EX PARTE MOTION TO
 CONTINUE HEARING ON MOTION TO
 15 QUASH SEARCH WARRANT AND
 RETURN OF PROPERTY**

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

17 Requested Continuance Date: June 16, 2010

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

20
 21 I, Eric K. Behrens, declare:

22 1. I am the Managing Counsel for Litigation for The Regents of the University of
 23 California ("the University"). The University is the subject of a pending Motion to Quash Search
 24 Warrant and Return Property filed by the First Amendment Project.

25 2. Except as qualified, I have personal and first hand knowledge of the facts set forth
 26 in this declaration and, if called as a witness, could and would competently testify thereto under
 27 oath.
 28

1 3. On May 25, 2010 (yesterday), the University learned for the first time that a
2 previously filed motion to quash a search warrant in a pending criminal case had been continued
3 from May 11, 2010 to June 4, 2010 at 2:00 p.m. The First Amendment Project did not provide
4 the University with any notice of this continued hearing.

5 4. On the morning of May 26, 2010, I called David Greene, whose name appears on
6 the First Amendment Project's pleadings, to leave him a message that the University would like
7 him to stipulate to a continuance of the hearing on the First Amendment Project's Motion to
8 Quash since the University was not even aware that there was a hearing on this motion for June
9 4th at 2:00 p.m.

10 5. Geoffrey King of the First Amendment Project returned my call and I reiterated
11 the University's request that the hearing on the Motion to Quash be continued to allow the
12 University the opportunity to respond substantively to the Motion. In the course of my
13 conversation with Mr. King, he confirmed that the University had not been served with a notice
14 of the continued hearing on the Motion to Quash but he argued that since the University had not
15 appeared at the original hearing on the Motion to Quash, the First Amendment Project was not
16 required to give it notice of the continued hearing.

17 6. Mr. King pointed out that his client, David Morse, had not had the use of the
18 photographs since the time the University obtained them through its search warrant and that his
19 client was being prejudiced by the delay. In response, I offered to provide the photographs to his
20 client so long as the University was not waiving its right to use copies of the photographs for
21 future potential hearings about the destruction the crowd inflicted on the residence of the
22 Chancellor at the University of California at Berkeley. Mr. King stated he would get back to me.

23 7. Mr. King subsequently called me and stated that he would not stipulate to a
24 continuance of the June 4th hearing despite the fact that the University had not had notice of it
25 until the previous day. I then indicated that I would file an ex parte motion on May 27th to
26 continue the hearing.

27 8. Under CCP 1005(b) a motion must be noticed sixteen (16) court days before a
28 proposed hearing. Thus, since the University first learned only yesterday (May 25, 2010) that the

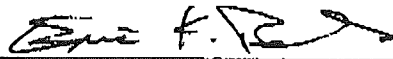
1 Motion to Quash the search warrant was still being pursued, under CCP 1005(b) an appropriate
2 continuance date would be sixteen (16) court days after the University learned of this matter
3 which would be June 16, 2010.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

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

Dated: May 26, 2010

CHARLES F. ROBINSON
ERIC K. BEHRENS

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

200951.1