

1 James R. Wheaton, State Bar No. 115230
2 David A. Greene, State Bar No. 160107
3 Geoffrey W. King State Bar No. 267438
4 **FIRST AMENDMENT PROJECT**
5 1736 Franklin Street, 9th Floor
6 Oakland, CA 94612
7 Telephone: (510) 208-7744
8 Facsimile: (510) 208-4562

9 Attorneys for Movant
10 **DAVID MORSE**

**ENDORSED
FILED
ALAMEDA COUNTY**
JUN 4 2010
CLERK OF THE SUPERIOR COURT
By _____ Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF ALAMEDA
14

15 IN RE SEARCH WARRANT ISSUED
16 DECEMBER 12, 2009

17 Warrant No. 2009-2775

18 **MEMORANDUM OF POINTS AND
19 AUTHORITIES IN OPPOSITION TO
20 UNIVERSITY OF CALIFORNIA'S
21 MOTION TO CONTINUE HEARING ON
22 MOTION TO QUASH SEARCH
23 WARRANT AND RETURN PROPERTY**

24 Date: June 4, 2010
25 Time: 2:00 p.m.
26 Dept: 115

1 **INTRODUCTION**

2 David Morse opposes the University of California’s (“UC”) motion to continue. Every day
3 that UC retains copies of Morse’s photographs for its own investigative purposes is another day
4 Morse’s First Amendment right to gather news is compromised. Every day that goes by is a day that
5 Morse cannot exercise his First Amendment right to publish his work. Morse fears that he is
6 perceived as an agent of the government and is consequently concerned about his journalistic
7 independence, both now and in the future. Any further delay in hearing the motion to quash the
8 search warrant and return Morse’s unpublished photographs constitutes an ongoing harm to his First
9 Amendment rights.

10 By contrast, any prejudice UC now claims is the product of its own neglect. UC has been
11 aware of this matter since it was served with papers on April 16, 2010. UC chose not to respond with
12 papers, not to attend the original hearing, and not to contact counsel for Morse until May 26.

13 Morse reasonably relied on UC’s demonstrated disinterest. Indeed, even UC did not believe
14 it would be involved in opposing Morse’s motion.

15 The Court must deny UC’s motion.

16 **FACTS**

17 On April 16, 2010 Morse filed a motion to quash a warrant secured and executed in violation
18 of section 1524(g) of the California Penal Code, which prohibits the issuance of a search warrant for
19 journalistic work product. (*Declaration of Geoffrey King (“King Decl.”) ¶ 2*) The motion also seeks
20 the return of that work product—Morse’s unpublished news photographs—which the University of
21 California Police (“UCPD”) have refused to return for nearly six months, despite multiple requests.
22 (*Declaration of David Morse (“Morse Decl.”) ¶ 3; King Decl. ¶ 2*)

23 Morse served the 1524(g) motion and supporting papers on UCPD, the Alameda County
24 District Attorney, and the UC General Counsel’s Office.¹ A copy of the Proof of Service for those
25 documents is attached as Exhibit A to the declaration of Monica Aguilar, filed herewith. The Clerk
26

27 ¹ Morse’s counsel called UC prior to service so as to ascertain the proper service agent.
28 (*Declaration of Monica Aguilar ¶¶ 3,4*)

1 of the Court set a hearing date on the motion for May 11, 2010, and each of the aforementioned
2 entities was re-noticed with the time, date and location of that hearing. A copy of the Proof of
3 Service for notice of the May 11 hearing is attached as Exhibit B to the declaration of Monica
4 Aguilar, filed herewith. Morse's counsel did not receive opposition papers or any other
5 communication from the District Attorney, UCPD or UC prior to the hearing. (*King Decl.* ¶ 5)

6 Morse and his counsel appeared at the May 11 hearing, expecting to address the merits of the
7 motion. (*King Decl.* ¶ 6) As the Court will recall, the Assistant Alameda County District Attorney
8 who appeared did not have a copy of the papers and requested a continuance. (*King Decl.* ¶ 6) UC
9 did not appear. (*King Decl.* ¶ 6) The Court noted the urgency of the matter and rejected the Assistant
10 District Attorney's request that the hearing be continued for one month. The court and the parties
11 present then agreed to continue the hearing to June 4. (*King Decl.* ¶ 6)

12 On May 26, counsel for Morse received a telephone call from UC asking for a continuance,
13 the first communication from UC since the filing of the motion on April 16. (*King Decl.* ¶ 5, 7)
14 Counsel for UC explained that it failed to file papers or appear because UC believed that the District
15 Attorney would timely oppose Morse's motion. (*King Decl.* ¶ 7)

16 Given the seriousness of the rights at stake, the urgency of the situation, and UC's previous
17 non-involvement, Morse, through counsel, informed UC that he would not stipulate to a continuance.
18 (*King Decl.* ¶ 8) UC then filed the motion for a continuance that is at issue here.² (*King Decl.* ¶ 8)

19 ARGUMENT

20 A. Granting the Continuance Would Prejudice Morse By Compounding His Ongoing 21 Constitutional Injury

22 "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably
23 constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). A continuance of the
24 hearing in this matter would further the ongoing constitutional injury to Morse. Morse has been

25
26 ² UC stated in its motion for a continuance that the 1524(g) motion was filed when a
27 criminal case was pending against Morse. This is incorrect. The motion was filed April 16, 2010.
28 The criminal charges were dismissed at Morse's initial appearance on December 15, 2009. (*King
Decl.* ¶ 2)

1 unable to exercise his First Amendment right to publish his newsworthy photographs for nearly six
2 months. (*Morse Decl.* ¶ 4) Every day that UC withholds Morse’s photographs from him is another
3 day his First Amendment right to publish them is denied. Every day that UC retains copies of
4 Morse’s photographs for its own investigative purposes is another day Morse’s First Amendment
5 right to gather news is compromised. Morse is suffering the very injury section 1524(g) is intended
6 to prevent—preserving journalists’ ability to gather news without being seen as investigative agents
7 of the state.³

8 Morse will be prejudiced by any further delay. Thus, a hearing on the motion to quash the
9 warrant and return all copies of Morse’s unpublished news photographs should not be further
10 delayed.

11 **B. UC Received Notice of the New Hearing Through its Representative the District**
12 **Attorney; in the Alternative, UC Failed to File a Timely Opposition or Appear at the**
13 **May 11 Hearing**

14 Morse served UC notice of the May 11 hearing on April 16. (*Aguilar Decl. Ex. B*) UC’s
15 opposition papers, for which it now seeks more time, were due prior to that May 11 hearing. UC
16 does not deny that it was aware of the May 11 hearing. Rather, it purposefully and intentionally
17 chose to file no opposition and to make no appearance, instead relying on the District Attorney to
18 represent its interests at that hearing.⁴

21 ³ See *Delaney v. Superior Court*, 50 Cal. 3d 785, 820-21 (1990). See also *Shoen v.*
22 *Shoen*, 5 F.3d 1289, 1295 (9th Cir. 1993) (recognizing the “lurking and subtle threat’ to the
23 vitality of a free press if disclosure of non-confidential information ‘becomes routine and
casually, if not cavalierly, compelled’”) (citations omitted).

24 ⁴ “[T]he University[] was told that the District Attorney’s office would oppose the Motion
25 to Quash *and therefore did not appear* at the original hearing on that motion which was
26 scheduled for May 11, 2010.” Memorandum of Points and Authorities in Support of Ex Parte
27 Motion to Continue Hearing on Motion to Quash Search Warrant and Return of Property (“UC
MPA”) at 1 (emphasis added). UC’s representations to Morse are consistent with this statement.
(*King Decl.* ¶ 7)

1 By UC's own reckoning, the District Attorney was appearing on UC's behalf at the May 11
2 hearing. UC thus received notice of the June 4 hearing when its representative, the District Attorney,
3 agreed to that date.

4 UC cannot have it both ways. Either the District Attorney represented UC and in obtaining
5 the first continuance accepted notice of the new date on UC's behalf, or UC received no relief at all
6 from this Court for its failure to oppose the motion on May 11.

7 If even UC believed that the District Attorney alone was opposing Morse's motion and that
8 UC did not need to participate, clearly, then, Morse cannot be charged with believing any different.

9 **C. UC Has Not Shown Good Cause for a Continuance, As Is Required in This**
10 **Criminal Proceeding**

11 A continuance in a criminal case may be granted only for good cause. Cal. Penal Code §
12 1050(e). Rather, in assessing whether good cause for a continuance exists, a court "must consider
13 not only the benefit which the moving party anticipates, but also the likelihood that such benefit will
14 result, the burden on other witnesses, jurors and the court and, *above all*, whether substantial justice
15 will be accomplished or defeated by a granting of the motion." People v. Doolin, 45 Cal. 4th 390,
16 450 (2009) (emphasis added) (citations and quotes omitted). A continuance is properly denied where
17 the party's lack of preparation is due to its own neglect. People v. Loomis, 27 Cal. App. 2d 236, 238-
18 39 (1938). Neither convenience nor a stipulation between the parties constitutes good cause for a
19 continuance. Cal. Penal Code § 1050(e).

20 The prejudice UC asserts is the result of its own neglect. Moreover, a continuance of the
21 hearing would further the constitutional injury to Morse. UC has thus not shown good cause to
22 continue the hearing.

23 **D. The Code of Civil Procedure Does Not Require Re-Notice to a Party That Has**
24 **Voluntarily Chosen Not to File Opposition Papers or Appear**

25 UC contends that the California Code of Civil Procedure required that it be noticed of the
26 June 4 hearing negotiated by the Court and the parties present at the May 11 hearing. See Cal. Code
27 Civ. Proc. § 1005(c). As this matter is a criminal proceeding, the Code of Civil Procedure does not
28 apply. But even if it did, UC's reliance on section 1005(c) is misplaced. A party that elects not to

1 appear in a proceeding waives its right to notice of a subsequent hearing. Cal. Code Civ. Proc. §
2 1010.⁵

3 **CONCLUSION**

4 Based on the foregoing, the Court must reject UC's motion for a continuance of the hearing
5 on the motion to quash and return of property.

6
7 Dated: June 2nd, 2010

FIRST AMENDMENT PROJECT

8
9
10 
11 _____
12 Geoffrey King
13 Attorneys for Movant David Morse
14
15
16
17
18
19
20
21
22
23
24
25

26 _____
27 ⁵ Despite the fact that UC missed the deadlines to file papers in time for both the May 11
28 and June 4 hearings, counsel for Morse offered on May 26 to accommodate UC by accepting its
opposition papers as late as close of business on Tuesday, June 1. (*King Decl.* ¶ 8)

1 James R. Wheaton, State Bar No. 115230
2 David A. Greene, State Bar No. 160107
3 Geoffrey W. King State Bar No. 267438
4 **FIRST AMENDMENT PROJECT**
5 1736 Franklin Street, 9th Floor
6 Oakland, CA 94612
7 Telephone: (510) 208-7744
8 Facsimile: (510) 208-4562

9 Attorneys for Movant
10 DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY
JUN 2 2010
CLERK OF THE SUPERIOR COURT
By _____ Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 IN RE SEARCH WARRANT ISSUED
14 DECEMBER 12, 2009

15 Warrant No. 2009-2775

16 **DECLARATION OF DAVID MORSE IN
17 OPPOSITION TO UNIVERSITY OF
18 CALIFORNIA'S MOTION TO CONTINUE
19 HEARING ON MOTION TO QUASH
20 SEARCH WARRANT AND RETURN
21 PROPERTY**

22 Date: June 4, 2010
23 Time: 2:00 p.m.
24 Dept: 115

25
26
27
28
DECLARATION OF DAVID MORSE IN OPPOSITION TO UNIVERSITY OF CALIFORNIA'S MOTION TO CONTINUE
HEARING ON MOTION TO QUASH SEARCH WARRANT AND RETURN PROPERTY

1 **DECLARATION OF DAVID MORSE**

2 I, DAVID MORSE, declare under penalty of perjury that, unless otherwise indicated, the
3 following is true and correct of my own personal knowledge, and I would testify hereto if called at
4 trial:

5 1. I am a 42-year old photojournalist and media professional. I began my journalism career
6 with a monthly column in a music magazine in 1991. Since late 2002, I have focused my work on
7 the documentation of social and political movements, which has led me to photograph, video record,
8 audio record, and otherwise report on hundreds of demonstrations, rallies, conferences, public
9 meetings and court hearings, encompassing a wide variety of causes. My work often requires me to
10 attend contentious protests that feature large police presences.

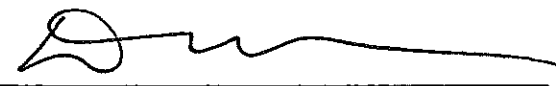
11 2. On December 12, 2009, the University of California Police (“UCPD”) secured and executed
12 a search warrant for unpublished photographs I made while covering a demonstration at UC Berkeley
13 in my capacity as a journalist for the online news organization *Indybay*. The search warrant affidavit
14 made no mention of my protestations that I was a journalist who was newsgathering, nor the fact that
15 I presented my *Indybay* press pass to numerous officers, including a sergeant. A more comprehensive
16 recitation of the facts of the incident can be found in my motion to quash the search warrant and
17 return property and supporting declarations filed in Alameda County Superior Court as *In Re Search*
18 *Warrant issued December 12, 2009 (Warrant No. 2009-2775)* on April 16, 2010.

19 3. I asked the UCPD to return my unpublished photographs in December 2009. They refused
20 my requests. My photographs still have not been returned to me. Nor have any copies been furnished
21 to me.

22 4. The UCPD’s continued possession of my unpublished photographs and the possibility that
23 those photographs may be used to prosecute people continues to harm me. I have been unable to
24 publish my own photographs for nearly six months now. I am also impeded from covering
25 newsworthy events because the subjects of my reportage cannot be sure of my independence from
26 the police. Even my current status as an unwilling supplier of information to police has undermined
27 my relationship with those I cover, and thus access to stories. Since the search warrant issued I have
28

1 been asked by subjects of my work whether I willingly handed my photographs over to the police,
2 further complicating my reportage. The longer I am forced to wait before I can vindicate these
3 rights, the more likely it is that the harm to my perceived independence will become permanently
4 entrenched.

5 I declare under penalty of perjury of the laws of the State of California that the foregoing is
6 true and correct and executed this 2nd day of June, 2010 in San Francisco, California.

7
8
9 By: 

10 David Morse
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 James R. Wheaton, State Bar No. 115230
David A. Greene, State Bar No. 160107
2 Geoffrey W. King State Bar No. 267438
FIRST AMENDMENT PROJECT
3 1736 Franklin Street, 9th Floor
Oakland, CA 94612
4 Telephone: (510) 208-7744
Facsimile: (510) 208-4562

5 Attorneys for Movant
6 DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY
JUN 9 2010
CLERK OF THE SUPERIOR COURT
By _____ Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF ALAMEDA
9

10 IN RE SEARCH WARRANT ISSUED 11 DECEMBER 12, 2009	Warrant No. 2009-2775 12 DECLARATION OF GEOFFREY KING IN 13 OPPOSITION TO UNIVERSITY OF 14 CALIFORNIA'S MOTION TO CONTINUE 15 HEARING ON MOTION TO QUASH 16 SEARCH WARRANT AND RETURN 17 PROPERTY Date: June 4, 2010 Time: 2:00 p.m. Dept: 115
--	---

18
19
20
21
22
23
24
25
26
27
28
**DECLARATION OF GEOFFREY KING IN OPPOSITION TO UNIVERSITY OF CALIFORNIA'S MOTION TO CONTINUE
HEARING ON MOTION TO QUASH SEARCH WARRANT AND RETURN PROPERTY**

1 7. On May 26, 2010, Eric Behrens of UC left a message for FAP Staff Counsel David Greene
2 seeking a continuance of the hearing. I returned Mr. Behren's call and he indicated to me that UC
3 wished for a continuance based on the fact that UC had assumed that the District Attorney would
4 oppose Morse's motion, but that this did not seem to be the case. I explained to Mr. Behrens that my
5 client was eager to vindicate his rights, but that I would speak with him. I also stated that among
6 other harms, Morse was unable to publish his photographs because the UCPD would not return
7 them. Mr. Behrens responded that Morse could have copies of his photographs returned, but that the
8 University would not waive its rights to use them. I stated that Morse would very much like copies
9 of his images, but that he also wanted all copies returned. I told Mr. Behrens that I would speak with
10 Morse about the continuance issue. As of the time of filing, the photographs have not been returned
11 to Morse or FAP.

12 8. After speaking with Morse I called Mr. Behrens back to let him know that I was not
13 authorized to continue the hearing. Mr. Behrens then stated that he would seek an ex parte order
14 continuing the hearing, and that he would now seek a date farther in the future. I called Mr. Behrens
15 back and offered to accept UC's opposition papers as late as close of business on Tuesday, June 1
16 if UC would forego the motion for a continuance and argue the merits of Morse's motion on June
17 4. I noted that the Court would have to approve this plan. Later that day, I received a copy of the
18 motion for a continuance at issue here via facsimile.

19 9. In subsequent communications with Mr. Behrens, he stated that UC would file opposition
20 papers by Wednesday, June 2, but would seek the continuance anyway.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct and executed this 2nd day of June, 2010 in Oakland, California.

23
24
25
26 By: 
27
28

1 James R. Wheaton, State Bar No. 115230
2 David A. Greene, State Bar No. 160107
3 Geoffrey W. King State Bar No. 267438
4 **FIRST AMENDMENT PROJECT**
5 1736 Franklin Street, 9th Floor
6 Oakland, CA 94612
7 Telephone: (510) 208-7744
8 Facsimile: (510) 208-4562

9 Attorneys for Movant
10 **DAVID MORSE**

**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 9 2010

CLERK OF THE SUPERIOR COURT
By _____ Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 IN RE SEARCH WARRANT ISSUED
14 DECEMBER 12, 2009

Warrant No. 2009-2775

**DECLARATION OF MONICA AGUILAR
IN OPPOSITION TO UNIVERSITY OF
CALIFORNIA'S MOTION TO CONTINUE
HEARING ON MOTION TO QUASH
SEARCH WARRANT AND RETURN
PROPERTY**

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

15
16
17
18
19
20
21
22
23
24
25
26
27
28
**DECLARATION OF MONICA AGUILAR IN OPPOSITION TO UNIVERSITY OF CALIFORNIA'S MOTION TO CONTINUE
HEARING ON MOTION TO QUASH SEARCH WARRANT AND RETURN PROPERTY**

1 **DECLARATION OF MONICA AGUILAR**

2 I, MONICA AGUILAR, declare under penalty of perjury that, unless otherwise indicated,
3 the following is true and correct of my own personal knowledge, and I would testify hereto if called
4 at trial:

5 1. I am a legal assistant at First Amendment Project ("FAP"). On or about April 15, 2010, I
6 spoke by telephone with Detective Isaac Koh of the University of California Police Department
7 ("UCPD") regarding the service of the following papers: Notice of Motion and Motion to Quash
8 Search Warrant and Return Property; Memorandum of Points and Authorities in Support of Motion
9 to Quash Search Warrant and Return Property; and the Declarations of Geoffrey King, David Morse,
10 Peter Maiden, Mary Ratcliff and J.T. Johnson. Detective Koh communicated to me that I could use
11 him as the agent for process of service for UCPD.

12 2. In the same conversation with Detective Koh, I inquired about other UC departments and/or
13 personnel I should also serve and he suggested I call the UC General Counsel's office ("UC") to
14 ensure proper service. I called UC and spoke with an assistant to Michael R. Smith, the Chief
15 Campus Counsel, who informed me that I should issue service to Mr. Smith.

16 3. On April 16, 2010, FAP filed the Notice of Motion and Motion to Quash Search Warrant and
17 Return Property; Memorandum of Points and Authorities in Support of Motion to Quash Search
18 Warrant and Return Property; and the Declarations of Geoffrey King, David Morse, Peter Maiden,
19 Mary Ratcliff and J.T. Johnson were filed with the Superior Court of California, Alameda County.
20 My colleague Nicole Feliciano issued the service of these documents, via Federal Express, to the
21 following service list:

22 University of California Police Department, Berkeley
23 Attn: Detective Isaac Koh
24 1 Sproul Hall
25 Berkeley, CA 94720-1199
26 Phone: 510 642-6760
27 Fax: 510 643-4655

28 ///

///

///

1 Michael R. Smith
Chief Campus Counsel and Associate General Counsel
2 UC Berkeley
Office of Legal Affairs
3 200 California Hall, #1500
Berkeley, CA 94720-1500
4 Phone: (510) 642-7122
Fax: (510) 643-5980

5 Nancy E. O' Malley, District Attorney
6 Alameda County District Attorney's Office
1225 Fallon St. Suite 900
7 Oakland, Ca 94612
Phone: (510) 272-6222
8 Fax: (510) 271-5156

9 A true and correct copy of the Proof of Service for these documents is attached hereto as Exhibit A.

10 4. After the aforementioned pleadings were filed with the Clerk of the Court, and also on April
11 16, FAP served a subsequent Notice of Motion containing the hearing time, date and location for the
12 initial hearing on the same service list. A true and correct copy of the Proof of Service for that
13 document is attached hereto as Exhibit B.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct and executed this 2 day of June, 2010 in OAKLAND, California.


16
17
18
19 
By: Monica Aguilar

Exhibit A

1 James R. Wheaton, State Bar No. 115230
2 David A. Greene, State Bar No. 160107
3 Geoffrey W. King State Bar No. 267438
4 **FIRST AMENDMENT PROJECT**
5 1736 Franklin Street, 9th Floor
6 Oakland, CA 94612
7 Telephone: (510) 208-7744
8 Facsimile: (510) 208-4562

9 Attorneys for Movant
10 DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY

APR 16 2010

CLERK OF THE SUPERIOR COURT
By A. SALTA Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 IN RE SEARCH WARRANT ISSUED
14 DECEMBER 12, 2009

Case No.: 2009-2975

PROOF OF SERVICE

15 DATE: May 11, 2010
16 TIME: 9:00 am
17 DEPT: 115

Hon.

1
2 **PROOF OF SERVICE**

3 I, Nicole Feliciano, hereby declare:

4 I am over the age of 18 years and am not a party to this action. I am employed in the
5 county of Alameda. My business address is First Amendment Project, 1736 Franklin Street,
6 Ninth Floor, Oakland, CA 94612.

7 On April 16, 2010, I caused to be served the attached:

8 **NOTICE OF MOTION AND MOTION TO QUASH SEARCH WARRANT AND
9 RETURN PROPERTY; MEMORANDUM OF POINTS AND AUTHORITIES IN
10 SUPPORT OF MOTION TO QUASH SEARCH WARRANT AND RETURN
11 PROPERTY; [PROPOSED] ORDER**

12 **DECLARATION OF DAVID MORSE IN SUPPORT OF MOTION TO QUASH
13 SEARCH WARRANT AND RETURN PROPERTY**

14 **DECLARATION OF GEOFFREY KING
15 IN SUPPORT OF MOTION TO QUASH SEARCH WARRANT AND RETURN
16 PROPERTY**

17 **DECLARATION OF J.T. JOHNSON IN SUPPORT OF MOTION TO QUASH
18 SEARCH WARRANT AND RETURN PROPERTY**

19 **DECLARATION OF PETER MAIDEN IN SUPPORT OF MOTION TO QUASH
20 SEARCH WARRANT AND RETURN PROPERTY**

21 **DECLARATION OF MARY RATCLIFF IN SUPPORT OF MOTION TO QUASH
22 SEARCH WARRANT AND RETURN PROPERTY**

23 **PROOF OF SERVICE**

24 X **BY FEDERAL EXPRESS.** I caused the above identified document(s) to be placed in a
25 sealed Federal Express envelope(s) with delivery fees fully prepaid, for next business day
26 delivery to the party(ies) listed below.
27 Susan R. Oie

28 I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct, and that this Declaration was executed at Oakland, California on
April 16, 2010.



Nicole Feliciano
DECLARANT

SERVICE LIST

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

Michael R. Smith
Chief Campus Counsel and Associate General Counsel
UC Berkeley
Office of Legal Affairs
200 California Hall, #1500
Berkeley, CA 94720-1500
Phone: (510) 642-7122
Fax: (510) 643-5980

By FEDEX

Nancy E. O' Malley, District Attorney
Alameda County District Attorney's Office
1225 Fallon St. Suite 900
Oakland, Ca 94612
Phone: (510) 272-6222
Fax: (510) 271-5156

By FEDEX

University of California Police Department, Berkeley
Attn: Detective Isaac Koh
1 Sproul Hall
Berkeley, CA 94720-1199
Phone: 510 642-6760
Fax: 510 643-4655

By FEDEX

Exhibit B

1 James R. Wheaton, State Bar No. 115230
David A. Greene, State Bar No. 160107
2 Geoffrey W. King State Bar No. 267438
3 **FIRST AMENDMENT PROJECT**
1736 Franklin Street, 9th Floor
Oakland, CA 94612
4 Telephone: (510) 208-7744
Facsimile: (510) 208-4562

5 Attorneys for Movant
6 DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY

APR 26 2010

CLERK OF THE SUPERIOR COURT
By _____ Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8
9 IN AND FOR THE COUNTY OF ALAMEDA

10
11 IN RE SEARCH WARRANT ISSUED
DECEMBER 12, 2009

Warrant No.: 2009-2775

12 **REVISED NOTICE OF MOTION TO**
13 **QUASH SEARCH WARRANT AND**
14 **RETURN PROPERTY**

15 DATE: May 11, 2010
16 TIME: 9:00 a.m.
DEPT: 115

17 Hon.

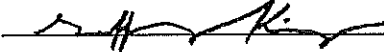
1 **REVISED NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on May 11, 2010 in Department 115,
4 Movant DAVID MORSE will and does hereby move the Court for an order to quash search warrant
5 number 2009-2775, issued on December 12, 2009, as it pertains to the Sony Digital Camera, Model
6 MVC-CD500, serial number 36459 and two Memorex CD-R discs, 210 MB each, belonging to
7 DAVID MORSE; and to order the return of all copies of unpublished photographs seized pursuant
8 to the warrant.¹ The motion will be based upon this Revised Notice of Motion; Notice of Motion
9 to Quash Search Warrant and Return Property; Memorandum of Points and Authorities; and
10 declarations of DAVID MORSE, GEOFFREY KING, J.T. JOHNSON, PETER MAIDEN AND
11 MARY RATCLIFF with exhibits thereto, filed with the motion on April 16, 2010; and any other
12 pleadings, papers, evidence, and written or oral arguments that the parties may submit.

13
14 FIRST AMENDMENT PROJECT

15
16 Dated: April 16, 2010

17 By: 
18 Geoffrey King
19 Attorneys for Movant David Morse
20
21
22
23
24
25

26 _____
27 ¹ The original Notice of Motion stated that the hearing date, time and department were to
28 be determined. This Revised Notice of Motion includes the date, time and department as set by
the Clerk of the Court upon filing of the Motion. It also includes the warrant number.

APR 26 2010

CLERK OF THE SUPERIOR COURT
By _____ Deputy

PROOF OF SERVICE

I, Nicole Feliciano, hereby declare:

I am over the age of 18 years and am not a party to this action. I am employed in the county of Alameda. My business address is First Amendment Project, 1736 Franklin Street, Ninth Floor, Oakland, CA 94612.

On April 16, 2010, I caused to be served the attached:

REVISED NOTICE OF MOTION TO QUASH SEARCH WARRANT AND RETURN PROPERTY

X **BY FEDERAL EXPRESS.** I caused the above identified document(s) to be placed in a sealed Federal Express envelope(s) with delivery fees fully prepaid, for next business day delivery to the party(ies) listed below.
Susan R. Oie

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this Declaration was executed at Oakland, California on April 16, 2010.



Nicole Feliciano
DECLARANT

SERVICE LIST

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

Michael R. Smith
Chief Campus Counsel and Associate General Counsel
UC Berkeley
Office of Legal Affairs
200 California Hall, #1500
Berkeley, CA 94720-1500
Phone: (510) 642-7122
Fax: (510) 643-5980

By FEDEX

Nancy E. O' Malley, District Attorney
Alameda County District Attorney's Office
1225 Fallon St. Suite 900
Oakland, Ca 94612
Phone: (510) 272-6222
Fax: (510) 271-5156

By FEDEX

University of California Police Department, Berkeley
Attn: Detective Isaac Koh
1 Sproul Hall
Berkeley, CA 94720-1199
Phone: 510 642-6760
Fax: 510 643-4655

By FEDEX

1 James R. Wheaton, State Bar No. 115230
David A. Greene, State Bar No. 160107
2 Geoffrey W. King State Bar No. 267438
3 **FIRST AMENDMENT PROJECT**
1736 Franklin Street, 9th Floor
Oakland, CA 94612
4 Telephone: (510) 208-7744
Facsimile: (510) 208-4562

5 Attorneys for Movant
6 DAVID MORSE

ENDORSED
FILED
ALAMEDA COUNTY
JUN 9 2010
CLERK OF THE SUPERIOR COURT
By _____ Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF ALAMEDA
9

10 IN RE SEARCH WARRANT ISSUED
DECEMBER 12, 2009

Case/Warrant No. 2009-2775

11 **PROOF OF SERVICE**

12 Date: June 4, 2010
13 Time: 2:00 p.m.
14 Dept: 115
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 **PROOF OF SERVICE**

3 I, Monica Aguilar-Barriga, hereby declare:

4 I am over the age of 18 years and am not a party to this action. I am employed in the
5 county of Alameda. My business address is First Amendment Project, 1736 Franklin Street,
6 Ninth Floor, Oakland, CA 94612.

7 On June 2, 2010, I caused to be served the attached:

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO**
9 **UNIVERSITY OF CALIFORNIA'S MOTION TO CONTINUE HEARING ON**
10 **MOTION TO QUASH SEARCH WARRANT AND RETURN PROPERTY**
11 **PROOF OF SERVICE**

12 **DECLARATION OF DAVID MORSE IN OPPOSITION TO UNIVERSITY OF**
13 **CALIFORNIA'S MOTION TO CONTINUE HEARING ON MOTION TO QUASH**
14 **SEARCH WARRANT AND RETURN PROPERTY**

15 **DECLARATION OF GEOFFREY KING IN OPPOSITION TO UNIVERSITY OF**
16 **CALIFORNIA'S MOTION TO CONTINUE HEARING ON MOTION TO QUASH**
17 **SEARCH WARRANT AND RETURN PROPERTY**


18 **DECLARATION OF MONICA AGUILAR IN OPPOSITION TO UNIVERSITY**
19 **OF CALIFORNIA'S MOTION TO CONTINUE HEARING ON MOTION TO**
20 **QUASH SEARCH WARRANT AND RETURN PROPERTY**

21 **PROOF OF SERVICE**

22 X **BY MAIL** I caused the above identified document(s) addressed to the party(ies) listed
23 below to be deposited for collection at the Public Interest Law Offices or a certified United States
24 Postal Service box following the regular practice for collection and processing of correspondence
25 for mailing with the United States Postal Service. In the ordinary course of business.

26 X **BY FACSIMILE.** I caused the above identified document(s) to be sent by facsimile
27 transmission to the party(ies) listed below at the facsimile number(s) shown.

28 I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct, and that this Declaration was executed at Oakland, California on
June 2, 2010.



Monica Aguilar-Barriga
DECLARANT

SERVICE LIST

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

Michael R. Smith
Chief Campus Counsel and Associate General Counsel
UC Berkeley
Office of Legal Affairs
200 California Hall, #1500
Berkeley, CA 94720-1500
Phone: (510) 642-7122
Fax: (510) 643-5980

By MAIL & FACSIMILE

Nancy E. O' Malley, District Attorney
Alameda County District Attorney's Office
1225 Fallon St. Suite 900
Oakland, Ca 94612
Phone: (510) 272-6222
Fax: (510) 271-5156

By MAIL & FACSIMILE

University of California Police Department, Berkeley
Attn: Detective Isaac Koh
1 Sproul Hall
Berkeley, CA 94720-1199
Phone: 510 642-6760
Fax: 510 643-4655

By MAIL & FACSIMILE