

1 ROBERT AMPARÁN, SBN 172132
SHARI L. GREENBERGER, SBN 180438
2 OMAR FIGUEROA SBN 196650
506 Broadway
3 San Francisco CA 94133
Telephone: 415/986-5591

4 Attorneys for Defendant
5 EDWARD ROSENTHAL

6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA, CR 02-0053 CRB

12 Plaintiff,

13 v.

14 EDWARD ROSENTHAL,

15 Defendant.

NOTICE OF MOTION AND MOTION TO
DISMISS INDICTMENT FOR UNDUE
DELAY IN VIOLATION OF EDWARD
ROSENTHAL'S RIGHTS AS
GUARANTEED UNDER THE DUE
PROCESS CLAUSE OF THE FIFTH
AMENDMENT

Date: March 2, 2007

Time: 2:00 p.m.

16 _____/
17 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE UNITED
STATES ATTORNEY FOR THE NORTHERN DISTRICT OF CALIFORNIA:

18
19 PLEASE TAKE NOTICE that on the date and at the time
20 indicated above, EDWARD ROSENTHAL, through counsel, will and
21 hereby does move to dismiss the present charges due to the
22 Government's pre-indictment delay in violation of his Fifth
23 Amendment Due Process rights.

24 This motion is predicated on the files and records herein,
25 and on the declaration of counsel filed herewith.

26 Dated: February 20, 2007

27 /s/ ROBERT AMPARÁN
ROBERT AMPARÁN
Attorney for Defendant
EDWARD ROSENTHAL

INTRODUCTION

1
2 The government violated Mr. Rosenthal's Fifth Amendment due
3 process rights resulting in prejudicial pre-indictment delay by
4 filing a superseding indictment alleging tax violations against
5 him, Counts 21, 22, 23, 24 and 25, nearly five years after his
6 initial indictment on marijuana and money laundering charges.
7 Significantly, Mr. Rosenthal was previously subjected to a
8 federal trial for charges arising during the same time period
9 alleged in the initial Indictment filed in February of 2002.
10 Following conviction, this Court sentenced Mr. Rosenthal on June
11 14, 2006, to custody for 1 day for one count of manufacturing
12 marijuana (18 U.S.C. section 841(a)(1)); one count of conspiring
13 to manufacture marijuana (21 U.S.C. section 846); and one count
14 of maintaining a place (21 U.S.C. section 856(a)(1), to run
15 concurrent with credit for time served; 3 years of supervised
16 release; \$1000.00 fine; and \$300.00 special assessment. An
17 appeal followed and after three years of litigation the
18 conviction was reversed, and Mr. Rosenthal was granted a new
19 trial.

20 Notably, the counts which were added to the Superseding
21 Indictment could have been alleged in the original Indictment on
22 February 12, 2002; yet, the government waited 4 ½ years, for no
23 good cause, to include the tax charges that are presently before
24 this Court.¹

25
26 ¹ The government's rationale for filing the Superseding
27 Indictment was based purely on vindictive motives, in direct
28 response to Mr. Rosenthal's exercise of his first amendment
rights, subjecting the indictment to dismissal as a result of
its vindictive prosecution. This argument is more fully
addressed in Defendant's Motion to Dismiss for Vindictive
Prosecution filed contemporaneously herein.

1 As a result of the government's excessive delay, Mr.
2 Rosenthal's ability to defend himself has been compromised and
3 he has suffered actual prejudice by being forced to bear the
4 expense and hardship of having to defend himself in multiple
5 trials.² Moreover, Mr. Rosenthal's ability to interview and
6 produce witnesses and locate evidence has been compromised due
7 to this improper and vindictive tactical decision to delay
8 bringing tax charges until October 12, 2006.

9 Further, the length of the delay, when balanced against the
10 Government's reasons for the delay, offends well-established
11 notions of fair play and substantial justice.

12 STATEMENT OF FACTS

13 In Counts 21 through 25 of the October 12, 2006 superseding
14 indictment, Mr. Rosenthal is charged with violations of 26
15 U.S.C. § 7206(1), "Fraud and false statements." 26 USC § 7206.
16 These tax charges stem from Mr. Rosenthal's alleged willful
17 failure to report gross receipts from the sale of clones of
18 medicinal marijuana plants while acting as an agent of the City
19 of Oakland. The government chose not to prosecute Mr. Rosenthal
20 on tax charges in the February, 2002 indictment, despite having
21 access to all relevant tax filings and financial documents
22 throughout the period of the trial of U.S. v. Rosenthal in 2003
23 and throughout the entire appellate process.

24 At this time, Mr. Rosenthal seeks a dismissal of counts 21
25

26 ² In light of this Court's severance of the tax counts from
27 the marijuana and money laundering charges, Mr. Rosenthal will
28 be forced to defend himself in two upcoming trials with nearly
identical witnesses and evidence. This argument is more fully
addressed in defendant's Motion to Reconsider Severance, also
lodged and filed contemporaneous, herewith.

1 through 25 based upon violations of his due process rights as
2 discussed below.

3 **ARGUMENT**

4 THE GOVERNMENT HAS DENIED MR. ROSENTHAL DUE
5 PROCESS BY DELAYING THE FILING OF RELATED
6 NEW CHARGES IN THE SUPERSEDING INDICTMENT.

6 The Due Process Clause is the source of constitutional
7 protection against oppressive pre-indictment delay. United
8 States v. Lovasco, 431 U.S. 783, 789 (U.S. 1977). The Fifth
9 Amendment to the Constitution guarantees that individuals will
10 not be denied due process of law as a result of the prosecu-
11 torial pre-indictment delay. United States v. Valentine, 783
12 F.2d 1413, 1416 (9th Cir. 1986). Additionally, Fed. Rule Crim.
13 Proc. 48(b) permits district courts to dismiss indictments due
14 to pre-indictment delay, to protect a defendant from prejudice
15 encountered through such delay. See United States v. Marion,
16 404 U.S. 307, 319 (U.S. 1971).

17 To determine whether pre-indictment delay has risen to the
18 level of a due process violation, courts traditionally apply a
19 two-prong test. United States v. Gonzalez-Sandoval, 894 F.2d
20 1043, 1050 (9th Cir. 1990). First, the defendant has the burden
21 of proving that actual prejudice occurred as a result of the
22 delay. Id. Second, once the defendant has met this burden, the
23 courts weigh the length of the pre-indictment delay against the
24 reason for the delay. Id. Actual prejudice to the defense of a
25 criminal case may result from the shortest and most necessary
26 delay. United States v. Lovasco, 431 U.S. 783, 789-790 (U.S.
27 1977)

28 The government violated Mr. Rosenthal's Fifth Amendment due

1 process rights by allowing the tax allegations to languish for
2 nearly four and a half years before the filing of a superceding
3 indictment. As a result of the Government's excessive delay,
4 Mr. Rosenthal's ability to defend himself has been compromised
5 and he has suffered actual prejudice, as elucidated below, in
6 that critical witnesses were not located and interviewed during
7 the relevant time periods, and material documents which could
8 have been preserved, were destroyed in the four and a half years
9 prior to the government seeking to indict on additional charges.
10 Mr. Rosenthal's ability to produce witnesses and evidence that
11 may have enhanced his ability to adequately defend himself from
12 the charges herein has been sacrificed due to the Government's
13 unfounded decision to delay the filing tax charges until October
14 12, 2006.

15 A. Mr. Rosenthal Has Suffered Real and Actual Prejudice.

16 Actual prejudice is typically demonstrated in three ways:
17 "oppressive pretrial incarceration, anxiety and concern of the
18 accused, and the possibility that the [accused's] defense will
19 be impaired." United States v. Gregory, 322 F.3d 1157, 1163
20 (9th Cir. 2003). "Loss of memory, however is not always
21 reflected in the record because what has been forgotten can
22 rarely be shown." Barker v. Wingo, 407 U.S. 514, 532 (1972).

23 In the present case, Mr. Rosenthal has been subject already to
24 one federal trial for the charges set forth in the first Indict-
25 ment on February 12, 2002. As a result of the Superseding
26 Indictment and his need to defend himself, Mr. Rosenthal is now
27 suffering from a great deal of anxiety and concern over the
28 prospect that based upon the four-to-seven year lapse between

1 the alleged offenses and Superseding Indictment, his defense
2 will be impaired and substantially compromised.

3 This anxiety is magnified by the extreme financial hardship
4 he has been placed under, having to defend himself in multiple
5 proceedings, the loss of valuable witnesses and the destruction
6 of material and relevant evidence.

7 For instance, between 2002 and October 2006, Mr. Rosenthal
8 did not devote any investigation towards numerous individuals
9 who could have served as witnesses in his defense on tax
10 charges, because he was never given any notice during that time
11 frame that he would have to defend against such charges.
12 Several witnesses, who would have testified on behalf of Mr.
13 Rosenthal, have passed away or vanished since the filing of the
14 original indictment, and their current whereabouts are unknown.
15 These witnesses, who would have been present to testify in 2002,
16 could have provided substantial impeachment against a main
17 government witness in the tax allegations, thereby enhancing Mr.
18 Rosenthal's prospects of acquittal from the present charges
19 pending against him.

20 Moreover, many records which could have been obtained and
21 subpoenaed from various cannabis clubs, have long since been
22 destroyed and this loss of evidence has impaired the defenses
23 ability to negate specific elements of the charged offenses.
24 These records would have helped establish Mr. Rosenthal's actual
25 expenses, lack of willfulness, state of mind and lack of any
26 motive to evade taxes, at the heart of his defense.

27 In addition, witnesses' memories regarding events of 2002
28 and the previous relevant years are impaired based on the mere

1 passage of time and some will be unable to testify with the same
2 clarity and persuasiveness they would have had years ago. With
3 each passing year, Mr. Rosenthal has lost contact with potential
4 witnesses, as well as with pertinent documents that would have
5 assisted in his defense. It is unequivocal that the Government
6 could have brought each of the new charges against Mr. Rosenthal
7 in 2002, when it filed the original indictment. By not doing
8 so, and waiting four and one half years to file the present
9 charges, which are inextricably intertwined with the charges in
10 the original indictment, the Government has caused actual
11 prejudice to Mr. Rosenthal by the loss of actual evidence and
12 witnesses who would have testified on Mr. Rosenthal's behalf.
13 Indeed a number of patients who Mr. Rosenthal provide clones to
14 have died or disappeared.

15 The loss of actual evidence and witnesses, which the
16 defense has attempted to document and reconstruct, include but
17 are not limited to the following:

18 1. **Jane Weirick**, a medical marijuana activist, who was a
19 co-founder of the San Francisco Patients' Resource Center.
20 Ms. Weirick went on to found the Hayward Patients' Resource
21 Center and worked with local officials to establish one of the
22 first city agreements to permit marijuana dispensaries to
23 operate. Ms. Weirick worked with the Harm Reduction Center and
24 was close to Mr. Hayes and Mr. Watts. Ms. Weirick was also
25 very good friends with Mr. Rosenthal, and they were acquainted
26 on both a personal and business level. Ms. Weirick died on
27 October 25, 2005 from respiratory failure.

28 Having regularly attended City Council meetings in support

1 of the regulation of medicinal cannabis, Ms. Weirick possessed
2 specific knowledge that Mr. Rosenthal participated in the City
3 of Oakland-sponsored Medical Marijuana Working Group meetings
4 and had inquired repeatedly about the proper procedures and
5 protocols for setting up the business and regulating cannabis
6 production in conformity with the law. She was specifically
7 aware that Mr. Rosenthal was informed by Oakland City Councilman
8 and Chair of the Public Safety Commission, Nate Miley, that the
9 City of Oakland was in the process of determining how to address
10 issues related to business structures and accounting protocols
11 for the revenue generated from the sale of medical cannabis.

12 Furthermore, Ms. Weirick could provide material impeachment
13 testimony against "star" government witnesses regarding Mr.
14 Rosenthal's true relationship with Harm Reduction Center (HRC).
15 Ms. Weirick had specific information as to: (1) Rick Watts' role
16 at the Harm Reduction Center, and the vendor role of Mr.
17 Rosenthal; (2) who owned the marijuana plants at the Harm
18 Reduction Center; (3) how marijuana was distributed at the Harm
19 Reduction Center; and (4) the financial transactions and
20 operations of the Harm Reduction Center.

21 Ms. Weirick had specific knowledge that Mr. Rosenthal had
22 no formal relationship except a vendor relationship with HRC,
23 who would also donate free clones to provide to indigent
24 patients. She could further verify that on limited occasions
25 Mr. Rosenthal did consultant related work for HRC. Signifi-
26 cantly, her testimony would refute key witness allegations that
27 Mr. Rosenthal was responsible for any grow or grow related
28 activity in the basement of HRC, and confirm that Mr. Rosenthal,

1 to the contrary, did not own any plants, tend any plants, nor
2 play any role in the distribution of plants for HRC at anytime.

3 Finally Ms. Weirick, who was also at one time a close
4 friend of government witness Bob Martin, would have been able to
5 provide invaluable impeachment information to the defense in her
6 testimony against Bob Martin at the upcoming trial, against the
7 unfounded allegations against Mr. Rosenthal.

8 2. **Dr. Mike Alcalay**, a licensed California Physician, who
9 recently passed away earlier this year of 2006 and was a close
10 advisor of Mr. Rosenthal, as well as a medical marijuana
11 activist. Dr. Alcalay had been to Mandela Parkway warehouse on
12 many occasions and played a leading role in helping Mr. Rosen-
13 thal develop research protocols at Mandela. Dr. Alcalay
14 regularly consulted with Mr. Rosenthal, and was explicitly
15 familiar with the fact that Mr. Rosenthal was using the Mandella
16 warehouse as a research space and to facilitate the cultivation
17 of marijuana for distribution to the seriously ill in the City
18 of Oakland. He was aware the City of Oakland recruited and
19 deputized Ed Rosenthal to grow marijuana, and that city
20 officials were aware of and supported Mr. Rosenthal's
21 compassionate and charitable operation.

22 Most importantly, he would have confirmed that the
23 warehouse was not devoted to activities designed to generate
24 income and instead to research and development of a facility to
25 cultivate marijuana for the seriously ill in the City of Oakland
26 for the City of Oakland.

27 Furthermore, Dr. Alcalay was actively involved in the
28 Oakland-sponsored Medical Marijuana Working Group meetings, and

1 as such aware of and could have testified that Mr. Rosenthal
2 consistently advocated regulation of the City's medical
3 marijuana program. He could attest to the fact that Mr.
4 Rosenthal sought guidance from Oakland City Officials as to
5 business structure and organization, and the implementation of
6 protocols and procedures. Moreover he had knowledge that the
7 Oakland officials advised Mr. Rosenthal that they were still
8 working out these protocols and procedures and had yet to do so.
9 (See Exhibit J).

10 3. **Mr. Bob Wilson**, the proprietor of Hayward Hempery, who
11 moved from the California area over two years ago, and cannot be
12 located. Apparently he was suffering from late stage diabetes
13 complications and was in delicate health prior to his departure.
14 To the extent the government intends to offer evidence through
15 witness James Halloran, regarding the Hayward Hempery and Mr.
16 Rosenthal's relationship thereto, Mr. Wilson would have provided
17 material impeachment testimony against Mr. Halloran, as he was
18 directly aware that Mr. Rosenthal only helped set up the grow at
19 this dispensary, and did so on a non-profit basis.

20 4. **David Witty**, who was the individual primarily in charge
21 of maintaining the marijuana plants at the Harm Reduction Center
22 and who personally maintained the "grow" of the plants. As such
23 he knew exactly to whom the plants belonged and he knew the
24 names of many patients and clients of the Harm Reduction Center.
25 Furthermore he had first-hand knowledge of the financial
26 transactions at the Harm Reduction Center - including payments
27 out of the Harm Reduction Center bank account, as he worked
28 directly for Ken Hayes. Accordingly, as the responsible party

1 for the grow of the plants, Mr. Witty could corroborate that Mr.
2 Rosenthal was merely a vendor to HRC, and not in charge of the
3 plants or any of the operations at HRC. Furthermore he would
4 if present to testify confirm that Mr. Rosenthal did not work at
5 nor was he part of HRC.

6 5. **David Wheeler**, a good friend of Kenneth Hayes, who gave
7 the Harm Reduction Center start-up "seed" money. He had know-
8 ledge of the financial transactions at the Harm Reduction
9 Center. He was the primary financier of the Center from its
10 beginnings. Mr. Wheeler died of AIDS in Northern California in
11 late 2002.

12 If he could have testified, he would have corroborated that
13 Mr. Rosenthal was merely a vendor, and not in charge of the
14 plants or any of the operations at HRC as well.

15 6. **Daniel Woods** ran the Harm Reduction Center on a daily
16 basis, even when Ken Hayes was present. He was the "bud tender"
17 (person who dispenses marijuana) at the Center. As a result, he
18 had firsthand knowledge of the inner-workings of the Harm Reduc-
19 tion Center and the financial transactions that took place
20 there. He paid employees and made reimbursements for
21 materials. Mr. Woods has not been located. Mr. Rosenthal's
22 defense counsel have been advised that Mr. Woods was suffering
23 from AIDS and was in the last stages of life in 2004. As the
24 responsible party as the "bud tender" he could further substan-
25 tiate that Mr. Rosenthal was merely a vendor, and not in charge
26 of the plants or any of the operations at HRC, in contrast to
27 the anticipated testimony of the upcoming government witnesses,
28 who will attribute some role or responsibility to Mr. Rosenthal

1 in the HRC operation beyond a mere vendor.

2 7. **Mikey LNU** - a good friend of government witness Dave
3 Lewis who could refute key statements made at the grand jury in
4 2006 against Ed Rosenthal. His whereabouts are currently
5 unknown. He could provide valuable impeachment against Dave
6 Lewis to substantiate his character for untruthfulness and
7 propensity to lie based on his ongoing battle with metham-
8 phetamine addiction, of which he had intimate knowledge.

9 This witness was a frequent visitor to Dave Lewis' home and
10 knew that Mr. Lewis' main source of income was derived from his
11 own marijuana cultivation and sales. In contrast to what was
12 presented to the grand jury regarding allegations that Dave
13 Lewis was collecting money from processed marijuana he received
14 from Mr. Rosenthal prior to 1999, amounting to \$20,000-30,000 in
15 cash, this witness could refute such false allegations that Dave
16 Lewis ever obtained any marijuana or any other illicit
17 substances from Mr. Rosenthal on any occasion.

18 8. **John Chapmen** - Whereabouts currently unknown - operated
19 a medicinal marijuana dispensary in the Mission District in the
20 years 2000-2002, wherein Ed would donate free clones to provide
21 to indigent patients, thereby further confirming that the ware-
22 house was not devoted to activities designed to generate income.

23 9. **Richard Evans** - Whereabouts currently unknown operated a
24 medicinal marijuana dispensary in the Mission District in the
25 years 2000-2002, where Ed would donate free clones to provide to
26 indigent patients, thereby further confirming that the warehouse
27 was not devoted to activities designed to generate income.

28 In addition to the foregoing , Mr. Rosenthal should be

1 entitled to a presumption of prejudice, in light of the fact
2 that the only change of circumstances between the initial
3 indictment and the superceding indictment was his exercise of
4 his rights to appeal and to express himself freely.

5 Thus, predicated upon the foregoing, Mr. Rosenthal has
6 sufficiently demonstrated actual prejudice to meet his burden of
7 showing pre-indictment delay. Moreover, the Government should
8 not be permitted to skirt its responsibilities and manipulate
9 the law in order to gain a tactical advantage.

10 B. The Length of the Delay, When Balanced Against the
11 Government's Reasons for the Delay, Offends Fundamental
12 Conceptions of Justice.

13 Mr. Rosenthal has met his burden of demonstrating actual
14 prejudice. Therefore, this Court must weigh the length of the
15 pre-indictment delay against the Government's rationale for the
16 delay. United States v. Gonzalez-Sandoval, 894 F.2d 1043, 1050
17 (9th Cir. 1990). Moreover, to accommodate the sound adminis-
18 tration of justice to the rights of the defendant to a fair
19 trial will necessarily involve a delicate judgment based on the
20 circumstances of each case. United States v. Marion, 404 U.S.
21 307, 466 (U.S. 1971).

22 In United States v. Marion, the government conceded that
23 the Due Process Clause of the Fifth Amendment would require
24 dismissal of the indictment if it were shown at trial that the
25 pre-indictment delay in that case caused substantial prejudice
26 to appellees' rights to a fair trial and that the delay was an
27 intentional device to gain tactical advantage over the accused.
28 Id. at 324-325; see also Brady v. Maryland, 373 U.S. 83 (1963);

1 and Napue v. Illinois, 360 U.S. 264 (1959). Therefore, in cases
2 such as this, where the delay is clearly an intentional device
3 used to gain a tactical advantage over the accused, dismissal of
4 the charges is warranted.

5 In the present case, the government's own assertions
6 indicate that the new tax allegations were in direct retaliation
7 against Mr. Rosenthal for exercising his First Amendment rights
8 after jury trial, his constitutional right to attack his
9 conviction after appeal and were utilized as an intentional
10 device to gain an unfair advantage over Mr. Rosenthal. The
11 government's underhanded attempt to gain such advantage is
12 precisely the type of action that the United States Supreme
13 Court has pinpointed as a violation of a defendant's Due Process
14 rights.

15 On October 25, 2006, Assistant U.S. Attorney George Bevan,
16 explained the following to this Court:

17 The Court: So one wonders what is the
18 purpose of this prosecution.

19 Mr. Bevan: The purpose is this: Mr.
20 Rosenthal, after the verdict took the
21 microphones and said, I didn't get a fair
22 trial. The jury didn't know that I was
23 growing for clubs. ... So I'm saying, this
time around, he wants the financial side
reflected, fine, let's air this thing out.
Let's have the whole conduct before the
jury: Tax, money laundering, marijuana.

24 (Exhibit I, Transcript of October 25, 2006, line 16:
pages 20-25; and 17: 1-4.

25 Mr. Bevan further explained to the Court that he was
26 uncomfortable to be on the receiving end of accusations that the
27 trial was unfair to the extent that:

28 Mr. Rosenthal did not report his income on
his tax returns and otherwise committed

1 money laundering, that's fair game to get
2 the entire issue before the jury ... We only
3 charged and only tried a portion of his
4 conduct, and what we're saying now is, Okay
5 we're going to put all of his conduct in
6 front of the jury. ... And that's the basis
7 for the indictment."

8 (Exhibit I, Transcript, 18: 3-14)

9 Despite the fact that the government's expressions to this
10 Court drip with obvious indications of vindictive prosecution,
11 it is evident that the Government had full and complete know-
12 ledge of all the information relating to this case and was aware
13 of each and every potential charge against Mr. Rosenthal when
14 the first Indictment was brought in February of 2002. However,
15 the government impermissibly failed to provide notice to Mr.
16 Rosenthal that he should defend against tax charges, and allowed
17 the evidence to languish, the witnesses to dissipate, and
18 evidence to be destroyed until after the Ninth Circuit granted
19 Mr. Rosenthal a retrial. Now, after four and one-half years
20 have passed, the government is attempting to justify the
21 vindictive nature of the prosecution and prejudicial pre-
22 indictment delay solely upon Mr. Rosenthal's comments, that he
23 did not get a fair trial, as evidenced by the prosecutor's
24 comments, "... So I'm saying, this time around, he wants the
25 financial side reflected, fine, let's air this thing out."

26 (Exhibit I, Transcript, 16: 20-25; and 17: 1-4)

27 When government culpability is found, relief is applicable.
28 United States v. Lovasco, 431 U.S. 703, 789 (1977). The govern-
ment is fully culpable, evidenced by its own statements to this
Court, for the pre-indictment delay; thus, it bears a heavy
burden in justifying the lengthy delay herein.

1 Balancing the length of the delay against the government's
2 reasons for the delay, which are solely tactical and vindictive
3 in nature, the delay most certainly offends those "fundamental
4 conceptions of justice which lie at the base of our civil and
5 political institutions." See United States v. Valentine, *supra*,
6 783 F.2d at 1416.

7 Accordingly, the tax counts in the Superseding Indictment
8 should be dismissed with prejudice.

9 **CONCLUSION**

10 Mr. Rosenthal clearly satisfied the applicable legal
11 standard, showing actual prejudice, and lack of justification
12 for the length of the delay when weighed against the govern-
13 ment's reason for the delay, thereby demonstrating that the
14 Government's pre-indictment delay rises to the level of a denial
15 of due-process. For the reasons discussed herein, defense
16 counsel respectfully urges this Court to dismiss the present
17 charges against Mr. Rosenthal.

18 Dated: February 19, 2007

19 Respectfully submitted,

20 ROBERT AMPARÁN
21 SHARI L. GREENBERGER
22 OMAR FIGUEROA
23 Attorneys for Defendant
24 ED ROSENTHAL

25 /s/ ROBERT AMPARÁN
26 by ROBERT AMPARÁN

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

DECLARATION OF COUNSEL

I, ROBERT AMPARÁN, declare:

I am an attorney licensed to practice in the State of California and before this court, and I am one of the attorneys of record for defendant EDWARD ROSENTHAL.

It is my information and belief that the facts and statements set forth in the accompanying document are true and correct to the best of my knowledge and belief, and are based upon a review of all the discovery provided in the case, interviews with my client, and my own investigation.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on February 18, 2007, at San Francisco, California.

/s/ ROBERT AMPARÁN
ROBERT AMPARÁN