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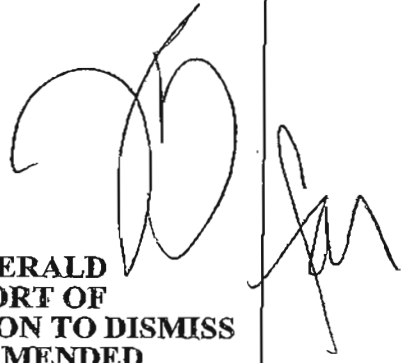
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RICHARD W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11



12 ROBERT-JOHN FOTI; JOE NEUFELD;)
KEN AUGUSTINE,)
13 Plaintiffs,)
14 v.)
15 OFFICER McHUGH and other unknown)
16 number of unnamed officers of the U.S.)
Marshals Service and the Federal Protective)
17 Service; U.S. MARSHALS SERVICE;)
FEDERAL PROTECTIVE SERVICE,)
18 Defendants.)
19

No. C 04-2567 PJH

**DECLARATION OF GERALD
AUERBACH IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

The Honorable Phyllis J. Hamilton

[NO HEARING DATE; MOTION TO BE
DECIDED ON THE PAPERS]

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DECL. OF CAROL LAZZARO I/S/O MTN TO DISMISS

C 04-2567 PJH

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT-JOHN:FOTI;)

JOE NEUFELD; KEN AUGUSTINE,)

Plaintiffs,)

v.)

OFFICER MCHUGH)

and other unknown number)

of unnamed officers)

of the U.S. Marshals Service)

and the Federal Protective)

Service; U.S. MARSHALS SERVICE;)

FEDERAL PROTECTIVE SERVICE,)

Defendants.)

Case No. C 04-2567 PJH

Date: Wednesday, October 27, 2004

Time: 9:00 a.m.

Judge: Honorable Phyllis J. Hamilton

Courtroom 3, 17th Floor

DECLARATION OF CAROL LAZZARO IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT

I, CAROL LAZZARO, do hereby declare as follows:

1. I am an Associate Principal Legal Advisor, for the Office of the Principal Legal Advisor, the Agency Counsel for the Federal Protective Service (FPS), a component of the U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS).

2. As Agency counsel, I am familiar with the procedures for maintaining the files of claims submitted in accordance with the prescribed procedures under the Federal Tort Claims Act (FTCA).

3. I certify that I have caused FPS records to be searched, and contacted the former Agency counsel for FPS, the General Services Administration, to request that their files be searched, and have found no record of any administrative FTCA claim filed by or on behalf of Robert-John:Foti, Ken Augustine or Joe Neufeld.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of September 2004.

Carol Lazzaro
CAROL LAZZARO