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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;
13 KEN AUGUSTINE,)

14 Plaintiffs,)

15 v.)

16 OFFICER McHUGH and other unknown
17 number of unnamed officers of the U.S.
Marshals Service and the Federal Protective
18 Service; U.S. MARSHALS SERVICE;
FEDERAL PROTECTIVE SERVICE,)

19 Defendants.)
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FILED

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

No. C 04-2567 PJH

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

Date: Wednesday, October 27, 2004
Time: 9:00 a.m.
Judge: Honorable Phyllis J. Hamilton
Courtroom 3, 17th Floor

DECL. OF G. AUERBACH I/S/O MTN TO DISMISS
C 04-2567 PJH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

| | | |
|---------------------------|---|------------------------|
| ROBERT JOHN FOTI, ET AL., |) | |
| PLAINTIFFS, |) | |
| VS. |) | Case No. C 04-2567 PJH |
| OFFICER McHUGH, et al. |) | |
| DEFENDANTS. |) | |

DECLARATION OF GERALD M. AUERBACH

I, Gerald M. Auerbach, declare the following to be true and correct:

1. I am the General Counsel for the United States Marshals Service (USMS), Department of Justice, Arlington, Virginia and am responsible for overseeing the administrative tort claims received by this office.

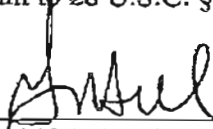
2. This office is the custodian of agency records relating to the filing, evaluation, and disposition of administrative claims presented to the USMS under the Federal Tort Claims Act (FTCA). All such claims are forwarded to the Office of General Counsel for disposition.

3. As a routine business practice, this office maintains a record of each such claim. The claims are indexed by claimant.

4. On September 8, 2004, this office searched the FTCA claim records to determine whether claims were presented to the USMS by plaintiffs Robert John Foti, Joseph Leonard Neufeld and/or Ken Augustine arising out of the incident described in the complaint.

5. The review of the FTCA claim records did not reveal any FTCA claims presented to the USMS by plaintiffs arising out of the incident described in the complaint.

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.



 Gerald M. Auerbach
 General Counsel
 United States Marshals Service Headquarters
 Washington, D.C. 20530-1000
 (202) 307-9054

Executed on: 9/14; 2004