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12 UNITED STATES DISTRICT COURT  
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,	) No. CR 05-1046(E)-DSF
	)
15 Plaintiff,	) <u>GOVERNMENT'S MOTION TO</u>
	) <u>DISQUALIFY DEFENSE COUNSEL DUE</u>
16 v.	) <u>TO CONFLICT OF INTEREST;</u>
	) <u>MEMORANDUM OF POINTS AND</u>
17	) <u>AUTHORITIES; DECLARATION OF</u>
	) <u>KEVIN M. LALLY; EXHIBITS</u>
18 ANTHONY PELLICANO, et al.,	)
	) Hearing Date: February 11, 2008
19 Defendants.	) Time: 8:30 a.m.
20	)
21	)
22	)
23	)

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24 Plaintiff United States of America, by and through its  
 25 attorney of record, Assistant United States Attorneys Daniel A.  
 26 Saunders and Kevin M. Lally, hereby files its Motion to  
 27 Disqualify Counsel due to Conflict of Interest.  
 28


1 This motion is based on the attached memorandum of points  
2 and authorities, declaration of Assistant United States Attorney  
3 Kevin M. Lally and exhibits thereto; the files and records of  
4 this case, and any additional evidence or argument the Court may  
5 wish to consider.

6  
7 DATED: February 6, 2008

Respectfully submitted,

8 THOMAS P. O'BRIEN  
United States Attorney

9 CHRISTINE C. EWELL  
10 Assistant United States Attorney  
Chief, Criminal Division

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13 \_\_\_\_\_  
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14 KEVIN M. LALLY  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 As this Court expressly has found, this is a case in which  
5 defendant Terry Christensen ("defendant") has invoked privilege  
6 "not to protect his client or to protect the legal system, but,  
7 instead, to protect his own personal interest." (CR 1046).  
8 Defendant again is attempting to use privilege to suppress from  
9 public disclosure information adverse to his potential interests.  
10 Specifically, two years after assembling his litigation team but  
11 a week after when the government served a trial subpoena on his  
12 partner, Patricia Glaser ("Glaser"), defendant sought to have  
13 Glaser added to his litigation team, and thereby set up a barrier  
14 that could preclude her from testifying against him in this case.  
15 Glaser, however, is irreparably conflicted from representing  
16 defendant in this case due to both her status as a potential  
17 witness and to having financial interests that are adverse to  
18 defendant. Therefore, to ensure a fair trial and preserve the  
19 integrity of a judgment in this case, Glaser should be  
20 disqualified from representing defendant in this case.

21 II.

22 FACTUAL BACKGROUND

23 A. Terry Christensen

24 Defendant has been the managing partner of the Los Angeles  
25 law firm Christensen, Glaser, Fink, Jacobs, Weil & Shapiro  
26 ("Christensen Glaser") since the law firm's inception in 1988.

1 (Lally Decl. ¶ 2; Ex. A). In this capacity, defendant, in 2002,  
2 represented client Kirk Kerkorian in litigation with Kerkorian's  
3 ex-wife, Lisa Bonder Kerkorian, regarding child support payments  
4 for Kira Kerkorian. The indictment alleges that during the  
5 course of this litigation, defendant used private investigator  
6 Anthony Pellicano to wiretap Lisa Bonder Kerkorian and thereby  
7 intercepted her trial strategy, settlement position, and other  
8 confidential information. (CR 119).

9 On February 15, 2005, defendant was charged with conspiring  
10 to commit wiretapping, in violation of Title 18, United States  
11 Code, Section 371, and aiding and abetting a wiretap, in  
12 violation of Title 18, United States Code, Section 2511. (Id.).  
13 Over the course of the past two years, defendant has been  
14 represented by Terree A. Bowers and Mary Carter Andruus of Howrey  
15 LLP and Daniel K. Webb of Winston & Strawn.

16 B. Patricia Glaser

17 In 1988, Glaser joined defendant in founding the law firm of  
18 Christensen Glaser.<sup>1</sup> (Lally Decl. ¶ 3; Ex. B). From information  
19 and evidence obtained during the course of this investigation, it  
20 is known that Glaser hired Pellicano in connection with a  
21 litigation matter in 2000 and that two separate entries for  
22 Glaser, one of which references her home telephone number, were  
23 recovered from the address book stored on Pellicano's office

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25  
26 <sup>1</sup> The firm previously was known as Christensen, Miller,  
27 Fink, Jacobs, Glaser, Weil & Shapiro. When partner Louis "Skip"  
Miller left the firm in May 2006, the firm was renamed  
Christensen Glaser.

1 computers.<sup>2</sup> (Lally Decl. ¶ 4).

2 Immediately following the issuance of the February 2005  
3 indictment, Glaser, who publicly has identified herself as the  
4 Christensen Glaser spokesperson for matters pertaining to  
5 defendant's indictment, made multiple statements in support of  
6 defendant in which she stated that defendant had only retained  
7 Pellicano in connection with a single case and that he had only  
8 done so to protect a client (Kerkorian) and a child (Kira Bonder  
9 Kerkorian) from repeated death threats and extortion after law  
10 enforcement, which previously had been apprised of the threats  
11 and extortion, had proven unable to protect Kirk or Kira  
12 Kerkorian.<sup>3</sup> (Lally Decl. ¶ 6; Ex. C). Subsequent to these  
13 statements being made, the government produced in discovery the  
14 34 Pellicano-Christensen recordings that set forth the substance  
15 of the actual communications between defendant and Pellicano.  
16 Upon reviewing these calls, defendant altered his defense  
17 strategy to claim that he "retained Pellicano to determine the  
18 true paternity of Kira Bonder Kerkorian as part of the child  
19 support litigation." (CR 939).

20 C. Issuance of Trial Subpoena to Glaser

21 The government served Glaser with a trial subpoena on  
22 Friday, January 25, 2008. (Lally Decl. ¶ 7). On Thursday,  
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24 <sup>2</sup> It is the government's understanding that Glaser has  
25 specialized overwhelmingly, if not exclusively, in civil  
26 litigation.

27 <sup>3</sup> As the Court is aware, this statement is false on  
28 several levels.

1 January 31, 2008, Glaser called government counsel to discuss  
2 issues related to her trial testimony. Specifically, Glaser  
3 advised the government that she had accepted service of the  
4 subpoena and wanted to advise the government that, with the  
5 exception of a state court trial that was scheduled for the first  
6 week of March and that would take approximately one week to try,<sup>4</sup>  
7 she was available to testify as required by the subpoena. (Lally  
8 Decl. ¶ 8). Glaser then asked the government what the substance  
9 of her proposed testimony would be. (Id.). Citing her  
10 professional relationship with defendant, the government  
11 respectfully declined this request. (Id.).

12 D. Glaser's Addition To Defendant's Litigation Team

13 Two years after the litigation in this case was initiated,  
14 one week after Glaser accepted service of a government trial  
15 subpoena in this matter, and two days after advising government  
16 counsel that she would be available to testify at trial as  
17 needed, the government received a call from Mr. Bowers on  
18 Saturday, February 2, 2008, in which he notified the government  
19 that Glaser would be joining defendant's litigation team. (Lally  
20 Decl. ¶ 9). In response, the government advised Mr. Bowers that  
21 it would seek Glaser's disqualification. (Id.).

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23  
24 <sup>4</sup> Glaser stated that there was a possibility that this  
25 trial date could be set aside, if her request for summary  
26 judgment was granted. The government is not aware of whether the  
27 court ruled on the summary judgment motion in the one day between  
28 when it was advised of this trial date and when it was notified  
that Glaser was joining defendant's litigation team. If no  
ruling has been issued, it would appear that Glaser has a  
conflict with the February 27, 2008 trial date in this case.



1 On Monday, February 4, 2008, Glaser, over government  
2 objection, made an appearance on defendant's behalf at the  
3 pretrial conference in this matter. Afterwards, Glaser spoke  
4 with government counsel regarding the circumstances that  
5 purportedly led to her decision to join defendant's litigation  
6 team. During this conversation, Glaser conceded that she had not  
7 been a member of defendant's litigation team until Friday,  
8 February 1, 2008. (Lally Decl. ¶ 10). According to Glaser, she  
9 joined defendant's litigation team not to avoid having to testify  
10 against her long-time partner in this case, but rather because  
11 defendant was in need of new lead counsel given that Dan Webb had  
12 to step aside.<sup>5</sup> (Id.).

13 On February 5, 2008, Glaser filed a notice of substitution  
14 of counsel with this Court. (CR 1099). Through this motion, the  
15 government formally seeks Glaser's disqualification as  
16 defendant's counsel in this case.

### 17 III.

#### 18 ARGUMENT

#### 19 A. Disqualification Of Defense Counsel Is Appropriate Where 20 There Is An Actual Conflict Of Interest

21 Under the Sixth Amendment, a criminal defendant is entitled  
22 to "representation that is free from conflicts of interest" --  
23

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24 <sup>5</sup> While it appears that Mr. Webb is no longer a member of  
25 defendant's litigation team, it does not appear that his  
26 departure was related to any actual conflict with the February  
27 27, 2008 trial date, as his March 3, 2008 trial in the Southern  
28 District of New York was continued at Mr. Webb's request on  
January 30, 2008. (Lally Decl. ¶ 11; Ex. D).

1 that is, to representation by an attorney who pursues the  
2 defendant's interests "single-mindedly," and whose strategic  
3 decisions are uninfluenced by obligations to others. Wood v.  
4 Georgia, 450 U.S. 261, 271-72 (1981); see also United States v.  
5 Christakis, 238 F.3d 1164, 1168 (9th Cir. 2001) ("Under the Sixth  
6 Amendment, a criminal defendant has the right to be represented  
7 by counsel whose loyalties are undivided.").

8 Beyond the defendant's right to effective representation,  
9 courts "have an independent interest in ensuring that criminal  
10 trials are conducted within the ethical standards of the  
11 profession and that legal proceedings appear fair to all who  
12 observe them." Wheat v. United States, 486 U.S. 153, 160 (1988).  
13 This independent interest derives from trial courts'  
14 "institutional interest in the rendition of just verdicts in  
15 criminal cases," and in seeing that these verdicts "remain intact  
16 on appeal." Id. at 160-61. The government has a duty to bring  
17 the risk of a conflict of interest to the attention of the trial  
18 judge. Mannhalt v. Reed, 847 F.2d 576, 583-84 (9th Cir. 1988).

19 A district court, therefore, has broad discretion in  
20 deciding whether to reject a defendant's conflict-of-interest  
21 waiver and disqualify counsel. While the Sixth Amendment  
22 "comprehend[s]" representation by a defendant's preferred  
23 counsel, its "essential aim" is to ensure that a defendant  
24 receive effective representation. Wheat, 486 U.S. at 159. Thus,  
25 a defendant does not have a right to "inexorably be represented  
26 by the lawyer whom he prefers." Id.; see also United States v.  
27  
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1 Locascio, 6 F.3d 924, 933 (2d Cir. 1993) (stating that the "right  
2 to waiver is not absolute" because of the court's independent  
3 duty to ensure fair trials).

4 The Supreme Court has stated that because questions  
5 concerning the waiver of potential conflicts occur "not with the  
6 wisdom of hindsight after the trial has taken place, but in the  
7 murkier pre-trial context when relationships between parties are  
8 seen through a glass, darkly," a district court has "substantial  
9 latitude" to disqualify counsel. Id. at 163. The trial judge  
10 possesses this "substantial latitude" to avoid "being whipsawed -  
11 damned if it does and damned if it doesn't disqualify counsel" in  
12 the face of a conflict of interest. United States v. Stites, 56  
13 F.3d 1020, 1024 (9th Cir. 1995). "The danger of whipsawing is  
14 especially acute when the defendant himself is a lawyer marked by  
15 cunning and ethical obtuseness." Id.

16 Accordingly, the court has "substantial latitude" to  
17 disqualify Glaser from representing defendant in order to ensure  
18 that Glaser's conflicts of interest do not impair defendant's  
19 right to a fair trial.

20 B. Glaser's Status As A Potential Witness In This Case  
21 Precludes Her from Representing Defendant

22 As a preliminary matter, Glaser should be disqualified from  
23 representing defendant as such representation would violate the  
24 advocate-witness rule. The advocate-witness rule holds that an  
25 attorney should be disqualified where she will appear as both an  
26 advocate and witness at trial. United States v. Prantil, 764  
27  
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1 F.2d 548, 553 (9th Cir. 1985). In Prantil, the Ninth Circuit  
2 addressed the propriety of the prosecuting attorney acting as  
3 both an advocate and a witness. Although the prosecutor never  
4 testified, he "was a witness to, and indeed a participant in,  
5 some aspect of all of the events alleged in the indictment." Id.  
6 at 551. The defendant moved to have the prosecutor replaced in  
7 order to permit the defense to call him as a witness. Id. The  
8 Ninth Circuit held that the district court abused its discretion  
9 in denying the defendant's motion. The Court stated:

10 The advocate-witness rule prohibits an attorney from  
11 appearing as both a witness and an advocate in the same  
12 litigation. This venerable rule is a necessary  
13 corollary to the more fundamental tenet of our  
14 adversary system that juries are to ground their  
15 decisions in the facts of the case, not on the  
16 integrity or credibility of the advocates.  
17 Accordingly, adherence to this time-honored rule is  
18 more than just an ethical obligation of individual  
19 counsel; enforcement of the rule is matter of  
20 institutional concern implicating the basic foundations  
21 of our system of justice.

22 Id. at 553;<sup>6</sup> see also United States v. Assoc. Convalescent Ent.,  
23 Inc., 766 F.2d 1342, 1346-47 (9th Cir. 1985) (civil case where  
24 defense counsel disqualified the day before trial because  
25 government listed attorney on its witness list); Optyl Eyewear

26 \_\_\_\_\_  
27 <sup>6</sup> The Court delineated a set of "narrowly interpreted"  
28 exceptions where an attorney might be permitted to testify.  
Those exceptions include situations where "the proposed testimony  
relates to a purely formal or uncontested matter; the need for  
the testimony could not have been reasonably anticipated and the  
evidence is necessary to prevent a miscarriage of justice; and  
where a particular attorney's familiarity with a case is such  
that withdrawal will irreparably injure his client's case." Id.  
at 553 n.2. Since Glaser would testify on substantive matters  
and has only recently become involved in this litigation, these  
narrow exceptions do not apply here.

1 Fash. Int'l Corp. v. Style Co., 760 F.2d 1045, 1048 (9th Cir.  
2 1985) (holding that a court has authority to disqualify an  
3 appearing attorney on the ground that the attorney will be a  
4 witness in the case).

5 Likewise, in United States v. Simcho, 2007 WL 1100316, (N.D.  
6 Cal. Apr. 11, 2007) (unpublished), the district court applied the  
7 advocate-witness rule and granted a motion to disqualify defense  
8 counsel based on defense counsel's status as a potential witness.  
9 Since defense counsel had participated in tax seminars that  
10 related to the defendant's tax fraud scheme and was a witness to  
11 some of the events at issue in the case, the court found that  
12 defense counsel would impermissibly "function as an unsworn  
13 witness" who could testify "without cross examination." Id. at  
14 \*3. Defense counsel would thus violate the advocate-witness rule  
15 by "blurring the roles of advocate and witness." As such, the  
16 court, exercising its "substantial latitude to ensure fairness in  
17 the trial," ordered defense counsel disqualified. Id. at \*2-3.

18 Also, in Benas v. Baca, 2003 WL 21530209 (C.D. Cal. July 1,  
19 2003) (unpublished), the district court disqualified an attorney  
20 from representing a defendant based on his potential to testify  
21 as a witness at trial. The court relied on California's version  
22 of the advocate-witness rule, California Rule of Professional  
23 Conduct 5-210, which states that a "member shall not act as an  
24 advocate before a jury which will hear testimony from the  
25 member," and Central District Local Rule 83-3.1.2, which states  
26 that the court adopts the California Rules of Professional  
27

1 Conduct, including Rule 5-210. Id. at \*2. As plaintiff intended  
2 to call defense counsel as a witness at trial and defense  
3 counsel's testimony was relevant, the court ruled that the local  
4 rules prohibited defense counsel from serving as counsel in the  
5 case. Id. at \*3.

6 Just as in Prantil, Simcho, and Benas, the advocate-witness  
7 rule applies squarely here. Glaser is a percipient witness to  
8 the events at issue in this case and had been subpoenaed by the  
9 government prior to the time that she sought to join defendant's  
10 litigation team. If called as a witness, Glaser's testimony  
11 would go to substantive and contested issues in this litigation.<sup>7</sup>  
12 See Prantil, 764 F.2d at 553 n.2. This evidence would be  
13 important to the trial, as it would go to inconsistent positions  
14 taken by defendant in this litigation and would reflect the  
15 manufactured nature of defendant's present defense. Thus, the  
16 evidence is relevant and should result in Glaser's  
17 disqualification from representing defendant in this case.

18 In addition, the timing of Glaser's attempts to join  
19 defendant's litigation team reflect a naked attempt to improperly  
20 suppress the likelihood that Glaser could be called as a  
21 government witness against defendant. As discussed above,  
22 Glaser, a civil litigator, conceded that she was not a member of  
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24 <sup>7</sup> To provide defense counsel with sufficient information  
25 to respond to this motion, the government has addressed some of  
26 the grounds on which Glaser may be called to testify, likely in  
27 the government's rebuttal case. The government can supplement  
28 this information in camera should the Court need additional  
information.

1 defendant's litigation team for the past two years. (Lally Decl.  
2 ¶ 10). However, within a week of being served with a government  
3 trial subpoena in this case, Glaser joined defendant's litigation  
4 team, purportedly as lead counsel.<sup>8</sup> The government respectfully  
5 submits that such conduct is inappropriate and should not be  
6 permitted.

7 Further, because Glaser has witnessed events that are at  
8 issue in this case, if she were to represent defendant, she would  
9 impermissibly "function as an unsworn witness" who could testify  
10 "without cross examination" even if she is not called as a  
11 witness at trial. Simcho, 2007 WL 1100316, at \*3; see also  
12 United States v. Locascio, 6 F.3d 924, 933 (2d Cir. 1993) ("[A]n  
13 attorney acts as an unsworn witness when his relationship to his  
14 client results in his having first-hand knowledge of the events  
15 presented at trial."). This would blur the role of advocate and  
16 witness and thereby violate the advocate-witness rule. See  
17 Prantil, 764 F.2d at 553.

18 Accordingly, in light of Glaser's status as a potential  
19 sworn or unsworn witness in this case, the court should  
20 disqualify Glaser from representing defendant at trial.

21 C. As Glaser Holds Financial Interests Adverse To Defendant,  
22 She Should Be Disqualified In This Case

23 Glaser's status as a named partner in defendant's law firm  
24 also creates an irreparable conflict of interest here. Rule  
25

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26 <sup>8</sup> According to the Notice of Substitution of Counsel, Mr.  
27 Bowers will remain second chair despite having represented  
28 defendant in every proceeding to date. (CR 1099).

1 3-300 of the California Rules of Professional Conduct prohibits  
2 attorneys from possessing pecuniary interests adverse to their  
3 clients. See also ABA Model Rule of Professional Conduct 1.7  
4 (stating that "a lawyer shall not represent a client if the  
5 representation involves a concurrent conflict of interest" and  
6 that such a conflict exists if there is a "significant risk" that  
7 the representation will be affected by the "personal interest of  
8 the lawyer").

9 The Ninth Circuit has held that where counsel holds  
10 financial interests adverse to her client, a defendant may be  
11 deprived of effective assistance of counsel due to counsel's  
12 conflict of interest. United States v. Hearst, 638 F.2d 1190,  
13 1193-94 (1980) (citing Cuyler v. Sullivan, 446 U.S. 335, 350  
14 (1980)). A defendant's Sixth Amendment claim of ineffective  
15 assistance of counsel may persist even where there has been a  
16 waiver. If a convicted defendant claims that he or she was  
17 denied the right to counsel with undivided loyalties, "the burden  
18 of proving waiver is on the government," and courts "'will  
19 indulge every reasonable presumption against the waiver.'" United States v. Allen, 831 F.2d 1487, 1498 (9th Cir. 1987)  
20 (ruling that waiver was invalid) (quoting Glaser v. United  
21 States, 315 U.S. 60 (1942)).

22  
23 Here, Glaser and defendant are both named partners in the  
24 Christensen Glaser firm. As a partner, Glaser holds a  
25 substantial financial interest and duty to her fellow partners  
26 and associates to preserve the reputation and financial viability  
27



1 of the firm. If Glaser were to represent defendant at trial, her  
2 interest in the financial success of the firm could conflict with  
3 her duties to defendant. For example, while defendant's interest  
4 in acquittal would be aligned with the firm's financial  
5 interests, trial in this matter will involve the public  
6 disclosure of the 34 Pellicano-Christensen calls. As this Court  
7 has previously found, public disclosure of these recordings will  
8 reveal defendant's "at best - unsavory or - at worst - illegal  
9 tactics." (CR 1046). Should there be a torrent of negative  
10 publicity from the playing of these recordings in open court, it  
11 may be in the firm's interest to stem the negative publicity by  
12 having defendant plead guilty and publicly accept responsibility  
13 for his conduct. See United States v. Locascio, 6 F.3d 924, 933  
14 (2d Cir. 1993) (stating that an attorney with a personal stake in  
15 the litigation "may be tempted to minimize his own conduct at the  
16 expense of his client"). Thus, Glaser's financial stake in  
17 defendant's trial could adversely affect her effectiveness in  
18 representing defendant at trial, and place any verdict in this  
19 case at risk of being reversed.

20 Furthermore, even if defendant offers to waive Glaser's  
21 financial conflict of interest, defendant may still be able to  
22 later set forth an ineffective assistance of counsel claim based  
23 on Glaser's conflict of interest. After all, "the burden of  
24 proving waiver is on the government," and courts "'will indulge  
25 every reasonable presumption against the waiver.'" Allen, 831  
26 F.2d at 1498; United States v. Arrington, 867 F.2d 122, 129 (2d  
27  
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1 Cir. 1989) (upholding disqualification despite conflict waiver  
2 where lawyer had personal stake in litigation). By accepting a  
3 waiver, the court would risk having the waiver later being  
4 declared invalid due to the obvious conflict in this case.<sup>9</sup>

5 Therefore, the court should disqualify Glaser from  
6 representing defendant based on the additional ground that she  
7 holds a financial interest adverse to defendant.

8 **IV.**

9 **CONCLUSION**

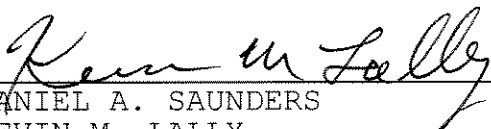
10 For the foregoing reasons, the government respectfully  
11 requests that the Court grant this motion and order that Glaser  
12 be disqualified from representing defendant at trial.

13  
14 Dated: February 6, 2008

Respectfully submitted,

15 THOMAS P. O'BRIEN  
16 United States Attorney

17 CHRISTINE C. EWELL  
18 Assistant United States Attorney  
19 Chief, Criminal Division

20   
21 DANIEL A. SAUNDERS  
22 KEVIN M. LALLY  
23 Assistant United States Attorney

24 Attorneys for Plaintiff  
25 UNITED STATES OF AMERICA

26 <sup>9</sup> Should this Court elect not to disqualify Glaser, the  
27 government requests that a hearing be held at which time detailed  
28 waivers be obtained from defendant.

1 DECLARATION OF KEVIN M. LALLY

2 I, Kevin M. Lally, hereby declare and state as follows:

3 1. I am an Assistant United States Attorney in the  
4 Violent & Organized Crime Section of the United States Attorney's  
5 Office for the Central District of California. Along with  
6 Assistant United States Attorney Daniel A. Saunders, I have been  
7 assigned to prosecute the matter of United States v. Anthony  
8 Pellicano, et al., No. CR 05-1046(E)-DSF.

9 2. A true and correct copy of the attorney profile for  
10 defendant Terry Christensen ("defendant") obtained from the  
11 Christensen, Glaser, Fink, Jacobs, Weil & Shapiro website is  
12 Exhibit A.

13 3. A true and correct copy of the attorney profile for  
14 Patricia Glaser obtained from the Christensen, Glaser, Fink,  
15 Jacobs, Weil & Shapiro website is attached as Exhibit B.

16 4. Through my participation in this case, I am aware that  
17 an interviewed party has stated that Patricia Glaser, who was  
18 adverse to the party in a civil litigation matter in 2000, had  
19 retained private investigator Anthony Pellicano to assist in the  
20 case. In addition, I have reviewed Pellicano's computer address  
21 book and have observed back-to-back entries for Ms. Glaser. One  
22 of the two entries includes Ms. Glaser's home telephone number.

23 5. Defendant was indicted in the above-referenced case on  
24 February 15, 2006. At the time of this indictment, discovery  
25 containing the 34 audio recordings between Pellicano and  
26 defendant had not yet been produced.

1           6. True and correct copies of newspaper articles from the  
2 New York Times, Los Angeles Times and Los Angeles Daily Journal,  
3 which were published on February 16, 2006 and which contain  
4 statements from Ms. Glaser regarding the charges against  
5 defendant, are attached as Exhibit C.

6           7. Through discussions with the case agent assigned to  
7 serve trial subpoenas in this matter, I am aware that Ms. Glaser  
8 was served with a trial subpoena on Friday, January 25, 2008.

9           8. On Thursday, January 31, 2008, AUSA Saunders and I  
10 participated in a telephone call initiated by Ms. Glaser. During  
11 the course of this conversation, Ms. Glaser advised us that she  
12 was in receipt of the government's trial subpoena. In addition,  
13 Ms. Glaser stated that she would be available to testify as  
14 needed. Ms. Glaser also inquired as to the substance of her  
15 likely testimony; however, due to her relationship with  
16 defendant, this request was respectfully declined. Finally, as a  
17 courtesy, Ms. Glaser was asked whether she had any scheduling  
18 conflicts of which the government should be aware. In response,  
19 Ms. Glaser stated that she had a one-week trial in state court  
20 that was set for the first week of March, but that it was  
21 possible that the matter could be resolved in advance of trial by  
22 way of summary judgment.

23           9. On Saturday, February 2, 2008, defendant's counsel,  
24 Terree A. Bowers, notified the government that Ms. Glaser would  
25 be joining defendant's litigation team.

26           10. Following the February 4, 2008, pretrial conference in  
27  
28

1 this case, Ms. Glaser requested to speak with AUSA Saunders and  
2 me about the circumstances surrounding her retention in this  
3 case. During the conversation that followed, Ms. Glaser stated  
4 that defendant had asked her to join his litigation team on  
5 Friday, February 1, 2008. According to Ms. Glaser, this request  
6 was precipitated by defendant's need to obtain a new lead trial  
7 attorney, as Daniel K. Webb had elected to step down from this  
8 position due to conflicts in his trial calendar.

9 11. A true and correct copy of the January 31, 2008 order  
10 by the Honorable Shira A. Scheindlin, United States District  
11 Judge, continuing the trial date in United States v. Bourke, No.  
12 CR 05-518 (SAS) at Mr. Webb's request is attached as Exhibit D.

13 I declare under penalty of perjury under the laws of the  
14 United States that the foregoing is true and correct.

15 Executed this 6th day of February, 2008, in Los Angeles,  
16 California.

17   
18 KEVIN M. LALLY  
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**CERTIFICATE OF SERVICE BY MAIL**

I, SONIA ACEVEDO, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California, that my business address is Office of United States Attorney, U.S. Courthouse, 312 N. Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action.

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District court for the Central District of California, at whose direction the service by mail described in this Certificate was made on; that on February 6, 2008, I deposited in the United States mails in at the U.S. Courthouse at 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, copies of:

GOVERNMENT'S MOTION TO DISQUALIFY DEFENSE COUNSEL DUE TO CONFLICT OF INTEREST; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KEVIN M. LALLY; EXHIBITS

addressed to: ANTHONY J. PELLICANO  
Reg. No. 21568-112  
c/o MDC Legal Center  
MDC - Los Angeles  
P.O. Box 1500  
Los Angeles, CA 90053

at his known address, at which place there is a delivery Service by United States mail.

This Certificate is executed on certify February 6, 2008 under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
SONIA ACEVEDO