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 6 CITY OF OAKLAND, RONALD ABAD,
 DAVIR CARRILLO, RICHARD FIELDING,
 7 JAMES FISHER, DAVID KOZICK,
 ISAAC WILSON, ISAGANI PUGAO,
 8 ARLENE M. ROSEN

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 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**

13 JOHN L. WHEELER, GLORIA A.
 WHEELER,

14 Plaintiffs,

15 v.

16 CITY OF OAKLAND, RONALD ABAD,
 17 DAVID CARRILLO, RICHARD FIELDING,
 JAMES FISHER, DAVID KOZICKI, ISAAC
 18 WILSON, ISAGANI PUGAO, ARLENE M.
 ROSEN, CALVIN M. WONG,
 19 BROOKFIELD HOMEOWNERS
 ASSOCIATION, WILEY WILLIAMS AND
 20 DOES 3 through 50, inclusive,

21 Defendants,

Case No. C 05-00647 SBA

**DECLARATION OF GLORIA Y. LEE IN
 SUPPORT OF DEFENDANTS RONALD
 ABAD, DAVID CARRILLO, DAVID
 KOZICKI, AND ISAGANI PUGAO'S
 MOTION TO MODIFY CASE
 MANAGEMENT DEADLINE PURSUANT
 TO LOCAL RULE 6-3**

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1 I, GLORIA Y. LEE, declare as follows:

2 1. I am employed as Deputy City Attorney by the City Attorney's Office in
3 Oakland, and am the primary attorney on this case. I have personal knowledge of the
4 following facts, and if called upon to do so, could and would competently testify thereto.

5 2. At the July 28, 2005 case management conference in this case, plaintiffs'
6 counsel indicated that not all of the individual City defendants had been served. I later
7 spoke with plaintiffs' counsel regarding the issue, and we agreed to suspend any
8 responsive pleading by any of the individual City defendants until plaintiffs had confirmed
9 service on all of the individuals. Attached as Exhibit A is a true and correct copy of the
10 July 28, 2005 letter from me to plaintiffs' counsel documenting our agreement.

11 3. On August 5, 2005, plaintiffs' counsel informed me by email that plaintiffs
12 were still attempting to serve Richard Fielding and Calvin Wong. The email was the last
13 communication that I had with plaintiffs' counsel on this issue until late-January 2006.
14 Attached as Exhibit B is a true and correct copy of the August 5, 2005 email from plaintiffs'
15 counsel to me.

16 4. In early-February 2006, plaintiffs confirmed service on the individual City
17 defendants (with the exception of Calvin Wong, who apparently could not be located).
18 Defendants subsequently filed their 12(c) and 12(b)(6) motions on March 3, 2006.

19 5. On March 20, 2006, plaintiffs' counsel requested that the hearing date on the
20 pending 12(c) and 12(b)(6) motions be continued by two weeks. I agreed to the request,
21 and the parties accordingly submitted a stipulation and proposed order to continue the
22 hearing date and to adjust the briefing schedule accordingly. The request was granted by
23 the Court.

24 6. The Court's Order on the pending 12(c) and 12(b)(6) motions was filed on
25 April 28, 2006. All that remains in this case is a Section 1983 claim against individual City
26 defendants Ronald Abad, David Carrillo, David Kozicki, and Isagani Pugao (collectively,

1 the "Remaining Defendants") for an alleged violation of plaintiffs' Fourth Amendment
2 rights.

3 7. The Remaining Defendants contend there is no genuine issue of material
4 fact as to whether they violated plaintiffs' Fourth Amendment rights. More specifically, fact
5 discovery has now closed, and it is apparent there is no evidence that plaintiffs had a
6 reasonable expectation of privacy in their driveway. The issue is thus perfectly postured
7 for resolution, and dismissal, on summary judgment.

8 8. There has been no prior request for continuances of dates in the case
9 management order by the Remaining Defendants.

10 9. The deadline for hearing dispositive motions is now set for May 2, 2006. A
11 settlement conference is scheduled for May 18, 2006. The pre-trial conference is
12 scheduled for June 13, 2006. The trial date is June 26, 2006.

13 10. The Remaining Defendants request that the deadline for hearing dispositive
14 motions be moved to June 13, 2006, the date of the pre-trial conference. The Remaining
15 Defendants propose filing their motion for summary judgment by May 9, 2006, that
16 plaintiffs file their opposition papers by May 23, 2006, and that the Remaining Defendants
17 file their reply papers by May 30, 2006.

18 11. Without the change in deadline, the Remaining Defendants will be unable to
19 file a motion for summary judgment on the sole issue that remains in this case. Given the
20 Remaining Defendants' belief that no genuine issue of material fact exists as to whether
21 plaintiffs' Fourth Amendment rights here were violated, the Remaining Defendants
22 contend that summary judgment would properly dispose of the case and the need for trial
23 would be eliminated. Thus, the interests of both efficiency and conserving judicial
24 resources would be served.

25 12. I contacted plaintiffs' counsel on May 1, 2006, the next business day after
26 the Court's April 28, 2006 Order, to obtain a stipulation to the time change. We spoke

1 later that day, and in light of the time constraint, I again requested that plaintiffs' counsel
2 provide his response by noon on May 2, 2006. I called plaintiffs' counsel in the late-
3 morning of May 2, 2006, but was unable to reach him and left him a detailed voicemail
4 advising that I would file the motion if no agreement was reached by noon. Attached as
5 Exhibit C is a true and correct copy of the May 1, 2006 letter from me to plaintiffs' counsel
6 describing the proposed modification and requesting the stipulation.

7 13. The requested continuance will not affect the trial date of June 26, 2006.

8 I declare under penalty of perjury of the laws of the United States that the foregoing
9 is true and correct. Executed this 2nd day of May 2006 in Oakland, California.

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/S/ _____
Gloria Y. Lee