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CENTRAL DIST. OF CALIF.
RIVERSIDE

BY _____

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3 **SAN BERNARDINO COUNTY**

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ORIGINAL

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 EASTERN DIVISION

15 IN THE MATTER OF THE SEARCH
16 OF AN APPLE IPHONE SEIZED
17 DURING THE EXECUTION OF A
18 SEARCH WARRANT ON A BLACK
19 LEXUS IS300, CALIFORNIA
LICENSE PLATE 35KGD203

ED No. CM 16-10-SP

SAN BERNARDINO COUNTY
DISTRICT ATTORNEY'S
APPLICATION TO PARTICIPATE
AS AMICUS CURIAE

Hearing Date: March 22, 2016
Time: 1:00 p.m.
Place: Courtroom 3 or 4
Judge: Hon. Sheri Pym

24 The District Attorney of San Bernardino County, California, attorney for
25 the People of the State of California, respectfully submits this Ex Parte
26 application for an order granting it leave to participate as amicus curiae in this
27 matter to file a brief in support of the *United States of America's Ex Parte Order*
28 *To Compel Apple, Inc. To Assist Agents In Search*. A copy of the District

1 Attorney's proposed brief is attached to this motion. In support thereof, the
2 People of the State of California, through their attorney, the District Attorney of
3 the County of San Bernardino submit the following:

4
5 I

6 CONSENT TO FILE AMICUS CURIAE BRIEF

7 The San Bernardino County District Attorney, on behalf of his client, The
8 People of the State of California, have requested and acquired the consent of the
9 United States Government and Apple, Inc. to participate as Amicus Curiae and to
10 file the attached brief in this matter.

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12 II

13 INTEREST OF THE DISTRICT ATTORNEY AND THE PEOPLE OF THE
14 STATE OF CALIFORNIA AS AMICUS CURIAE

15 The San Bernardino County District Attorney and his client, The People of
16 the State of California, have a compelling governmental interest in acquiring any
17 evidence of criminal conduct, additional perpetrators, potential damage to the
18 infrastructure of San Bernardino County, and in protecting the California
19 Constitutionally guaranteed due process rights of the victims, deceased and
20 living, arising from state crimes committed on December 2, 2015 within his
21 jurisdiction and contained solely on the seized iPhone before the court. The
22 People of the State of California, through its attorney, the District Attorney of San
23 Bernardino County assert that he is best prepared explain and demonstrate to
24 the Court that these interests outweigh any alleged interests that Apple, Inc.
25 asserts.

26 A. THE ACQUISITION OF EVIDENCE OF CRIMINAL ACTIVITY

27 The District Attorney is the public prosecutor who is charged with
28 attending the courts and within his discretion initiating and conducting on behalf

1 of the People of the State of California all prosecutions for public offenses. Cal.
2 Govt. Code § 26500 (Lexis 2016). Every person who commits a public offense in
3 the State of California is liable for punishment in this state. The jurisdiction for
4 prosecution of public offenses is in the jurisdictional territory in which it is
5 committed Cal. Penal Code § 777 (Lexis 2016).

6 The San Bernardino County District Attorney has a specific, unique and
7 compelling interest in acquiring the evidence of criminal activity that may be
8 contained on the Apple iPhone before the Court seized pursuant to a lawful
9 search warrant from the Lexus vehicle.¹ The telephone is owned by the County
10 of San Bernardino and was issued to one its employees, Sayed Farook to conduct
11 county business

12 On December 2, 2015 Mr. Farook and at least one accomplice committed
13 14 counts of willful deliberate premeditated murder a violation of Cal. Penal
14 Code §§ 187(a), 189 (Lexis 2016), with the special circumstances of multiple
15 murder Cal. Penal Code § 190.2(3) (Lexis 2016) specifying a penalty of death or
16 life imprisonment without the possibility of parole, and the commission of 22
17 counts of attempted murder in violation of Cal. Penal Code § 664/187 (Lexis
18 2016),. The murders were committed in furtherance of a conspiracy Cal. Penal
19 Code § 182 (Lexis 2016).

20 At the time that the murders were being perpetrated at least two 911 calls to
21 the San Bernardino Police Dispatch² center reported the involvement of three
22 perpetrators. Although the reports of three individuals were not corroborated, and
23 may ultimately be incorrect, the fact remains, that the information contained
24 solely on the seized iPhone could provide evidence to identify as of yet unknown
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26 _____
27 ¹ It should be noted that the California License Plate for the vehicle is incorrectly noted in the
28 court caption. The correct license plate number, contained in the search warrant, is 5KGD203.

² A copy of the computerized dispatch center calls is attached as Exhibit A

1 co-conspirators who would be prosecuted for murder and attempted murder in
2 San Bernardino County by the District Attorney.

3 The iPhone is a county owned telephone that may have connected to the
4 San Bernardino County computer network. The seized iPhone may contain
5 evidence that can only be found on the seized phone that it was used as a weapon
6 to introduce a lying dormant cyber pathogen that endangers San Bernardino
7 County's infrastructure, a violation of Cal. Penal Code §502 (Lexis 2016) and
8 poses a continuing threat to the citizens of San Bernardino County.

9 B. PROTECTION AND ENFORCEMENT OF THE DUE PROCESS
10 RIGHTS OF CALIFORNIA VICTIMS.

11 On behalf of his client, the People of the State of California, the District
12 Attorney has a unique interest and is best qualified to demonstrate to the Court
13 that Apple, Inc. is infringing on the due process rights guaranteed to victims of
14 crime by the California Constitution and is impeding the enforcement of those
15 rights.

16 The California Constitution guarantees victims of crimes committed in
17 California a Victim's Bill of Rights Cal. Const. Art. I, §28. Included in that Bill
18 of Rights is the expectation that those who commit felonies that injure victims
19 will be thoroughly investigated and speedily be brought before the courts and
20 tried in a timely manner. It also requires the good faith efforts and actions of
21 elected and appointed officials to accomplish these goals. Cal. Const. Art. I,
22 §28(a)(4). The victim's Bill of Rights also provides the right to "truth in evidence
23 and that "all relevant evidence" be admissible in a criminal proceeding. Cal.
24 Const. Art. I, §28(f)(2).

25 The People of the State of California, if permitted to file the attached
26 amicus curiae brief, will assert that Apple, Inc. has created a repository of
27 information that can be found only on the seized device before the Court. It will
28 also assert that a search warrant has established that there is probable cause to

1 believe that the device contains relevant evidence. It will also assert that Apple
2 has created in the device of their design a repository of possible relevant evidence
3 which cannot be penetrated or accessed without their assistance. It will further
4 assert that by failing to assist in the acquisition of this information, Apple is
5 infringing on the victim's rights as provided by the California Constitution and
6 that Apple is impeding the District Attorney's Constitutional obligation to
7 investigate and prosecute crimes committed against these victims.

8 9 III

10 ARGUMENT

11 The Federal District Court has "broad discretion" to allow the filing of
12 amicus curie briefs and it will only be overturned if there is an abuse of
13 discretion. *Hoptowit v. Ray*, 682 F.2d 1237 (9th Cir. 1982), abrogated on other
14 grounds, *Thomas v. Ponder*, 611 F.3d 1144, 1154 (9th Cir. 2010). "Generally,
15 courts have exercised great liberality in permitting an amicus curiae to file a brief
16 in a pending case.... There are no strict prerequisites that must be established
17 prior to qualifying for amicus status; an individual seeking to appear as amicus
18 must merely make a showing that his participation is useful to or otherwise
19 desirable to the court". *In re Roxford Foods Litigation.*, 790 F. Supp. 987, 997
20 (E.D. Cal. 1991), citing *United States v. Louisiana*, 751 F.Supp. 608, 620 (E.D.
21 La. 1990).

22 In addition to whatever interest the United States has in this Court's
23 decision in whether Apple should be required to assist in the unlocking of the
24 seized San Bernardino County iPhone the Court's decision will have a very real
25 impact on San Bernardino County, and the victims of crimes committed in San
26 Bernardino County. The District Attorney and our client, The People of the State
27 of California believe that we can provide this prospective and our view of how
28 Apple's activity and position impacts us. We believe that we can offer our

1 perspective to the court as to why the government's interest is compelling and
2 outweighs any arguments of interests that Apple can or will advance in support of
3 its position.

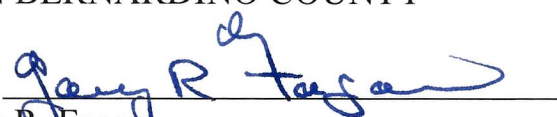
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5 CONCLUSION

6 For the above mentioned reasons, the San Bernardino County District
7 Attorney, and our client, the People of the State of California, respectfully request
8 that the Court grant the San Bernardino County District Attorney's Ex Parte
9 Application, and allow him to participate as Amicus Curiae in support of the
10 United States' application to compel Apple to assist in unlocking the seized
11 iPhone before this Court. A proposed order is attached.

12 DATED: March 3, 2016

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14 Respectfully Submitted,

15 MICHAEL A RAMOS
16 DISTRICT ATTORNEY
17 SAN BERNARDINO COUNTY

18 By: 
19 Gary R. Fagan
20 Chief Deputy District Attorney
21 San Bernardino County
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