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1 2 Dr. Orly Taitz, Attorney-at-Law 3 29839 S. Margarita Pkwy Rancho Santa Margarita CA 92688 4 ph. 949-683-5411 5 fax 949-766-7036 California State Bar No.: 223433 6 E-Mail: dr taitz@vahoo.com UNITED STATES DISTRICT COURT 8 FOR THE CENTRAL DISTRICT OF CALIFORNIA SANTA ANA (SOUTHERN) DIVISION 9 Captain Pamela Barnett, et al., 10 Plaintiffs, 11 v. 12 Barack Hussein Obama. Michelle L.R. Obama, Hilary Rodham 13 Clinton, Secretary of State, Robert M. Gates, Secretary of Defense, 14 Joseph R. Biden, Vice-President and President of the Senate, 15 Defendants.

Civil Action:

SACV09-00082-DOC

PLAINTIFFS' L-R 7-10 MOTION FOR LEÁVE TO FILE SUR-REPLY TO MOTION TO DISMISS

Plaintiffs' L-R 7-10 Motion for Leave to File Sur-Reply To Defendants' Reply to Plaintiffs' Response to Defendants' September 4, 2009 Motion to Dismiss

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Plaintiffs hereby move and request leave of court to file a surreply in response to Defendants' Reply filed and served on Friday, September 25, 2009. Plaintiffs cite the following authority from the Local Rules of the Central District of California:

L.R. 7-10 Reply Papers. A moving party may, not later than the seventh calendar date (not excluding Saturdays, Sundays, and holidays) before the date designated for the hearing of the motion, serve and file a reply memorandum, and declarations or other rebuttal evidence. Absent prior written order of the Court, the opposing party shall not file a response to the reply.

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Plaintiffs submit that the Defendants have raised new matter in their reply which require an answer. Namely, the Defendants submit cast in a highly prejudicial light to the Plaintiffs' cause, namely the orders of the Honorable Clay D. Land from the Middle District of Georgia.

It is true that Judge Land ruled in favor of defense in a case seeking stay of deployment of active duty military pending verification of Mr. Obama's legitimacy for the position of the President and Commander in Chief. What is most important in that case, is that for the first time after over a 100 legal actions filed all over the Nation challenging Mr. Obama's legitimacy for presidency, a judge in this case found **standing**, as judge Land got straight to the substance of the Plaintiffs' case, assuming standing of the members of the military to challenge the legitimacy of the Commander in Chief, but deciding to exercise discretionary abstention on the issue of deployment. Most of the plaintiffs in this case before His Honor, judge Carter, are members of the military, and as such, based on the precedent set in *Rhodes* case, they have **standing** to challenge legitimacy of Mr. Obama, therefore contradicting the defendants' main argument in the motion to dismiss, their claim that none of the plaintiffs have standing. The fact that Judge Land decided to abstain on the issue of deployment is irrelevant in this case, as it goes to the final disposition of the case, and whether the judiciary should abstain from reviewing a certain procedure within the military.

Furthermore, the Defendants assert that the Plaintiffs have not addressed the question of "redressability", and this matter needs to be clarified in light of the Plaintiffs' substantive due process contentions regarding the intersection of the First and Ninth Amendments as sources of the right of discrete and insular but politically powerless minorities to invoke strict scrutiny of obvious

1 2 3 deviations from and therefore to enforce precisely and exactly the letter of the Constitution on the model of *Flast v. Cohen* and this charge requires a surreply. 4 5 Finally, the Defendants continue to misrepresent the Plaintiffs' 6 contentions regarding standing and how standing as a barrier to self-governing 7 enforcement of the Constitution through Petition to Article III Courts (as 8 advocated by the Defendants, in any case) would itself constitute a violation of 9 Plaintiffs' constitutional right to due process of law in the enforcement of the plain letter of the Constitution. 10 11 WHEREFORE, Plaintiffs' pray, pursuant to L.R. 7-10, that they be allowed 12 to file a surreply to Defendants' response in this case, and even to do so as late as Thursday, October 1, 2009, especially since they are precluded from filing 13 their Second Amended Complaint prior to the hearing on Defendants' Motion to 14 Dismiss by this Court's Minute Order entered Thursday, September 24, 2009. 15 16 Respectfully submitted, Saturday, September 26, 2009 17 18 By: 19 Dr. Orly Taitz, Esq., Attorney-at-Law (California Bar 223433) 20 Attorney for the Plaintiffs 21 29839 S. Margarita Pkwy Rancho Santa Margarita CA 92688 22 ph. 949-683-5411 23 Fax: 949-766-7036 E-Mail: dr taitz@yahoo.com 24 25 26 27 28

1 2 3 **PROOF OF SERVICE** I the undersigned Charles Edward Lincoln, being over the age of 18 and 4 5 not a party to this case, so hereby declare under penalty of perjury that on this, 6 Saturday, September 26, 2009, I provided facsimile or electronic copies of the 7 Plaintiffs' above-and-foregoing Plaintiffs' L.R. 7-10 Motion for Leave to File 8 Surreply to the following attorneys for the Defendants who have appeared in 9 this case in accordance with the local rules of the Central District of California. 10 to wit: THOMAS P. O'BRIEN 11 12 LEON W. WEIDMAN ROGER E. WEST **roger.west4@usdoj.gov** (designated as lead counsel for 13 President Barack Hussein Obama on August 7, 2009) 14 DAVID A. DeJUTE **David.Dejute@usdoj.gov** 15 16 GARY KREEP usif@usif.net 17 FACSIMILE (213) 894-7819 DONE AND EXECUTED ON THIS Saturday the 26th day of September, 2009. 18 19 20 21 Charles Edward Lincoln, III Tierra Limpia/Deo Vindice 22 c/o Pevton Yates Freiman 23 603 Elmwood Place, Suite #6 Austin, Texas 78705 24 charles.lincoln@rocketmail.com 25 Tel: (512) 923-1889 26 27 28