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COUNTY OF MIDDLESEX

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CIVIL OFFICE

April 10, 2015

Via Hand Delivery

Hon. Travis L. Francis, A.J.S.C.
Middlesex County Courthouse
P.O. Box 864
New Brunswick, NJ 08903-0964

Re: William J. Brennan v. Middlesex County Prosecutor's Office,
James O'Neil, Custodian of Records for the Middlesex County
Prosecutor's Office, and John Does 1-10
Docket No. MID-L-293-15

Dear Judge Francis:

Kindly accept this letter brief in lieu of a formal brief in support of defendants' motion for a stay of the Order of April 7, 2015 in this matter and for reconsideration. Defendants rely on the Certification of Thomas Mannion, Assistant Prosecutor, in support of this motion.

THE MOTION FOR RECONSIDERATION

Yesterday, I sent to Your Honor a letter objecting to the proposed form of Order that plaintiff's counsel had submitted to this Office and Your Honor on April 7, 2015, on the ground that my Office had not been served with the Court's decision as of that date, though plaintiff's counsel apparently had held off e-mailing me a copy of the Decision and his entered Order of same date until later the evening of Wednesday, April 8, 2015, after our office hours. I therefore did not even have an opportunity to send my client the

Court's decision to review until the following day, April 9, 2015. I promptly did later that morning, when I discovered the e-mail from plaintiff's counsel. Only today did I receive a hard copy of the Court's decision by regular mail, even though its envelope bore a Pitney Bowles postage stamp of April 7, 2015.

One of the issues that I had with the proposed form of order that plaintiff's counsel sent to me, and I informed the court of same on April 9, 2015, before I was aware of the entered Decision on April 6, 2015, and Order of April 7, 2015, was the three (3) day turn around time for the Prosecutor's Office to comply with the Order. I had suggested in my letter to the Court that the three (3) days were inadequate and that more time should be provided. My office was never consulted by the Court regarding how much time would be needed before the Order was entered.

On April 9, 2015, I had yet to consult with my client about how much time it would actually need to produce the MVR's. Since then I have come to understand from my client that considerably more time is required. The reasons for this are set forth in the Certification of Assistant Prosecutor Thomas Mannion that is submitted herewith in support of defendants' motion for a stay, as well as for reconsideration.

Paragraph 9 of the Mannion Certification specifies that with the exception of five (5) MVR's of New Brunswick Police Officers involved in the Middleton pursuit itself, the Prosecutor's Office has not located, retrieved or copied any other MVR's for New Brunswick Police pursuits. A.P. Mannion rather provided Judge Bergman in camera with a seven (7) page list of eluding cases in New Brunswick that had been obtained without authorization from Promis Gavel.

While at this time I do not have a transcript of oral argument before Your Honor in this case, and I plan to order an expedited copy of it as soon as possible, as I recall Plaintiff's counsel stated to the Court that all of the MVR's that had been submitted in the Middleton case were just "in a box" somewhere, so as to suggest that defendants' objection to producing them here on the ground that his request was overbroad and lacked specificity, in violation of MAG Entertainment, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 543 (App. Div. 2005), was without merit. It appears the Court agreed. I objected to the remark. Plaintiff's counsel had no personal knowledge of this, and he never represented this in any certification to the Court. Nor could he properly do so. When I objected to the remark, as I recall, Your Honor commented to the effect that plaintiff's counsel was speaking figuratively, and that all of the MVR's did not have to be in a box. This missed the point of the objection. The Court appears to have rested in its Decision on the factual misunderstanding that all of the MVR's ordered to be produced in the Middleton case had been produced to Judge Bergman. That is incorrect. Assistant Prosecutor Mannion reflects in paragraph 8 of his Certification that he provided with his letter of August 13, 2014 to Judge Bergman, "Exhibit A" attached to the Certification, for an in camera review, a list of other eluding cases involving New Brunswick Police. He sought instruction by Judge Bergman regarding whether to locate, copy and produce copies of MVR's in any of those cases, if in fact it turns out that MVR's were made in any of those cases, and the Prosecutor's Office locates them in its case files. Judge Bergman has yet to rule or order the production of any of such MVR's.

As Your Honor may recall, and the transcript ultimately will reflect, I handed to the Court Officer for delivery to Your Honor at oral argument the August 13, 2014 letter from Assistant Prosecutor Mannion to Judge Bergman. It is "Exhibit A" attached to the Mannion Certification. This was to explain to Your Honor that a seven page print out from Promis Gavel listing one hundred and thirty seven eluding cases arising out of New Brunswick from January 2003 to March 25, 2014, had been produced in camera to Judge Bergman for a ruling from him whether to produce any MVR's that might have been made by New Brunswick Police in pursuits that may have ended up in files of the Prosecutor's Office, as well as whether to produce the Promis Gavel list because the list had been released to the Prosecutor's Office outside its authorization.

Paragraphs 3 through 7 of the Mannion Certification reflects that the Middlesex County Prosecutor's Office does not have authorization to retrieve from Promis Gavel the information that is contained in the seven page print out that was provided to it. This was done by someone who either had been unaware of the limitation of access, or just improperly disregarded it. The Order of April 7, 2015, therefore, imposes an obligation on the Prosecutor's Office that it may not lawfully satisfy without exceeding its authorization to use Promis Gavel. Furthermore, plaintiff's counsel is seeking to take advantage of that breach of authorization, which the Court's Decision and Order of April 7, 2015, ratify. The Prosecutor's Office has been put in a compromising position by the Order of April 7, 2015, without the Court having ruled that such past and future unauthorized conduct is permissible.

For the foregoing reasons, defendants submit that good cause exists in this case for the Court to reconsider its Order because it rests on a material mistake of fact, as

well as a legal error that MAG Entertainment, LLC v. Div of Alcoholic Beverage Control, supra, does not apply to this case so as to require its dismissal.

THE STAY REQUEST

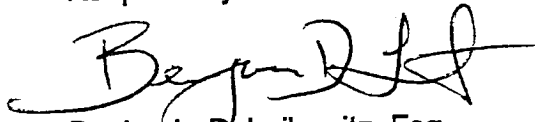
Defendants are requesting a stay of the Order of April 7, 2015 on the following grounds.

First, as is set forth in paragraphs 9 through 19 of the Mannion Certification, the Prosecutor's Office needs more than three (3) days to comply with the Order of April 7, 2015. The reasons are set forth in detail in the Certification. For one thing, files in the Prosecutor's Office record room only go back to 2010. Files going back to 2004 are off-site at County Archives in North Brunswick. Some 92 files there, contained in numerous boxes, would have to be located at Archives. Once located, each box comprising each file would have to be searched to see if they contained any MVRs from the New Brunswick Police Department. Not all cases involving an eluding charge necessarily result in a MVR being made. If an MVR were made, it may not have necessarily been sent to the Prosecutor's Office. According to the Certification, having to comply with the Order of April 7, 2015, as entered, would disrupt the operation of the Prosecutor's Office. Consequently, the Prosecutor's Office requests thirty (30) days within which to comply with the Court's Order, and subject to a clarification by the Court regarding the Office's unauthorized access to Promis Gavel to cover the balance of the time between March 24, 2014, and the present. This goes beyond the timeframe in the Middleton case, where the issues raised are still under in camera consideration by Judge Bergman.

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THOMAS F. KELSO, ESQ.
COUNTY COUNSEL

Second, defendants seek to file a motion for leave to appeal with the Appellate Division from the Order of April 7, 2015. Accordingly, defendants seek a stay of the Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin D. Leibowitz", with a long horizontal flourish extending to the right.

Benjamin D. Leibowitz, Esq.
Senior Deputy County Counsel

Cc: Thomas Kelso, Esq.
Andrew Carey, Prosecutor
Donald Burke, Esq. (via e-mail and reg. mail).