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11 ATTORNEYS FOR PARIS WHITNEY HILTON

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 THE PEOPLE OF THE STATE OF  
15 CALIFORNIA,

16 Plaintiff,

17 PARIS WHITNEY HILTON,

) Case No. 6MP09160  
)  
) OPPOSITION TO GRANTING OF  
) EX PARTE MOTION TO SHORTEN  
) TIME WITHOUT NOTICE;  
) OPPOSITION TO ORDER TO SHOW  
) CAUSE FOR CONTEMPT AND  
) TO TRANSPORT PARIS HILTON  
) TO COURT; MEMORANDUM OF  
) LAW IN SUPPORT; EXHIBITS  
)  
) Date: June 8, 2007  
) Dept.: 71  
)

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22 TO: THE HONORABLE MICHAEL T. SAUER, JUDGE OF THE SUPERIOR  
23 COURT, THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, AND THE  
24 LOS ANGELES COUNTY CITY ATTORNEY'S OFFICE:

25 INTRODUCTION

26 On May 5, 2007, after a probation violation hearing, the court found Defendant  
27 Paris Whitney Hilton ("defendant") in violation of her grant of probation in case  
28 6MP09160 and ordered that she spend 45 days in jail, and furthered ordered no work  
furlough, no work release, no electronic monitoring, no weekends and no city jail. (See

1 Exhibit A, Minute Order of Probation Violation Proceedings.) In other words, the court  
2 ordered defendant into the Los Angeles County Jail. The court stayed the jail term until  
3 June 5, 2007. Defendant and the Los Angeles County Sheriff's Department ("the  
4 Sheriff's Department") complied with the court's order and, on June 3, 2007, defendant  
5 surrendered herself to the Sheriff's Department and entered its Century Regional  
6 Detention Facility in Lynwood, California.

7 On June 6, 2007, the Sheriff's Department, after extensive consultation with both  
8 medical personnel and doctors at the Lynwood Facility, determined that due a medical  
9 condition, defendant's custody needed to be reassigned. Penal Code section 1203.016,  
10 subdivision (d)(2) provides that the correctional administrator of the Sheriff's  
11 Department home detention program, or his or her designee, "shall have the sole  
12 discretionary authority to permit program participation as an alternative to physical  
13 custody." In accordance with that statutory authority, the Sheriff's Department placed  
14 defendant on electronic monitoring and prohibited her from leaving her residence, for  
15 any reason, for the 40 days remaining on her sentence. (See Exhibit B, Electronic  
16 Monitoring Agreement.)

17 On June 7, 2007, at 4:30 p.m., the Los Angeles County City Attorney filed an ex  
18 parte application with the court (the "Application") requesting that the court issue an  
19 order "shortening any time required by law for issuance of an order to show cause why  
20 the Los Angeles County Sheriff's Department should not be held in contempt for  
21 violating this court's order [that no electronic monitoring be granted]." (Application, p.  
22 5.) Acknowledging that defendant is still in the custody of the Sheriff's Department, the  
23 City Attorney further requested that the court order the Sheriff's Department to  
24 transport defendant to the hearing. (Application, p. 7.)

25 As defendant is prohibited from leaving her residence as a condition of electronic  
26 monitoring (see Exhibit B), in the event the Sheriff's Department does not transport her  
27 to court, defendant cannot come to court on her own volition. Simply put, the act of  
28 leaving her residence would constitute a probation violation.

1 The court's order that defendant not be allowed electronic monitoring was,  
2 originally, scrupulously honored by defendant and the Sheriff's Department. On June 3,  
3 2007, defendant reported to the Lynwood Facility of the Los Angeles County jail and  
4 the Sheriff's Department placed her in a cell. But circumstances changed and, three  
5 days later, the Sheriff's Department, in consultation with medical personnel and doctors  
6 at the facility, determined that due a medical condition defendant's custody needed to be  
7 reassigned. It therefore placed her into an electronic monitoring program, which the  
8 Legislature has deemed a form of custody. (Penal Code § 2900.5, subd. (f); *People v.*  
9 *Lapaille* (1993) 15 Cal.App.4<sup>th</sup> 1159, 1170.)

10 It strains reason that a trial court can override a decision of the Sheriff's  
11 Department made in consultation with doctors given the traditional notion that a  
12 sentencing court's function is confined to a determination whether incarceration is  
13 appropriate, and not to specify detention in any particular institution. (*People v.*  
14 *Graham, supra*, 83 Cal.App.3d at p. 745.) And, as noted, the manner of execution of  
15 sentence, including a determination of the place of incarceration, is vested in  
16 correctional officials. (*People v. Lara, supra*, 155 Cal.App.3d at p. 576.)

17 Consider the following scenario: the air filtration system of a county jail facility  
18 contains a detergent that causes a massive allergic reaction, including seizures, in rare  
19 instances. An inmate is ordered into that facility by a sentencing court. Three days later  
20 the inmate suffers a seizure, which is traced to the detergent in the air filtration system.  
21 The Sheriff's Department immediately places the inmate into an electronic monitoring  
22 program due to this medical condition. Despite objection to electronic monitoring by  
23 the prosecutor, under such circumstances, a court "order" that the inmate be returned to  
24 the same facility would necessarily be ignored by the Sheriff's Department. (E.g.,  
25 *People v. Fowler, supra*, 62 Cal.App.3d 904.)

26 Because the Sheriff's Department is charged with the responsibility of not only  
27 housing inmates, but feeding them, protecting them, and providing for their medical  
28 needs, and is subject to lawsuit in the event it fails in its duties, it necessarily follows

1 that the Sheriff's Department is solely responsible for determining the manner and place  
2 of incarceration as well. This concept is embedded in section 1203.016, subdivision  
3 (d)(2), in the separation of powers doctrine, and in California case law. Accordingly,  
4 the court must dismiss the City's Application on its merits.

5  
6 **CONCLUSION**

7 Based on the foregoing discussion, it is respectfully submitted that the  
8 Application was granted in violation of the governing California Rules of Court and  
9 Code of Civil Procedure provisions, and that the court must therefore vacate its order  
10 and only hear the Application when it is submitted in accordance those rules and  
11 provisions.

12 Turning to the merits, it is firmly established that the Sheriff's Department, in its  
13 execute capacity, is vested with the authority to house inmates at it sees fit and, under  
14 the relevant case and statutory authorities, a trial court does not have the authority to  
15 override that core function.

16 Dated: June 8, 2007

Respectfully submitted,

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20 Richard A. Hutton

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23 \_\_\_\_\_  
24 Steven Graff Levine

25 Attorneys for Defendant  
26 PARIS WHITNEY HILTON  
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