

MAR 01 2005

GARY M. BLAIR, Executive Officer
By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

1 KAYE SCHOLER LLP
2 Larry R. Feldman, Bar Number 45126
3 Julian Brew, Bar Number 150615
4 Theodore Maya, Bar Number 223242
5 1999 Avenue of the Stars, Suite 1700
6 Los Angeles, California 90067-6048
7 Telephone: (310) 788-1000
8 Fax: (310) 788-1200

9 Attorneys for Subpoenaed Parties
10 DAVID and MARIA VENTURA

* Unsealed pursuant
to 6/16/05 court
order

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

KAYE SCHOLER LLP

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiffs,

13 v.

14 MICHAEL JOSEPH JACKSON,

15 Defendant.

) CASE NO. 1133603

) **EX PARTE APPLICATION FOR AN**
) **ORDER VACATING THE COURT'S**
) **FEBRUARY 25, 2005 ORDER ON**
) **MOTION TO QUASH VENTURA AND**
) **BANK OF THE WEST SUBPOENAS;**
) **DECLARATION OF THEODORE MAYA**
) **IN SUPPORT THEREOF**

) **TO BE FILED UNDER SEAL**

) The Honorable Rodney S. Melville

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21 **TO BE FILED UNDER SEAL** *In Camera*

EX PARTE APPLICATION

Subpoenaed parties David and Maria Ventura ("the Venturas") hereby move this Court *ex parte* and respectfully ask that the Court vacate its Order on Motion to Quash Ventura and Bank of the West Subpoenas, filed February 25, 2005. As shown in the accompanying declaration of Theodore Maya, the order redacted and signed by the Court is different from the proposed order served on the Venturas, to which they objected. The Venturas respectfully ask the Court instead to issue their proposed order, which they lodged with the Court on February 25, 2005, a copy of which is attached to the accompanying declaration of Theodore Maya.

Ex parte relief is necessary because, until the Venturas' counsel received the Court's order on February 28, 2005, they did not know and had no means to know that a different proposed order had been lodged with the Court than that with which the Venturas were served and to which they objected. Because the order has already been filed, prompt relief is necessary.

EX PARTE NOTICE

Theodore Maya, counsel for the Venturas, gave notice of this *ex parte* application to Brian Oxman, counsel for Mr. Jackson, by leaving a telephonic message for Mr. Oxman on March 1, 2005. No response has been received at the time of this filing.

SUPPORTING PAPERS

This application is based on the accompanying declaration of Theodore Maya, the attachments thereto, the pleadings on file concerning the Venturas' motion to quash subpoenas, any other papers the Court may request, and any other matters of which the Court may take judicial notice.

Dated: March 1, 2005

KAYE SCHOLER LLP

By: _____

Theodore Maya
Attorneys for David and Maria Ventura

KAYE SCHOLER LLP

DECLARATION OF THEODORE MAYA

I, Theodore Maya, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I am an associate with the firm of Kaye Scholer LLP, counsel for David and Maria Ventura ("the Venturas") for purposes of their motion to quash. If called to testify, I could and would testify as follows:

2. As explained below, the proposed order redacted and signed by the Court that disposed of the Venturas' motion to quash subpoenas was not the proposed order served on the Venturas, to which they filed an objection. All parties had previously agreed that this order — Defendant's **First Proposed Order** — signed (after redaction) by the Court was not an accurate statement of this Court's oral ruling. Indeed, all parties previously rejected Defendant's **First Proposed Order**. The version of the order served on the Venturas was Defendant's **Second Proposed Order**. It differed in critical respects from the **First Proposed Order**.

3. On February 28, 2005, we received the redacted and signed order from the Court ruling on the Venturas' motion to quash subpoenas. This order bears a time/date stamp indicating it was lodged with the Court by Mr. Jackson as a proposed order on February 18, 2005. The Court filed this order on February 25, 2005. A true and correct copy of this order is attached hereto as Exhibit A. This order, before redaction, is identical to Defendant's **First Proposed Order**.

4. On February 22, 2005, we received, by mail, a proposed order — the **Second Proposed Order** — on the Venturas' motion to quash. A true and correct copy of this proposed order is attached hereto as Exhibit B. At this time we also received a declaration of Brian Oxman, counsel for Mr. Jackson, dated February 18, 2005, in which Mr. Oxman acknowledged that the version of the order attached as Exhibit A — the **First Proposed Order** — did not accurately reflect the Court's ruling on the Venturas' motion to quash. (*See* 2/18/05 Oxman Decl. ¶ 4.) We assumed that all of these papers were filed with the Court in the same manner they were served upon us.

5. It appears that the **First Proposed Order** — Exhibit A — was lodged with, redacted, and signed by the Court. This order was not served on the Venturas as the proposed order submitted to the Court. The Venturas' objections to this version of the order differ from their objections to the

KAYE SCHOLER LLP

1 Second Proposed Order (Exhibit B) received by them on February 22, 2005. The Venturas filed their
2 opposition to the Second Proposed Order on February 25, 2005, along with a proposed order ruling
3 on their motion to quash. A true and correct copy of the Venturas' proposed order on their motion to
4 quash, which was lodged with the court on February 25, 2005, is attached hereto as Exhibit C.

5 6. The order signed by the Court and attached as Exhibit A — the First Proposed Order
6 — differs in key respects from the order served on the Venturas and attached as Exhibit B — the
7 Second Proposed Order. For instance, in Paragraph 1 of Exhibit A, the order requires Bank of the
8 West to produce records of all "checks from third parties other than the Venturas' regular employer"
9 in any account belonging to the Venturas. However, in the Second Proposed Order served on the
10 Venturas and attached as Exhibit B, the Bank was required only to produce records of "checks to or
11 for the benefit of Janet Arvizo" (Emphasis added.)

12 7. Mr. Oxman previously faxed us a copy of Exhibit A, Defendant's First Proposed
13 Order, on January 14, 2005. At that time, we objected to its form on a number of bases, including
14 that described in the preceding paragraph. Julian Brew, a partner at Kaye Scholer, spoke with Mr.
15 Oxman by telephone that same day and explained our objections. Thereafter, Mr. Oxman faxed us
16 Defendant's Second Proposed Order, identical to Exhibit B, apparently acknowledging that the First
17 Proposed Order did not accurately reflect the Court's ruling. Because the Second Proposed Order
18 still contained language to which Mr. Brew had earlier objected during his phone conversation with
19 Mr. Oxman, Mr. Brew did not approve the form of that order when he received it in January and the
20 Venturas objected to it when they believed it had been lodged with the Court in February.

21 8. Because it was never properly served on them, the Venturas respectfully request that
22 the Court vacate its "Order on Motion to Quash Ventura and Bank of the West Subpoenas," filed
23 February 25, 2005, and in its place issue the Venturas' proposed order on their motion to quash,
24 lodged by them on February 25, 2005, a copy of which is attached hereto as Exhibit C.

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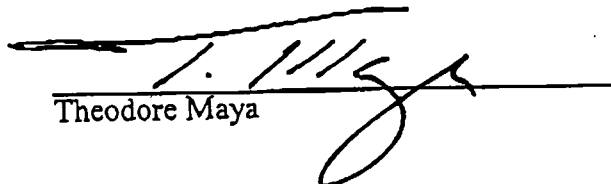
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1 9. On March 1, 2005, at approximately 2:00 P.M., I called Mr. Oxman and left a message
2 on his voicemail system notifying him of this filing.

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4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed on March 1, 2005 at Los Angeles, California.

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9 Theodore Maya

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KAYE SCHOLER LLP

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA
SANTA MARIA CIVIL DIVISION
312 E. COOK STREET
SANTA MARIA, CA 93454**

(805) 346-7414 Phone
(805) 346-7591 Fax (Criminal/Traffic)
(805) 346-7616 Fax (Admin/Civil/Small Claims)

FAX TRANSMITTAL SHEET

DATE: 2-25-05 TOTAL PAGES: 4 (inc. cover sheet)

TO: Larry Feldman, etal, Kaye Scholer, LLP
Thomas Mesereau, Jr., Collins, Mesereau, Reddock & Yu, LLP

FAX # 310-788-1200 (Larry Feldman)
805-456-0699 (Thomas A. Mesereau, Jr.)

SENT BY: Carrie Wagner for Judge Melville PHONE #: (805) 346-7678

=====

SPECIAL INSTRUCTIONS:

ORDER ON MOTION TO QUASH VENTURA AND BANK OF THE WEST
SUBPOENAS

Please deliver to above individual(s) as soon as possible. Thank you.

NOTICE OF CONFIDENTIALITY

The information contained in this facsimile is legally privileged and/or confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient you are hereby notified that any use, dissemination, distribution, or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify sender by telephone at (805) 346-7414 and return the original message to the above address via the U.S. Postal Service or messenger. Thank you.

1 **COLLINS, MESEREAU, REDDOCK & YU**
Thomas A. Mesereau, Jr., State Bar Number 091182
2 Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
3 Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133
4

5 **SANGER & SWYSEN**
Robert M. Sanger, State Bar No. 058214
233 East Carrillo Street, Suite C
6 Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311
7

8 **OXMAN & JAROSCAK**
Brian Oxman, State Bar No. 072172
14126 East Rosecrans
9 Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298
10

11 Attorneys for Defendant
MICHAEL JOSEPH JACKSON
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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**
15

16 **THE PEOPLE OF THE STATE OF**
17 **CALIFORNIA,**

18 Plaintiffs,

19 vs.

20 **MICHAEL JOSEPH JACKSON,**

21 Defendant.
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Case No. 1133603

**ORDER ON MOTION TO QUASH
VENTURA AND BANK OF THE WEST
SUBPOENAS**

Honorable Rodney S. Melville

Date: January 14, 2005

Time: 8:30 am.

Dept: SM 2

FILED UNDER SEAL AND IN CAMERA

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26 The Motion of Objectors, David and Maria Ventura, to Subpoenas Duces Tecum issued to David
27 Ventura, Maria Ventura, and Bank of the West came on regularly for a hearing on January 14, 2005, in
28 Department SM-2 of the above-entitled court, In Camera and in Chambers, the Honorable Rodney S.

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 25 2005

GARY M. BLAIR, Executive Officer

Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

RECEIVED
05 FEB 18 PM 4:16
SANTA BARBARA COUNTY
CLERK OF SUPERIOR COURT

1 Melville, Judge Presiding. Julian Brew and Larry Feldman appeared for Objectors, David and Maria
2 Ventura. Robert Sanger and Brian Oxman appeared for Michael Jackson. The Court having read the
3 papers submitted by the parties and considered the oral argument of their counsel, hereby enters the
4 following Order:

5 IT IS ORDERED:

6 (1) The Subpoena Duces Tecum dated December 22, 2004, to Bank of the West be and hereby is
7 modified to as to David Ventura and Maria Ventura to require the Bank to produce all records in any
8 account belonging to David Ventura or Maria Ventura as described in the subpoena as it relates to deposits,
9 ^{RSM} [REDACTED] and checks from third parties other than the Venturas' regular employer. The Bank shall
10 produce all documents contained in such accounts to the Court for In Camera review so that the Court may
11 determine who would qualify as third parties and whether receipts or disbursements from the account are
12 relevant and material to the issues in the case.

13 (2) In all other respects to persons other than David Ventura and Maria Ventura, there having been
14 no objection lodged concerning the subpoena, the Bank of the West shall comply to the Subpoena for
15 production of such records to the Court.

16 (3) The Subpoena Duces Tecum dated December 22, 2004 to Maria Ventura and the Subpoena
17 Duces Tecum dated December 22, 2004, issued to David Ventura, be and hereby are modified to require
18 production of all materials, documents, and financial records relating to fund raising activities, including
19 the collection, holding, and disbursement of money on behalf or for the benefit of Janet Arvizo, Davellin
20 Arvizo, Gavin Arvizo, and Star Arvizo, ^{abn} [REDACTED]

21 [REDACTED]
22 [REDACTED] RSM
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24 DATED: 2/25/05

25 Rodney S. Melville

26 Judge Rodney S. Melville
27 Santa Barbara Superior Court
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STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On FEBRUARY 25, 2005, I served a copy of the attached ORDER ON MOTION TO QUASH VENTURA AND BANK OF THE WEST SUBPOENAS addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

JULIAN BREW, ESQ.
TED MAYA, ESQ.
LARRY FELDMAN, ESQ.
1999 AVENUE OF THE STARS, SUITE 1700
LOS ANGELES, CA 90067

FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (310) 788-1200 (BREW, ETAL). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 25TH day of FEBRUARY, 2005, at Santa Maria, California.


CARRIE L. WAGNER

EXHIBIT B

FEB 22 2005

KAYE, SCHOLER LLP

1 **COLLINS, MESEREAU, REDDOCK & YU**
 Thomas A. Mesereau, Jr., State Bar Number 091182
 2 Susan C. Yu, State Bar Number 195640
 1875 Century Park East, 7th Floor
 3 Los Angeles, CA 90067
 Tel.: (310) 284-3120, Fax: (310) 284-3133

4 **SANGER & SWYSEN**
 5 Robert M. Sanger, State Bar No. 058214
 233 East Carrillo Street, Suite C
 6 Santa Barbara, CA 93101
 Tel.: (805) 962-4887, Fax: (805) 963-7311

7 **OXMAN & JAROSCAK**
 8 Brian Oxman, State Bar No. 072172
 14126 East Rosecrans
 9 Santa Fe Springs, CA 90670
 Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant
 11 MICHAEL JOSEPH JACKSON

12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

15
 16 THE PEOPLE OF THE STATE OF CALIFORNIA,

17 Plaintiffs,

18 vs.

19 MICHAEL JOSEPH JACKSON,

20 Defendant.

) Case No. 1133603

) ORDER ON MOTION TO QUASH
 VENTURA AND BANK OF THE WEST
 SUBPOENAS

) Honorable Rodney S. Melville

) Date: January 14, 2005

) Time: 8:30 am.

) Depr: SM 2

) FILED UNDER SEAL AND IN CAMERA

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 26 The Motion of Objectors, David and Maria Ventura, to Subpoenas Duces Tecum issued to David
 27 Ventura, Maria Ventura, and Bank of the West came on regularly for a hearing on January 14, 2005, in
 28 Department SM-2 of the above-entitled court, In Camera and in Chambers, the Honorable Rodney S.

1 Melville, Judge Presiding. Julian Brew and Larry Feldman appeared for Objectors, David and Maria
2 Ventura. Robert Sanger and Brian Oxman appeared for Michael Jackson. The Court having read the
3 papers submitted by the parties and considered the oral argument of their counsel, hereby enters the
4 following Order:

5 IT IS ORDERED:

6 (1) The Subpoena Duces Tecum dated December 22, 2004, to Bank of the West be and hereby is
7 modified to as to David Ventura and Maria Ventura to require the Bank to produce all records in any
8 account belonging to David Ventura or Maria Ventura as described in the subpoena as it relates to deposits,
9 disbursements, and checks to or for the benefit of Janet Arvizo, aka Janet Ventura and Janet Jackson,
10 Davellin Arvizo, Gavin Arvizo, Star Arvizo, and Jay Daniel Jackson, from third parties other than the
11 Venturas' regular employer. The Bank shall produce all documents contained in such accounts to the Court
12 for In Camera review so that the Court may determine who would qualify as third parties and whether
13 receipts or disbursements from the account are relevant and material to the issues in the case.

14 (2) In all other respects to persons other than David Ventura and Maria Ventura, there having been
15 no objection lodged concerning the subpoena, the Bank of the West shall comply to the Subpoena for
16 production of such records to the Court.

17 (3) The Subpoena Duces Tecum dated December 22, 2004 to Maria Ventura and the Subpoena
18 Duces Tecum dated December 22, 2004, issued to David Ventura, be and hereby are modified to require
19 production of all materials, documents, and financial records relating to fund raising activities, including
20 the collection, holding, and disbursement of money on behalf or for the benefit of Janet Arvizo, Davellin
21 Arvizo, Gavin Arvizo, Star Arvizo, or Jay Jackson.

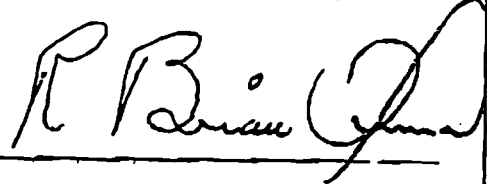
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23 DATED: _____

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25 _____
26 Judge Rodney S. Melville
27 Santa Barbara Superior Court

28 APPROVED AS TO FORM AND CONTENT:

DATED: _____

Julian Brew
Attorney for David and Maria Ventura



DATED: January 24, 2005

R. Brian Oxman
Attorney for Mr. Michael Jackson

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EXHIBIT C

KAYE SCHOLER LLP

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MICHAEL JACKSON,

Defendant.

CASE NO. 1133603

[PROPOSED]

ORDER ON MOTION TO QUASH
FILED BY DAVID AND MARIA
VENTURA

The Motion to Quash and Opposition to Subpoenas, filed by David and Maria Ventura (collectively, the "Venturas") was heard on January 14, 2005, in Department SM-2 of the above-entitled Court, *in camera* and in Chambers, the Honorable Rodney S. Melville presiding. Julian Brew and Robert Turner appeared for the Venturas. Robert Sanger and Brian Oxman appeared for defendant Michael Jackson. Having considered the papers in support of and in opposition to the motion, as well as the oral argument of counsel, the Court orders as follows:

A. The Bank of the West Subpoena

(1) The Supboena Duces Tecum dated December 22, 2004, and directed to Bank of the West (the "Bank of the West Subpoena"), is ordered limited as follows. With regards to records relating to the Venturas, the Bank of the West Subpoena is modified to

KAYE SCHOLER LLP

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require the Bank to produce all records, in any account belonging to either of the Venturas, of any checks deposited into such an account that were made payable to Janet Arvizo or to David Arvizo.

(2) In all other respects concerning persons other than the Venturas, there having been no objection lodged concerning the Bank of the West Subpoena, the Bank shall comply with the subpoena.

(3) Any documents produced by the Bank in response to the Bank of the West Subpoena shall be produced to the Court for *in camera* review, so that the Court may determine whether they are relevant and material to this action.

B. The Ventura Subpoenas

(4) The Subpoenas Duces Tecum dated December 22, 2004, and directed to the Venturas (the "Ventura Subpoenas"), are modified to require production of all materials, documents, and financial records relating to fund raising activities, including the collection or holding of money, on behalf or for the benefit of Janet Arvizo, Davellin Arvizo, Gavin Arvizo, Star Arvizo, or Jay Jackson.

(5) Any documents produced by the Venturas in response to the Ventura Subpoenas shall be produced to the Court for *in camera* review, so that the Court may determine whether they are relevant and material to this action.

IT IS SO ORDERED.

DATED: _____

RODNEY S. MELVILLE
Judge of the Superior Court

KAYE SCHOLER LLP

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1999 Avenue of the Stars, Suite 1700, Los Angeles, California 90067.

On March 1, 2005, I served the following documents described as:

EX PARTE APPLICATION FOR AN ORDER VACATING THE COURT'S FEBRUARY 25, 2005 ORDER ON MOTION TO QUASH VENTURA AND BANK OF THE WEST SUBPOENAS; DECLARATION OF THEODORE MAYA IN SUPPORT THEREOF

by placing a true copy of the above entitled document in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

by FAX

X by U.S. MAIL (I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.)

OR

by PERSONAL SERVICE

by personally delivering such envelope to the addressee.
by causing such envelope to be delivered by messenger to the office of the addressee.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 1, 2005, at Los Angeles, California

David Mandis
Name

David Mandis
Signature

SERVICE LIST

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Thomas A. Mesereau, Jr.
1875 Century Park East, Suite 700
Los Angeles, CA 90067

Brian Oxman
14126 E. Rosecrans
Santa Fe Springs, CA 90670

KAYE SCHOLER LLP