

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

DEC 08 2004

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

** unsealed
pursuant to
11/16/05 Court
order*

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)
13)
14) Plaintiff,
15)
16) v.
17) MICHAEL JOE JACKSON,
18) Defendant.

No. 1133603
PLAINTIFF'S OBJECTION TO
THE SUBPOENA OF
PSYCHIATRIC RECORDS, AND
REQUEST THAT THE
COURT LIMIT THE SCOPE OF
MEDICAL AND MILITARY
RECORDS; DECLARATION OF
RONALD J. ZONEN;
MEMORANDUM OF
POINTS AND AUTHORITIES

DATE: December 20, 2004
TIME: ~~8:30 a.m.~~ 9:30 AM
DEPT: SM 2 (Melville)

UNDER SEAL

22 TO: THE CLERK OF THE COURT, DEFENDANT MICHAEL JOE JACKSON,
23 AND THOMAS MESEREAU, JR. AND ROBERT SANGER, HIS COUNSEL OF RECORD
24 IN THIS PROCEEDING:

25 PLEASE TAKE NOTICE that on December 20, 2004, at ⁹~~8~~:30 a.m. or as soon
26 thereafter as the matter may be heard, the People will object to Defendant's issuance of a
27 subpoena duces tecum for psychiatric records and will move the court to limit the scope and
28 extent of material sought by subpoena as overbroad.

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This motion is made on the ground that Defendant has abused the process of the court in issuing subpoenas duces tecum in this case, both by seeking information that could not possibly lead to evidence relevant to his defense and by violating the constitutional right of privacy of the individuals whose records are demanded and by securing records that are privileged.

This motion is supported by the Declaration of Ronald J. Zoncn and the accompanying Memorandum of Points and Authorities.

DATED: December 8, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR.
District Attorney

By: RJ Zoncn
Ronald Zoncn, Senior Deputy
Attorneys for Plaintiff

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DECLARATION OF RONALD ZONEN

I, Ronald Zonen, say;

1. I am an attorney licensed to practice in the state of California. I am currently employed as a prosecutor for the District Attorney of Santa Barbara County. I am assigned the prosecution of the above entitled matter.

2. I have reviewed each of the subpoenas duces tecum issued by defendant to various entities, a copy of which his counsel sent to the Doe family in compliance with the court's order dated November 29, 2004.

3. The defense has sought subpoena's from all banking institutions ever used by the Doe family, from UCLA Medical Center, from Kaiser Hospital, from the United States Army, from the law firm that previously represented the Doe family and from many other individuals and organizations that have, at one time or another, been involved with the Doe family.

4. The military records sought are those of Jane Doe's husband, the step-father of the victim. The records are for any document ever generated by the United State Army during the 23 years Mr. Doe has been associated with them either on active or inactive duty.

5. Defendant directed a subpoena duces tecum to the UCLA Medical Center, seeking all records of Jane Doe including prenatal, postnatal, birth records, baby health care etc.

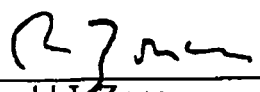
6. Defendant directed a subpoena duces tecum to Kaiser Foundation, seeking all medical records of each member of the family since birth, including psychiatric records of Jane Doe that are subject to legal privilege.

7. The subpoenas seek documents with little or no limitation on the information about the Doe family that would be revealed by those documents. I have been asked by the Doc family to ask the court to limit access to records that are obviously irrelevant to the defense and intrude severely upon their privacy, and to deny access to psychiatric records that have not been previously waived.

8. It appears that with each of the subpoenas issued the defense has included and order of the court, signed by Brian Oxman, restricting the Doc family from communicating

1 with the prosecution that they are in receipt of the subpoenas. (See Exhibit "A.") This order
2 appears to be inconsistent with the Court's ruling on November 29th, that the restraining order
3 would be issued to the third party custodians of the records but not to the parties whose records
4 are the subject of the subpoenas. The subpoenas sent to the Doe family also includes the
5 advisement that they must object within "five [calendar] days" rather than five court days.
6 (See exhibit "B.") Mr. Oxman has been notified by letter of his error. (See Exhibit "C.")

7 I declare under penalty of perjury the foregoing is true and correct except as to
8 those matters which I state upon my information and belief, and as to those matters I believe it
9 to be true. I execute this declaration at Santa Barbara, California on December 8, 2004.

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12 _____
13 Ronald J. Zonen
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 **PLAINTIFF'S STANDING TO PROTEST**

4 The prosecutor is not the attorney for the victim or for any witnesses to a crime, and
5 thus may not file pleadings or motions on behalf of a crime victim or witness. (*Bullen v.*
6 *Superior Court* (1988) 204 Cal.App.3rd 22, 25.) But where the prosecutor believes that a
7 subpoena directed to a third party in a criminal case appears to be overbroad, it may bring that
8 fact to the court's attention. The court has inherent authority to prevent the abuse of its process
9 (*Neal v. Bank of America* (1949) 93 Cal.App.2d 678, 682) and "to set aside on its own motion
10 any order which has been wrongfully obtained" (*Coley v. Superior Court* (1928) 89 Cal.App.
11 330, 335), and it surely may quash an improperly issued or served subpoena duces tecum. (Cf.
12 Code Civ. Proc., § 1987.1 ["... the court . . . upon the court's own motion after giving counsel
13 notice and an opportunity to be heard, may make an order quashing the subpoena entirely [or]
14 modifying it . . ."]. And see *Mansell v. Otto* (2003) 108 Cal.App.4th 265, 277 [trial court
15 properly granted prosecutor's request for protective order directing that crime victim's
16 psychiatric records be returned to victim, treating it as a belated motion to quash], *People v.*
17 *Kaurish* (1990) 52 Cal.3d 648, 686 [motion to quash subpoena for police reports], *People v.*
18 *Condley* (1977) 69 Cal.App.3d 999, 1017 [prosecutor's motion to quash subpoena for sheriff's
19 personnel files], and *People v. Cohen* (1970) 12 Cal.App.3d 298, 324-325 [upholding trial
20 court's order granting People's motion to quash defendant's subpoena DT issued to State Farm
21 Insurance].)

22 II

23 **PSYCHIATRIC RECORDS ARE PRIVILEGED**
24 **UNDER EVIDENCE CODE SECTION 1014**

25 Evidence Code section 1014 provides as follows:

26 **1014. Psychotherapist--patient privilege**

27 Subject to Section 912 and except as otherwise provided in this article,
28 the patient, whether or not a party, has a privilege to refuse to disclose,

1 and to prevent another from disclosing, a confidential communication
2 between patient and psychotherapist if the privilege is claimed by:

3 (a) The holder of the privilege.

4 (b) A person who is authorized to claim the privilege by the holder of
5 the privilege.

6 (c) The person who was the psychotherapist at the time of the
7 confidential communication, but the person may not claim the privilege
8 if there is no holder of the privilege in existence or if he or she is
9 otherwise instructed by a person authorized to permit disclosure.

10 The relationship of a psychotherapist and patient shall exist between a
11 psychological corporation as defined in Article 9 (commencing with
12 Section 2995) of Chapter 6.6 of Division 2 of the Business and
13 Professions Code, a marriage and family therapy corporation as defined
14 in Article 6 (commencing with Section 4987.5) of Chapter 13 of
15 Division 2 of the Business and Professions Code, or a licensed clinical
16 social workers corporation as defined in Article 5 (commencing with
17 Section 4998) of Chapter 14 of Division 2 of the Business and
18 Professions Code, and the patient to whom it renders professional
19 services, as well as between those patients and psychotherapists
20 employed by those corporations to render services to those patients. The
21 word "persons" as used in this subdivision includes partnerships,
22 corporations, limited liability companies, associations and other groups
23 and entities.

24 The records subpoenaed by the defense from Kaiser Hospital include records of mental
25 health therapies protected under Evidence Code section 1014. Records of mental health therapies
26 should be redacted from those records to be furnished to the defense unless and until a waiver has
27 been established.

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3 **III**
4 **MEDICAL RECORDS UNRELATED TO**
5 **THE CASE SHOULD BE DENIED**

6 Subpoenaed medical records from UCLA Medical Center include all records of
7 prenatal, post natal, birth records, etc. They are justified on two grounds: First that Jane Doe
8 asked for a continuance of her testimony originally set for August 29, 2004 because of the
9 scheduled delivery of her baby. Second, that the question of medications could impact on her
10 credibility.

11 The court continued Jane Doe's testimony seven weeks after receiving a letter from
12 her obstetrician (Dr. Carol Archie) attesting to the fact that Jane Doe was then pregnant and
13 that a C-section delivery was anticipated on August 27, 2004, the very day Jane Doe was
14 subpoenaed to appear in Santa Maria.

15 This is no longer an issue for the defense. If Attorney Oxman truly believes that
16 Jane Doe fabricated both a pregnancy and a C-section delivery, never mind the existence of the
17 baby boy currently in her household as the result of that pregnancy and delivery, then the court
18 can review as much of her medical records as is necessary to determine that she really did
19 deliver a baby boy on August 27.

20 As to Attorney Oxman's claim that the defense needs information concerning Jane
21 Doe's use of prescribed medications, the subpoena should be limited in its scope to
22 medications taken, received or prescribed. Notes of Jane Doe's conversations with her doctors
23 or complications with her health or delivery are irrelevant to that issue.

24 The subpoena for Kaiser Foundation records is without date or limitation as to each
25 member of the family. That subpoena should be quashed for lack of specificity as to the
26 identity of the family member as to whom records are sought, and what exactly the defense is
27 looking for by means of the subpoena.

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IV

**ACCESS TO VICTIM'S STEP-FATHER'S MILITARY
RECORDS SHOULD BE RESTRICTED**

The defense justifies the issuance of a subpoena duces tecum for all military records of the victim's step-father over the entirety of his career with the United States Army Reserves, both active and inactive duty. It is justified on two grounds; first that he did not notify his superior officer that he had been convicted of driving under the influence in Virginia in 2000. And second that his behavior during the times of these events was inconsistent with what would have been expected of a military man.

The People have no objection to records of Mr. Doe's discussions with his supervisor concerning his conviction for DUI being turned over to the defense.¹ The justification for the balance of Mr. Doe's file is disingenuous. Unless the defense can establish good cause for its disclosure the balance of Mr. Doe's military records should be returned to the military.

V

**THE RIGHT OF PRIVACY UNDER THE
CALIFORNIA CONSTITUTION**

Article 1, section 1 of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." The phrase "and privacy" was added to article 1, section 1's list of "inalienable rights" in 1972 by the "Privacy Initiative"; the provision was reworded to read as above by an initiative measure in 1974.

In *White v. Davis* (1975) 13 Cal.3d 757, our Supreme Court overturned the trial court's ruling sustaining a demurrer to a taxpayer's suit seeking to enjoin the expenditure of public funds in connection with the Los Angeles Police Department's covert intelligence-

¹ Mr. Doe was on inactive duty at the time of the conviction. He did in fact notify the military of the conviction.

1 gathering activities which included sending undercover agents into college classrooms to
2 report on classroom discussions. The Supreme Court regarded the constitutional amendment
3 as "controlling." It took appreciative note of a statement in the election brochure ("a statement
4 which represents, in essence, the only 'legislative history' of the constitutional amendment
5 available to us" – *id.*, at p. 775) which identified "the overbroad collection and retention of
6 unnecessary personal information by government and business interests" and "makes clear that
7 the amendment does not purport to prohibit all incursion into individual privacy but rather than
8 any such intervention must be justified by a compelling interest." (*Ibid.*)

9 "The constitutional provision is self-executing; hence, it confers a judicial right of
10 action on all Californians. (*White v. Davis, supra*, 13 Cal.3d at p. 775.) Privacy is protected
11 not merely against state action; it is considered an inalienable right which may not be violated
12 by anyone." (*Porten v. University of San Francisco* (1976) 64 Cal.3d 825, 829-830; fn.
13 omitted.)

14 Where a person whose communications with another are privileged by statute and
15 who is not a party to given court proceedings, "the appropriate court, in its discretion and on its
16 own motion, may protect an absentee holder of the privilege who has not waived it." (*Rudnick*
17 *v. Superior Court* (1974) 11 Cal.3d 924, 932-933.)

18 Quite apart from statutorily-created privileges, the constitutional right of privacy
19 "may be invoked by a litigant as justification for refusal to answer questions which
20 unreasonably intrude on that right. [Citations.]" (*Fults v. Superior Court* (1979) 88
21 Cal.App.3d 899, 903.) *Fults* arose out of a paternity action brought by the petitioner mother.
22 The Court of Appeal granted a peremptory writ of mandate directing the trial court to vacate its
23 discovery order with respect to Mr. Fults' inquiries into plaintiff's sexual activities unrelated to
24 the possible period of conception. The court noted that "the right [of privacy] is invoked
25 against governmental process to compel disclosure.

26 Petitioner is represented by state attorneys but it is the state, over her
27 objection, that seeks, in the form of a judicial order, to compel the
28 answers. When the state itself employs judicial process to compel
disclosure, the governmental involvement is obvious [citation] but

1 [since?] 'judicial discovery orders inevitably involve *state-compelled*
2 disclosure of presumptively protected information, the [constitutional]
3 principles have equal application to purely private litigation.' (*Britt v.*
4 *Superior Court* [(1978)] 20 Cal.3d [844] at 856, fn. 3.) (Italics in
5 original.) 'When the inquiry is conducted by the use of compulsory
6 process, the judiciary must bear the responsibility of protecting
7 individual rights.' [Citations.]"

8 (88 Cal.App.3d, at p. 903, n. 2.)

9 CONCLUSION

10 If the subpoenas duces tecum served upon the United States Army, the UCLA
11 Medical Center and American Express may be taken as a representative sampling, Defendant
12 has sought far more information than he is entitled to, upon little or no showing of the
13 materiality or relevance of that information to his defense, and with no regard whatsoever for
14 the constitutionally-protected right of privacy of the individuals whose records he demands.
15 The Court should hold Defendant strictly accountable for his overreaching.

16 DATED: December 8, 2004

17 Respectfully submitted,

18 THOMAS W. SNEDDON, JR.
19 District Attorney

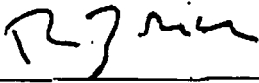
20 By: 
21 Ronald J. Zonen, Senior Deputy
22 Attorneys for Plaintiff
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EXHIBIT A & B

1
2 JACKSON:

3 PLEASE TAKE NOTICE that pursuant to the Court's Order of November 29, 2004, you are being
4 provided with notice of the enclosed subpoenas. Pursuant to that Order, you are not to disclose this
5 information or permit any other person to make any disclosures of this information to any third person, not
6 your agent. Nor are you to disclose this information to any member of the prosecution, including but not
7 limited to the Santa Barbara District Attorney, the Santa Barbara Sheriff's Office, or any other person,
8 business, or other entity.

9 You are hereby advised that you have five (5) days from the service of this Notice to file any
10 objection and set a hearing regarding these documents. That time expires on the close of business on
11 December 7, 2004.

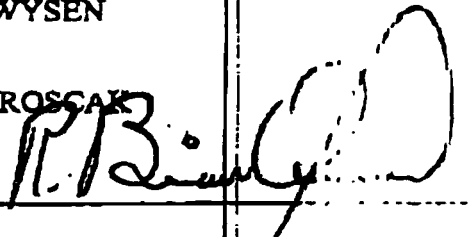
12 Nothing in this Notice is intended to provide you with legal advice. Any legal advice regarding this
13 matter should come from your own attorney.

14
15 Dated: November 30, 2004

16 Respectfully submitted,
17 Thomas A. Mesereau, Jr.
18 Susan Yu
19 COLLINS, MESEREAU, REDDOCK & ...

20 Robert M. Sanger
21 SANGER & SWYSEN

22 Brian Oxman
23 OXMAN & JAROSCAK

24 By: 

25 R. Brian Oxman
26 Attorneys for Defendant
27 Michael Jackson
28

EXHIBIT C

THOMAS W. SNEDDON, JR.
District Attorney

MARNIE B. PINSKER
Assistant Director

DAVID M. SAUNDERS
Chief Investigator



PATRICK J. MCKINLEY
Assistant District Attorney

CHRISTIE STANLEY
Assistant District Attorney

ERIC A. HANSON
Chief Trial Deputy

COUNTY OF SANTA BARBARA
DISTRICT ATTORNEY

December 6, 2004

R. BRIAN OXMAN, ESQ.
Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.
Santa Fe Springs, CA 90670

Re: People v. Michael Joe Jackson
Santa Barbara Sup. Ct. No. 1133603

Dear Mr. Oxman:

On November 30, 2004 you sent to Mrs. Jay Jackson and members of her family a copy of each of a number of subpoenas duces tecum your office had earlier caused to be served on various individuals, businesses and governmental entities in connection with the criminal case pending against your client in the above-referenced matter.

Those copies were accompanied by an amended "notice" to Mrs. Jackson and her family, signed by you on behalf of Mr. Mesereau and Mr. Sanger.

In that "notice," you advised Mrs. Jackson that "pursuant to [the Court's] Order [of November 29, 2004],"

"you are not to disclose this information or permit any other person to make disclosures of this information to any third person not your agent.

Santa Barbara Office
1112 Santa Barbara Street
Santa Barbara, CA 93101
(805) 568-2300
FAX (805) 568-2453

Lompoc Office
115 Civic Center Plaza
Lompoc, CA 93436
(805) 737-7760
FAX (805) 737-7732

Santa Maria Office
312-D East Cook Street
Santa Maria, CA 93454
(805) 346-7540
FAX (805) 346-7588

R. Brian Oxman, Esq.
December 6, 2004
Page two.

"Nor are you to disclose this information to any member of the prosecution, including but not limited to the Santa Barbara District Attorney, the Santa Barbara Sheriff's Office, or any other person, business, or other entity."

You further advised Mrs. Jackson and her family that they had "five (5) days from the service of this Notice to file any objection and set a hearing regarding these documents. That time expires on the close of business on December 6, 2004."

Your "notice" was mistaken in each of those particulars.

To take up, first, the time within which the persons who are the subject of given records must file an objection to the subpoena: The court set the time as "five court days," not just "five days."

With respect to the restrictions imposed by the Court's "Protective Order Regarding Defendant's Subpoenas Duces Tecum," you apparently have misread both the original order dated July 9th and the Court's amendments to that order last week.

The "non-disclosure" provision of the original order provides:

"3. Persons or entities subpoenaed by the defendant shall not disclose directly or indirectly to the People the fact that they have been subpoenaed or the nature of the subpoena."

Quite plainly, that provision is addressed to the custodian of the records subpoenaed, not to the person who may be the subject of the records in the custody of the subpoenaed party.

In the court proceedings on November 29th, the Court discussed its intention to modify the "*Teal*" order it had issued on R. July 9th to allow the custodian of the subpoenaed records "to notify the person whose records have been subpoenaed that they've been

Brian Oxman, Esq.
December 6, 2004
Page three.

subpoenaed." The following exchange ensued:

"MR. ZONEN: And those - -

"THE COURT: Those people then, if they have a privilege or a right to privacy or something they wish to bring to the Court's attention, they have the ability to do that.

"MR. ZONEN: And are they subject by the restraining order as well?

"THE COURT: No.

"MR. ZONEN: Who is subject by restraining order?

"THE COURT: Just the person who the records are being subpoenaed from."

(RT 11/29 23:4-19.)

Please do two things, promptly:

-- First, amend your "notice," both to indicate the time allotted to response as "five court days" and to strike the following erroneous sentences: "Pursuant to that Order, you are not to disclose this information or permit any other person to make disclosures of this information to any third person not your agent. Nor are you to disclose this information to any member of the prosecution, including but not limited to the Santa Barbara District Attorney, the Santa Barbara Sheriff's Office, or any other person, business, or other entity."

-- Second, please send a corrected copy of your "notice" to all those persons and entities to whom you sent the earlier version of your "notice."

R. Brian Oxman, Esq.
December 6, 2004
Page four.

This office would appreciate a courtesy copy of your amended "notice." If we do not receive a copy of your amended "notice," we will file a motion for an order directing you to amend your notice and to send the amended notice to all concerned entities and individuals. Please be guided accordingly.

Most sincerely,

A handwritten signature in cursive script, appearing to read "Gerald McC. Franklin".

Gerald McC. Franklin
Sr. Deputy District Attorney

cc: Thomas Mesereau, Jr., Esq.
Robert Sanger, Esq.
Mr. & Mrs. Jay Jackson

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3 **PROOF OF SERVICE**

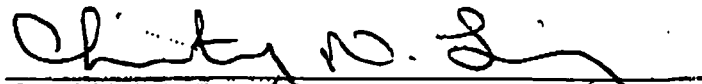

4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On December 8, 2004, I served the within PLAINTIFF'S OBJECTION TO THE
11 SUBPOENA OF PSYCHIATRIC RECORDS, AND REQUEST THAT THE COURT LIMIT
12 THE SCOPE OF MEDICAL AND MILITARY RECORDS; ETC. on Defendant, by
13 THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by delivering a
14 true copy thereof to Mr. Sanger at his office, and by faxing a true copy to Mr. Mesereau at the
15 facsimile number shown with his address on the attached Service List, and then by causing to
16 be mailed a true copy to him.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 8th day of December, 2004.

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21 Gerald McC. Franklin
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SERVICE LIST

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THOMAS A. MESEREAU, JR.
Collins, Mesereau, Reddock & Yu, LLP
1875 Century Park East, No. 700
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FAX: (310) 284-3122
Attorney for Defendant Michael Jackson

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233 E. Carrillo Street, Suite C
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FAX: (805) 963-7311
Co-counsel for Defendant

BRIAN OXMAN, ESQ.
Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.,
Santa Fe Springs, CA 90670
FAX: (562) 921-2298
Co-counsel for Defendant