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CIVIL BUSINESS OFFICE 17
CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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9 Attorneys for Nonparty Gerrit Lösch

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

12 JOSE LOPEZ, an Individual,

13 Plaintiff,

14 v.

15 DOE 1, LINDA VISTA CHURCH; DOE
2, SUPERVISORY ORGANIZATION;
16 DOE 3, PERPETRATOR; and DOES 4
through 100, inclusive,

17 Defendants.
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CASE NO. 37-2012-00099849-CU-PO-CTL

**EX PARTE APPLICATION TO ADVANCE
HEARING DATE ON NONPARTY GERRIT
LÖSCH'S MOTION TO SET ASIDE OR
OTHERWISE QUASH ORDER GRANTING
PLAINTIFF'S MOTION TO COMPEL THE
DEPOSITION OF GERRIT LÖSCH AND
THE UNDERLYING "NOTICE OF TAKING
THE DEPOSITION OF GERRIT LÖSCH,
WITH PRODUCTION OF DOCUMENTS
REQUIRED - VIDEORECORDED FOR USE
AT TRIAL"; DECLARATION OF MEGAN S.
WYNNE; AND [PROPOSED] ORDER**

Date: March 5, 2014
Time: 8:30 a.m.
Dept: C-65
Judge: Joan M. Lewis
Trial Date: June 27, 2014

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

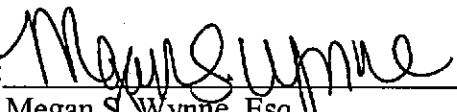
2 **PLEASE TAKE NOTICE** that on March 5, 2014, at 8:30 a.m. in Department 65 of the
3 above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Specially-
4 Appearing Nonparty GERRIT LÖSCH will, and hereby does, apply to the Court *ex parte* for an
5 order advancing the hearing date on his Motion to Set Aside or Otherwise Quash Order Granting
6 Plaintiff's Motion To Compel The Deposition Of Gerrit Lösch And The Underlying "Notice Of
7 Taking The Deposition Of Gerrit Lösch, With Production Of Documents Required – Videorecorded
8 For Use At Trial" ("Motion to Quash"), which is currently scheduled to be heard on May 30, 2014.

9 This *Ex Parte* Application is brought pursuant to Rule 3.713(c) of the California Rules of
10 Court on the grounds that good cause exists for the Court to advance the hearing date on the Motion to
11 Quash from May 30, 2014, to a date prior to April 2, 2014, because on January 2, 2014, this Court
12 affirmed the Discovery Referee's recommendation that the plaintiff be permitted to depose Mr. Losch
13 and ordered the deposition of Mr. Lösch to proceed within 90 days of the date of the Order, or by
14 April 2, 2014. The Motion to Quash seeks to set aside or otherwise quash the Court's January 2,
15 2014, Order and, therefore, the Motion should be heard prior to April 2, 2014.

16 This *Ex Parte* Application is based upon this Notice, the attached memorandum of points and
17 authorities, the Declaration of Megan S. Wynne, all pleadings, papers and records on file in this
18 action, and upon such other oral and documentary evidence as may be presented at the hearing of the
19 Motion.

20 Dated: March 3, 2014

MORRIS POLICH & PURDY LLP

21
22
23 By: 
24 Megan S. Wynne, Esq.
25 Ashley A. Escudero, Esq.
26 Attorneys for Nonparty Gerrit Lösch
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND SUMMARY OF ARGUMENT

3 This Court affirmed the Discovery Referee’s recommendation that plaintiff be permitted to
4 depose Mr. Losch by a Minute Order dated January 2, 2014 and issued January 10, 2014.
5 (“Minute Order”). Pursuant to the Court’s Minute Order, Mr. Lösch must be produced for
6 deposition within 90 days. (See Minute Order.) Therefore, the deadline to complete the deposition
7 of Mr. Lösch, based upon the date of the Court’s Minute Order, is April 2, 2014.

8 On February 5, 2014, Specially-Appearing Nonparty Gerrit Lösch filed a Motion to Set
9 Aside or Otherwise Quash Order Granting Plaintiff’s Motion To Compel The Deposition Of Gerrit
10 Lösch And The Underlying “Notice Of Taking The Deposition Of Gerrit Lösch, With Production
11 Of Documents Required – Videorecorded For Use At Trial” (“Motion”). (Declaration of Megan S.
12 Wynne (“Wynne Decl.”), ¶ 2.) The hearing on the Motion was set for the first available date on the
13 Court’s calendar – May 30, 2014. (*Id.*)

14 The parties appeared before the Court *ex parte* on February 6, 2014, on an issue unrelated to
15 Mr. Lösch. (Wynne Decl., ¶ 3.) At the *ex parte* hearing, the Court conveyed its belief that the
16 Minute Order is an outstanding Order compelling Mr. Lösch to appear for his deposition. (Wynne
17 Decl., ¶ 3, Exhibit A.) While it is Mr. Lösch’s position that this Court does not have jurisdiction
18 over him and therefore, the Court’s Order is not applicable to him (as more fully set forth in his
19 Motion to Quash), Mr. Lösch would like to have his Motion to Quash heard prior to the expiration
20 of the 90-day compliance period set forth in the Court’s Minute Order. However, as set forth
21 above, when Mr. Lösch filed his Motion to Quash, the first available hearing date was not until May
22 30, 2014, *more* than 90 days from the date of the Minute Order.

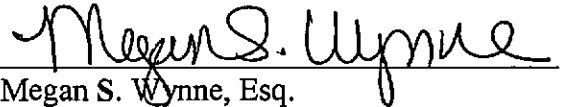
23 The Court is empowered to actively manage and supervise the pace of litigation from date of
24 filing through case disposition. (CRC 3.713(c)). Based upon the currently-scheduled date, however,
25 the Motion to Quash will not be heard until after the deadline the Court set to comply with the Minute
26 Order. In order for the Motion to be heard before the deadline set by the Court, Mr. Lösch requests
27 that the hearing be advanced from May 30, 2014, to a date prior to the deadline of April 2, 2014.

1 **III. CONCLUSION**

2 Based upon the foregoing, Mr. Lösch respectfully requests that the Court grant this *Ex Parte*
3 Application and advance the hearing date on the Motion to Quash from May 30, 2014, to a date prior
4 to April 2, 2014.

5 Dated: March 3, 2014

MORRIS POLICH & PURDY LLP

6
7 By: 
8 Megan S. Wynne, Esq.
9 Ashley A. Escudero, Esq.
Attorneys for Nonparty Gerrit Lösch

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1 **DECLARATION OF MEGAN S. WYNNE IN SUPPORT OF EX PARTE APPLICATION**
2 **OF NONPARTY GERRIT LÖSCH TO ADVANCE HEARING DATE**

3 I, Megan S. Wynne, declare as follows:

4 1. I am an attorney duly licensed to practice before all courts in the State of California
5 and am a partner at the law firm of Morris, Polich & Purdy LLP. I am the local attorney of record
6 for Nonparty Gerrit Lösch, and have personal knowledge of the facts stated herein. If called as a
7 witness, I could and would competently testify to the following.

8 2. On February 5, 2014, Specially-Appearing Nonparty Gerrit Lösch filed a Motion to
9 Set Aside or Otherwise Quash Order Granting Plaintiff's Motion To Compel The Deposition Of
10 Gerrit Lösch And The Underlying "Notice Of Taking The Deposition Of Gerrit Lösch, With
11 Production Of Documents Required – Videorecorded For Use At Trial" ("Motion") was filed on
12 Mr. Lösch's behalf. The hearing on the Motion was set for the first available date on the Court's
13 calendar – May 30, 2014.

14 3. The parties appeared before the Court *ex parte* on February 6, 2014, on an issue
15 unrelated to Mr. Lösch. I received a copy of the Court Reporter's transcript of the hearing. I
16 reviewed the transcript and am familiar with its contents. At the *ex parte* hearing, the Court
17 conveyed its belief that the Minute Order is an outstanding Order compelling Mr. Lösch to appear
18 for his deposition. (Reporter's Transcript, February 6, 2014, 8:27-28 – 9:1-11.) A true and correct
19 copy the excerpt of the transcript is attached hereto as Exhibit A.

20 4. On March 3, 2014, at approximately 10:30 a.m., I contacted Devin Storey, Esq., to
21 provide notice of the *ex parte*, including the nature of the relief sought, the date, time, and place of
22 the *ex parte* hearing. Mr. Storey informed me that Plaintiff will oppose this *ex parte* application.

23 5. On March 3, 2014, I also sent a letter by fax to Devin Storey, Esq., James McCabe,
24 Esq. and Rocky Copley, Esq. providing notice of the *ex parte*, including the nature of the relief
25 sought, the date, time and place of the *ex parte* hearing.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. C-65

HON. JOAN M. LEWIS, JUDGE

_____)	
JOSE LOPEZ,)	
)	
Plaintiff,)	
vs.)	
)	
DOE 1, LINDA VISTA CHURCH;)	Case No.
DOE 2, SUPERVISORY)	37-2012-00000849-
ORGANIZATION; DOE 3,)	-CU-PO-CTL
PERPETRATOR; and DOES 4 through)	
100,)	
Defendants.)	
_____)	

REPORTER'S TRANSCRIPT

THURSDAY, FEBRUARY 6, 2014

PAGES 1-11

APPEARANCES: (SEE FOLLOWING PAGE)

LAURA TAYLOR MARTIN, CSR
CSR No. 4158
Pro Tempore Reporter
San Diego, California
File No.: A8016B3

1 APPEARANCES

2

3 For the Plaintiff:

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7 For Defendant Watchtower
Bible and Tract Society
8 of New York:

LAW OFFICES OF ROCKY K. COPLEY
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San Diego, California 92101
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9

10

11 For Linda Vista Spanish
Congregation of Jehovah's
12 Witnesses:

THE MCCABE LAW FIRM
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4817 Santa Monica Avenue
Suite B
San Diego, California 92107
(619) 224-2848

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1 SAN DIEGO, CALIFORNIA; THURSDAY, FEBRUARY 6, 2014

2
3 THE COURT: Lopez, please.

4 Good morning. If you'll state your
5 appearances, please.

6 MR. STOREY: Good morning, your Honor. Devin
7 Storey for plaintiff.

8 MR. COPLEY: Rocky Copley on behalf of
9 defendant Watchtower Bible and Tract Society of New York,
10 Inc.

11 MR. McCABE: Good morning, your Honor. James
12 McCabe on behalf of Linda Vista:

13 MR. ZALKIN: Good morning, your Honor. Irwin
14 Zalkin on behalf of the plaintiff.

15 THE COURT: Okay. I haven't had a chance to
16 look at your papers. It's my understanding that, I
17 think, that this is the time that you wanted to be heard
18 on that.

19 MR. STOREY: Yes, your Honor.

20 THE COURT: Let me start with -- oh, I'm sorry,
21 Mr. Storey. Why don't you go ahead, Mr. Storey, since
22 I've already read the papers from Mr. Copley.

23 MR. STOREY: Your Honor, generally we're
24 opposed to this, both on the procedure and on the
25 substance. We were informed -- or when I looked at
26 the docket, this ex parte was put on calendar on
27 January 21st. It's something where we didn't get the
28 papers until, you know, the afternoon the day before

1 yesterday.

2 And generally this is something I would expect
3 to be maybe a noticed motion, something that would take
4 more time. And the process in this case is really going
5 sideways on these ex partes, where we're coming in on
6 very short notice for what should be noticed motions.
7 And we generally object to that, the process of hearing
8 this ex parte.

9 But in terms of the substance, I really don't
10 see a need for a stay here. The Court of Appeal has the
11 ability to issue a stay if there's really any substance
12 to this writ, which you know we very much doubt and very
13 much dispute.

14 Writs are taken, you know, incredibly
15 infrequently, I think far less than one in ten, and the
16 odds of this particular action being taken on a writ, on
17 a discovery issue, I think, is very low. And there's no
18 real reason to issue a stay here when the Court of Appeal
19 has the ability to do so, if there is any real teeth to
20 the writ.

21 THE COURT: Counsel.

22 MR. COPLEY: I saw no authority to require that
23 this application be done by a noticed motion.

24 As to the likelihood of a writ being issued and
25 that there is no need at this level, typically when
26 pursuing a writ of this nature, you apply to the trial
27 court, first stay the order. Should the trial court
28 refuse that application, we then are -- we have the

1 ability to tell the Court of Appeal we did ask at this
2 level and we're asking you.

3 The likelihood of a writ being granted, I
4 think, is very good. On discovery issues, when you have
5 issues of privilege, constitutional issues, those types
6 of writs are typically the kinds of writs that are
7 granted.

8 We are in a position where we have been ordered
9 to produce records from almost 14,000 files. Those
10 records include privileged -- attorney-client privileged
11 documents, attorney-work-product privileged documents,
12 ministerial privileged documents, and the court order was
13 to produce them in 90 days. We believe the issues of
14 privilege and the issues of abuse of discretion will
15 allow this writ to be heard.

16 And that's all I have to say on that.

17 THE COURT: Okay. Thank you.

18 MR. ZALKIN: Well, I can't sit still. This is
19 not a novel argument on appeal. We have been to the
20 Court of Appeal on similar writs involving trial court
21 orders to produce these types of documents in the
22 Catholic abuse cases, in Boy Scout cases, and they've
23 never won a writ yet in those kinds of cases.

24 If the Court of Appeal is for CTA in this case,
25 has any inclination to grant them the writ, they can
26 issue the stay. There is no reason to stay it at this
27 point.

28 We have been trying to get these depositions

1 going since October. We are getting zero cooperation. I
2 have written and asked for dates. As you know, your
3 Honor, when we were here last time, the Court instructed
4 that we be given dates. To this day, I'm getting
5 stonewalled.

6 I got a letter yesterday from counsel for
7 Mr. Losch saying there's no order that Mr. Losch appear
8 for a deposition. I'm happy -- you really should read
9 the letter I got. I think it would be helpful to
10 understand what's going on here.

11 THE COURT: Okay. Let's do one step at a time.

12 MR. ZALKIN: Okay.

13 THE COURT: All right?

14 MR. STOREY: Just -- if I could bring you back
15 on that, your Honor, I would just note that there's
16 nothing novel about these issues. Many of the issues
17 presented by the -- the issue with the depositions and
18 the production of documents on the issues of privilege
19 have been decided by the Roman Catholic Archbishop in the
20 Los Angeles case versus Superior Court. The issue of
21 producing files relating to others than the actual
22 perpetrator was decided by the In Re Clergy cases, one in
23 2010. There's nothing novel here.

24 THE COURT: The only thing that caught my ear
25 was the attorney-client privilege. I thought we talked
26 about that the last time we were discussing documents.
27 Wasn't --

28 MR. ZALKIN: Made the privilege log.

1 THE COURT: Right. I thought we talked --
2 anyway, I just wanted to have a clear recollection of
3 that.

4 Procedurally, Mr. Storey, I think that they
5 can do what they're doing here today, is to ask on an
6 ex parte basis to do this. Whether or not you received
7 the papers within 24 hours, that's procedurally correct
8 as well. I mean, that's just the way it goes with the
9 ex parte applications.

10 MR. STOREY: It's less with respect to this
11 particular issue and more just a general observation that
12 that's the way things are going, and a motion to
13 bifurcate and a motion to amend --

14 THE COURT: I understand that.

15 MR. STOREY: -- these are the motions that --

16 THE COURT: But I'm concentrating on this
17 today.

18 MR. STOREY: I understand.

19 THE COURT: And so I can consider it, I have
20 considered it, and under -- I think it's 918 of the
21 CCP -- make sure I'm citing the right section -- that the
22 Court has discretion whether or not to grant requests to
23 stay pending a writ, and I'm exercising my discretion not
24 to, and allow the Court of Appeal to issue the stay if
25 they feel fit. So that's what my ruling is today.

26 And is there anything else we need to take up
27 so I don't see you again next week?

28 MR. COPLEY: I'm sorry?

1 THE COURT: Anything else we need to take up so
2 I don't see you again next week?

3 MR. ZALKIN: Getting these dates? I mean, I
4 don't know what else to do. Obviously, if we notice the
5 deposition again, they're going to bring a motion to
6 quash that notice. I can see where this is headed, and
7 as far as we're concerned, we have an order. The Court
8 has ordered, adopted the referee's recommendations, has
9 ordered Mr. Losch to appear for a deposition.

10 They won't give us a date. I'm a little
11 concerned about noticing -- a new notice, you know.
12 We've already noticed it. I don't know why I need to
13 notice it again. All I need is a date.

14 THE COURT: I don't think you do.

15 MR. ZALKIN: Thank you.

16 THE COURT: Hopefully.

17 MR. ZALKIN: Thank you. And so I need the
18 order.

19 THE COURT: Who's handling it on your side
20 besides the pro hac vice attorney that I just had come
21 into this case?

22 MR. COPLEY: Well, your Honor, on the
23 deposition notices, they were taken off calendar. They
24 were taken off calendar back in November prior to Judge
25 Defiglia issuing his ruling. All of that was part of our
26 objections that we have filed with the Court.

27 THE COURT: Okay. But denying -- at the time
28 you came in and filed your objections, I looked at the

1 objections on the date that you came in. You were here
2 last. And I went ahead and signed an order adopting
3 Judge Defiglia's recommendation and ordering that
4 Mr. Losch's deposition go forward.

5 I don't know how much more I need to say about
6 that. There's -- I think there is an order to that. So
7 you might want to get that deposition on calendar
8 forthwith.

9 MR. COPLEY: I understand.

10 THE COURT: There is an order. So I don't
11 know --

12 MR. COPLEY: Well --

13 THE COURT: Would you tell your colleague who
14 is telling Mr. Zalkin there's no order that this Court
15 believes there is a direct order to do that, please?

16 MR. COPLEY: Well, I will certainly convey that
17 to Mr. Losch's counsel. I don't represent Mr. Losch.

18 THE COURT: I understand.

19 MR. COPLEY: And as to the PMQ deposition,
20 producing Mr. Ashe, who will be our PMQ, is not the
21 problem. It's the compliance with the document requests.

22 THE COURT: I understand.

23 MR. COPLEY: You know, it's Don Quixote, To
24 Dream the Impossible Dream, and I don't believe the Court
25 really understands that.

26 THE COURT: And I understand that it's going to
27 be quite an endeavor, but it also has been a very long
28 time that this has been in the making. And one of the

1 things I recall talking about the last time was that 90
2 days had already passed at the request of the documents,
3 and we're looking at several more months, and it was
4 represented to me that nothing had been done to even
5 start the process.

6 So I can't tell you how long it's going to
7 take, but it should have at least been attempted, and it
8 wasn't the last time I made the order.

9 So let me say this about the attorney who is
10 saying that there isn't an order. I'm getting a nod from
11 counsel that you will tell them that there is an order
12 and to go forward, because the next thing I'm going to
13 see is a contempt proceeding, and I don't want to go down
14 that path. Okay?

15 MR. COPLEY: Understood, your Honor.

16 THE COURT: Okay. Thank you.

17 MR. STOREY: Thank you, your Honor.

18 MR. McCABE: Thank you, your Honor.

19 MR. ZALKIN: Thank you, your Honor.

20 (Proceedings adjourned at 8:51 a.m.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. C-65

HON. JOAN M. LEWIS, JUDGE

_____)	
JOSE LOPEZ,)	
)	
Plaintiff,)	
vs.)	
)	
DOE 1, LINDA VISTA CHURCH;)	Case No.
DOE 2, SUPERVISORY)	37-2012-00000849-
ORGANIZATION; DOE 3,)	-CU-PO-CTL
PERPETRATOR; and DOES 4 through)	
100,)	
Defendants.)	
_____)	
_____)	

I, Laura Taylor Martin, CSR No. 4158, Certified Shorthand Reporter of the State of California, for the County of San Diego, do hereby certify that the foregoing pages 1 through 10 comprise a full, true and correct transcript of the proceedings taken in the matter of the above-entitled cause on February 6, 2014.

Dated this 6th day of February, 2014.

LAURA TAYLOR MARTIN
CSR No. 4158

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PROOF OF SERVICE

(Code Civ. Proc., §§ 1013a, 2015)

*Jose Lopez v. Doe 1, Linda Vista Church, et al.; Case No. 37-2012-00099849-CU-PO-CTL
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO*

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is One American Plaza, 600 West Broadway, Suite 500, San Diego, California, 92101.

On March 3, 2014, I served the foregoing document described as:

- 1. **EX PARTE APPLICATION TO ADVANCE HEARING DATE ON NONPARTY GERRIT LÖSCH'S MOTION TO SET ASIDE OR OTHERWISE QUASH ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL THE DEPOSITION OF GERRIT LÖSCH AND THE UNDERLYING "NOTICE OF TAKING THE DEPOSITION OF GERRIT LÖSCH, WITH PRODUCTION OF DOCUMENTS REQUIRED – VIDEORECORDED FOR USE AT TRIAL"; DECLARATION OF MEGAN S. WYNNE; AND [PROPOSED] ORDER**

on the other parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Devin M. Storey THE ZALKIN LAW FIRM 12555 High Bluff Drive, Suite 260 San Diego, CA 92130 (858) 259-3011 Fax: (858) 555-2312 dms@zalkin.com Attorneys for Plaintiff	James M. McCabe THE MCCABE LAW FIRM, APC 4817 Santa Monica Avenue, Suite B San Diego, CA 92107 (619) 224-2848 Fax: (619) 224-0089 jim@mccablelaw.net Attorneys for Doe 1, Linda Vista Church
Rocky K. Copley LAW OFFICES OF ROCKY K. COPLEY 225 Broadway, Suite 2100 San Diego, CA 92101 (619) 232-3131 Fax: (619) 232-1690 rkccopley@rkc-rocklaw.com	Donald T. Ridley, Esq. THE MANDEL LAW FIRM 370 Lexington Avenue, Suite 505 New York, NY 10017 Tel: (212) 697-7383 Fax: (212) 681-6157 dtrdly@gmail.com Attorneys for Gerrit Lösch
Calvin Rouse, Esq. (<i>Pro Hac Vice</i>) WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., LEGAL DEPARTMENT 100 Watchtower Drive Patterson, NY 12563 (845) 306-1000 Fax: (845) 306.0709 calrouse@msn.com Attorneys for Watchtower	

By Mail: I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with the practice of Morris Polich & Purdy LLP for collecting and processing correspondence for mailing, said practice being that, in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

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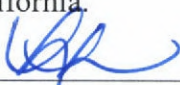
By Facsimile: I caused each document to be transmitted via the facsimile number(s) listed on the attached service list. The facsimile machine I used complied with California Rules of Court, rule 2003(3) and no error was reported by the machine pursuant to California Rules of Court, rule 2008(e).

By Personal Service: I delivered such envelope by hand to the offices of the addressee(s).

By E-Mail: I transmitted true copies of the documents via E-MAIL to the addressee(s).

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

Executed on March 3, 2014, at San Diego, California.



Lisa K. Leão