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22 MICHAEL JOSEPH JACKSON

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JUL 13 2004

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

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23 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
24 FOR THE COUNTY OF SANTA BARBARA  
25 SANTA MARIA DIVISION

26 THE PEOPLE OF THE STATE OF  
27 CALIFORNIA,

28 Plaintiff,

vs.

MICHAEL JOSEPH JACKSON

Defendant.

CASE NO. 1133603

NOTICE OF MOTION AND  
MOTION TO CONTINUE TRIAL;  
PENAL CODE § 1050(b);  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
STEVE COCHRAN

Hearing: July 27, 2004  
Time: 8:30 a.m.  
Place: Dept. 9

~~FILED UNDER SEAL~~

TO THE PEOPLE OF THE STATE OF CALIFORNIA AND THEIR COUNSEL:

Please take notice that on July 27, 2004, or as soon thereafter as the matter

1 may be heard, before the Honorable Rodney S. Melville, defendant Michael J.  
2 Jackson, through his counsel, will and hereby does move to continue trial. Trial on  
3 the currently set date, September 13, 2004, is impossible because:

4 (1) The prosecution has not provided significant quantities of seized  
5 computers, video tapes, or investigative reports, witness statements, forensic tests,  
6 and the products of search warrants;

7 (2) On April 21, 2004, the prosecution obtained an indictment which  
8 claimed that at least six individuals conspired between February and March 2003,  
9 and engaged in 28 separate overt acts for which the prosecution previously provided  
10 virtually no discovery;

11 (3) The pace of discovery and necessary defense investigation to rebut the  
12 additional allegations in the indictment make it impracticable for Mr. Jackson to  
13 prepare adequately for trial.

14 This motion is brought pursuant to Penal Code section 1050(b). This motion  
15 is based on this notice of motion, the attached memorandum of points and  
16 authorities, the declaration of Steve Cochran, the file and record and any other  
17 information presented prior to a ruling hereon.

18 DATED: July 8, 2004 Respectfully submitted,  
19 Thomas A. Mesereau, Jr.  
20 Susan C. Yu  
21 COLLINS, MESEREAU, REDDOCK & YU

22 Steve Cochran  
23 Stacey McKee Knight  
24 KATTEN MUCHIN ZAVIS ROSENMAN

25 Robert M. Sanger  
26 SANGER & SWYSEN

27 By: Steve Cochran  
28 Steve Cochran  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This is a prosecution on an indictment alleging: one count of conspiracy to  
4 commit false imprisonment, child abduction and extortion; four counts of lewd  
5 conduct upon a child; one count of attempt of the same offense; and four counts of  
6 providing alcohol to a minor. Arraignment occurred recently, on April 30, 2004. On  
7 May 28, 2004, this Court, *sua sponte*, set a trial date of September 13, 2004.

8 In virtually every respect, this litigation is unusual and complex. The theory of  
9 the prosecution is, among other things, that at least six individuals conspired between  
10 February and March of 2003. The prosecution's strategy, however, is to target only  
11 Mr. Jackson and hold the specter of charges over the heads of the other five people.

12 Surreptitious investigation by law enforcement began in July of 2003.  
13 Searches pursuant to warrant commenced in mid-November 2003. To date, the  
14 prosecution has obtained and executed over

15  
16  
17 The prosecution has produced intermittent waves of material in mid January,  
18 early February, mid March, early May and recently, claiming that discovery is  
19 delivered as it becomes available.

20  
21 Discovery on the accusations in the indictment genuinely began in May  
22 2004. The prosecution has promised that this investigation will continue through the  
23 trial and that additional materials will be produced.

24 Moreover, as the defense continues its own investigation, it has become clear  
25 that critical discovery has not been produced. Despite claims by the prosecution that  
26 discovery is up to date, the defense has not been provided with

27 among other  
28 things.

1 Available information indicates that this trial will probably involve at least 100  
2 witnesses, hundreds of documents and extensive expert testimony. Mr. Jackson  
3 brought in new lead counsel in late April 2004. Necessary investigation, including  
4 analysis of discovery from the prosecution, review of seized items, witness  
5 interviews and preparation of the defense case has just begun in earnest.

6 Nothing less than Mr. Jackson's life is at stake in these proceedings. He has  
7 posted high bail to remain at liberty and is mounting a defense against the vast  
8 resources of the government. The last thing he wants is to prolong this ordeal. The  
9 nature of this matter, however, provides more than good cause to continue the trial.  
10 Substantial additional time is indispensable for adequate trial preparation.  
11 Accordingly, Mr. Jackson respectfully urges this Court to continue the trial no less  
12 than 120 days.

## 13 **II. THE SALIENT FACTS**

### 14 **A. BACKGROUND**

15 The prosecution commenced these proceedings in mid-November 2003, with  
16 an arrest warrant alleging violation of Penal Code § 288(a), lewd conduct with a  
17 minor. A complaint was filed on December 18, 2003, asserting seven counts under  
18 § 288(a) and two counts of giving alcohol to a minor, in violation of Penal Code  
19 § 222. (Declaration of Steve Cochran at ¶ 2.)

20 A series of hearings occurred in early 2004 that included discussion about the  
21 schedule for a preliminary hearing. In March of 2004, the prosecution chose to  
22 convene a grand jury to seek an indictment instead of a preliminary hearing in open  
23 court. Grand jury proceedings ensued and an indictment was filed on April 21, 2004.  
24 (Declaration of Steve Cochran at ¶ 3.)

25 Again, the prosecution measurably expanded the scope and complexity of the  
26 allegations against Mr. Jackson. The indictment alleges an elaborate conspiracy  
27 among Mr. Jackson and five named, but unindicted persons to commit child  
28 abduction, false imprisonment and extortion. Twenty-eight acts in supposed

1 furtherance of the conspiracy are listed. The indictment also imagines four counts of  
2 lewd conduct, one count of attempt and four counts of giving alcohol to a minor.  
3 The new allegations in the indictment expand the number of witnesses to over one  
4 hundred.

5 (Declaration of Steve Cochran at ¶ 4.)

6 In anticipation of arraignment on the indictment, Mr. Jackson relieved certain  
7 lawyers and brought in new lead counsel. Arraignment on the indictment occurred  
8 on April 30, 2004, at which Mr. Jackson announced pleas of not guilty. At the next  
9 hearing on May 28, 2004, this Court, *sua sponte*, set a trial date of September 13,  
10 2004. This Court explained that it would entertain a continuance of the trial date  
11 upon a showing of good cause. (Declaration of Steve Cochran at ¶ 5.)

12 Mr. Jackson is a 45-year old father of three children. Despite a humble  
13 childhood and many obstacles, Mr. Jackson has achieved immense success  
14 worldwide as an entertainer. He has no criminal history. On the contrary, Mr.  
15 Jackson has made enormous cultural and charitable contributions. (Declaration of  
16 Steve Cochran at ¶ 6.)

17 Obviously, this is an extraordinary matter. The future of Mr. Jackson and his  
18 children is at stake.

19 **B. THE VOLUME OF DISCOVERY AND THE PROSECUTION'S**  
20 **FAILURE TO PRODUCE IMPORTANT MATERIALS**

21 The prosecution and the police have devoted immense resources to their  
22 investigation, which they describe as "ongoing". Reports produced in discovery  
23 reveal that the investigation began as early as April 2003.. (Declaration of Steve  
24 Cochran at ¶ 7.)

25 The defense has received discovery by way of installments, the most recent of  
26 which occurred the week of June 21, 2004. So far, the prosecution has produced

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28 Discovery by the prosecution to date also includes



1 approximately

(Declaration of Steve Cochran at ¶ 8.)

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3 The prosecution has not provided discovery of certain critical items. For  
4 instance,

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8 Despite numerous requests, a motion  
9 for discovery and numerous assurances by the prosecution, often in open court, that  
10 the defense either has or will have "everything," the defense has not been provided  
11 this key tape. (Declaration of Steve Cochran at ¶ 9.)

12 Furthermore,

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14 Counsel for  
15 Mr. Jackson was permitted to view the letters briefly with other seized items at the  
16 Sheriff's Department, but only in the immediate presence of the lead detectives in the  
17 case,

18 Defense counsel were recently allowed to view, but  
19 not copy or photograph these exhibits. The prosecution has now raised issues with  
20 regard to both procedures and has requested that this Court make other orders before  
21 the defense is given further access to either the seized items retained by the Sheriff or  
22 the exhibits put before the Grand Jury. (Declaration of Steve Cochran at ¶ 10.)

23  
24 (Declaration of Steve  
25 Cochran at ¶ 11.)

26 Due to the present restrictions on viewing evidence, a vast amount of materials  
27 is yet unavailable to the defense. Among the materials are file boxes of documents  
28 seized in various searches conducted last year and materials seized within the last



1 month for which the defense does not have inventories.

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The defense has not been provided with an opportunity to review  
the actual material seized pursuant to most of these warrants. (Declaration of Steve  
Cochran at ¶ 12.)

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were turned over to the  
defense only last week. Just recently, the prosecution produced

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(Declaration of Steve Cochran at  
¶ 13.)

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**C. THE MASS OF SEIZED MATERIAL FOR REVIEW AND  
ANALYSIS**

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The volume of discovery is dwarfed by the amount of seized material.

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(Declaration of Steve Cochran at ¶ 14.)

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(Declaration of Steve Cochran at ¶ 15.)

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1 Defense counsel was provided access to the seized items for the first time in  
2 June of this year. That session was a preliminary tour because of the large mass of  
3 material. Arrangements for defense review of the seized materials have been the  
4 subject of hearings on May 28 and June 25, 2004. (Declaration of Steve Cochran at  
5 ¶ 16.)<sup>1/</sup>

6 The prosecution has not yet turned over the materials that have been or will be  
7 subjected to forensic analysis. Therefore, defense counsel cannot yet determine what  
8 experts are needed in this case, or what forensic tests should be conducted.  
9 (Declaration of Steve Cochran at ¶ 17.)

10 **D. THE WIDE ARRAY OF FACTUAL ISSUES REVEALED BY**  
11 **MATTERS PRESENTED TO THE GRAND JURY**

12 A glimpse of the factual complexity of this matter is revealed by the transcripts  
13 of hearings before the grand jury.

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18 (Declaration of Steve Cochran at ¶ 18.)

19 Matters presented to the grand jury place in issue topics well beyond the broad  
20 allegations in the indictment.

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24 <sup>1/</sup> In the interest of efficiency and to avoid burdening the Court with duplicate  
25 material, counsel for Mr. Jackson respectfully requests that this Court take judicial  
26 notice of various documents that are already part of the file. Affidavits in support of  
27 warrant applications, search warrants and returns on those warrants reflect the resources  
28 devoted to this matter by the prosecution, the huge amount of seized items and the  
daunting task for defense counsel to review and analyze these materials and then  
conduct independent followup inquiry. These documents are incorporated herein as  
exhibits.

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The detail about what actually occurred during these events are the critical component of evidence at trial. (Declaration of Steve Cochran at ¶ 19.)<sup>2/</sup>

III. THE APPLICABLE LAW

The trial court is authorized to continue the trial upon a showing of good cause. Cal. Pen. Code § 1050(b). The court has vast discretion in these matters, with the pertinent inquiry being whether a continuance is in the interest of justice under the totality of circumstances. *People v. Snow*, 30 Cal. 4th 43, 70, 132 Cal. Rptr. 2d 271 (2003).

Naturally, the defense must be provided ample time to reasonably prepare for trial. *People v. Fontana*, 139 Cal. App. 3d 326, 333, 188 Cal. Rptr. 612 (1982). This is a fact-based inquiry focusing on the nature of the case, the status of discovery, the age of the litigation and the occurrence of prior continuances. *People v. Snow, supra* (denial of a continuance for trial preparation affirmed because case was pending for 26 months and the defendant was granted a number of lengthy continuances).

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<sup>2/</sup> The defense has moved this matter along with more than reasonable diligence. Motions were briefed and argued about certain matters that occurred during grand jury proceedings. With some prodding by this Court, Mr. Jackson was arraigned right after filing of the indictment. Enormous effort has been devoted to pouring through discovery and other materials necessary to brief motions for discovery, reduction of bail, to suppress evidence and to set aside the indictment. Meanwhile, large chunks of discovery continue to be delivered by the prosecution.

Other crucial aspects to the defense investigation are ongoing or need to be done. Glitches persist, though. For instance, documents subpoenaed by the defense have been held for weeks pending a ruling on procedure, which this Court issued on June 25, 2004. Unfortunately, despite efforts by the defense to obtain those documents in July 2004, they were not released until further direction could be obtained from this Court. Defense counsel are prepared to make a showing on such matters *in camera* to aid the Court's determination of this motion.

1 **IV. A CONTINUANCE IS NECESSARY FOR ADEQUATE TRIAL**  
2 **PREPARATION.**

3 The pace of discovery, the mass of material for review, the number of  
4 witnesses, the unavailability of computers and other items for exam by defense  
5 counsel, among other things, render a September 13 trial unrealistic. This case is too  
6 big to force a trial only five months following an indictment alleging elaborate, new  
7 charges.

8 The defense function encompasses many obligations. Among them are  
9 thorough review of information provided by the prosecution, examination of  
10 materials gathered during the course of police investigation, document review,  
11 follow-up forensic examination and witness interviews of those contacted by law  
12 enforcement personnel.

13 That is only the beginning. The defense must also conduct a wholly  
14 independent search for evidence. Tips of information must be followed. New  
15 witnesses must be found, contacted and interviewed. Legal research must be done  
16 and motions, writs and other documents have to be written. After all that and more,  
17 counsel must prepare for witness examination, motions *in limine* and everything else  
18 to occur at trial.

19 In the context of this litigation, no less than months are necessary to  
20 implement Mr. Jackson's Sixth Amendment rights to effective assistance of counsel  
21 and a fair trial. The scope of the prosecution's investigation is breath-taking. This is  
22 not a usual criminal investigation, it is an effort to take down a major celebrity. The  
23 focus of the prosecution is not the people who allegedly restrained, abducted or  
24 extorted but the celebrity who had little if any involvement with the day  
25 to day activities of the unindicted co-conspirators. The expenditure of resources by  
26 the prosecution is unprecedented and extravagant. The prosecution has expanded  
27 this case to the point that the search warrants, the seized materials, the audio tapes,  
28 the video tapes and everything else associated with the investigation exceeds



1. anything that this Court has or will see, except in the most complex murder or white  
2 collar case.

3 Obviously, the factual issues are many, the volume of discovery is massive and  
4 that material is a fraction of the seized items. Furthermore, because the  
5 government's investigation continues, additional information and documents will be  
6 produced which, following review by the prosecution, will be made available to  
7 defense counsel for analysis and followup.

8 It is unfair and unnecessary to push this matter to trial before the defense has  
9 had the same type of time and access to relevant material as the prosecution. That  
10 type of access has yet to occur and is still being worked out by the parties with the  
11 benefit of guidance from this Court.

12 This case has moved apace. Counsel have been diligent. This is  
13 Mr. Jackson's first request for a continuance. As in any other litigation, the trial  
14 date should be tailored to the nature of the case and the amount of work necessary for  
15 adequate preparation.

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1. V. CONCLUSION

2. On this record, a continuance is essential to protect Mr. Jackson's right to a  
3. fair trial. By virtue of the amount of work to be done, the continuance has to be  
4. much more than a few weeks. Accordingly, Mr. Jackson respectfully urges this  
5. Court to continue the trial no less than 120 days.

6.  
7. DATED: July 8, 2004

Respectfully submitted,

8. Thomas A. Mesereau, Jr.

9. Susan C. Yu

COLLINS, MESEREAU, REDDOCK & YU

10. Steve Cochran

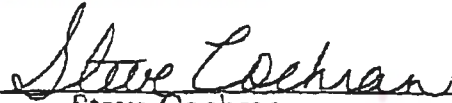
11. Stacey McKee Knight

KATTEN MUCHIN ZAVIS ROSENMAN

12. Robert M. Sanger

13. SANGER & SWYSEN

14.  
15. By:



Steve Cochran

Attorneys for Defendant

16. MICHAEL JOSEPH JACKSON

## DECLARATION

1. DECLARATION OF STEVE COCHRAN

2 I, Steve Cochran, declare as follows:

3 1. I am an attorney duly authorized to practice before all courts of the State  
4 of California and am a partner of the law firm of Katten Muchin Zavis Rosenman,  
5 co-counsel for Michael Joseph Jackson in the above-entitled case. I submit this  
6 declaration in support of Mr. Jackson's motion to continue trial.

7 2. The prosecution commenced these proceedings in mid November 2003,  
8 with an arrest warrant alleging violation of Penal Code § 288(a), lewd conduct with a  
9 minor. A complaint was filed on December 18, 2003, asserting seven counts under  
10 § 288(a) and two counts of giving alcohol to a minor, in violation of Penal Code  
11 § 222.

12 3. A series of hearings occurred in early 2004 that included discussion  
13 about the schedule for a preliminary hearing. In March of 2004, the prosecution  
14 chose to convene a grand jury to seek an indictment instead of a preliminary hearing.  
15 Grand jury proceedings ensued and an indictment was filed on April 21, 2004.

16 4. The indictment alleges an elaborate conspiracy among Mr. Jackson and  
17 five named, but unindicted persons to commit child abduction, false imprisonment  
18 and extortion. Twenty-eight acts in supposed furtherance of the conspiracy are  
19 listed. The indictment also imagines four counts of lewd conduct, one count of  
20 attempt and four counts of giving alcohol to a minor. The new allegations in the  
21 indictment expand the number of witnesses to over one hundred.

22  
23 5. In anticipation of arraignment on the indictment, Mr. Jackson relieved  
24 certain lawyers and brought in new lead counsel. Arraignment on the indictment  
25 occurred on April 30, 2004, at which Mr. Jackson announced pleas of not guilty. At  
26 the next hearing on May 28, 2004, this Court, *sua sponte*, set a trial date of  
27 September 13, 2004. This Court explained that it would entertain a continuance of  
28 the trial date upon a showing of good cause.



1 6. Mr. Jackson is a 45-year old father of three children. Despite a humble  
2 childhood and many obstacles, Mr. Jackson has achieved immense success  
3 worldwide as an entertainer. He has no criminal history. On the contrary, Mr.  
4 Jackson has made enormous cultural and charitable contributions.

5 7. The prosecution and the police have devoted immense resources to their  
6 investigation, which they describe as "ongoing". Reports produced in discovery  
7 reveal that the investigation began as early as April 2003.

8 8. The defense has received discovery by way of installments, the most  
9 recent of which occurred the week of June 21, 2004.

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14 9. The prosecution has not provided discovery of certain critical items.  
15 For instance,

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18  
19 Despite numerous  
20 requests and a motion for discovery and despite numerous assurances by the  
21 prosecution, often in open court, that the defense either has or will have  
22 "everything," the defense has not been provided this key tape.

23 10. Furthermore,

1. Defense counsel were recently allowed to view the exhibits  
2 but not copy or photograph. Deputy District Attorney Gordon Auchincloss has now  
3 raised issues with regard to both procedures and has requested that this Court make  
4 other orders before the defense is given further access to either the evidence retained  
5 by the Sheriff or the exhibits put before the Grand Jury.

6 11. Other tapes are also missing from discovery.  
7

8 12. Due to the present restrictions on viewing evidence, a vast amount of  
9 materials is yet unavailable to the defense.  
10

11  
12 The status of the production of search warrants, affidavits and returns as of the  
13 drafting of this motion is summarized as follows:  
14

15 The defense has not been  
16 provided with an opportunity to review the actual material seized pursuant to most of  
17 these warrants.

18 13. In addition,  
19 over to the defense only last week. Just recently,  
20

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23 14. The volume of discovery is dwarfed by the amount of seized material.  
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7 16. Defense counsel was provided access to the seized items for the first  
8 time in June of this year. That session was a preliminary tour because of the large  
9 mass of material. Arrangements for defense review of the seized materials have been  
10 the subject of hearings on May 28 and June 25, 2004.

11 17. The prosecution has not yet turned over the materials that have been or  
12 will be subjected to forensic analysis. Therefore, defense counsel cannot determine  
13 what experts are needed in this case, or what forensic tests should be conducted.

14 18. A glimpse of the factual complexity of this matter is revealed by the  
15 transcripts of hearings before the grand jury. Without judicial rulings on evidence,  
16 cross-examination or other participation by defense counsel,  
17

18 The  
19 prosecution sought release of grand jury exhibits for forensic testing as recently as  
20 July of this year.

21 19. Matters presented to the grand jury place in issue topics well beyond the  
22 broad allegations in the indictment.  
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The detail

1 about what actually occurred during these events are the critical component of  
2 evidence at trial.

3 20. A continuance in the area of 120 days is indispensable. That time is  
4 necessary to protect Mr. Jackson's rights to assistance of counsel and a fair trial.

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

6 Executed this 8<sup>th</sup> day of July 2004 at Los Angeles, California.

7  
8   
Steve Cochran



PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

(X ) I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

( ) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the persons listed below:

On July 8, 2004, I served the foregoing documents described as NOTICE OF MOTION AND MOTION TO CONTINUE TRIAL; PENAL CODE § 1050(b); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEVE COCHRAN on the interested parties in this action as follows:

Thomas W. Sneddon, Jr.  
District Attorney of Santa Barbara  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

Fax: 805-568-2398

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

Executed on July 8, 2004, at Los Angeles, California.

  
Marsha Davis

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

( ) I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

(X) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the above-named persons.

On July 13, 2004, I served the foregoing documents described as

[PROPOSED] REDACTED NOTICE OF MOTION AND MOTION TO CONTINUE TRIAL; PENAL CODE § 1050(b); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEVE COCHRAN

on the interested parties in this action as follows:

Thomas W. Sneddon, Jr.  
District Attorney of Santa Barbara  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

Fax: 805-568-2398

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

Executed on July 13, 2004, at Los Angeles, California.

  
Marsha Davis