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23 Attorneys for Defendant  
24 **MICHAEL JOSEPH JACKSON**

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

27 **THE PEOPLE OF THE STATE OF**  
28 **CALIFORNIA,**

Plaintiffs,

vs.

**MICHAEL JOSEPH JACKSON,**

Defendant.

) Case No. 1133603  
)  
)  
)

) **SUPPLEMENTAL BRIEF IN SUPPORT OF**  
) **MOTION TO TRAVERSE AFFIDAVITS, TO**  
) **QUASH WARRANTS AND TO SUPPRESS**  
) **EVIDENCE UNDER PENAL CODE §1538.5;**  
) **DECLARATION OF ROBERT M. SANGER;**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES**

) **UNDER SEAL**

) Honorable Rodney S. Melville  
)  
)

) Date: August 16, 2004  
) Time: 10:00 am.  
) Dept: SM 2

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

AUG 06 2004

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

\*Unsealed pursuant  
to 6/11/05 Court  
Order

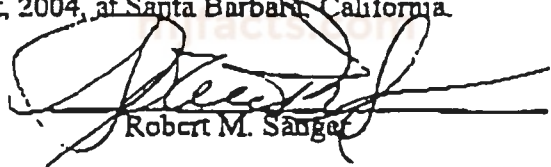
**SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5**

**DECLARATION OF ROBERT M. SANGER**

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Mr. Michael Jackson.
2. I have reviewed the search warrants, affidavits and inventories provided by the prosecution to defense counsel by the prosecution including the DVDs of the search of Mr. Jackson's residence.
3. As of this writing, Mr. Jackson has not been provided with a complete and proper set of search warrants, affidavits and returns by the prosecutor.
4. Unless the prosecutor provides for this Court and for Mr. Jackson and his counsel, certified copies of search warrants, affidavits and returns, Mr. Jackson will assert that the prosecutor has not established that a warrant was in effect for any or all of the searches herein and will ask the Court to treat all such searches as warrantless.
5. Furthermore, without certified copies of all documents, Mr. Jackson, in fact, cannot adequately prepare for the hearing on this motion.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct this 6<sup>th</sup> day of August, 2004, at Santa Barbara, California.

  
Robert M. Sanger

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **MR. JACKSON AND HIS COUNSEL HAVE NOT BEEN PROVIDED WITH ALL OF**  
4 **THE SEARCH WARRANTS, AFFIDAVITS AND INVENTORIES**  
5 **RELATED TO ALL OF THE SEARCHES**

6 Mr. Jackson asks the Court to take judicial notice of the Status Report dated July 30,  
7 2004, which details the status of discovery.

8 As of this writing, Mr. Jackson has not been provided with a complete and proper set of  
9 search warrants, affidavits and returns by the prosecutor. Unless the prosecutor provides for this  
10 Court and for Mr. Jackson and his counsel, certified copies of search warrants, affidavits and  
11 returns, Mr. Jackson will assert that the prosecutor has not established that a warrant was in  
12 effect for any or all of the searches herein and will ask the Court to treat all such searches as  
13 warrantless. A warrantless search is presumptively unreasonable under the Fourth Amendment  
14 to the United States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1290.)

15 II.

16 **DETECTIVE ZELIS' "EXPERT" OPINION IN**  
17 **THE STATEMENT OF PROBABLE CAUSE LACKS FOUNDATION**

18 The affidavit lacks foundation to establish that the Affiant, Detective Paul Zelis, is an  
19 expert on the characteristics of pedophiles. A true and correct copy of the affidavit is attached to  
20 Mr. Jackson's MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
21 SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5 as Exhibit C. The Affiant did not  
22 establish that he possessed the necessary training and experience on which he purported to base  
23 his opinion of the common traits of pedophiles. Furthermore, as argued in Mr. Jackson's  
24 MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS  
25 EVIDENCE UNDER PENAL CODE §1538.5, pages 13-14, he omitted the opinion of Dr. Stan  
26 Katz that Mr. Jackson is not a pedophile.

27 In detailing his background for the magistrate, Detective Zelis states that he has

28 SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5

1 "investigated numerous property crimes and crimes against persons, including burglary, child  
2 molest, theft, assault, domestic violence, narcotic and drug violations." He states that he has  
3 attended "the basic law enforcement training academy and possesses the Basic and Intermediate  
4 P.O.S.T. Certificates" and that he has "attended specialized courses, including Homicide  
5 Investigation (80 hrs.), and Sexual Assault Investigation (40 hrs.)."

6 Detective Zelis' affidavit includes a 4 page pedophilic profile titled "Characteristics of  
7 persons involved in sex crimes against children." He states that "[a]s a result of the training and  
8 experience outlined above, your Affiant has learned that the following characteristics are  
9 generally found to exist in varying combinations and be true in cases involving people who  
10 molest children - 'pedophiles'."

11 Conspicuously absent from the affidavit, are any statements regarding the number of  
12 investigations that Detective Zelis has participated in that involve the alleged sexual exploitation  
13 of minors and children. He does not recite any specific experience, let alone expertise, in the  
14 area of pedophiles. There is no mention of the number of investigations, if any, in which he has  
15 served as the lead detective. There is not a description of the specific training that he received or  
16 of any publications that he has read that are relevant to the behavior of pedophiles. The affidavit  
17 also lacks any mention of the number of interviews, if any, that Detective Zelis has conducted  
18 with children who have been molested or with admitted child molesters. Simply put, there is  
19 nothing in the affidavit that establishes that the Affiant is qualified to give expert opinion on the  
20 characteristics of those who molest children.

21 Evidence Code Section 720(a)-(b) states the criteria for determining if a person is  
22 qualified as an expert:

23 (a) A person is qualified to testify as an expert if he has special knowledge, skill,  
24 experience, training, or education sufficient to qualify him as an expert on the  
25 subject to which his testimony relates. Against the objection of a party, such  
special knowledge, skill, experience, training, or education must be shown before  
the witness may testify as an expert.

26 (b) A witness' special knowledge, skill, experience, training, or education may be  
27 shown by any otherwise admissible evidence, including his own testimony.

28  
SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5



**DECLARATION OF ROBERT M. SANGER**

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Mr. Michael Jackson.

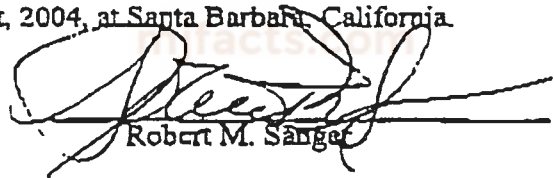
2. I have reviewed the search warrants, affidavits and inventories provided by the prosecution to defense counsel by the prosecution including the DVDs of the search of Mr. Jackson's residence.

3. As of this writing, Mr. Jackson has not been provided with a complete and proper set of search warrants, affidavits and returns by the prosecutor.

4. Unless the prosecutor provides for this Court and for Mr. Jackson and his counsel, certified copies of search warrants, affidavits and returns, Mr. Jackson will assert that the prosecutor has not established that a warrant was in effect for any or all of the searches herein and will ask the Court to treat all such searches as warrantless.

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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct this 6<sup>th</sup> day of August, 2004, at Santa Barbara, California.

  
Robert M. Sanger

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15 **II.**

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28 **SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
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1 "investigated numerous property crimes and crimes against persons, including burglary, child  
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28  
SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5



1 Here, Detective Zelis failed to provide the necessary foundation to establish that he  
2 possessed the special knowledge, skill, experience, training or education on which to base a  
3 detailed opinion on the common characteristics of pedophiles. Instead, he provides a list of the  
4 different types of crimes he has investigated, makes reference to one sexual assault course, and  
5 then launches into a rote description of characteristics of pedophiles that is obviously not based  
6 on his own special knowledge, skill, experience training or education.

7 In this case, the "expert" testimony in the affidavit was foundationless. It  
8 consisted of rambling boilerplate recitations designed to meet law enforcement  
9 needs. It is clear that the "expert" portion of the affidavit was not drafted with the  
10 facts of this case or this particular defendant in mind.  
11 (*United States v. Weber* (9<sup>th</sup> Circuit, 1990) 923 F.2d 1338, 1346.)

12 As argued below, Detective Zelis' list of pedophile characteristics is used to justify both  
13 the staleness of the search and the overbroad list of the items to be seized. Without this profile,  
14 the warrant lacks any probable cause to believe that any listed items would be or still be at Mr.  
15 Jackson's residence. There was no probable cause to justify the overbroad list of property to be  
16 seized nor the issuance of a warrant so long after the alleged offenses took place.

### 17 III.

#### 18 THE SEARCH WARRANT IS INVALID BECAUSE IT IS STALE

19 There was not probable cause to believe that the property to be seized was in Mr.  
20 Jackson's home shortly before the warrant was executed. An affidavit in support of a search  
21 warrant must contain probable cause to believe that the property to be seized is still in the place  
22 to be searched when the warrant is sought (*People v. Mesa* (1975) 14 Cal. 3d 466, 470) The  
23 more remote the incidents relied upon, the less probable it is that the evidence will be discovered.  
24 (*People v. Scott* (1978) 21 Cal. 3d 284, 294.)

25 Here, the November 18, 2003 search of Mr. Jackson's home occurred 8 months after the  
26 alleged crimes were supposedly committed. The Affiant attempts to justify the obvious staleness  
27 of the search by including boilerplate language stating that pedophiles "rarely, if ever, dispose of  
28 their sexually explicit material," "keep mementos of their relationship with specific children,"  
and "rarely, if ever" dispose of pictures of children. (Exhibit C to Mr. Jackson's MOTION TO



1 TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE  
2 UNDER PENAL CODE §1538.5, 5:13-14; 7:19-20; 7:25-27.) As discussed above, foundation  
3 for this testimony was not established in the affidavit. Without Detective Zelis' assertions about  
4 so-called profile, there is not probable cause for believing the property to be seized would be at  
5 the search location.

6 IV.

7 **THE SEARCH WARRANT IS INVALID BECAUSE IT IS OVERBROAD**

8 The foundationless pedophile profile in the affidavit was used to justify an overbroad list  
9 of property to be seized. The finding of probable cause for virtually all of the items in the search  
10 warrant, including pornographic materials, photographs of the Arvizos, computer systems,  
11 underwear, and correspondence, is based on Detective Zelis' purported expert opinion on the  
12 characteristics of people who sexually abuse children. As discussed above, the Affiant did not  
13 establish that he was qualified to opine as to whether a suspected pedophile would possess these  
14 particular items.

15 V.

16 **THE SEARCH OF MR. JACKSON'S PRIVATE SUITE WAS INVALID BECAUSE**  
17 **THERE WAS NO KNOCK AND NOTICE**

18 The Fourth Amendment to the United States Constitution and California law require that  
19 law enforcement officers executing a search warrant give notice of their authority and be refused  
20 entry before the officer may forcibly enter the premises to execute the warrant. (*Wilson v.*  
21 *Arkansas* (1995) 514 U.S. 527; Penal Code Section 1531.) While there is a split in authority,  
22 there is case law that holds that knock-notice is required not only at outer doors, but also at inner  
23 doors. (*People v. Pipitone* (1984) 152 Cal.App. 3d 1112; *People v. Glasspoole* (1975) 121  
24 Cal.Rptr. 736; *People v. Webb* (1973) 36 Cal.App. 3d 460, 464-465; Contra *People v. Mays*  
25 (1998) 67 Cal.App. 4<sup>th</sup> 969.)

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28 SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5

VI.

**THE SHERIFFS CONDUCTED AN ILLEGAL SWEEP OF AREAS THAT WERE  
OUTSIDE THE SCOPE OF THE WARRANT**

The government conducted a sweep of the premises that went far beyond the buildings designated by the search warrant that amounted to a warrantless search. (See *Stanley v. Georgia*, 394 U.S. 557, 572, 22 L.Ed.2d 542, 89 S.Ct 1243, 1251-52 (1969) (Stewart, J., concurring)) The search warrant permitted the officers to search "the arcade building, the main residence, and the security headquarters" at Naverland Ranch. (Exhibit C to Mr. Jackson's MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5) However, the officers searched other buildings and areas.

The items seized and the observations of the officers must be suppressed because the search of these other areas constituted an illegal warrantless search. This search cannot be justified as a protective sweep. (See *Thompson v. Louisiana* (1985) 469 U.S. 17; *United States v. Furrow* (9<sup>th</sup> Circuit, 2000) 220 F.3d 805.)

VII.

**THE SEARCH AMOUNTED TO AN IMPERMISSIBLE GENERAL SEARCH**

As Mr. Jackson argued in his MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PEN C §1538.5, pages 15-16, a vast amount of materials were seized that were not covered by the search warrant. To the extent that the District Attorney may attempt to justify the seizure of some of these items based on the plain view doctrine, the burden is on the prosecution to show that the plain view doctrine is applicable to each particular seizure. (*People v. Murray* (1978) 77 Cal.App. 3d 305.) In addition to the item being in plain view, the officer must have probable cause to believe that the item is subject to seizure, rather than mere suspicion. (*Arizona v. Hicks* (1987) 480 U.S. 321.)

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SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5

VIII.

**THE MATERIALS PROVIDED IN RESPONSE TO SEARCH WARRANT NUMBER 5005 ARE OUTSIDE THE SCOPE OF THE WARRANT AND MUST BE SUPPRESSED**

Search Warrant 5005 requested documentation held by Bank of America pertaining to Mr. Jackson's accounts which were active during the time frame between and including "2/1/2003 through 4/31/03 (sic)." A true and correct copy of that search warrant is attached as Exhibit A. According to a Sheriff's Department Report, Dawn Millsaps, of the Bank of America legal compliance department, indicated that there were no active accounts for Mr. Jackson during the requested time frame. A true and correct copy of that report is attached as Exhibit B. Nevertheless, Ms. Millsaps sent Detective Bonner information about account activity that was outside of the requested time frame.

The material faxed to the Sheriff's Department is clearly outside the scope of the search warrant and must be suppressed.

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IX

CONCLUSION

For all of the reasons set forth above, Mr. Jackson requests that this Court find the conclusions, omissions and speculations in statements discussed above to be made in reckless disregard for the truth, or find that there were material omissions in the affidavits which renders what remains in the affidavits insufficient to support a finding of probable cause and that this Court quash both warrants, and suppress all evidence seized under the authority of those warrants. However, Mr. Jackson respectfully requests leave to amend or renew this motion if, when and after the prosecutor provides appropriate discovery.

Dated: August 6, 2004

Respectfully submitted,

COLLINS, MESEREAU, REDDOCK & YU  
Thomas A. Mescreau, Jr.  
Susan C. Yu

KATTEN MUCHIN ZAVIS ROSENMAN  
Steve Cochran  
Stacey McKee Knight

SANGER & SWYSEN  
Robert M. Sanger

OXMAN & JAROSCAK  
Brian Oxman

By:

  
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON



EXHIBIT A

STATE OF CALIFORNIA - COUNTY OF SANTA BARBARA  
SANTA BARBARA JUDICIAL DISTRICT

# SEARCH WARRANT AND AFFIDAVIT (AFFIDAVIT)

I, Detective Craig Bonner, swear under oath that the facts expressed by me in the attached and incorporated statement of probable cause are true and that based thereon I have probable cause to believe and do believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the location set forth below. Wherefore, affiant requests that this Search Warrant be issued.

NIGHT SEARCH REQUESTED: YES ( ) NO (X)

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF SANTA BARBARA: proof by affidavit having been made before me by Detective Craig Bonner, that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524, in that it tends to show that a felony has been committed or that a particular person has committed a felony.

**YOU ARE THEREFORE COMMANDED TO SEARCH:** Bank of America, Legal Process/ subpoena compliance, 1000 West Temple Street, Los Angeles, California 90012, Mail code CA9-705-05-19. For the following: Documentation held by Bank of America pertaining to personal, business and corporate banking and/ or credit account/s held by, or associated with the below described person/ business, which were active during the time frame between and including 2/1/2003 through 4/31/2003, including copies of application forms, current account holder/ business information and any other information/ documentation, which could be used to accurately identify the person(s) who own and/ or use the accounts in question.

Furthermore, Bank of America is directed to provide copies of detailed statements documenting activity (including all deposits, withdrawals and transfers of money) within the accounts in question between and including 2/1/2003 and 4/31/2003 involving the account/s held by, or associated with the below described individual/ business entity. Additionally, Bank of America is directed to provide copies (front and back) of all checks cashed against the account(s) held by, or associated with the below described individual/ business entity between and including 2/1/2003 and 4/31/2003:

Person/ business entity: Michael Joseph (or "Joe") JACKSON. (the entertainer), DOB SSN: [REDACTED] and/or Michael Joe JACKSON, DBA: MJJ Productions

AND TO SEIZE IT IF FOUND and keep it in your custody until further order of court. This Search Warrant and incorporated Affidavit was sworn to as true and subscribed before me this 17<sup>th</sup> day of May, 2004, at 8:15 A.M./P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

Anthony J. Mealli  
(Signature of Magistrate)

NIGHT SEARCH <sup>SANTA BARBARA</sup> ~~SUPERIOR~~ NO (X)

Jr of the Santa Barbara Superior Court, Santa Maria Division

FILED

**SANTA BARBARA**  
**BURGERS & BEER**

MAY 14 2004

GARY H. BLAIR  
Executive Director

CORNA FREY Deputy Chief

Warrant page 1



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EXHIBIT B





PAGE 2	<b>SHERIFF'S DEPARTMENT</b>		Case Number <b>03-5670</b>
	Santa Barbara County		
	<b>CONTINUATION SHEET</b>		
(A) LIST CONTINUATION. (B) DESCRIBE: PHYSICAL EVIDENCE, LOCATION FOUND & DISPOSITION. (C) NARRATIVE. (D) DISPOSITION.			

**A. LIST CONTINUATION:**

Relationships of named individuals:

1. Dawn Millsaps is employed by Bank of America, in their legal compliance department.

Attachments to report:

1. Five page fax transmission from Bank of America.

**B. PHYSICAL EVIDENCE:**

None.

**C. NARRATIVE:**

On Friday, 5-14-2004, I served Bank of America personnel with a copy of Search Warrant Number 5005. I was subsequently contacted by Bank of America personnel and advised the warrant was forwarded to their legal compliance personnel.

On Tuesday, 5-18-2004, I spoke with Dawn Millsaps, of the Bank of America legal compliance department. Millsaps indicated they searched their databases and found a number of Bank of America accounts, which were associated with Michael JACKSON. Millsaps indicated none of the savings/ checking accounts were active during the 2-1-2003 through 4-31-2003 time frame. I asked Millsaps to send me documentation listing the accounts and which shows the accounts were not active during the period of time requested in search warrant number 5005.

On Wednesday, 5-18-2004, I received a five page fax transmission from Dawn Millsaps. The fax transmission pertained to the banking accounts held by Michael JACKSON at Bank of America. There were two savings accounts, which were closed in January 2000. There was one Commercial loan account, [REDACTED]. Lastly, there was an interest checking account, which was opened in April 2004 and [REDACTED]. None of this material appeared pertinent to this investigation.

**D. CASE DISPOSITION:**

Attn: Records. Investigation continuing.

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## PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On August 6, 2004, I served the foregoing document SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5; DECLARATION OF ROBERT M. SANGER; MEMORANDUM OF POINTS AND AUTHORITIES on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon  
District Attorney  
1105 Santa Barbara Street  
Santa Barbara, CA 93101  
805-568-2398

- ☐ **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.
- ☒ **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at
- ☐ **BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.
- ☒ **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- Executed August 6, 2004 at Santa Barbara, California.

Bbbette J. Tryon