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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
Howard Weitzman (SBN 38723)
2 hweitzman@kwikalaw.com
Jonathan Steinsapir (SBN 226281)
3 jsteinsapir@kwikalaw.com
Aaron Liskin (SBN 264268)
4 aliskin@kwikalaw.com
808 Wilshire Boulevard, Third Floor
5 Santa Monica, California 90401
Telephone: 310.566.9800
6 Facsimile: 310.566.9850

7 Attorneys for Specially Appearing Non-Parties,
the Personal Representatives of the Estate of
8 Michael J. Jackson, deceased.

FILED
Superior Court of California
County of Los Angeles

JUN 20 2014

Sherri R. Carter, Executive Officer/Clerk
By Myrna Beltran Deputy
Myrna Beltran

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 WADE ROBSON, an individual,

13 Plaintiff,

14 vs.

15
16 DOE 1, an individual; MJJ PRODUCTIONS,
17 INC., a California corporation; MJJ
VENTURES, INC., a California corporation;
18 and DOES 4-50, inclusive,

19 Defendants.

Case No. BC 508502

Assigned the Hon. Mitchell L. Beckloff

**NOTICE OF DEMURRER AND MOTION
TO DISMISS "DOE 1" – A DECEASED
PERSON – AS A PARTY DEFENDANT IN
THIS ACTION FOR LACK OF
JURISDICTION; DEMURRER AND
MOTION TO DISMISS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT; AND DECLARATION OF
JONATHAN P. STEINSAPIR**

Date: October 1, 2014
Time: 8:30 a.m.
Dept: 51

Action Filed: May 10, 2013
Trial Date: Not Set

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**
2 **PLEASE TAKE NOTICE** that on October 1, 2014 at 8:30 a.m. or as soon thereafter as
3 the matter may be heard in Department 51 of the Los Angeles Superior Court, located at 111
4 North Hill Street, Los Angeles, California 90012, non-parties John Branca and John McClain, in
5 their capacity as Executors under the Will of Michael J. Jackson, and as personal representatives
6 of his Estate (“the Executors”), by and through their undersigned counsel, will *specially appear*
7 and move to dismiss and demur to the Second Amended Complaint against Defendant “Doe 1,” a
8 deceased person, for lack of jurisdiction over the person and over the subject matter. By filing this
9 motion and demurrer, the Executors are not making a general appearance and are not waiving any
10 rights they have under the claims filing provisions of the Probate Code, under the statute of
11 limitations of Code of Civil Procedure section 366.2, or under any other statute or source of law.

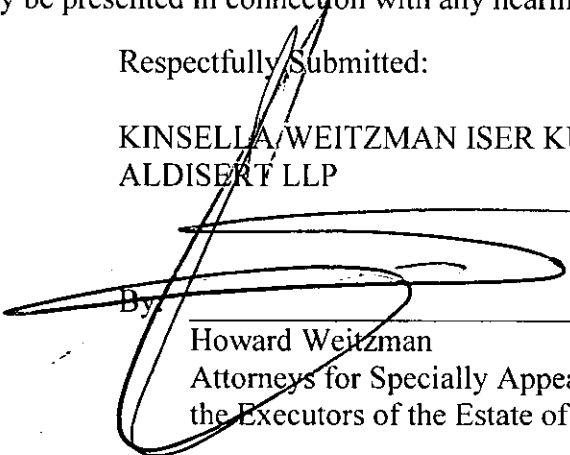
12 The demurrer and motion to dismiss are made pursuant to Code of Civil Procedure
13 § 430.10, and pursuant to the Court’s inherent power, on the ground that Defendant “Doe 1” is
14 deceased and was deceased when this action was filed. Thus, this Court has no jurisdiction to
15 entertain an action against him, and has no jurisdiction to enter any judgment against him. This
16 action must, therefore, be dismissed against him.

17 This demurrer is based upon this Notice, the attached Demurrer and Motion to Dismiss, the
18 attached Memorandum of Points and Authorities, the Declaration of Jonathan P. Steinsapir, the
19 Second Amended Complaint, any further briefing on this matter, and on such other and further
20 written and oral argument as may be presented in connection with any hearing on this matter.

21 DATED: June 20, 2014

Respectfully Submitted:

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

22
23
24
25 By 
26 Howard Weitzman
27 Attorneys for Specially Appearing Non-Parties,
28 the Executors of the Estate of Michael J. Jackson

1 DEMURRER AND MOTION TO DISMISS

2 Non-parties John Branca and John McClain, in their capacity as Executors under the Will
3 of Michael Jackson, and as personal representatives of his Estate ("the Executors"), by and
4 through their undersigned counsel, hereby specially appear and move to dismiss and demur to the
5 Second Amended Complaint against Defendant "Doe 1" a deceased person on the following
6 grounds:

7 Defendant "Doe 1" is deceased and was deceased when this action was filed. Thus, this
8 Court has no jurisdiction to entertain an action against him and has no power to enter any
9 judgment against him. Thus, this action must be dismissed against "Doe 1" pursuant to Code of
10 Civil Procedure § 430.10, subdivisions (a) and (c), and pursuant to the Court's inherent power.

11 By filing this motion and demurrer, the Executors are not making a general appearance and
12 are not waiving any rights they have under the claims filing provisions of the Probate Code, under
13 the statute of limitations of Code of Civil Procedure section 366.2, or under any other statute, case,
14 or source of law.

15 WHEREFORE, the Executors pray that this motion to dismiss be granted and that this
16 demurrer to the Second Amended Complaint be sustained without leave to amend inasmuch as it
17 names "Doe 1" as a party defendant, and that the Court grant such other and further relief as the
18 Court deems just and proper.

19 DATED: June 20, 2014

Respectfully Submitted:

20 KINSELLA WEITZMAN ISER KUMP &
21 ALDISERT LLP

22
23 By: _____

24 Howard Weitzman
25 Attorneys for Specially Appearing Non-Parties,
26 the Executors of the Estate of Michael J. Jackson
27
28

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 In this action, Wade Robson has named a deceased person as a party defendant. Although
3 named fictitiously as "Defendant Doe 1," it is clear from reading the Second Amended Complaint
4 that Doe 1 is Michael Jackson, who died on June 25, 2009, almost four years before this action
5 was filed. (Second Amended Complaint ("SAC") at ¶¶ 2-4, 7, 28-29.) No court has jurisdiction to
6 entertain an action against a deceased person. An action initiated against a party after that party
7 has died is void *ab initio* (as to that person) for lack of jurisdiction. *Walter v. National Indem. Co.*,
8 3 Cal. App. 3d 630, 634 (1970); *Conlin v. Blanchard*, 219 Cal. 632, 635 (1933). *Cf. also United*
9 *States v. Dunne*, 173 F. 254, 258 (9th Cir. 1909) ("All private criminal injuries or wrongs, as well
10 as all public crimes, are buried with the offender.") (quoting *United States v. Daniel*, 47 U.S. 13,
11 14 (1848)).

12 Michael Jackson, or "Doe 1," must therefore be dismissed from this case without
13 prejudice, and this demurrer should be sustained as to Michael Jackson without leave to amend.

14 Prior to filing this motion, and in an attempt to avoid motion practice on this very
15 straightforward issue, counsel for the Executors requested that Robson file a dismissal without
16 prejudice against "Doe 1." Counsel explained that they understood that the Second Amended
17 Complaint needed to contain allegations regarding Michael Jackson's alleged conduct (which the
18 Executors deny happened). Thus, they requested that Robson dismiss his claims against Michael
19 Jackson without prejudice to his rights against any other persons, including the Executors of the
20 Estate. (Steinsapir Decl., Ex. A.) The Executors made it clear that they did not believe such a
21 dismissal would even require an amendment to the operative complaint. (*Id.*, Ex. C.) Robson
22 declined to dismiss Michael Jackson as a defendant, "given the possible adverse effect a dismissal
23 may have on [Robson's] pleadings and discovery." (*Id.*, Ex. B.) But whatever rights Robson may
24 have against any party, those rights cannot possibly change by dismissing a "party" over whom
25 this Court has no jurisdiction. All the Executors seek is a definitive order (or dismissal by Robson)
26 confirming that Michael Jackson himself is not, and cannot be, a party to this action and that no
27 judgment may be entered against him here.

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1 The Executors have a duty to make sure that no lawsuit go forward against Michael
2 Jackson as a defendant. Given the number of persons interested in the Estate (including its
3 beneficiaries, its potential and actual creditors, and other potentially interested entities), allowing
4 the action to go forward with Michael Jackson as a party “defendant” could only cause confusion
5 for the Executors and for the Estate. It is no answer that Michael Jackson is only named
6 fictitiously as “Doe 1”—almost anyone who reads the complaint will recognize that “Doe 1” in the
7 Second Amended Complaint is Michael Jackson. (*E.g.*, SAC at ¶¶ 2-4, 7, 28-29.)

8 Although we are confident that this Court understands that naming of Michael Jackson as a
9 “defendant” is a legal nullity, that may not be the case with courts in other jurisdictions, with
10 governmental agencies, with private parties, or with other persons potentially interested in the
11 Estate. Accordingly, the Executors are specially appearing here for the sole purpose of moving to
12 dismiss Michael Jackson (or “Doe 1”) as a defendant and to demur to the Second Amended
13 Complaint insofar as it names Michael Jackson (or “Doe 1”) as a party defendant. By filing this
14 motion and demurrer, the Executors are not making a general appearance and are not waiving any
15 rights they have under the claims filing provisions of the Probate Code, under the statute of
16 limitations of Code of Civil Procedure section 366.2, or under any other source of law.

17 The Executors respectfully request that the Court dismiss Michael Jackson (or “Doe 1”) as
18 a party defendant without prejudice, and that the Court sustain this demurrer to the Second
19 Amended Complaint without leave to amend insofar as it names Michael Jackson (or “Doe 1”) as
20 a party defendant.

21 DATED: June 20, 2014

Respectfully Submitted:

22 KINSELLA WEITZMAN ISER KUMP &
23 ALDISERT LLP

24 By: 

25 Howard Weitzman
26 Attorneys for Specially Appearing Non-Parties,
27 the Executors of the Estate of Michael J. Jackson
28

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EXHIBIT A

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From: Jonathan Steinsapir
Sent: Wednesday, June 04, 2014 12:10 PM
To: 'Maryann Marzano (mmarzano@gradstein.com)'; 'Henry Gradstein (hgradstein@gradstein.com)'
Cc: Aaron C. Liskin; Howard L. Weitzman; 'Jeryll S. Cohen'
Subject: Robson v. MJJ Productions, Inc., et al.

Maryann and Henry:

In anticipation of our responses to the complaint in the Robson civil matter, we want to broach one issue with you which we think can and should be resolved informally without court intervention.

Robson has named Michael Jackson as a defendant (under the fictitious name "Doe1"). The complaint itself admits that Michael Jackson (or Doe1) is deceased (and had been for some time when Robson filed the action). And in any event, that fact is obviously judicially noticeable. The law cannot be more well established that no court in this state (or anywhere else I am aware of) has jurisdiction to entertain a lawsuit seeking a judgment against a dead person. For just some examples, see *Walter v. National Indem. Co.*, 3 Cal. App. 3d 630, 634 (1970) and *Conlin v. Blanchard*, 219 Cal. 632, 635 (1933). Accordingly, we plan to move to dismiss Doe1 as the court has no jurisdiction to entertain an action against a dead person.

The complaint as written now generally refers to Michael Jackson as DECEDENT, or as "Doe1", and the complaint makes it quite clear what you are accusing him of doing wrong (as opposed to the Corporate Defendants), and we understand why the complaint makes these references. But *naming* Michael Jackson as *an actual party-defendant* is inappropriate in light of very well established precedent in the state and federal courts, and also creates ambiguity in the complaint given various references to "Defendants" globally. Simply put, it would be an utter waste of ours and the court's resources to have to file a motion on this very straightforward issue.

We understand that you will attempt, if and when appropriate, to substitute the personal representatives of the Estate of Michael J. Jackson as party defendants. Indeed, you have specifically named them in the complaint as Doe4 and Doe5. A dismissal of Doe1 will not affect Robson's rights, if he has any, against the personal representatives of the Estate for the alleged conduct of Michael Jackson.

There may be some difficult legal issues in this case, but this is not one of them. Accordingly, we ask that you simply dismiss Doe1 without prejudice. Please let us know if you will agree to do so by the end of the week. If we do not hear from you, we will prepare a motion on the issue and must reserve our rights to seek all appropriate relief in that regard. Give me a call if you want to discuss.

Thanks,
Jon

Jonathan P. Steinsapir
Kinsella Weitzman Iser Kump & Aldisert LLP
808 Wilshire Boulevard, Third Floor
Santa Monica, California 90401
Direct Dial: 310.566.9834 | Direct Fax: 310.566.9884
Main Tel: 310.566.9800 | Main Fax: 310.566.9850
Email: jsteinsapir@kwikalaw.com
website: <http://www.kwikalaw.com/>

EXHIBIT A

EXHIBIT B

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From: Maryann Marzano <mmarzano@gradstein.com>
Sent: Friday, June 06, 2014 9:58 AM
To: Jonathan Steinsapir; Henry Gradstein
Cc: Aaron C. Liskin; Howard L. Weitzman; 'Jeryll S. Cohen'
Subject: RE: Robson v. MJJ Productions, Inc., et al.
Attachments: image001.png

Dear Jonathan,

We have had an opportunity to review your e-mail and the cases you have cited below.

However, we are unclear as to why you are choosing to raise this issue of Doe 1 now. We are well aware that any claims against Michael Jackson need to be made against the estate; hence the probate action. We also realize that the Court has no jurisdiction over the deceased, and we have no intention of fruitlessly naming Jackson as a defendant in the civil action. Having said that, we are reluctant to dismiss the Doe 1 defendant given the possible adverse effect a dismissal may have on our pleadings and discovery.

Certainly we are open to addressing your concerns via a stipulation or other means. Please let us know your thoughts.

Maryann

Maryann R. Marzano, Esq.
Partner
Gradstein & Marzano, P.C.
6310 San Vicente Boulevard, Suite 510
Los Angeles, California 90048
(323) 776-3100 | Cell: (310) 991-8924
Email: mmarzano@gradstein.com



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From: Jonathan Steinsapir [<mailto:JSteinsapir@kwikalaw.com>]
Sent: Wednesday, June 4, 2014 12:10 PM
To: Maryann Marzano; Henry Gradstein
CC: Aaron C. Liskin; Howard L. Weitzman; 'Jeryll S. Cohen'
Subject: Robson v. MJJ Productions, Inc., et al.

EXHIBIT B

Maryann and Henry:

In anticipation of our responses to the complaint in the Robson civil matter, we want to broach one issue with you which we think can and should be resolved informally without court intervention.

Robson has named Michael Jackson as a defendant (under the fictitious name "Doe1"). The complaint itself admits that Michael Jackson (or Doe1) is deceased (and had been for some time when Robson filed the action). And in any event, that fact is obviously judicially noticeable. The law cannot be more well established that no court in this state (or anywhere else I am aware of) has jurisdiction to entertain a lawsuit seeking a judgment against a dead person. For just some examples, see *Walter v. National Indem. Co.*, 3 Cal. App. 3d 630, 634 (1970) and *Conlin v. Blanchard*, 219 Cal. 632, 635 (1933). Accordingly, we plan to move to dismiss Doe1 as the court has no jurisdiction to entertain an action against a dead person.

The complaint as written now generally refers to Michael Jackson as DECEDENT, or as "Doe1", and the complaint makes it quite clear what you are accusing him of doing wrong (as opposed to the Corporate Defendants), and we understand why the complaint makes these references. But *naming* Michael Jackson as *an actual party-defendant* is inappropriate in light of very well established precedent in the state and federal courts, and also creates ambiguity in the complaint given various references to "Defendants" globally. Simply put, it would be an utter waste of ours and the court's resources to have to file a motion on this very straightforward issue.

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There may be some difficult legal issues in this case, but this is not one of them. Accordingly, we ask that you simply dismiss Doe1 without prejudice. Please let us know if you will agree to do so by the end of the week. If we do not hear from you, we will prepare a motion on the issue and must reserve our rights to seek all appropriate relief in that regard. Give me a call if you want to discuss.

Thanks,
Jon

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website: <http://www.kwikalaw.com/>

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EXHIBIT C

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11/14/14

From: Jonathan Steinsapir
Sent: Friday, June 06, 2014 2:18 PM
To: 'Maryann Marzano'; 'Henry Gradstein'
Cc: Aaron C. Liskin; Howard L. Weitzman; 'Jeryll S. Cohen'; 'Matt Slater (mslater@gradstein.com)'
Subject: RE: Robson v. MJJ Productions, Inc., et al.

Maryann:

We are raising the issue now because the first formal response to Robson's allegations in the civil action is due on June 20. The personal representatives of the Estate of Michael Jackson have a duty to make sure that the rights of the creditors and beneficiaries of the Estate are not adversely affected by invalid legal actions. A lawsuit purporting to name Michael Jackson as a party-defendant is not valid and we have a duty to make sure that it does not go forward in any manner.

Since you recognize that Michael Jackson/Doe1 is not a proper party-defendant to the case, we are not sure what the hesitation is as to dismissing him. A simple dismissal without prejudice will address this straightforward issue. As I said, the pleadings would not need to be changed to address this particular issue. Our response date for the Corporate Defendants would not need to be changed. Discovery will not be affected: the alleged facts are the alleged facts and Robson's discovery rights are whatever they are in light of those allegations. Keeping a "party" in the case as a defendant who everyone acknowledges should not be a party is not going to change the scope of discovery or anything else. It could only cause confusion.

We had hoped not to have to prepare on a motion on this issue, but it appears that we are going to have to. Let us know if you reconsider.

Thanks.

Jonathan P. Steinsapir
Kinsella Weitzman Iser Kump & Aldisert LLP
808 Wilshire Boulevard, Third Floor
Santa Monica, California 90401
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Email: jsteinsapir@kwikalaw.com
website: <http://www.kwikalaw.com/>

From: Maryann Marzano [mailto:mmarzano@gradstein.com]
Sent: Friday, June 06, 2014 9:58 AM
To: Jonathan Steinsapir; Henry Gradstein
Cc: Aaron C. Liskin; Howard L. Weitzman; 'Jeryll S. Cohen'
Subject: RE: Robson v. MJJ Productions, Inc., et al.

Dear Jonathan,

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However, we are unclear as to why you are choosing to raise this issue of Doe 1 now. We are well aware that any claims against Michael Jackson need to be made against the estate; hence the probate action. We also realize that the Court has no jurisdiction over the deceased, and we have no intention of fruitlessly naming Jackson as a defendant in the civil action. Having said that, we are reluctant to dismiss the Doe 1 defendant given the possible adverse effect a dismissal may have on our pleadings and discovery.

Certainly we are open to addressing your concerns via a stipulation or other means. Please let us know your thoughts.

Maryann

Maryann R. Marzano, Esq.

Partner

Gradstein & Marzano, P.C.

6310 San Vicente Boulevard, Suite 510

Los Angeles, California 90048

(323) 776-3100 | Cell: (310) 991-8924

Email: mmarzano@gradstein.com



Gradstein & Marzano

A Professional Corporation

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From: Jonathan Steinsapir [mailto:JSteinsapir@kwikalaw.com]

Sent: Wednesday, June 4, 2014 12:10 PM

To: Maryann Marzano; Henry Gradstein

Cc: Aaron C. Liskin; Howard L. Weitzman; 'Jeryll S. Cohen'

Subject: Robson v. MJJ Productions, Inc., et al.

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In anticipation of our responses to the complaint in the Robson civil matter, we want to broach one issue with you which we think can and should be resolved informally without court intervention.

Robson has named Michael Jackson as a defendant (under the fictitious name "Doe1"). The complaint itself admits that Michael Jackson (or Doe1) is deceased (and had been for some time when Robson filed the action). And in any event, that fact is obviously judicially noticeable. The law cannot be more well established that no court in this state (or anywhere else I am aware of) has jurisdiction to entertain a lawsuit seeking a judgment against a dead person. For just some examples, see *Walter v. National Indem. Co.*, 3 Cal. App. 3d 630, 634 (1970) and *Conlin v. Blanchard*, 219 Cal. 632, 635 (1933). Accordingly, we plan to move to dismiss Doe1 as the court has no jurisdiction to entertain an action against a dead person.

The complaint as written now generally refers to Michael Jackson as DECEDENT, or as "Doe1", and the complaint makes it quite clear what you are accusing him of doing wrong (as opposed to the Corporate Defendants), and we understand why the complaint makes these references. But *naming* Michael Jackson as *an actual party-defendant* is inappropriate in light of very well established precedent in the state and federal courts, and also creates ambiguity in the complaint given various references to "Defendants" globally. Simply put, it would be an utter waste of ours and the court's resources to have to file a motion on this very straightforward issue.

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There may be some difficult legal issues in this case, but this is not one of them. Accordingly, we ask that you simply dismiss Doe1 without prejudice. Please let us know if you will agree to do so by the end of the week. If we do not hear from you, we will prepare a motion on the issue and must reserve our rights to seek all appropriate relief in that regard. Give me a call if you want to discuss.

Thanks,
Jon

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, CA 90401.

On June 20, 2014, I served true copies of the following document(s) described as **NOTICE OF DEMURRER AND MOTION TO DISMISS "DOE 1" – A DECEASED PERSON – AS A PARTY DEFENDANT IN THIS ACTION FOR LACK OF JURISDICTION; DEMURRER AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; AND DECLARATION OF JONATHAN P. STEINSAPIR** on the interested parties in this action as follows:

Henry Gradstein, Esq.
Maryann R. Marzano, Esq.
Gradstein & Marzano, P.C.
6310 San Vicente Boulevard, Suite 510
Los Angeles, CA 90048

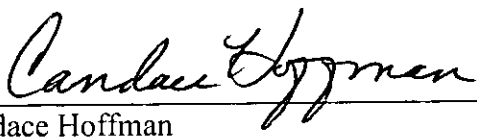
Attorneys for Wade Robson
Tel: 323-302-9488
Fax: 323-931-4990
hgradstein@gradstein.com
mmarzano@gradstein.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump & Aldisert LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a courtesy copy of the document(s) to be sent from e-mail address choffman@kwikalaw.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed above or on the attached Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 20, 2014, at Santa Monica, California.


Candace Hoffman