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Services, Inc.; Daniel Alan Dunigan (erroneously sued and served as David Alan Dunigan);  
9 Kenneth R. Seybold; Matthew James Butler and Salvatore Meo

10  
11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF RIVERSIDE**

13  
14 FRANCOIS G. CHOQUETTE,  
15 Plaintiff,  
16 vs.

CASE NO. RIC 538634

Assigned for All Purposes to the  
Honorable Sharon J. Waters

17 CHURCH OF SCIENTOLOGY  
18 INTERNATIONAL, a California corporation;  
BUILDING MANAGEMENT SERVICES, a  
19 California corporation; DAVID ALAN  
20 DUNIGAN, an individual; KENNETH R.  
21 SEYBOLD, an individual; MATTHEW JAMES  
BUTLER, an individual; SALVATORE MEO, an  
22 individual; and DOES 1 through 20, inclusive,  
23 Defendants.

**NOTICE OF HEARING ON MOTION  
TO COMPEL DEPOSITION OF  
DONALD MYERS**

Date: 8-20-10  
Time: 9:00 a.m.  
Dept: 2

24 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on August 20, 2010, at 9:00 a.m. in Department 2 of the  
26 Riverside Superior Court, located at 4050 Main Street, Riverside, CA 92507, Defendants Church  
27 of Scientology International, Inc.; Building Management Services, Inc.; Daniel Alan Dunigan  
28

1 (erroneously sued and served as David Alan Dunigan); Kenneth R. Seybold; Matthew James  
2 Butler and Salvatore Meo's Motion to Compel the Deposition of Donald Myers will be heard.

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**LESTER & CANTRELL, LLP**



Dated: July 15, 2010

BY: \_\_\_\_\_

Mark S. Lester  
David Cantrell  
&

**MOXON & KOBRIN**  
Kendrick L. Moxon

Attorneys for Defendants, CHURCH OF  
SCIENTOLOGY INTERNATIONAL,  
INC.; BUILDING MANAGEMENT  
SERVICES, INC.; DANIEL ALAN  
DUNIGAN (ERRONEOUSLY SUED  
AND SERVED AS DAVID ALAN  
DUNIGAN); KENNETH R. SEYBOLD;  
MATTHEW JAMES BUTLER AND  
SALVATORE MEO

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Francois Choquette's complaint has alleged a battery occurred against him on  
4 October 26, 2008, and claims that Defendant Church of Scientology International, Inc. took  
5 actions in Los Angeles County to prevent him from protesting. Third party witness Donald  
6 Myers is an associate of Choquette as members of an anti-religious hate group which calls itself  
7 "Anonymous." Its members typically wear chilling masks in self described "raids" upon  
8 Churches during which they threaten, harass and bait church-goers. Mr. Myers is a key witness  
9 in this case because: (1) there are direct allegations in the complaint concerning Mr. Myers; (2)  
10 he is a witness to acts in Los Angeles alleged in the complaint; (3) he has knowledge respecting  
11 Plaintiff's alleged damages; and (4) he was given important video recordings of the witnesses to  
12 the incident by the plaintiff and other members of their organization.

13 Mr. Myers was served with a deposition subpoena, but the deposition was continued  
14 several times at his request or at the request of his former counsel. Mr. Myers agreed to appear  
15 at his deposition on May 28, 2010, confirmed the morning thereof when he called defense  
16 counsel and indicated he would be late. Mr. Myers arrived at the deposition two and one-half  
17 hours late and then, after just a few minutes, refused to answer questions and left the deposition  
18 proceeding. In the few minutes that Myers did testify, he admitted he helped Plaintiff destroy  
19 evidence by editing a videotape so that it did not cast Plaintiff in a negative light.

20 Defendants' counsel would not have retained a videographer and court reporter or  
21 appeared at the deposition, but for Mr. Myers' assurances that he would appear and testify.  
22 Defendants accordingly seek an order requiring Mr. Myers to appear at his deposition within ten  
23 days and for the imposition of monetary sanctions to cover the costs incurred by Defendants  
24 during the first round of Mr. Myers' deposition (attorney's fees, court reporter fees, and  
25 videographer fees). These fees total \$7,230.91.

26 **II. STATEMENT OF FACTS**

27 Plaintiff's complaint alleges, among other things, that he was battered on October 26,  
28 2008. Defendants deny any wrongdoing. Plaintiff is a member of the group "Anonymous,"

1 which among other things, engages in acts its members refer to as “raids” upon Churches of  
2 Scientology (Ex. L, Curtis Deposition at p. 9:15) and other acts of harassment. During the raids,  
3 plaintiff and his associates generally wear a white “vendetta” mask or other disguises. (Moxon  
4 Declaration Ex. M) Plaintiff was trespassing on property belonging to the Church of  
5 Scientology International and acting in a hostile manner when he was the subject of a citizen’s  
6 arrest by Church security guards.

7 In his original complaint, Plaintiff alleged that the incident was “captured upon numerous  
8 video-audio and still camera equipment.” (Complaint at ¶ 59.) Early in the discovery process  
9 Plaintiff produced a copy of the so-called video of this incident. (Cantrell Dec. ¶ 2.) Upon a  
10 review of the video, Defendants found that the video was highly edited and many key parts of  
11 the video had been removed. (Cantrell Dec. ¶ 2.) In December, 2009, Defendants took the  
12 deposition of Plaintiff. (Cantrell Dec. ¶ 2.) During the deposition Plaintiff acknowledged that  
13 the video had been edited and that his associate Donald Myers had done the editing. (Cantrell  
14 Dec. ¶ 2.) Mr. Myers is a frequent participant with plaintiff in his Anonymous activities, and  
15 was the subject of a criminal conviction at the same location for property damage during one of  
16 the “raids.” (Moxon Dec. ¶ 4.)

17 Plaintiff’s complaint also alleges that his constitutional rights have somehow been  
18 violated during protests that have occurred in Hollywood, California. Prior to appearing for his  
19 deposition, Mr. Myers produced several gigabytes of videos that showed he was present when  
20 Plaintiff appeared in Hollywood. (Cantrell Dec., ¶5.)

21 Defendants noticed the deposition of Mr. Myers so that they could inquire into several  
22 areas, including the editing of the video tape of October 26, 2008, and Mr. Myers’ witnessing of  
23 other events alleged in the Complaint, plaintiff’s alleged damages, and other elements of the  
24 claims and defenses regarding plaintiff’s knowledge that he was intentionally trespassing.  
25 (Cantrell Dec. ¶ 3.)

26 The deposition was originally scheduled to occur on March 18, 2010. (Cantrell Dec. ¶ 3,  
27 Exh. “A”.) The deposition was subsequently rescheduled to April 28, 2010. (Cantrell Dec. ¶ 3,  
28 Exh. “B”.) Thereafter, Mr. Myers’ counsel, Graham Berry, confirmed the deposition for that

1 date. (Cantrell Dec. ¶ 3, Exh. "C".) Mr. Berry subsequently withdrew from representing Mr.  
2 Myers. (Cantrell Dec. ¶ 3.) On April 22, 2010, Mr. Myers acknowledged that he would be  
3 present for his deposition. He also stated he would be producing 27 gigabytes of data, videos  
4 and photos. (Cantrell Dec. ¶ 4, Exh. "D".) Recognizing it would take quite some time to review  
5 the 27 gigabytes of material, Defendants counsel suggested that the production occur on April  
6 28, and the deposition be continued a short period of time in order to allow Defendants to  
7 review the information "so that no time is wasted on the day of your deposition." (Cantrell  
8 Dec. ¶ 4, Exh. "E".) Mr. Myers refused, and indicated that he would produce all of the  
9 documents on April 28, 2010, and was "willing to stay all day if necessary." (Cantrell Dec., ¶ 4,  
10 Exh. "E".)

11 Rather than causing undue delay while reviewing the documents at deposition,  
12 Defendants withdrew the subpoena for Mr. Myers and served two new ones: One for document  
13 production on May 20, 2010 and one for deposition on May 26, 2010. (Cantrell Dec. ¶ 5, Exh.  
14 "F".) After some discussions with Mr. Myers regarding the deposition timing, the parties  
15 agreed that the deposition would go forward on May 28, 2010. (Cantrell Dec. ¶ 5, Exh. "G".)  
16 Although the May 28, 2010, deposition was scheduled at 10:00 a.m., Mr. Myers contacted  
17 Defendants and asked if he could appear at noon on May 28, 2010. (Cantrell Dec. ¶ 5, Exh.  
18 H".)

19 On May 28, 2010, Defendants' counsel were present at the site of the deposition at  
20 11:00 a.m. (Cantrell Dec. ¶ 7.) One of the lawyers, Kendrick Moxon, was required to travel  
21 from Los Angeles County. Defendants also hired a court reporter and a videographer, and are  
22 required to pay those service providers. (Cantrell Dec. ¶ 8.) Late in the morning of May 28,  
23 2010, after Mr. Moxon and a paralegal were enroute to the deposition, Mr. Myers telephoned  
24 indicating he was coming to the deposition, but would not arrive until approximately 2:00 p.m.  
25 (Cantrell Dec., ¶ 8.) By the time Mr. Myers called it was too late to modify the schedule for the  
26 court reporter or the lawyers. (Cantrell Dec., ¶ 8.)

27 Despite Mr. Myers' promise to arrive at 2:00 p.m., he arrived at approximately 2:35 p.m.  
28 (Cantrell Dec., ¶ 8.) The deposition began almost immediately. (Cantrell Dec., ¶ 8.) Within

1 about 10 minutes Mr. Myers indicated that he planned to leave the deposition. (Cantrell Dec.,  
2 ¶8.) Soon thereafter, following some preliminary questioning, Mr. Myers actually did leave the  
3 deposition and refused to answer further questions. (Cantrell Dec., ¶ 8.) He was informed  
4 before leaving that he would be subject to a motion to compel and that defendants would seek  
5 their fees and costs for the failed deposition.

6 **III. LEGAL ARGUMENT**

7 **A. An Order Compelling Donald Myers' Deposition Is Warranted.**

8 California Code of Civil Procedure section 2025.450 authorizes a party to seek a court  
9 order compelling a witness to attend deposition. As is set forth above and in the Declaration of  
10 David Cantrell, Mr. Myers' deposition was properly noticed by Defendants. Defendants'  
11 counsel attempted to informally resolve the matter after Mr. Myers' departure, by sending a  
12 meet and confer letter, but he declined to engage in a further meet-and-confer. (Cantrell Dec, ¶  
13 8). Attached hereto as Exhibit "N" is a true and correct copy of my meet and confer letter to  
14 Mr. Myers.

15 Mr. Myers' deposition has been continued several times. Mr. Myers agreed in writing to  
16 appear on May 28, 2010. (Cantrell Dec., ¶ 6.) Mr. Myers then showed up several hours late and  
17 refused to answer more than a few questions. (Cantrell Dec., ¶ 8.) He knew at the time he  
18 scheduled the deposition that the notice was set for both stenographic and video recording.  
19 (Cantrell Dec., Ex. G.) Nevertheless, he failed to warn anyone prior to his arrival on May 28,  
20 2010, that he would refuse to sit for more than a few minutes of questioning. (Cantrell Dec., ¶  
21 8.)

22 There is no substantial justification for Mr. Myers' failure to inform the defendants that  
23 he intended to leave the deposition thus sparing them the cost and expense of attending  
24 themselves, no justification for his departure, and no justification for his continued refusal to  
25 attend his deposition. The court should accordingly compel Mr. Myers to attend the deposition  
26 pursuant to Code of Civil Procedure § 2025.450.

27 Mr. Myers' deposition is necessary. As is set forth above, there are videos depicting  
28 some of the incidents in question in this case. Plaintiff testified at his deposition that Mr. Myers

1 helped him edit and modify these videos, and Mr. Myers is in the chain of custody of the videos  
2 of apparently each of the “Anonymous” witnesses to the event. (Cantrell Dec., ¶ 2.) Mr. Myers  
3 agreed at his deposition that he helped Plaintiff modify some of those videos. (Cantrell Dec.,  
4 Ex. I.) Mr. Myers even admitted that he did this because some of the videos cast Plaintiff in a  
5 negative light. (Cantrell Exh. I.) In addition, Mr. Myers has been present at the Church’s  
6 facility in Los Angeles on a number of occasions engaged in raids therein with plaintiff.  
7 (Cantrell Dec., ¶9.) Testimony in these areas is relevant because Plaintiff has alleged in the  
8 complaint that the Church has taken action to prevent him and Mr. Myers’ protesting activity in  
9 Los Angeles . While it is clear Mr. Myers does not wish to sit for deposition, it is equally clear  
10 that there are a number of facts within his personal knowledge that are the subject of this  
11 litigation. On this basis, there is no substantial justification for Mr. Myers to refuse to sit for  
12 deposition.

13 **B. Defendants are Entitled to Sanctions Against Mr. Myers.**

14 Code of Civil Procedure section 2025.450(c)(1) provides that: if a motion to compel  
15 deposition is granted “the court *shall* impose a monetary sanction...in favor of the party who  
16 noticed the deposition and against the deponent” unless the court finds that the deponent acted  
17 with substantial justification. (Emphasis added.) Additionally, Code of Civil Procedure  
18 §2023.030 allows the court to impose a monetary sanction against a party for misuse of the  
19 discovery process. Such a misuse of the discovery process has been deemed to be a failure to  
20 submit to an authorized method of discovery (deposition) or unsuccessfully opposing a motion  
21 to compel without substantial justification (Code Civ. Proc. §2023.010(d), (h).)

22 As shown in the accompanying Declarations of David Cantrell and Kendrick Moxon,  
23 Defendants will incur \$7,230.91 due to Mr. Myers’ refusal to proceed with his deposition.  
24 (Cantrell Declaration, ¶10-12; Moxon Dec. ¶ 4.) This amount is made up of (1) attorney’s fees  
25 wasted at the failed deposition (\$3,900); (2) Court Reporter and videographer fees from the  
26 failed deposition (\$440.91); and (3) attorney’s fees and costs incurred in bringing this motion  
27 (\$2,890). Defendants therefore request that this court order Mr. Myers to pay Defendants  
28 \$7,230.91 as a result of his abuse of the discovery process.

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RIVERSIDE, CALIFORNIA 92507

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**IV. CONCLUSION**

Based on the foregoing, Defendants respectfully request that this court issue an order compelling Mr. Myers to attend his deposition within ten (10) days of the hearing on this motion. Defendants further request that this court order Mr. Myers to pay Defendants' reasonable fees and expenses of \$7,230.91.

**LESTER & CANTRELL, LLP**

Dated: July 13, 2010

BY: 

Mark S. Lester  
David Cantrell

&

**MOXON & KOBRIN**  
Kendrick L. Moxon

Attorneys for Defendants, CHURCH OF  
SCIENTOLOGY INTERNATIONAL,  
INC.; BUILDING MANAGEMENT  
SERVICES, INC.; DANIEL ALAN  
DUNIGAN (ERRONEOUSLY SUED  
AND SERVED AS DAVID ALAN  
DUNIGAN); KENNETH R. SEYBOLD;  
MATTHEW JAMES BUTLER AND  
SALVATORE MEO

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**DECLARATION OF DAVID CANTRELL**

I, David Cantrell, declare:

1. I am a member of the law firm Lester & Cantrell, LLP, attorneys in this action for Defendants, Church of Scientology International, Inc., Building Management Services, Inc., Daniel Alan Dunigan (erroneously sued and served as David Alan Dunigan), Kenneth R. Seybold, Matthew James Butler and Salvatore Meo (“Defendants”) I have personal knowledge of the following facts and am competent to testify thereto.

2. Plaintiff’s complaint alleges, among other things, that he was battered on October 26, 2008, by Defendants. Defendants dispute this allegation and assert that Plaintiff was trespassing and acting in a hostile manner when he was the subject of a citizen’s arrest. Plaintiff claimed in his complaint that the incident was “captured upon numerous video-audio and still camera equipment.” Early in the discovery process our office took the deposition of Plaintiff and required that he produce various documents at his deposition. Plaintiff produced a copy of a video that captured some of the events of October 26, 2008. Upon reviewing the video, it appeared to me that it was edited and many of the parts had been removed. For instance, there is a portion of time in the video in which the audio does not match what is occurring on screen. Based on this review, at deposition we inquired of Plaintiff whether or not the video had been edited, and he indicated that it had. Attached to Defendant’s evidence as Exhibit “A” to this declaration is a copy of the relevant portions of the pages of Plaintiff’s deposition regarding the editing of this video. Mr. Choquette acknowledged during his deposition that the video was edited by Donald Myers. (Exhibit A, page65, 66, 171-173, 187-188.)

3. Based on Plaintiff’s statements and allegations in his complaint concerning Mr. Myers, our office set the deposition of Mr. Myers. The deposition was originally scheduled to occur on March 18, 2010. (Attached to Defendant’s Evidence as Exhibit “B” is a true and correct copy of the first subpoena served on Mr. Myers. Shortly after the service of the original deposition subpoena, the deposition was rescheduled to April 28, 2010. Attached to Defendant’s Evidence as Exhibit “C” is a true and correct copy of the Notice of Continuance of Deposition. Thereafter, I received contact from Mr. Myers’ lawyer, Graham Berry. During that

1 contact Mr. Berry confirmed the deposition would occur on April 28, 2010. Attached hereto as  
2 Exhibit "D" is a true and correct copy of the e-mail I received from Mr. Berry in this regard.  
3 Mr. Berry subsequently contacted our office and indicated he was withdrawing from  
4 representing Mr. Myers.

5 4. On April 22, 2010, Mr. Myers acknowledged that he would be present for his  
6 deposition on April 28, 2010. He also indicated that he would be producing 27 gigabytes of  
7 data, videos and photos. Attached to Defendant's Evidence as Exhibit "E" is a true and correct  
8 copy of the correspondence I received from Mr. Myers in this regard. Recognizing it would  
9 take several hours to review 27 gigabytes of materials, I suggested to Mr. Myers that the  
10 document production occur on April 28, and that the deposition be continued for a short period  
11 of time in order to allow Defendants to review the information so that Mr. Myers time was not  
12 wasted. Attached to Defendant's Evidence as Exhibit "F" is a true and correct copy of an e-  
13 mail I sent to Mr. Myers. Mr. Myers refused this arrangement and indicated he would produce  
14 all of the documents on April 28, 2010, and was "willing to stay all day if necessary." (See  
15 Exhibit "E".)

16 5. Rather than causing undue delay while reviewing the documents at deposition,  
17 Defendants withdrew the subpoena for Mr. Myers and served two new ones: One for document  
18 production to occur on May 20, 2010, and one for a deposition to occur on May 26, 2010.  
19 Attached to Defendant's Evidence as Exhibit "G" is a true and correct copy of the two  
20 subsequent subpoenas. Later, Mr. Myers produced several gigabytes of data, which I personally  
21 reviewed. This material included videos of the Church's property on October 26, 2008, as well  
22 as several videos of Mr. Myers and Mr. Choquette harassing members of the Church in  
23 Hollywood.

24 6. After several discussions with Mr. Myers concerning deposition timing, the  
25 parties agreed that the deposition would go forward on May 28, 2010. Attached to Defendants'  
26 Evidence as Exhibit "H" is a true and correct copy of the Notice of Deposition for that date,  
27 along with the subpoena. Although the May 28, deposition was scheduled to occur at 10:00  
28 a.m., Mr. Myers contacted me and asked if he could appear at noon on that date. We agreed

1 that this would be acceptable. Attached to Defendants' Evidence as Exhibit "I" is a true and  
2 correct copy of Mr. Myers' e-mail in this regard.

3 7. On May 28, 2010, I was present at my office for the deposition at approximately  
4 11:00 a.m. Kendrick Moxon, my co-counsel, was also present at that time. Mr. Moxon was  
5 required to travel from Los Angeles County to attend the deposition.

6 8. In addition to me and Mr. Moxon being present at the deposition, we also hired a  
7 court reporter and videographer for the deposition. Mr. Myers was provided notice that we  
8 would be hiring a court reporter and videographer when we served him with the subpoena  
9 indicating that we would take these steps. (See Exhibit "G") Despite Mr. Myers' knowledge  
10 that we would be present on that date and time with a court reporter and videographer, he  
11 telephoned my office late in the morning indicating he would not arrive until approximately  
12 2:00 p.m. By the time Mr. Myers called it was too late to modify the schedule for the court  
13 reporter, the videographer or the lawyers. Despite Mr. Myers promise to arrive at 2:00 p.m. he  
14 arrived at approximately 2:35 p.m. At that point, the deposition began almost immediately.  
15 Within a few questions, Mr. Myers indicated he planned to leave the deposition. In less than an  
16 hour Mr. Myers actually did leave the deposition and refused to answer further questions.  
17 Attached hereto as Exhibit "J" is a true and correct copy of the condensed version of the  
18 deposition of Mr. Myers. Mr. Myers' deposition testimony is necessary in this case with the  
19 relevant portions underlined. On June 11, 2010, I tried to informally resolve the issue by  
20 sending a meet and confer letter to Mr. Myers. To date, Mr. Myers has not responded to my  
21 meet and confer attempts. Attached hereto as Exhibit "N" is a true and correct copy of my June  
22 11, 2010, meet and confer letter to Mr. Myers.

23 9. In addition to the fact that Plaintiff has already provided testimony that Mr. Myers  
24 edited many of the videos at issue, Mr. Myers also appears to have been present at several  
25 protests that occurred in Hollywood, California. Mr. Choquette's complaint claims that at these  
26 protests some acts were taken that impacted Mr. Choquette's rights in this case. After  
27 reviewing Mr. Myers' document production it is very clear to me that Mr. Myers has been  
28 present with Mr. Choquette at the Hollywood facility on a number of occasions. I have met and

1 participated in the deposition of Mr. Choquette and therefore I am familiar with how he looks in  
2 a manner that is sufficient for me to identify him on the videos produced by Mr. Myers. We are  
3 seeking to complete the deposition of Mr. Myers to inquire into these and other relevant areas.

4 10. I bill my services to my client at the rate of \$300 per hour. On May 28, 2010, I  
5 billed my clients at least 6 hours to prepare for and attend the deposition of Mr. Myers. All of  
6 these fees could have been avoided had Mr. Myers informed us ahead of time that he was going  
7 to (a) show up several hours late and (b) refuse to answer questions regarding his knowledge of  
8 the facts of this case.

9 11. In addition to the attorney's fees above, my office engaged a court reporter and  
10 videographer to record the events of Mr. Myers' deposition. When we received word from Mr.  
11 Myers that he would appear several hours late, it was too late to cancel these service providers.  
12 In that regard, we have received invoices from the court reporter and the videographer. These  
13 invoices total \$440.91 and are collectively attached to Defendants' Evidence as Exhibit "K".

14 12. In addition to the time incurred above, I have spent at least 4.5 hours in preparing  
15 this motion. As indicated above, my time is billed at the rate of \$300 per hour, for a total of  
16 \$1,350 in attorney's fees in the preparation of this motion. I expect to review Mr. Myers'  
17 opposition and prepare a reply, which should take approximately 3 hours (\$900.00). In  
18 addition, I plan to attend the hearing on this matter which will take approximately 2 hours of  
19 time (\$600.00). In addition there is a \$40 filing fee for this motion. For this motion, we expect  
20 that our clients will incur \$2,890 in attorney's fees and costs.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct, and that this declaration was executed on the 13<sup>th</sup> day of July,  
23 2010, at Riverside, California.

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David Cantrell



1 business litigation, speech issues, and claims against religious entities. Based on my experience  
2 and training, \$300 per hour is a reasonably hourly rate for the time I incurred working in this  
3 matter. I expended 7 hours of time traveling to and from the deposition, waiting for Mr. Myers  
4 to appear, and briefly taking his deposition. In that regard, I request that the Court enter an  
5 award of sanctions against Mr. Myers and in favor of my clients in the amount of \$2,100.00 for  
6 the time I incurred related to this deposition.

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct. Executed this 13<sup>th</sup> day of July, 2010, at Los Angeles, California.

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Kendrick Moxon

LESTEK & CANTRELL, LLY  
1325 SPRUCE STREET, SUITE

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