IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re MARTIN M., A Person Coming Under The Juvenile Law	)	Case No. S177704
PEOPLE OF THE STATE OF CALIFORNIA Petitioner/Respondent, v. MARTIN M., Minor/Appellant	)	SUPREME COURT FILED AUG - 9 2010 Frederick K. Ohlrich Clerk Deputy

opposition

APPELLANT'S ~~REPLY~~ TO RESPONDENT'S MOTION FOR JUDICIAL NOTI CE

Fourth Appellate District, Division Two, Case No. E045714
Superior Court of San Bernardino, Case No. J220179
The Honorable Michael A. Knish

LAUREN E. ESKENAZI (No. 181285)Attorney at Law
11693 San Vicente Blvd. #510
Los Angeles, California 90049
Telephone (323) 821-7889
Fax (323) 395-0123
Attorney for Minor/Appellant Martin M.
By appointment of the Court of Appeal
under the Appellate Defenders, Inc.,
independent case system.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In Re MARTIN M., A Person Coming Under The Juvenile Law	)))	
______________________________	)	Case No. S177704
	))	
PEOPLE OF THE STATE OF CALIFORNIA	))	
Petitioner/Respondent,	))	
v.	))	
MARTIN M.,	))	
Minor/Appellant	)	
______________________________	)	

APPELLANT'S REPLY TO RESPONDENT'S MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE RONALD M. GEORGE, PRESIDING JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF STATE OF CALIFORNIA:

Appellant/Minor, Martin M., by and through his counsel Lauren E. Eskenazi, replies to Respondent's Motion for Judicial Notice. This Court should not take judicial notice of exhibits 1, 3, 8, 9, and 10 because they do not meet the criteria set for by Evidence Code section 452, subdivisions (c) and (h). In addition, where this Court finds that judicial notice is inappropriate, Appellant respectfully asks this Court to strike those portions

of Respondent's brief that improperly rely on facts outside the record or, in the alternative, strike Respondent's brief in its entirety and order that it be re-filed in compliance with California Rule of Court, rule 8.204(a)(2)(C).

DATED: August 5, 2010

Respectfully submitted,

LAUREN E. ESKENAZI
Attorney for Minor, Martin M.

TABLE OF CONTENTS

I. Introduction . . . .

II. Respondent's Argument That This Court Should Take J
1 & 8 Because They Qualify As "Official Acts" Under
452, Subdivision (c), Is Unsupported . . . .

A. "The Safe School Task Force" (Exhibit 1) Does
Act and Should Not Be Judicially Noticed. . . . .

B. The Letter From Superintendent O'Connell (Exh
As An Official Act and Should Not Be Judiciall

III. Respondent's Argument That This Court Should Take J
3, 9 & 10 Because They Constitute Facts and Propositi
Reasonably Subject To Dispute, Pursuant To Evidence
Subdivision (h), Is Misguided . . . .

A. Exhibit 3: Legislative Report On Security and Cr
California Public Schools . . . .

B. Exhibits 9 & 10: Statistical Data From The San
District and Campus Security Magazine On Crim
Campuses . . . .

IV. This Court Should Either Strike Respondent's Brief In
Portions Of Respondent's Brief Where Respondent R
Record For Which This Court Does Not Take Judicial N

V. CONCLUSION . . . .

Silverbrand v. County of Los Angeles (2009) 46 Cal.4th 106 7

Waingwright v. Sykes (1977) 433 U.S. 72 4

STATUTES

Evidence Code
section 452, subdivision (c) . . . . *passim*
section 452, subdivision (h) . . . . *passim*

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

On March 19, 2010, Respondent filed an Opening Brief on the Merits which included extensive reliance on facts outside the record.[1] Thereafter, Appellant filed a motion asking this Court to either strike Respondent's brief or, in the alternative, to compel Respondent to justify its reliance on facts outside the record. In response, Respondent filed a "Motion For Judicial Notice" asking this Court to take judicial notice of 10 separate exhibits totaling over 200 pages of information which was never presented to the trial court. With the exception of those exhibits expressly concerning legislative history (Exhibits 2, 4, 5, 6, & 7), Respondent has failed to justify judicial notice of the outside evidence it extensively relies upon in its opening brief.

As a general matter, appellate review of facts developed outside the record undermines the most basic function of a trial by usurping the reliability of the fact finding process. Factual reliability and accuracy depend on procedures unique to the trial process. The trial is the "main

---

[1] Hereinafter, "ROM" shall refer to "Respondent's Opening Brief on the Merits filed March 19, 2010. Respondent's "Motion for Judicial Notice," filed with this Court on July 21, 2010 shall hereinafter be referred to as "RM" for purposes of citation. Since Respondent omitted page numbers from its motion, the page citations to this motion correspond with

event" because it uniquely requires fact finding from a 12 member jury, a unanimous verdict, proof beyond a reasonable doubt, application of the rules of evidence, and instructions on how to weigh and consider evidence. (See generally *People v. Partida* (2005) 37 Cal.4th 428, 448 citing *Freytag v. Commissioner* (1991) 501 U.S. 868, 895 (conc. Opn. of Scalia, J.) quoting *Waingwright v. Sykes* (1977) 433 U.S. 72, 90.) As such, both the Federal and California constitutions require trial procedures which ensure "reliability of the fact finding process." (*People v. Mincey* (1992) 2 Cal.4th 408, 445 citing *Ford v. Wainwright* (1986) 477 U.S. 399, 411; *People v. Geiger* (1984) 35 Cal.3d 510, 520; *People v. Ramos* (1979) 25 Cal.3d 260, 268 [the California Constitution, Article I, section 7 and 15, guarantee a "fundamentally fair decision-making process"].) As articulated in *People v. Riser* (1956) 47 Cal.2d 566, 586, the State has no interest in convicting an accused based on the "testimony of witnesses who have not been rigorously cross – examined and thoroughly impeached as the evidence permits."

Here, Exhibits 1, 3, 8, 9 & 10 were never subjected to the fact-finding mechanisms of a trial which are in place to ensure maximum fairness and reliability. Respondent cannot now circumvent these fundamental constitutional safeguards in an attempt to try its case at the

---

the first four pages of the motion.

appellate level free from the adversarial process. Respondent is not simply asking this Court to take judicial notice of one universal indisputable fact. Rather, it has submitted, for the first time on appeal, a complex web of facts consisting of approximately 50 pages of information on a topic of great controversy: the history and scope of crime in California's public schools. Even assuming, *arguendo*, this topic is relevant to determining the legal definition of a "pubic officer," Respondent should have introduced this evidence at trial rather than introducing it at the eleventh hour, on appeal, where Appellant is powerless to rebut it. Therefore, with the exception of legislative history, this Court should decline to take judicial notice of those facts relied upon by Respondent that are outside the record on appeal.

II. Respondent's Argument That This Court Should Take Judicial Notice Of Exhibits 1 & 8 Because They Qualify As "Official Acts" Under Evidence Code Section 452, Subdivision (c), Is Unsupported.

Respondent argues that this Court should exercise its discretion to take judicial notice of Exhibits 1, 2, 4, 5, 6, 7, and 8 because each is an "official act" pursuant to Evidence Code section 452, subdivision (c). (RM 3) Appellant concedes that Exhibits 2, 4, 5, 6, and 7 are proper matters for judicial notice because they constitute legislative history for statutes relevant to this appeal. However, contrary to Respondent's assertion, Exhibits 1 and 8 do not constitute "official acts" and, therefore,

are not proper subjects of judicial notice either as a matter of law or as a matter of discretion.

A. The "Safe School Task Force Report" (Exhibit 1) Does Not Qualify as An Official Act and Should Not Be Judicially Noticed.

Respondent argues that it is appropriate for this Court to take judicial notice of the "Safe School Task Force Report" (Exhibit 1), issued jointly by the Attorney General and the State Superintendent of Public Instruction, because it is an "official publication" under Evidence Code 452, subdivision (c). (RM 3) Evidence Code section 452, subsection (c), provides as follows:

> Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:
>
> (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

Respondent suggests that any publication or report issued by the Attorney General's Office is, *ipso facto*, an "official act" under Evidence Code section 452. (RM 3) To support its argument, it relies on *People v. Crusilla* (1999) 77 Cal.App.4th 141, 147, in which the Fourth District Court of Appeal exercised its discretion to take judicial notice of an "official publication" entitled "San Ysidro Border Crossing Jurisdictional Analysis."

In *Crusilla*, the defendant was stopped and arrested at a border crossing by federal agents for drunk driving. The defendant argued that the federal agents had no jurisdiction to arrest him for a state crime on state land. (*People v. Crusilla, supra,* 77 Cal.App.4th at pp. 146-147.) On appeal, both Parties cited to "an official publication of the California Attorney General's Office, entitled San Ysidro Border Crossing Jurisdictional Analysis (rev.) June 1997. . . ." (*Id.* at p. 147.) Therefore, since the issue of judicial notice was never contested in *Crusilla*, it cannot stand for the proposition, as suggested by Respondent, that any publication issued by the Attorney's General's Office is an "official act." (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127 [cases not authority for propositions not considered].)

Moreover, it was not the official character of the publication in *Crusilla* that qualified it for judicial notice under Evidence Code section 452, subdivision (c). Rather, the Land Commission's letters attached to the publication constituted an "official act" under Government Code section 126. In this regard, Government Code section 126 requires, in part, that the State Lands Commission make a public resolution before shared jurisdiction between the federal government and the State of California can be established. (*People v. Crusilla, supra,* 77 Cal.App.4th at pp. 146-149.)

Therefore, unlike the publication at issue here, the "San Ysidro Border Crossing Jurisdictional Analysis" reflected an "official act" by the State's executive branch.

In contrast, the "Safe School Task Force Report" (Exhibit 1) does not represent an official act under Evidence Code section 452, subdivision (c). Rather, as conceded by the Report's introduction, the publication merely submits recommendations and strategies to increase the safety of California's public schools despite the fact that "Our schools are among the safest places for our children." (Exhibit 1, introductory letter) This aspirational effort, while noble, should not be confused with an "official act." The Attorney General's Office cannot render a Report an "official act" simply by deciding to publish it. As held in *Childs v. State of California* (1983) 144 Cal.App.3d 155, 162, an "official act" is not created simply because a public employee signs a declaration or document. Therefore, since respondent provides no legal authority which contextualizes the Task Force's Report as a legally operative "official act," this Court should not take judicial notice of it.

In addition, as the Courts of Appeal have long held, "the official character of a document will not make otherwise inadmissible material therein admissible." (*Love v. Wolf* (1964) 226 Cal.App.2d 378,

403; see also *Marocco v. Ford Motor Co.* (1970) 7 Cal.App.3d 84, 88.) Therefore, judicial notice is only appropriate where the item requested for judicial notice fits within a delineated category in the relevant evidence code section, its contents are relevant, and it is not used to prove the truth of a document's content. (Evid. Code, §§ 452, 459; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.Ap.4th 471, 482.) Here, the Task Force's Report fails to meet any of these criteria. First and foremost, the Report has no relevance to the issue raised on appeal: whether a campus security guard is a "public officer" under Penal Code section 148. The Report does not discuss the role of security guards at school campuses, makes no reference to Penal Code section 148, and does not discuss, let alone consider, the legal definition of a "public officer."[2]

Finally, the Task Force's Report is wrought with hearsay statements for which Respondent offers no theories of admissibility. (See *Love v. Wolf, supra,* 226 Cal.App.2d at p. 403; see also *Marocco v. Ford Motor Co., supra,* 7 Cal.App.3d at p. 88 ["While courts take judicial notice of public records, we do not take judicial notice of the truth of all matters

---

[2] In addition, even if the Report attempted to define a campus security guard as a "public officer" under Penal Code Section 148, the Report would still lack relevance because the State's Attorney General and State Superintendent of Public Instruction are not legislators and, therefore, their opinions cannot substitute for Legislative intent when construing a

stated therein. And the official character of a document will not make otherwise inadmissible material therein admissible].) Therefore, this Court should not take judicial notice of the Report because, on its face, it is inadmissible hearsay.

Moreover, this admissibility problem is compounded by the fact that the Task Force's Report was never introduced at trial and, thus, was never subject to cross examination. Consequently, the Task Force's Report's reliability is, at best, questionable and consideration of the Report for the first time on appeal compromises appellant's Sixth Amendment right to confront and cross-examine witnesses. For all these reasons, this Court should not take judicial notice of the Task Force's Report because it does not constitute an official act (only a strategy and recommendation), is irrelevant, is inadmissible hearsay, and violates Appellant's Sixth and Fourteenth Amendment rights to confront and cross examine witnesses.

B. The Letter From Superintendent O'Connell (Exhibit 8) Does Not Qualify as An Official Act and Should Not Be Judicially Noticed.

Like the Safe Schools Task Force Report (Exhibit 1), Respondent offers no theory as to why a letter from State Superintendent of Public Instruction, Jack O'Connell, is an "official act" (Exhibit 8). (RM 3)

---

statute.

Rather, it relies on a case wherein an "All County Letter" ("ACL") issued by the Department of Health Services ("DHS") was deemed an "official act" because it showed that DHS had an underground or internal policy which it acted upon in an official capacity. (*California Advocates for Nursing Home Reform (CANHR) v. Bonita* (2003) 106 Cal.App.4th 498, 503-504, 515, fn.8.) And, since DHS failed to properly promulgate its policies pursuant to the Administrative Procedure Act ("APA"), it subjected the State of California to potential liability. (*California Advocates for Nursing Home Reform (CANHR) v. Bonita* (2003) 106 Cal.App.4th 498, 503-504, 515, dn.8.)

In contrast, the letter from O'Connell is not an "official act." The letter expressly concerns the "Governor's proposals that affect kindergarten through grade twelve (K-120 education." (Exhibit 8, emphasis added.) Clearly, a mere proposal, the effect of which is unknown, cannot be an "official act." This proposal only indicates what action the superintendent desired not what action was actually taken. An "official act" is not created simply because a document is published on official stationary. (See *Childs v. State of California, supra,* 144 Cal.App.3d at p. 162; *Love v. Wolf, supra,* 226 Cal.App.2d at p. 403; *Marocco v. Ford Motor Co., supra,*7 Cal.App.3d at p. 88.)

Moreover, while the Court of Appeal found the ALC in *CANHR* to be an "official act," it still declined to take judicial notice of it. (*Id.* at 515, n. 8.) Specifically, the Court of Appeal in *CANHR* held that,

> Because the ACL was not before the trial court, we decline to take judicial notice, as requested, and the ACL is in no measure a basis of our reversal of summary judgment.

(*Ibid.*) Likewise, O'Connell's letter was not before the trial court and is inappropriate for judicial notice for that reason.

Further, like the Task Force's Report (Exhibit 1), the O'Connell letter (Exhibit 8) has no relevance to the issue raised on appeal. The effect of California's budgetary crisis on public schools has no bearing on whether a school security guard is a "public officer." As such, the legal definition of a "public officer" transcends the Governor's ability to make schools safe given California's budgetary challenges.

Therefore, this Court should not take judicial notice of the O'Connell letter (Exhibit 8) because, as a mere proposal, it does not qualify as an "official act," it was not before the trial court, and is irrelevant to the issue on appeal.

//

//

//

III. Respondent's Argument That This Court Should Take Judicial Notice Of Exhibits 3, 9 & 10 Because They Constitute Facts and Propositions That Are Not Reasonably Subject To Dispute, Pursuant To Evidence Code Section 452, Subdivision (h), Is Misguided.

A. Exhibit 3: Legislative Report On Security and Crime Prevention Strategies In California Public Schools

Respondent suggests that this Court should take judicial notice of a 50 page report prepared at the request of the State Senate Education Committee entitled "Security and Crime Prevention Strategies In California Public Schools" (Exhibit 3) because it contains "facts and propositions that are not reasonably subject to dispute and are capable of immediate and indisputable accuracy" under Evidence Code section 452, subdivision (h). To support its position, Respondent relies on *Gillum v. Johnson* (1936) 7 Cal.2d 744, 760 wherein this Court took judicial notice of the fact that, during the depression era, "unemployment for several years past has presented serious and at time very acute problems for state and national governments."

Notably, in taking judicial notice of the State's serious unemployment rates in *Gillum*, this Court did not open the door to taking judicial notice of a 50 page Legislative report containing lengthy analysis aimed at balancing the interests of many disgruntled groups. (*Gillum v.*

Johnson, supra, 7 Cal.2d at p. 760.) Rather, it took judicial notice of one simple indisputable fact: unemployment was high in 1936. Given the political nature of the Legislative Report (Exhibit 3), its length, and complexity, Respondent cannot claim the Report contains "indisputable" facts amenable to judicial notice under Evidence Code section 452, subdivision (h). This suggestion exploits section 452, which only permits consideration of facts outside the record in rare and constrained circumstances. Consequently, Respondent's effort to have this Court take judicial notice of Exhibit 3, an elaborate Legislative Report, on appeal for the first time is simply an end-run around Appellant's Sixth and Fourteenth Amendment rights to confront and cros examine witnesses as well as a fair trial.

Moreover, the Legislative Report contains many inconsistencies and does not "indisputably" support Respondent's proposition that,

> during the 1990s, despite the development of the school/law enforcement partnership and development of school safety plans, it was evident that the public schools continued to be victimized by crimes and against persons and property.

(RM 4) Contents from the Legislative Report, itself, (Exhibit 3) and material the Task Force's Report (Exhibit 1) both reveal that Respondent's position is, in fact, extremely debatable and, thus, unsuitable for judicial

notice.

Specifically, the Task Force's Report (Exhibit 1) notes that "youth violence is down in California, as it is across the nation." (Exhibit 1 of RM, Introductory Letter) This information expressly contradicts Respondent's position and is, therefore, "disputable" under subdivision (h) of Evidence Code section 452. Moreover, the "Security and Crime Prevention Strategies in California Public Schools" Report (Exhibit 3), acknowledges that the statistical data concerning the effect of prevention programs on school violence is unknown. Specifically, the Report (Exhibit 3) states, "The state has funded pilot programs in the past yet not documented outcomes to learn what worked and what did not." (Exhibit 3, p. 39.) Therefore, contrary to Respondent's position, the 50 page Legislative Report on "Security and Crime Prevention Strategies in California Public Schools" (Exhibit 3) does not provide indisputable support for the proposition that, despite the investment in crime prevention programs, public schools continue to be victimized by crimes against persons and property. (RM 4) And, like Exhibits 1 and 8, Exhibit 3 similarly relies on hearsay, compromises Appellant's Sixth and Fourteenth Amendment rights to a fair trial, and lacks relevance with regard to determining the legal definition of a "public officer." For these reasons, the

"Security and Crime Prevention Strategies in California Public Schools" (Exhibit 3) does not fall within the criteria set forth by Evidence Code section 452, subdivision (h), and this Court should not take judicial notice of it.

B. Exhibits 9 & 10: Statistical Data From The San Bernardino Unified School District and Campus Security Magazine On Crime On School Campuses.

Respondent relies on statistical data from Exhibits 9 and 10 to support its position that public schools "continue to see a rise in criminal offenses on school campuses." (ROM 17) Respondent argues that this Court should take judicial notice of the statistical data because such facts are "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (RM 4) However, in many instances statistical data is not indisputably accurate.

In *People v. Jones* (1972) 25 Cal.App.3d 776, 786 the Court of Appeal refused to take judicial notice of statistical data concerning alleged racial discrimination in the jury selection process and held that "raw statistical data without expert interpretation can be extremely misleading and has, on occasion, provoked demonstrably erroneous statements by appellate courts." The same is true here.

The statistical data relied on in *Jones* to show racial

discrimination is very similar to the statistical data relied on by Respondent to show an increase in crime at public schools because, in each instance, statistics used in this area are often manipulated by interested parties in an effort to resolve larger social problems. As a result, statistics and raw data used in these contexts are often subject to enormous dispute. In addition, like *Jones*, Respondent failed to offer expert testimony to explain how this raw data reliably shows a trend towards "a rise in criminal offenses on school campuses." (ROM 17) Expert testimony, however, should be introduced at trial where statistical methodology can be examined to best determine the reliability and meaningfulness of statistical data. Again, like Exhibits 1, 3, and 8, the statistical data in Exhibits 9 and 10 lack relevance, contain hearsay, and compromise Appellant's Sixth and Fourteenth right to confront and cross examine witnesses and to a fair trial.

Even on the face of Exhibits 9 and 10, the statistical data presented provides inconsistent evidence on whether there has been a rise in criminal offenses on school campuses. For example, statistics from the San Bernardino School District show the following decrease in the number of burglaries committed by students: 116 in 2006; 87 in 2007; and 65 in 2008. (Exhibit 9) Similarly, grand theft crimes decreased from 51 in 2006; to 43 in 2007; and; 35 in 2008. In other instances, the statistical data in Exhibit 9

shows that a consistent increasing trend in crime cannot be conclusively established. For example, battery on school property dramatically decreased from 2006 to 2007 (41 to 6), but increased from 2007 to 2008 (6 to 24). (Exhibit 9) Similarly, possession of a gun on school grounds ranged from 10 in 2006, to 12 in 2007, and 2 in 2008. (Exhibit 9) Therefore, the raw data in Exhibit 9 does not show a consistent increase in crime on school campuses and, like the raw data in *Jones*, cannot be said to be indisputable.

The statistical data in Exhibit 10 shows equally inconsistent trends. For example, like Exhibit 9 some of the raw data shows a decrease in crime rather than an increase in crime on school campuses.

> Although there was an overall decline in the victimization rates for students ages 12 to 18 at school between 1992 and 2007, there was no measurable difference in the rate of crime at school between 2004 and 2007. Between 1992 and 2007 the rate of crime for students away from school declined.

(Exhibit 10) Therefore, as the statistical data itself shows, "a rise in criminal offenses on school campuses" is <u>not</u> a matter immune from factual dispute and, therefore, should not be the subject of judicial notice under Evidence Code section 452, subdivision (h).

//

//

IV. This Court Should Either Strike Respondent's Brief In It's Entirety Or Strike The Portions Of Respondent's Brief Where Respondent Relies On Facts Outside The Record For Which This Court Does Not Take Judicial Notice.

California Rule of Court, Rule 204(a)(2)(C), requires that a brief on the merits "Provide a summary of the significant facts limited to matters in the record." (emphasis added.) Therefore, with few exceptions, an appellate court may only consider facts presented at the trial level on appeal. (See *People v. Zeth S.* (2003) 31 Cal.4th 396, 405.) As argued, *supra,* however, Respondent's opening brief includes extensive purported factual support which exceeds the scope of the normal record on appeal. (See Cal. Rules of Court, rule 8.320.) Therefore, where this Court determines that specific facts and documents relied upon in Respondent's brief are inappropriate for judicial notice, Respondent's brief should be stricken. (Cal. Rules of Court, rule 8.204(e)(2)(A)&(B).)

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court decline to take judicial notice of Exhibits 1, 3, 8, 9 and 10 attached to Respondent's Motion For Judicial Notice and, where this Court finds judicial notice is inappropriate either order those portions of Respondent's Opening brief to be stricken or strike Respondent's brief in its entirety with orders to file a new brief in full compliance with California

Rules of Court, rule 8.204(a)(2)(C).

DATED: August 5, 2010

Respectfully submitted,

LAUREN E. ESKENAZI
Attorney for Minor, Martin M.

PROOF OF SERVICE

I, the undersigned, declare that I am a resident of Los Angeles County, California; that my business address is the Law Office of Lauren E. Eskenazi, 11693 San Vicente Blvd. #510, Los Angeles, California 90049; that I am over the age of eighteen years; that I am not a party to the above-entitled action; and that I served by mail the document described herein to the following:

Deputy Attorney General Bejarano
110 W "A" Street
P.O. Box 85266
San Diego, California 92186-5266

Mr. Martin Martinez
2062 Porter Street
San Bernardino, California 92407

APPELLATE DEFENDERS, Ms. Jamie Popper
555 W. Beech St., Suite 300
San Diego, CA 92101

A copy of: **APPELLANT'S REPLY TO RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

This proof of service is executed on August 5, 2010 at Los Angeles, California. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

LAUREN E. ESKENAZI