Berhane Habte
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(310) 315-0682

Defendant Berhane Habte, in pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE

COUNTY OF LOS ANGELES, WEST BRANCH

VILLAGE TRAILER PARK, INC., etc., Plaintiffs, v. BERHANE HABTE, et al., Defendants.	Case No. 12U02139 **DEFENDANT BERHANE HABTE'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION AS TO RULING MADE SEPTEMBER 10, 2012 OVERRULING DEFENDANT'S DEMURRER TO PLAINTIFFS' MOBILEHOME RESIDENCY LAW FIRST AMENDED COMPLAINT FOR UNLAWFUL DETAINER FOR FAILURE TO PAY RENT OR QUIT AFTER THREE-DAY NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF BERHANE HABTE IN SUPPORT THEREOF** (C.C.P. § 1008(a); Civil Code § 798.56 (e); C.C.P. §§ 430.30(a), 430.40(a), 430.50(a), 430.60) Hearing Date: October 15, 2012 Time: 8:30 a.m. Dept.: S, The Honorable Judge Lawrence Cho Complaint Filed: 6/21/12, Served Improperly 6/29/12 FAC Filed 7/27/12, Improperly Served 7/30/12 (Only By Mail on Moving Party, No Proof of Service In FAC)

(Notice of Ruling on Demurrer Incorrectly States Ruling was made in Dept. G by Judge James K. Hahn)

FILED CONCURRENTLY WITH REQUEST FOR JUDICIAL NOTICE

TO THE COURT AND TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that at the time, date, and place aforementioned Defendant will and hereby does move the Court for reconsideration of the Court's Minute Order of September 10, 2012 herein, written notice of entry of which has not yet been given. In an abundance of caution in order to avoid default, Defendant is filing this Motion as soon as possible after the date given orally in open court for answer due to overruling his Demurrer. [1]

The Motion will be and is made to request the Court reconsider its overruling of Defendant's Demurrer to the First Amended Complaint ("FAC") in this case on the ground that Plaintiffs' response to arguments made in the Demurrer and in oral argument on September 10, 2012 first clarified for Defendant that Plaintiffs were arguing at the same time contradictory things that could not be lawfully argued. First they argued that the three-day notice to pay rent or quit on which the FAC is based was served on this moving Defendant as the Demurrer showed both laws on which the case is brought require, the Mobilehome Residency Law, and the local Rent Control Law. However, that assertion is contradicted by Exhibit 3 to the FAC, so the Demurrer should have been sustained without leave to amend.

The above is so because this is a case, not for termination of Defendant's tenancy with a 60-day notice on the ground he is an unlawful tenant who has no standing under the MRL, which is what the FAC added to the Complaint after Defendant's first Demurrer. Instead, this is a case based solely on failure to pay rent after service of a three-day Notice to Pay Rent or Quit, so it is a case based on a notice of termination of tenancy on the ground of failure to pay rent after a three-day notice

1 Request for Judicial Notice Exhibit A filed concurrently herewith shows the Notice served on Defendant was incorrect, at p. 1, ll. 24-25 stating his Demurrer was heard on September 5, 2012 in Department G by Judge James K. Hahn. However, as indicated in Paragraphs 2-4 of the attached Declaration in Support of this Motion, the Demurrer was actually heard on September 10, 2012 in Department S by Judge Lawrence Cho.

to pay rent or quit. Plaintiffs' counsel stated in response that the MRL allegedly did not require a resident to be served with a three-day notice to pay rent or quit when the resident was not a “lawful tenant” under the MRL, and secondly, that the three-day notice to pay rent or quit attached to the FAC was served on Defendant by posting and mailing to “All Other Residents in Possession.”

Plaintiffs' counsel gave no authority and Defendant can find none for the first claim, and the second is contradicted by Exhibit 3 to the FAC under penalty of perjury, so it cannot be denied by Plaintiffs. This Motion clarifies therefore that the FAC is about not paying rent when the FAC admits in Exhibit 3 that Plaintiffs had not served any three-day notice to pay rent or quit on Defendant BERHANE HABTE, the moving-party Defendant. However, then as a backup the claim made in court by their lawyer that they had served a three-day notice on that Defendant when their proof of service states they served it only on Michael Carlson needed to be brought to the attention of the Court by this Motion for Reconsideration and the concurrently filed Request for Judicial Notice.

This Motion will be and is made on the ground that new law not raised, or perhaps not raised in an understandable way due to Defendant's English language difficulty at the hearing on the Demurrer, shows the Demurrer should have been sustained without leave to amend, on the grounds of failure to state a cause of action and of uncertainty stated in the Demurrer. These grounds became clear to Defendant at the hearing on the Demurrer as explained herein, and therefore entitle Defendant to make this Motion for Reconsideration.

This Motion will be and is based on the pleadings and papers on file with the Court herein, the documents of which judicial notice is requested in the RJN filed concurrently herewith, the attached Memorandum of Points and Authorities and Declaration of BERHANE HABTE in support hereof, and such arguments as shall be

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allowed by the Court at the hearing on this Motion.

DATED: September 17, 2012

Respectfully submitted,

BERHANE HABTE
Defendant in pro per

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION, STATEMENT OF FACTS, AND SUMMARY OF ARGUMENT

The instant Motion for Reconsideration concerns the Court's ruling overruling Defendant's Demurrer to the FAC in this case. It is made on the ground that Plaintiffs' response to the arguments made in the Demurrer and in oral argument on the Demurrer on September 10, 2012 first clarified for Defendant that Plaintiffs were arguing that the three-day notice to pay rent or quit on which the FAC is based was served on this moving Defendant as both laws on which the case is brought require, the Mobilehome Residency Law, and the local Rent Control Law. However, that assertion is contradicted by Exhibit 3 to the FAC, so the Demurrer should have been sustained without leave to amend.

The above is so because this is a case, not for termination of Defendant's tenancy with a 60-day notice on the ground he is an unlawful tenant who has no standing under the MRL, which is what the FAC added to the Complaint after Defendant's first Demurrer. Instead, this is a case to terminate a tenancy based solely on failure to pay rent after service of a three-day Notice to Pay Rent or Quit. Plaintiffs' counsel stated in response to the argument in the Demurrer that the three-day notice was not alleged in the FAC to have been personally served—or indeed served at all—on Defendant, that the MRL allegedly did not require a resident to be served with a three-day notice to pay rent or quit when the resident was not a “lawful tenant” under the MRL. Secondly, a a fallback, counsel claimed the three-day notice to pay rent or quit attached to the FAC was served on Defendant by posting and mailing.

Plaintiffs' counsel gave no authority and Defendant can find none for the first claim, and the second is contradicted by Exhibit 3 to the FAC under penalty of perjury, so it cannot be denied by Plaintiffs. This Motion clarifies therefore that the FAC is about not paying rent when the FAC admits in Exhibit 3 that Plaintiffs had not served any three-day notice to pay rent or quit on the moving-party Defendant. However, then as

a backup the claim made in court by their lawyer that they had served a three-day notice on that Defendant when their proof of service states they served it only on Michael Carlson needed to be brought to the attention of the Court by this Motion for Reconsideration and the concurrently filed Request for Judicial Notice.

I

THE COURT MAY RECONSIDER AN ORDER AND MAY VACATE IT IF IT WAS ENTERED BY MISTAKE OR SURPRISE OF A PARTY, AND THE COURT MUST VACATE THE RULING ON DEFENDANT'S DEMURRER TO DO JUSTICE BECAUSE UNCERTAINTY RAISED AS AN ISSUE IN THE DEMURRER PREVENTED DEFENDANTS FROM REALIZING PLAINTIFFS WERE CLAIMING BOTH THAT THE THREE-DAY NOTICE WAS SERVED ON DEFENDANT, IN CONTRADICTION TO EXHIBIT 3 OF THE FAC, AND THAT IT DID NOT NEED TO BE SERVED ON DEFENDANT UNDER THE MRL, WITHOUT AUTHORITY

C.C.P. § 1008 (a) reads as follows:

> (a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. . . . . .

Here, this Motion is being made within the above time limit, in fact within five (5) days of the Court's announcement of its ruling and without any written notice thereof. Therefore, this Motion is definitely timely.

II

A PARTY IS ESTOPPED TO CONTRADICT FACTS STATED UNDER PENALTY OF PERJURY IN DOCUMENTS FILED WITH A COURT, SO EXHIBIT 3, WHICH DOES NOT CLAIM ANY ATTEMPT TO SERVE CARLSON PERSONALLY OR PERSONAL SERVICE OF CARLSON, NOR CLAIMS ANY SERVICE OF HABTE, CANNOT BE CONTRADICTED

The Court of Appeal for the First District on August 15, 2012, in Veira v. City of East Palo Alto, San Mateo County Super. Ct. No. 468259, the slip opinion for which is

filed with the Court in the concurrently filed Request for Judicial Notice ("RJN") as Exhibit B, and in the cases discussed therein, discusses the rule that a party cannot contradict facts stated in documents filed with a court. The Court states in relevant part (in a paragraph on page 10 of the Slip Opinion with page numbers added by Defendant to Exhibit B to the RJN):

> The City defendants respond that Vieira cannot create a triable issue of fact by submitting a contrary, self-serving declaration. A party opposing a motion for summary judgment cannot offer evidence that contradicts its own judicial admissions. (Visueta v. General Motors Corp. (1991) 234 Cal.App.3d 1609, 1613.) "[A] judicial admission cannot be rebutted: It estops the maker." (Uhrich v. State Farm Fire & Casualty Co.(2003) 109 Cal.App.4th 598, 613.) Here, on two separate occasions––when it filed its mechanic's liens and when it filed its complaint against the Wilsons––Vieira stated under penalty of perjury that all work for installation on the manufactured homes had been completed. Accordingly, these judicial admissions are binding and dispositive without further evidence. (See, e.g., Kurinij v. Hanna & Morton (1997) 55 Cal.App.4th 853, 870-871.) "On Summary judgment such admissions are proper and overcome evidence even when the opposing party seeks to contradict the prior admission." (Id. at p. 871.) This evidence supported the lower court's determination that the parties' objective intent was to attach the manufactured homes to the realty.

In Visueta v. General Motors Corp. (2nd Dist., 1991) 234 Cal.App.3d 1609, 1613, the issue was regarding admissions or concessions made during the course of discovery, which General Motors wanted to dispute later in its declarations regarding summary judgment. The Court stated discovery admissions govern and control over contrary declarations lodged at a hearing on a motion for summary judgment.

1. Even more so is it true in case of ruling on a demurrer that a party cannot contradict in oral argument what the pleading being objected to states under penalty of perjury. A demurrer must admit the truth of the pleading. Gressley v. Williams (2nd

Dist., 1961) 193 Cal.App.2d 636, 638-9. It cannot also be required to admit the opposite "truth" claimed by the same party at oral argument.

Plaintiffs simply cannot base a case for failure to pay rent on a three-day notice to pay rent or quit not served on the person they are attempting to evict or even shown in the FAC to have been attempted to be served on that person as required by law. The MRL requires PERSONAL service the same way the CCP requires service of a three-day notice on any tenant, and if this were a regular apartment or house tenant, the Court would surely be aware personal service of the three-day notice is required unless three attempts are made and an affidavit of those attempts is filed. No such affidavit is attached to the FAC.

Moreover, Civil Code § 798.56(a) allows eviction for nonpayment of rent not only if a three-day notice to the "homeowner"--whom the FAC does not claim is exclusively Michael Carlson, instead making claims about who signed or did not sign a rental agreement with Plaintiffs--has been served after the rent was unpaid for five (5) days, but also allows curing of the defect by others, also not referred to in the FAC as excluding Defendant HABTE. [2]

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2 Civil Code Section 798.56 (e) (1) allowing eviction for nonpayment of rent reads in relevant part as follows:

> Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided that the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. For purposes of this subdivision, the five-day period does not include the date the payment is due. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy. . . . . .
>
> (2) Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision.

Nothing is mentioned in the FAC as to serving a copy of the three-day notice to Carlson on Habte. Instead, Plaintiffs' counsel claimed at oral argument that HABTE was served by the three-day notice's being addressed to "All Other Residents in Possession" as well as to Carlson, and then by a copy of THAT being posted and mailed, apparently to "All Other Residents in Possession." No proof of service so stating is attached to the FAC. In addition, neither the FAC nor Plaintiffs' counsel was clear that even that notice was actually mailed to HABTE, even though the FAC admits Plaintiffs knew he was the

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> If the homeowner does not pay prior to the expiration of the three-day notice period, the homeowner shall remain liable for all payments due up until the time the tenancy is vacated.
>
> **(3)** Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.
>
> . . . . .

Section 1162 of the Code of Civil Procedure reads as to a residential tenant as follows:

> (a) Except as provided in subdivision (b), the notices required by Sections 1161 and 1161a may be served by any of the following methods:
>
> (1) By delivering a copy to the tenant personally.
>
> (2) If he or she is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his or her place of residence.
>
> (3) If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

only resident in possession and plaintiffs knew Carlson and the other person it refers to were not residents.

It does not help any to call HABTE, the person who was not served with either the original or a copy of the three-day notice as the MRL requires, an “unlawful tenant.” If the person is being evicted for being an unlawful tenant, the notice to evict him has to be a notice to quit, which must be served on him. A case for non-payment of rent, as this case is, simply requires far more than is alleged in the FAC of giving notice of SEVERAL PEOPLE'S rights to pay the rent and avoid eviction. The claim of Plaintiffs' counsel that no notice is required to a mere resident does not solve Plaintiffs' problem of being required to serve a “homeowner,” “a junior lienholder,” and a registered owner, none of whom the FAC states exclude HABTE. Nothing in the code section allowing eviction for non-payment of rent allows eviction of residents without notice, as Plaintiffs' counsel claims, if they are also homeowners, junior lienholders, or a registered owner.

Moreover, claiming even a mere resident can be evicted if the homeowner does not pay the rent without the resident being allowed to cure the defect, as Plaintiffs' counsel claimed to the Court at oral argument without giving any authority for the claim, is belied by the fact that the three-day notice itself in Exhibit 2 is addressed to residents in possession as well as to some named person with whom Plaintiffs admit they had a rental agreement. Nothing claimed at oral argument or found in law since then, cures the problems of lack of lawful notice for a non-payment of rent case raised in the Demurrer.

CONCLUSION

For all the reasons given above, the Court should reconsider its Minute Order of September 10, 2012, vacate it, and sustain Defendant's Demurrer to the FAC in this case without leave to amend. This is because on the authority given above and in Exhibit B to the RJN filed concurrently herewith, Plaintiffs cannot amend to state a cause of action for eviction based on new and different facts from those stated in the

Complaint and the FAC, which both have Exhibit 3 attached stating the three-day notice was served only on Michael Carlson, even though the three-day notice itself attached to each pleading as Exhibit 2 states it is addressed also to "All Other Residents in Possession."

Plaintiffs cannot contradict the evidence they submitted under penalty of perjury, so if they want to evict based on non-payment of rent, they must serve a three-day notice to pay rent or quit on the defendant they seek to evict, not someone else. Otherwise, they could if they believe they can justify it under some law, try to evict Defendant based on their claim he is an unlawful tenant. In any event, they cannot amend the current complaint to state a different ground for eviction and base it on a notice they also did not serve on Defendant.

DATED: September 17, 2012

Respectfully submitted,

BERHANE HABTE
Defendant in pro per

DECLARATION OF BERHANE HABTE IN SUPPORT OF MOTION FOR RECONSIDERATION AND VACATING MINUTE ORDER OF SEPTEMBER 10, 2012

BERHANE HABTE declares as follows:

1. I am a Defendant in this Action. I declare the following of my own personal knowledge, and if called as a witness I could and would testify competently as stated herein.

Prior Application to the Court

2. On or about July 5, 2012 I filed a Demurrer to the Complaint in this case, on grounds of failure to state a cause of action and uncertainty, in this Action. Plaintiffs then filed a First Amended Complaint ("FAC"), which while it added some statements about me, did not solve any of the problems indicated in the Demurrer to the Complaint. I therefore filed a Demurrer to the FAC on or about August 2, 2012. That Demurrer first came on for hearing on September 5, 2012, the first date the Court Clerk told me was available giving 26 days for mailed notice of the hearing, in Department G of this Court.

3. The matter came on for hearing on that date in front of a Commissioner Ford, whose first name I do not know. Since I did not stipulate to have a commissioner hear the demurrer, the hearing on it was continued to September 10, 2012 in front of Judge Lawrence Cho.

4. The Demurrer was heard and overruled by Judge Lawrence Cho at 8:30 a.m. in Department S of this Court on September 10, 2012. No reason was given.

New Law and Facts

5. I argued at the oral argument that the three-day notice to pay rent or quit on which the FAC is based was not served on me as both laws on which the case is brought require, the Mobilehome Residency Law, and the local Rent Control Law. That is because this is a case, not for termination of my tenancy with a 60-day

notice on the ground I am an unlawful tenant who has no standing under the MRL, which is what the FAC added to the Complaint. Instead, this is a case based solely on failure to pay rent after service of a three-day Notice to Pay Rent or Quit, so a case for a notice of termination of tenancy on the ground of failure to pay rent after a three-day notice to pay rent or quit.

6. Plaintiffs' counsel stated in response that the MRL allegedly did not require a resident to be served with a three-day notice to pay rent or quit when the resident was not a "lawful tenant" under the MRL, and secondly, that the three-day notice to pay rent or quit attached to the FAC was served on me by posting and mailing.

7. I tried to state in reply to the Court that Plaintiffs admitted I was a lawful tenant under the Rent Control Law in a letter they sent to Carlson, the tenant who sold me half of the subject trailer, over two years ago, but that is not on the face of the FAC, which just lies when it states I am not a lawful tenant. The point that was relevant to the Demurrer that I tried to make, however, was if it were true that the case was evicting me as a "tenant" under the Rent Control Law. This is what FAC ¶ 8 states, the FAC is in compliance with § 1806(a) of the Rent Control Law in seeking to terminate a tenancy because "[t]he tenant has failed to pay the rent to which the landlord is entitled under the rental housing agreement and this Article," but nothing in the FAC shows either that I am a tenant or that I have failed to pay the rent to which the landlord is entitled under the rental housing agreement and the Santa Monica Rent Control Charter Amendment. It is not true as the landlord's counsel tried to tell the Court, that a "resident" the landlord knows is a resident ids not entitled to notice before an unlawful detainer case is filed. In fact, since Paragraph 8 says the FAC is filed against me because a "tenant" failed to pay rent, but the Rent Control Law allows eviction ONLY of a "tenant" who fails to pay rent after a three -day notice, the landlord cannot have

it both ways. First the FAC says I am not a tenant, then it says I am being evicted because a tenant did not pay rent, and then it says only the "tenant," Michael Carlson, was served with the three-day notice to Pay Rent or Quit.

8. Then the landlord's counsel tried to switch the argument and say I was served with the three-day notice, as "Other Residents in Possession," to which Exhibit 2, the three-day notice, is addressed. If I was served with that notice, why does Exhibit 3 to the FAC constitute the ONLY proof of service attached to the FAC, and why does it state only that the three-day notice was served on Michael Carlson?

9. I tried to explain this contradiction in what the documents attached to the FAC say and what the lawyer was claiming, but apparently either the Court did not understand my English, which is not my first language so sometimes is not that understandable, or else the Court was convinced by counsel for Plaintiffs' argument that the three-day notice had been served on me by posting and mailing.

10. When the Court overruled my Demurrer and would not allow me to say anything else is when I realized I needed to make it clear if I had not, that the FACT is that Exhibit 3 to the FAC states only Michael Carlson was served with the three-day notice, but Plaintiffs' counsel told the Court I had been served with the three-day notice by posting and mailing. Plaintiffs are not allowed to contradict the contents of the FAC in argument against a demurrer, or anywhere. It states what it says under penalty of perjury.

11. Second, that is when I realized Plaintiffs were claiming both that they could evict me under the MRL without any prior notice, but the FAC states they are evicting me under the local Rent Control Law as well. The Santa Monica Rent Control Law requires a three-day notice be served on me because it calls me a tenant, whether the MRL does or not. Therefore, I do not believe it is true that the MRL

allows evicting a resident if a tenant does not pay the rent, without any notice before the UD complaint is filed. Even if that is true, however, it is definitely not true under the Santa Monica Rent Control Law, when anyone who is a known resident after the landlord has taken rent from someone, is entitled to notice before an unlawful detainer is filed.

12. This Motion clarifies therefore that the FAC is about not paying rent when the FAC admits in Exhibit 3 that Plaintiffs had not served any three-day notice to pay rent or quit on me. However, then as a backup the claim made in court by their lawyer that they had served a three-day notice on me when their proof of service states they served it only on Michael Carlson needed to be brought to the attention of the Court by this Motion for Reconsideration and the concurrently filed Request for Judicial Notice, which I researched and prepared as soon as possible.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Monica, California, September 17, 2012.

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BERHANE HABTE

DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

Peter Naughton declares:

I was, on the date of service, over 18 years of age and not a party to this action; my business address is 406 Broadway, #332F, Santa Monica, CA 90401.

On September 17, 2012, I served the DEFENDANT BERHANE HABTE'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION AS TO RULING MADE SEPTEMBER 10, 2012 ON Defendant's DEMURRER TO Plaintiffs' MOBILEHOME RESIDENCY LAW FAC FOR UNLAWFUL DETAINER FOR FAILURE TO PAY RENT OR QUIT AFTER THREE-DAY NOTICE TO PAY RENT OR QUIT, etc.**,** attached hereto, on the interested parties herein, by placing a true copy of the document in a sealed envelope with sufficient first-class postage affixed and delivering it to a clerk for the United States Post Office at Santa Monica or Los Angeles, California, addressed as follows:

Terry R. Dowdall, Attorney
Robin G. Eifler, Attorney
DOWDALL LAW OFFICES, A.P.C., Attorneys at Law
284 North Glassell Street
Orange, CA 92866-1409

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 17, 2012, at Santa Monica, California.

_____
Peter Naughton