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11 "Defendant Doe 3, Supervisory Organization")

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO**

14 **JOHN DORMAN, INDIVIDUALLY, AND)**
15 **JOEL GAMBOA, INDIVIDUALLY)**

16 **Plaintiffs,)**

17 **v.)**

18 **DEFENDANT DOE 1 LA JOLLA CHURCH,)**
19 **DEFENDANT DOE 2 LINDA VISTA)**
20 **CHURCH, AND DEFENDANT DOE 3 SU-)**
21 **PERVISORY ORGANIZATION, DEFEND-)**
22 **ANT DOE 4, PERPETRATOR, AND DOES 5)**
23 **THROUGH 100, INCLUSIVE)**

24 **Defendants.)**

Case No.: 37-2010-00092450-CU-PO-CTL

**DEFENDANT WATCHTOWER'S AND
PLAYA PACIFICA SPANISH CON-
GREGATION'S JOINT MEMORAN-
DUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO PLAINTIFFS' NO-
TICE OF MOTION AND SECOND MO-
TION TO COMPEL FURTHER DOCU-
MENTS FROM DEFENDANT**

DATE: December 16, 2011

TIME: 10:30 a.m.

JUDGE: STEVEN R. DENTON

DEPT.: C-73

TRIAL DATE: April 20, 2012

COMPLAINT FILED: May 20, 2010

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1 **I. INTRODUCTION**

2 On July 1, 2011, this court partially granted Plaintiff's Motion to Compel Discovery
3 concerning the production of certain documents from Defendants, with the understanding that
4 "[t]hird party privacy rights are preserved because third party names have been redacted" (Mi-
5 nute Order, July 1, 2011, last paragraph). Defendants complied, and the parties thereafter stipu-
6 lated that Defendants would mail notices to each of the individuals whose names had been re-
7 dacted, asking them to either assert or waive their right of privacy vis-à-vis their names on the
8 documents (Plaintiffs' Exhibit 5).

9 Defendants promptly complied, with the following results. Three individuals asserted
10 their right of privacy: the person whose name is redacted in Plaintiffs' Exhibit 1, the second per-
11 son whose name is redacted on page two of Plaintiffs' Exhibit 2, and third person whose name
12 is redacted in Plaintiffs' Exhibit 4. Defendants had no last known address or way of locating the
13 first person whose name is redacted on page two of Plaintiffs' Exhibit 2.

14 On November 21, 2011, Defendants Watchtower and Playa Pacifica mailed letters to
15 Defendants setting forth the results of their inquiries, and enclosing documents with some
16 names unredacted, but with the above-described names redacted. Defendants filed the current
17 Second Motion to Compel on December 1, 2011. On December 2, 2011, Counsel for Playa
18 Pacifica emailed Defendants a copy of his letter and enclosures. The enclosures unredact all
19 names on page one of Plaintiffs' Exhibit 2, and two names on page three of Plaintiffs' Exhibit 2.
20 Pages two and three of Plaintiffs' Exhibit 3 were inadvertently left out of the mailing to Plain-
21 tiffs. Defendants do not object to producing those pages unredacted, although they will reveal
22 nothing new since the redacted names appear in a paragraph identical to the unredacted last par-
23 agraph on page one of Plaintiffs' Exhibit 2.

24 For the reasons that follow, the court should uphold the right of privacy of (1) the third
25 parties who have explicitly asserted it (the name redacted on Plaintiffs' Exhibit 1, the second
26 name redacted on page two of Plaintiffs' Exhibit 2, and the name redacted on Plaintiffs' Exhibit
27 4), and (2) the third party who could not be located and has therefore not waived the right of
28 privacy (the first name redacted on page two of Plaintiffs' Exhibit 2).

1 **II. THE COURT HAS A COMPELLING INTEREST TO UPHOLD A THIRD**
2 **PARTY’S FUNDAMENTAL RIGHT OF PRIVACY**

3 To say that the right of privacy is not absolute is simply a truism that applies to any
4 right. The privacy of citizens is a state interest of the highest order that cannot be brushed aside
5 by just any competing interest that happens to come along. Justice Brandeis called it “the right
6 most valued by civilized men.”¹ It is a “‘fundamental interest’ of our society, essential to those
7 rights ‘guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitu-
8 tion.’” *Board of Trustees v. Superior Court* (1981) 119 Cal. App. 3d 516, 524-525.² The Consti-
9 tution of the State of California enshrines it as an “inalienable right” (California Constitution,
10 Article I), and California courts have applied it to deny discovery requests in the case of third
11 parties,³ and even in the case of parties in an action.⁴

12 The United States Supreme Court has recognized that “pretrial discovery by depositions
13 and interrogatories has a significant potential for abuse ... not limited to matters of delay and
14 expense; discovery also may seriously implicate privacy interests of litigants and third parties.”
15 *Seattle Times v. Rhinehart* (1984) 467 U.S. 20, 34-35. “There is an opportunity, therefore, for
16 litigants to obtain -- incidentally or purposefully -- information that not only is irrelevant but if
17 publicly released could be damaging to reputation and privacy. *The government clearly has a*
18 *substantial interest in preventing this sort of abuse of its processes.” Id. at 36, (Italics added).*
19 As a consequence, “[i]n several different situations the courts have accorded standing to liti-
20 gants who are the recipients of discovery demands to assert the privacy rights of third persons
21 not present who would be affected by the litigant’s obedience to the order.” *Denari*, at 1499.⁵

22 ¹ *Olmstead v. United States*, 277 U.S. 438, 478.

23 ² Citing *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 130; *White v. Davis* (1975) 13
24 Cal.3d 757, 774-775.

25 ³ *Denari v. Superior Court* (1989) 215 Cal. App. 3d 1488; *Garstang v. Superior Court* (1995)
26 39 Cal. App. 4th 526; *Mendez v. Superior Court* (1988) 206 Cal. App. 3d 557; *Binder v. Su-
27 perior Court* (1987) 196 Cal. App. 3d 893; *Fults v. Superior Court* (1979) 88 Cal. App. 3d
28 899.

29 ⁴ *Board of Trustees*, supra; *John B. v. Superior Court* (2006) 38 Cal. 4th 1177.

30 ⁵ Citing *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652; *Mendez v. Superior*
31 *Court* (1988) 206 Cal.App.3d 557, 568; *Boler v. Superior Court* (1987) 201 Cal.App.3d 467,
32 472, fn. 1 ; *Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76.

1 It is telling that the only cases cited by Plaintiffs in which discovery of third party infor-
2 mation was permitted had to do with the perinatal medical history of mothers whose children
3 claimed malpractice at birth or harm caused by drugs taken during pregnancy.⁶ Other cases
4 sought discovery of child abusers' personal files,⁷ or found waiver of privacy in student athletes
5 who objected to a drug test.⁸ In *City of Long Beach v. Superior Court*, 64 Cal. App. 3d 65, dis-
6 covery of the requested witness list was denied, and in the remaining cases, discovery was em-
7 phatically denied because it concerned the privacy rights of third parties.⁹

8 **III. THE THIRD PARTIES WHOSE NAMES DEFENDANTS SEEK NOT ONLY**
9 **HAVE AN EXPECTATION OF PRIVACY IN THEIR COMMUNICATIONS,**
10 **BUT HAVE AN INDEPENDENT AND FUNDAMENTAL RIGHT OF PRIVACY**
11 **IN THE INFORMATION ABOUT THEIR PERSONAL LIVES**

12 Plaintiffs misstate the evidence when claiming that the third parties whose names have
13 been redacted made statements to Defendants without an expectation of privacy. Plaintiffs' Ex-
14 hibit 1 contains a triple-hearsay statement to the effect that the third party whose name is redact-
15 ed therein made a statement. Other than that, nothing on the face of the subject documents even
16 implies that the other third parties ever made any statements of any kind to anyone. Further, the
17 scribbled notes on page two of Plaintiffs' Exhibit 2 give no clue as to where that information
18 came from. In particular, since Defendants were unsuccessful in contacting the second third par-
19 ty whose name is redacted from those notes, it is unlikely that the information on those notes
20 was obtained from this individual. In addition, "[f]ailure to object on privacy grounds does not
21 automatically waive a right to privacy.¹⁰ Also, where third-party rights are at issue no waiver
22 will be found." *Pearce v. Club Med* (N.D. Cal. 1997) 172 F.R.D. 407, 410.¹¹

23 ⁶ *Jones v. Superior Court* (1981) 119 Cal. App. 3d 534; *Palay v. Superior Court* (1993) 18 Cal.
24 App. 4th 919.

25 ⁷ *In re The Clergy Cases* (2010) 188 Cal. App. 4th 1224.

26 ⁸ *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1.

27 ⁹ *Binder, supra; Denari, supra.*

28 ¹⁰ Citing *Heda v. Superior Court (Davis)* (1990) 225 Cal. App. 3d 525, 529 (finding where ob-
jections were made only on other grounds no waiver was made of privacy rights).

¹¹ Citing *Boler v. Superior Court (Everett)* (1987) 201 Cal. App. 3d 467, 472, fn. 1, (finding that
when relevant, court could not compel answers that would impair rights of unnamed sexual
partners, as well as defendant's).

1 Plaintiffs mischaracterize Defendants' records of judicial proceedings as something open
2 to "innumerable subsequent elders" and "dozens, perhaps more, people." All available evidence
3 indicates that such records are sealed when a case is closed, only to be opened thereafter if re-
4 quired by the penitential process. A privilege is not waived merely because a record is reviewed
5 by a party charged with such a duty under the penitential procedures of the particular faith.
6 Plaintiffs claim that "the secretary has access to the congregation's confidential files." But the
7 citation in support of that contention does not show that the secretary is allowed to open sealed
8 records. (Plaintiffs Exhibit 11, Deposition of Dennis Palmer at 50:6-20:20.)

9 Furthermore, and very significantly, the fundamental right to privacy in one's personal
10 life does not require that the information being encased in, and protected by, a privileged com-
11 munication. In *Pearce v. Club Med*, supra, plaintiff claimed she contracted amoebic dysentery
12 from food she consumed at defendant's resort. Defendant sought information about plaintiff's
13 sexual conduct with her husband, which was relevant as a possible source of the disease. The
14 court denied the request, explaining that "[d]iscovery orders are 'state-compelled disclosure'
15 and therefore the privacy rights protected by the California Constitution are equally applied to
16 purely private litigation." Consequently, the "right of privacy may be invoked by a litigant as
17 justification for a refusal to answer questions which unreasonably intrude on that right."¹²
18 *Pearce v. Club Med*, at 410. The court then concluded:

19 Defendants in this case are asking Plaintiff general questions regarding her sexual
20 activities with her husband. The fact that certain acts took place is not a privileged
21 communication, so is not privileged under the marital communication privilege.

22 These questions do, however, intrude on her right of privacy. This right was not
23 waived at her deposition, when she objected only on the grounds of the marital
24 communication privilege. The third party right to privacy of her husband is also vi-
25 olated by the questions.

26 *Id.*, at 411. Thus, even when the information sought seemed relevant to the defense of the case,
27 as a bar to discovery the court recognized not only the third-party husband's right of privacy,
28 but that of the plaintiff herself as well. In our case, all names sought to be unredacted pertain to

¹² Citing *Britt v. Superior Court of San Diego County* (1978) 20 Cal. 3d 844, 856, fn.3.

1 *third parties* who have either explicitly exerted their right of privacy or have not had an oppor-
2 tunity to voice their objection and be personally represented by counsel.

3 **IV. THE INTEREST IN ASCERTAINING THE TRUTH IN LEGAL PROCEED-**
4 **INGS IS NOT SERVED BY WHAT PLAINTIFFS SEEK TO DISCOVER**

5 The identity of the third parties whose names Plaintiffs seek are either already known, or
6 not at issue in this case. No facts are revealed by those names that are not already known to
7 Plaintiffs. Furthermore, the identity of these names is just as easily accessible to Plaintiffs as it
8 is to Defendants. Plaintiffs' Exhibit 1 is a letter from one of the Defendants' parents. The second
9 name on page two of Plaintiff's Exhibit 2 can easily be deduced from the fact that the last name
10 is not redacted. Plaintiffs' Exhibit 4 explicitly states that the name redacted thereon belongs to
11 the sibling of one of Plaintiffs' counsel's clients in another case. Plaintiffs have even better ac-
12 cess to these individuals than Defendants. Finally, since Defendants have been unable to locate
13 the first person whose name is redacted on page two of Plaintiffs' Exhibit 2, Defendants have no
14 better access to this individual than Plaintiffs. In any event, no facts relevant to this case would
15 be obtained from that individual, and therefore no further "truth" in these legal proceedings
16 could be ascertained from having that person's name.

17 **V. THE INTEREST IN PROTECTING THE PUBLIC FROM CHILD ABUSERS**
18 **AND "INSTITUTIONS THAT SHIELD THEM" WOULD NOT BE SERVED BY**
19 **WHAT PLAINTIFFS SEEK TO DISCOVER**

20 The names that Defendants seek to unredact are *not* those of child abusers being shielded
21 by some nefarious organization. They are those of victims of child abuse and their parents, who
22 have either explicitly and emphatically exerted their right of privacy in that information, or been
23 unable to do so because they cannot be located, and who have a right to be left alone. The only
24 thing that would be accomplished by revealing their names against their will is to vex them with
25 further intrusion into their lives. No additional facts would come to light by such an intrusion.

26 The comment about "institutions that shield" child abusers is irrelevant and unwarranted
27 in this case. It is a fundamental tenet of Defendants faith to obey the law,¹³ and to do so with a

28 ¹³ "Continue reminding them to be in subjection and be obedient to governments and authorities
as rulers, to be ready for every good work." (Titus 3:1, New World Translation of the Holy
Scriptures); Let every soul be in subjection to the superior authorities, for there is no authority

1 good conscience.¹⁴ Consequently, as an organization, they strictly follow the manifest policy of
2 every state when it comes to reporting incidents of child abuse. It is not their policy to shield
3 anyone from the consequences of breaking the law, regardless of what position the law-breaker
4 may have held within the organization.¹⁵ But the state's policy in California also requires pro-
5 tecting the rights of victims of child abuse, especially when those victims are third parties to a
6 case, and even more so when they have had no opportunity to voice their objections to an inva-
7 sion of their privacy, or to be represented by counsel in that endeavor.

8 **VI. UNDER THE RELEVANT FACTS, PLAINTIFFS' INTEREST IN SECURING A**
9 **FAIR LEGAL PROCESS DOES NOT OUTWEIGH THE FUNDAMENTAL**
10 **RIGHTS OF THIRD PARTY VICTIMS OF CHILD ABUSE AND THEIR PAR-**
11 **ENTS, NOR WOULD SUCH AN INTEREST IN ANY EVENT BE SERVED BY**
12 **THE NAMES PLAINTIFFS SEEK TO UNREDACT**

13 Whatever interest Plaintiffs may have in the personal information of third parties in this
14 case is outweighed by the state's compelling interest in upholding the privacy rights of third par-
15 ties. "The public interest in preserving confidential information outweighs in importance the in-
16 terest of a private litigant." *Pearce*, at 410. Consequently, "California's 'courts generally have
17 concluded that the public interest in preserving confidential information outweighs in im-
18 portance the interest of a private litigant.'" *Board of Trustees*, at 530.¹⁶

19 except by God; the existing authorities stand placed in their relative positions by God.
20 ² Therefore he who opposes the authority has taken a stand against the arrangement of God;
21 those who have taken a stand against it will receive judgment to themselves. (Romans 13:1, 2,
22 New World Translation of the Holy Scriptures)

23 ¹⁴ There is therefore compelling reason for YOU people to be in subjection, not only on account
24 of that wrath but also on account of your conscience. (Romans 13:1, 2, New World Transla-
25 tion of the Holy Scriptures)

26 ¹⁵ "For those ruling are an object of fear, not to the good deed, but to the bad. Do you, then,
27 want to have no fear of the authority? Keep doing good, and you will have praise from it; ⁴ for
28 it is God's minister to you for your good. But if you are doing what is bad, be in fear: for it is
not without purpose that it bears the sword; for it is God's minister, an avenger to express
wrath upon the one practicing what is bad." (Romans 13:3, 4, New World Translation of the
Holy Scriptures).

¹⁶ Citing *City & County of S. F. v. Superior Court* (1951) 38 Cal.2d 156, 163; *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 566-570; *State of California v. Superior Court* (1980) 102 Cal.App.3d 25, 29; *Black Panther Party v. Kehoe*, supra, 42 Cal.App.3d 645, 657-658; *Matchett v. Superior Court*, supra, 40 Cal.App.3d 623, 628-629; *People v. Russel* (1963) 214 Cal.App.2d 445, 453; *City Council v. Superior Court* (1962) 204 Cal.App.2d 68, 75-76; *Runyon v. Board etc. of Cal.* (1938) 26 Cal.App.2d 183, 184-185.

1 Therefore, something more than a promise of relevance must be shown to justify violat-
2 ing the privacy rights of third parties. For that reason, one court found that even where questions
3 sought in discovery were relevant, the court could not compel answers that would impair not
4 only the rights of unnamed sexual partners, but those of the defendant as well. *Boler v. Superior*
5 *Court* (1987) 201 Cal. App. 3d 467, 472, fn. 1.

6 This is especially the case here since, as previously shown, the information sought by
7 Plaintiffs will not yield any facts not already know to them, and, with the exception of the name
8 of the individual whom defendants were unable to contact, the information sought by Plaintiffs
9 is as accessible to them as it is to Defendants. Plaintiffs have no right to information that is
10 equally accessible to them, that offers no prospect of yielding new information in the case, and
11 that violates the fundamental privacy rights of third-party victims who have either explicitly ex-
12 erted their right or have not had an opportunity to voice their objection to Plaintiffs's demand to
13 intrude into their private life.

14 **VII. CONCLUSION**

15 In weighing Plaintiffs' interests in this case against the privacy rights of third-party vic-
16 tims, the court should take into account the fact that an intrusion into a person's private life,
17 once effected, cannot be undone, and has the potential for graver consequences than anticipated.
18 As the court recognized in *Pearce v. Club Med*, supra, at 411, a protective order will not miti-
19 gate an intrusion into a person's life. No amount of precautions can guarantee that information,
20 once revealed, will not be misused, or become fodder for who knows how many other parties
21 not entitled to it.

22 The information sought by Plaintiffs will not reveal any new facts needed by Plaintiffs to
23 prove their case, or any relevant information that might significantly shed light on any issue in
24 this case. It will violate the fundamental right of privacy of third parties who have not waived it,
25 but have either explicitly exerted it or have not had an opportunity to voice their objections and
26 be fairly represented by counsel of their choice on the matter. It will in fact result in an unwar-
27 ranted intrusion into the lives of victims who have a right to be left alone.

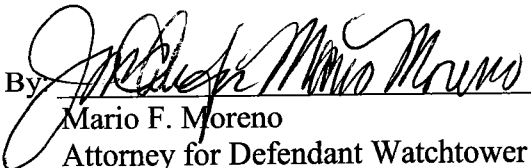
1 As the court explained in *Davies*, supra, “the courts have determined that ‘careful bal-
2 ancing’ requires a court to accommodate each interest to the greatest extent possible.” To allow
3 Defendants to unredact all names in the documents would grant more than Defendants need, and
4 would go beyond the careful tailoring necessary to respect the paramount constitutional rights of
5 the third-party victims.

6 For all the foregoing reasons, Defendants respectfully request that Plaintiffs Second Mo-
7 tion to Compel Further Documents from Defendants be denied.

8
9 DATED: December 12, 2011


Watchtower Bible and Tract Society of
New York, Inc., Legal Department

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By 
Mario F. Moreno
Attorney for Defendant Watchtower
Bible and Tract Society of New York,
Inc. (sued as “Doe 3, Supervisory Or-
ganization”)

DATED: December 12, 2011

THE MCCABE LAW FIRM, APC


James M. McCabe
Attorney for Defendant Playa Pacifica
Spanish Congregation (sued as “De-
fendant Doe 1, La Jolla Church”)

PROOF OF SERVICE
DORMAN et. al v. DOE 1, LA JOLLA CHURCH et. al.
Case No. 37-2010-00092450-CU_PO-CTL

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO:

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is 4817 Santa Monica Ave., Ste. B, San Diego, CA 92107

**On December 12, 2011, I served the following document(s) described as
DEFENDANT PLAYA PACIFIC AND WATCHTOWER'S JOINT OPPOSITION TO
PLAINTIFFS MOTION TO COMPEL FURTHER DOCUMENTS FROM
DEFENDANTS AND A LODGMENT OF FOREIGN CASES**

on all interested parties to this action as follows:

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST.

BY MAIL: By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with The Law Offices of James M. McCabe's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Ocean Beach, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposition for mailing in affidavit.

BY OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

BY FAX: I caused the above-referenced document to be transmitted via facsimile from Fax No. (619) 224-0089 to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee(s).

[State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[Federal] I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 12, 2011 at Ocean Beach, California



Employee of the McCabe Law Firm

1 **PROOF OF SERVICE**
2 **DORMAN et. al v. DOE 1, LA JOLLA CHURCH et. al.**
3 Case No. 37-2010-00092450-CU_PO-CTL

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8 **On December 12, 2011, I served the following document(s) described as**
9 **DEFENDANT PLAYA PACIFIC AND WATCHTOWER'S JOINT OPPOSITION TO**
10 **PLAINTIFFS MOTION TO COMPEL FURTHER DOCUMENTS FROM**
11 **DEFENDANTS AND A LODGMENT OF FOREIGN CASES**
12 on all interested parties to this action as follows:

13 by placing the original a true copy thereof enclosed in sealed envelopes
14 addressed as follows:

15 **PLEASE SEE ATTACHED SERVICE LIST.**

16 **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as
17 above, and placing it for collection and mailing following ordinary business practices. I
18 am readily familiar with The Law Offices of James M. McCabe's practice of collection
19 and processing correspondence for mailing. Under that practice it would be deposited
20 with U.S. postal service on that same day with postage thereon fully prepaid at Ocean
21 Beach, California, in the ordinary course of business. I am aware that on motion of
22 party served, service is presumed invalid if postal cancellation date or postage meter
23 date is more than one day after date of deposition for mailing in affidavit.

24 **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be
25 delivered to _____ for delivery to the above address(es).

BY FAX: I caused the above-referenced document to be transmitted via facsimile
from Fax No. (619) 224-0089 to Fax No. _____ directed to _____. The
facsimile machine I used complies with Rule 2003(3) and no error was reported by the
machine.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to
the addressee(s).

[State] I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

[Federal] I declare that I am employed in the office of a member of the bar of
this court at whose direction the service was made.

Executed on December 12, 2011 at Ocean Beach, California

Employee of the McCabe Law Firm