

S168047

**IN THE
SUPREME COURT OF CALIFORNIA**

STRAUSS ET AL. V. HORTON ET AL.

**APPLICATION TO FILE BRIEF OF AMICUS CURIAE
LOVE HONOR CHERISH;
BRIEF OF AMICUS CURIAE LOVE HONOR CHERISH
IN SUPPORT OF PARTIES CHALLENGING THE
MARRIAGE EXCLUSION**

BATE, PETERSON, DEACON, ZINN & YOUNG LLP
HARRY A. ZINN
(SBN 116397; HZINN@BPDZYLAW.COM)
LESTER F. APONTE
(SBN 143692; LAPONTE@BPDZYLAW.COM)
888 SOUTH FIGUEROA STREET
FIFTEENTH FLOOR
LOS ANGELES, CA 90017

**ATTORNEYS FOR AMICUS CURIAE
LOVE HONOR CHERISH**

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BATE, PETERSON, DEACON, ZINN & YOUNG LLP
HARRY A. ZINN
(SBN 116397; HZINN@BPDZYLAW.COM)
LESTER F. APONTE
(SBN 143692; LAPONTE@BPDZYLAW.COM)
888 SOUTH FIGUEROA STREET
FIFTEENTH FLOOR
LOS ANGELES, CA 90017

**ATTORNEYS FOR AMICUS CURIAE
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Pursuant to California Rules of Court, Rule 8.520, Love Honor Cherish, an unincorporated association, respectfully requests leave to file the attached brief of amicus curiae in support of the plaintiffs and other parties in this case who are challenging the enactment of Proposition 8, which repudiated this Court's historic opinion recognizing marriage equality for gay and lesbian Californians.

THE APPLICANT'S INTEREST AND HOW THIS BRIEF WILL ASSIST

THE COURT

This amicus curiae brief is submitted by Love Honor Cherish, a grassroots organization founded in Los Angeles in May 2008 to protect and defend this Court's marriage equality decision, In Re Marriage Cases, 43 Cal. 4th 757 (2008). Love Honor Cherish's members come from all walks of life and are both gay and straight. What unites them is a strong conviction in the fundamental equality of all of California's citizens regardless of sexual orientation and a belief in the importance of equal marriage rights. From May through November 2008, Love Honor Cherish's members dedicated countless hours, sometimes to the detriment of their personal lives and careers, to the defeat of Proposition 8 through outreach, a media campaign, and fundraising. Love Honor Cherish raised over half a million dollars for the No on 8 campaign. Love Honor Cherish is now taking a leading role in working to change the hearts and minds of those Californians who voted in favor of Proposition 8.

Love Honor Cherish is familiar with the issues before this Court and the scope of their presentation, and believes this brief will assist the Court by providing a perspective that is beyond the scope of the parties' briefs. Specifically, this brief will discuss the fact that the process of voting on Proposition 8 – even if the outcome of the vote had been different – impermissibly harmed gay and lesbian Californians and their allies: (1) by

forcing gay and lesbian couples to make choices about marriage that straight couples do not face; (2) by devaluing the dignity of the existing marriages; and (3) by forcing gays and lesbians and their allies to fight at the polls for their fundamental liberties and the equal protection of the law.

Dated: January 14, 2008

BATE, PETERSON, DEACON, ZINN &
YOUNG LLP

By: 
Lester F. Aponte

Attorneys for LOVE HONOR CHERISH

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I. INTRODUCTION

The process of voting on the fundamental constitutional right to marry deprived gays and lesbians and their straight allies of the equality and dignity that our State Constitution guarantees all Californians and to which this Court held they are entitled. Specifically, no proposition that would strip a fundamental right away from a group defined by a suspect classification should be allowed to be put up to a vote, absent the safeguards of the revision process, because the mere fact of voting to take away a fundamental right is in and of itself harmful.

In its historic decision, this Court declared that “gay individuals are entitled to the same legal rights and the same respect and dignity afforded all other individuals and are protected from discrimination on the basis of their sexual orientation.” In Re Marriage Cases, 43 Cal. 4th 757, 821-22 (2008).

However, Proposition 8 forced gay and lesbian Californians and their supporters to defend their rights and their dignity in a bitter election struggle. Gay and lesbian couples found themselves forced to make decisions on whether and when they should get married based not on the same considerations as other couples, but, rather, on the existence of a potentially small window of time in which they could exercise their fundamental right to marry. For those who did marry during that window, the promise of equality likewise has been denied as their marriages now stand as anomalies rather than marriages just like any other.

The process by which Proposition 8 was enacted deprived gay and lesbian Californians of their equal rights and dignity in several ways:

1. Gay and lesbian couples were forced to decide whether they wanted to undertake the rights and responsibilities of

marriage and to schedule their weddings not on their own timeframes, but rather, on one imposed by those who wished to deny them the right to marry;

2. Those couples who chose to exercise their right to marry before election day on November 4, 2008 now find their marriages viewed as an anomaly, thus depriving those unions of the very dignity and equality this Court held they deserved; and
3. The campaign that gay and lesbian Californians and their supporters were forced to wage to protect their fundamental rights subjected them to anxiety, fear and alienation not suffered by their fellow Californians.

These indignities do violence to the principles on which our constitutional system of government was founded. As the United States Supreme Court explained in West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943): “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, **and other fundamental rights** may not be submitted to vote; they depend on the outcome of no elections.” (Emphasis added.) “Without this, all the reservations of particular rights or privileges would amount to nothing.” The Federalist No. 78, p. 466 (C. Rossiter ed. 1961).

II. THE PROCESS OF VOTING ON THE FUNDAMENTAL RIGHT TO MARRY – EVEN HAD PROPOSITION 8 NOT PASSED – DEPRIVED GAY AND LESBIAN COUPLES OF THE FULL EQUALITY GUARANTEED TO THEM BY THE STATE’S CONSTITUTION

In its May 2008 decision, this Court embraced the principle that separate is inherently unequal. However, the initiative process forced gay and lesbian couples to make decisions about their relationships that opposite sex couples do not face. During the summer and fall of 2008, with Proposition 8 hanging over them like the Sword of Damocles, gay and lesbian couples were forced to decide whether to marry based on the fear that they would not be able to exercise their right to marry and enjoy the rights and obligations of marriage were Proposition 8 to pass.

Moreover, Proposition 8 deprived gay and lesbian couples of the ability to choose *when* to get married and the time to plan weddings to celebrate their love. Thus, the very pendency of Proposition 8 forced thousands of gay and lesbian couples to make what is perhaps life’s most important decision in a compressed time frame of just a few months. By contrast, straight couples were, and continue to be, free to make these decisions of whether and when to marry based solely on their private personal choices and with as much deliberation as they see fit.

Andrew Klayman, a filmmaker, and **Thomas Watson**, an attorney, are a couple who live in Los Angeles and who have been together for more than 10 years. Andrew and Tom decided not to marry before November 4. They chose not to allow the proponents of Proposition 8 who sought to take away their right to marry to dictate the timing of their wedding. They observe that no straight couple has ever had to decide

whether and when to get married based on the timing of an election.¹

Their hearts are broken by the passage of Proposition 8.

On the other hand, more than 10,000 same sex couples did choose to marry between May and November 2008 lest the voters deprive them of that right to do so. The public vote on Proposition 8 and its passage – even assuming it does not affect the strict legal validity of these marriages – deprives those marriages of the dignity and equal standing they ought to have under the California Constitution. Rather than lifelong unions with society’s full support, these pre-election marriages now tend to be perceived as historical anomalies.

Sherry Green and Gael Chandler live in West Los Angeles.

Sherry is a rocket scientist. Gael is a writer. They had been together and shared a home for more than 27 years when this Court’s decision in the Marriage Cases was announced. Many of their friends and relatives suggested to them that with Proposition 8 “looming” they should make a decision whether they wanted to get married before it was too late. They married – and were able to do so because of the timing of the Court’s decision – on June 27, 2008. Sherry and Gael chose that date because, by coincidence, both Sherry’s parents and Gael’s parents, respectively, had married on June 27. Having devoted much of their time and energy to insuring that other couples would share the same joy, thereby strengthening their own bond, Sherry and Gael are now devastated that a majority of Californians have voted for the proposition that a same-sex relationship does not deserve the same respect and dignity as an opposite sex relationship.

¹ All persons mentioned in this brief are members of Love Honor Cherish and have authorized use of their stories in this brief.

Jay Mendes and Van Sao were married on June 17, 2008, the first gay couple legally married in West Hollywood. They found that being able to say they were married and refer to each other as “my husband” made a world of difference in the way their families and society as a whole regarded their relationship. Although Jay and Van had been registered as domestic partners for several years, it felt entirely different to be married. But now that Proposition 8 has passed, their equality has been diminished. The question they now hear most often is “are you still married?”

Thus, for all gay and lesbian couples – those who chose to marry and those who did not – and for their families and friends, the mere fact that Proposition 8 was on the ballot deprived gay and lesbian couples of the equality this Court held they deserved with regard to the personal choices surrounding marriage and the respect that marriage deserves.

III. THE PROCESS OF VOTING ON THE FUNDAMENTAL RIGHT TO MARRY – EVEN HAD PROPOSITION 8 NOT PASSED – DEPRIVED GAY AND LESBIAN CALIFORNIANS OF THE DIGNITY GUARANTEED TO THEM BY THE STATE’S CONSTITUTION

It is a special indignity that gays and lesbians were forced to fight for their fundamental rights at the ballot box. In ways small and large, gay and lesbian Californians were harmed by the process itself. Indeed, bigots were empowered by the initiative process to give free rein to their prejudices. As a result, this Court’s life affirming declaration that gays and lesbians “are entitled to the same legal rights and the same respect and dignity afforded all other individuals” did not hold true.

Lester F. Aponte is a Latino attorney residing in North Hollywood. In his 20 years in California he had always felt welcome and free to be open about being gay. His experience working against Proposition 8 shattered that sense of security. On November 4, Lester spent the entire day at the polls handing out palm cards to voters and asking them not to take away his equal rights by voting “yes” on Proposition 8. While most voters at that polling place expressed support, some displayed a degree of hostility towards gay and lesbian persons that Lester had never before experienced. One particular voter came right to his face, called him a “faggot,” and made several other offensive, derogatory remarks. These individuals apparently were emboldened to express their bigotry by the very fact that it was viewed as acceptable (and sanctioned by the State) to vote on whether to take away the rights of gay and lesbian Californians.

Having to fight for dignity at the ballot box is oppressive and harmful. Even the exposure to negative messages in states in which marriage amendments have been on ballots negatively impacts gays and lesbians. A study released by the *Sexuality Research and Social Policy* journal, a project of the National Sexuality Resource Center, found that gay and lesbian individuals – whether or not they are themselves seeking marriage – suffer a profound psychological impact from the debate and passage of ballot measures denying them marriage equality. The study concluded that gay and lesbian persons from states who passed anti-gay initiatives in the 2006 election reported significantly more depressive symptoms, stress, and negative affect, than gays and lesbians in states that did not have ballot measure campaigns. Participants in this survey who lived in states with marriage amendments on the ballot in November 2006 reported higher levels of exposure to negative messages about LGBT issues

in the media and in their communities.² A similar study in 2004 by G.M. Russell found that when a particular group is the subject of political debate, group members often exhibit a variety of negative outcomes including anxiety, depression, alienation, fear, and anger.³

Moreover, gays and lesbian Californians are not the only ones who have suffered from having to fight for their rights at the ballot box. Their families and friends also are affected.

Aaron Bloom is an attorney in Century City. He joined Love Honor Cherish and has taken on a leadership position in the group because he believes that any prohibition against marriage rights for gay and lesbian couples is born of the same narrow mindedness that once barred Jews and Christians or Blacks and Whites from marrying each other. Aaron believes that his own marriage (to his wife) has been diminished by the campaign by the proponents of Proposition 8 to exclude gay and lesbian individuals from the institution of marriage because it demeaned the institution of marriage and made it an expressly discriminatory institution.

Rochelle D. Ventura is a retired grandmother who resides in West Los Angeles. She joined Love Honor Cherish because, to her, the struggle for equal rights for gay and lesbian persons is a continuation of the civil rights movement of the 1960's in which her family was deeply involved. She lent her home to Love Honor Cherish, donated generously to the

² "Marriage Amendments and Lesbian, Gay, and Bisexual Citizens in the 2006 Election," by Ellen D.B. Riggle, Sharon S. Rostosky, and Sharon Horne.

³ For a discussion of several studies with similar findings, visit: http://nsrc.sfsu.edu/article/same_sex_marriage_discrimination.

campaign and expended countless hours in the effort to defeat Proposition 8. During the campaign, Rochelle was deeply disturbed by the relentless parade of images, on television and elsewhere, vilifying gays and lesbians simply for seeking the right to marry the person they love.

In fact, all Californians are less today than they were before Proposition 8. As John F. Kennedy said in 1962 at the Lincoln Memorial on the Centennial of the Emancipation Proclamation, "In giving rights to others which belong to them, we give rights to ourselves and to our country." Conversely, taking rights away from others takes away rights from all Californians and all Americans.

IV. CONCLUSION

To force any gay and lesbian Californians – or any suspect class for that matter – to defend their fundamental rights against a ballot proposition, and to make significant life choices under threat of its passage, is fundamentally not equal and deprives them of the respect and dignity that the California Constitution provides. Although fundamental rights should never be stripped away from a group defined by a suspect classification, to do so by proposition rather than with the safeguards of revision process is plainly wrong. If the promise of equality has any meaning, Proposition 8 cannot be allowed to stand.

Dated: January 14, 2008

BATE, PETERSON, DEACON, ZINN &
YOUNG LLP

By: _____


Lester F. Aponte

Attorneys for LOVE HONOR CHERISH

CERTIFICATE OF WORD COUNT

The text of this brief consists of 2,194 words, as counted by the Microsoft Word 2007 program used to generate this brief.

Dated: January 14, 2008

BATE, PETERSON, DEACON, ZINN &
YOUNG LLP

By:



Lester F. Aponte

Attorneys for LOVE HONOR CHERISH

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 888 South Figueroa Street, Fifteenth Floor, Los Angeles, CA 90017.

On January 15, 2009, I caused to be served the foregoing document described as:

**APPLICATION TO FILE BRIEF OF AMICUS CURIAE
LOVE HONOR CHERISH; BRIEF OF AMICUS
CURIAE LOVE HONOR CHERISH IN SUPPORT OF
PARTIES CHALLENGING THE MARRIAGE
EXCLUSION**

on the interested parties in this action by placing a true copy thereof in a seal envelope addressed to:

Shannon P. Minter
Christopher F. Stoll
Melanie Rowen
Catherine Sakimura
Ilona M. Turner
Shin-Ming Wong
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: 415 392-6267
Facsimile: 415 392-8442

Attorneys for Petitioners
Karen L. Strauss, Ruth
Borenstein, Brad Jacklin,
Dustin Hergert, Eileen Ma,
Suyapa Portillo, Gerardo
Marin, Jay Thomas, Sierra
North, Celia Carter,
Desmund Wu, James Tolen,
and Equality California
(S168047)

Gregory D. Phillips
Jay M. Fujitani
David C. Dinielli
Michelle Friedland
Lika C. Miyake
Mark R. Conrad
Munger, Tolles & Olson, LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Telephone: 213 683-9100
Facsimile: 213 687-3702

Alan L. Schlosser
Elizabeth O. Gill
ACLU Foundation of Northern
California
39 Drumm Street
San Francisco, CA 94111
Telephone: 415 621-2493
Facsimile: 415 255-1478

Mark Rosenbaum
Clare Pastore
Lori Rifkin
ACLU Foundation of Southern
California
1313 West 8th Street
Los Angeles, CA 90017
Telephone: 213 977-9500
Facsimile: 213 250-3919

David Blair-Loy
ACLU Foundation of San Diego
and Imperial Counties
Post Office Box 87131
San Diego, CA 92138-7131
Telephone: 619 232-2121
Facsimile: 619 232-0036

Stephen V. Bomse
Orrick, Herrington & Sutcliffe
LLP
405 Howard Street
San Francisco, CA 94105
Telephone: 415 773-5700
Facsimile: 415 773-5759

David C. Codell
Law Office of David C. Codell
9200 Sunset Boulevard
Penthouse Two
Los Angeles, CA 90069
Telephone: 310 273-0306
Facsimile: 310 273-0307

Jon W. Davidson
Jennifer C. Pizer
Tara Borelli
Lambda Legal Defense and
Education Fund
3325 Wilshire Blvd., Suite 1300
Los Angeles, CA 90010
Telephone: 213 382-7600
Facsimile: 213 351-6050

Andrew P. Pugno
Law Offices of Andrew P. Pugno
101 Parkshore Drive, Suite 100
Folsom, CA 95630-4726
Telephone: 916 608-3065
Facsimile: 916 608-3066
E-mail: andrew@pug nolaw.com

Attorneys for Interveners
Dennis Hollingsworth, Gail J.
Knight, Martin F. Gutierrez,
Hak-Shing, William Tam, Mark
A. Jansson, and
Protectmarriage.com

Kenneth W. Starr
24569 Via De Casa
Malibu, CA 90265-3205
Telephone: 310 506-4621
Facsimile: 310 506-4266

Gloria Allred
Michael Maroko
John Steven West
Allred, Maroko & Goldberg
6300 Wilshire Blvd, Suite 1500
Los Angeles, CA 90048-5217
Telephone: 323 653-6530 &
302-4773
Facsimile: 323 653-1660

Attorneys for Petitioners
Robin Tyler and Diane Olson
(S168066)

Dennis J. Herrera, City Attorney
Therese M. Stewart
Danny Chou
Kathleen S. Morris
Sherri Sokeland Kaiser
Vince Chhabria
Erin Bernstein
Tara M. Steeley
Mollie Lee
City Hall, Room 234
One Dr. Carlton B. Goodlett
Place
San Francisco, CA 94012-4682
Telephone: 415 554-4708
Facsimile: 415 554-4699

Attorneys for Petitioner
City and County of San
Francisco (168078)

Jerome B. Falk, Jr.
Steven L. Mayer
Amy E. Margolin
Amy L. Bomse
Adam Polakoff
Howard Rice Nemerovski
Canady Falk & Rabkin
Three Embarcadero Center
7th Floor
San Francisco, CA 94111-4024
Telephone: 415 434-1600
Facsimile: 415 217-5910

Attorneys for Petitioners
City and County of San
Francisco, Helen Zia, Lia
Shigemura, Edward Swanson,
Paul Herman, Zoe Dunning, Pam
Grey, Marian Martino, Joanna
Cusenza, Bradley Akin, Paul
Hill, Emily Griffen, Sage
Andersen, Suwanna Kerdkaew,
and Tina M. Yun (S168078)

Ann Miller Ravel, County
Counsel
Tamara Lange
Juniper Lesnik
Office of the County Counsel
70 West Hedding Street
East Wing, 9th Floor
San Jose, CA 95110-1770
Telephone: 408 299-5900
Facsimile: 408 292-7240

Attorneys for Petitioner
County of Santa Clara (S168078)

Rockard J. Delgadillo, City
Attorney
Richard H. Llewellyn, Jr.
David J. Michaelson
Office of the Los Angeles City
Attorney
200 N. Main Street
City Hall East, Room 800
Los Angeles, CA 90012
Telephone: 213 978-8100
Facsimile: 213 978-8312

Attorneys for Petitioner
City of Los Angeles (S168078)

Raymond G. Fortner, Jr., County
Counsel
Leela A. Kapur
Elizabeth M. Cortez
Judy W. Whitehurst
Office of Los Angeles County
Counsel
648 Kenneth Hahn Hall of
Administration
500 West Temple Street
Los Angeles, CA 90012-2713
Telephone: 213 974-1845
Facsimile: 213 617-7182

Attorneys for Petitioner
County of Los Angeles
(S168078)

Richard E. Winnie, County
Counsel
Brian E. Washington
Claude Kolm
Office of County Counsel
County of Alameda
1221 Oak Street, Suite 450
Oakland, CA 94612
Telephone: 510 272-6700
Facsimile: 510 272-5020

Attorneys for Petitioner
County of Alameda (S168078)

Patrick K. Faulkner, County
Counsel
Sheila Shah Lichtblau
3501 Civic Center Drive
Room 275
San Rafael, CA 94903
Telephone: 415 499-6117
Facsimile: 415 499-3796

Attorneys for Petitioner
County of Marin (S168078)

Michael P. Murphy, County
Counsel Brenda B. Carlson
Glenn M. Levy
Hall of Justice & Records
400 County Center, 6th Floor
Redwood City, CA 94063
Telephone: 650 363-1965
Facsimile: 650 363-4034

Attorneys for Petitioner
County of San Mateo (S168078)

Dana McRae
County Counsel
County of Santa Cruz
701 Ocean Street, Room 505
Santa Cruz, CA 95060
Telephone: 831 454-2040
Facsimile: 831 454-2115

Attorneys for Petitioner
County of Santa Cruz (S168078)

Harvey E. Levine, City Attorney
Nellie R. Ancel
3300 Capitol Avenue
Fremont, CA 94538
Telephone: 510 284-4030
Facsimile: 510 284-4031

Attorneys for Petitioner
City of Fremont (S168078)

Rutan & Tucker, LLP
Philip D. Kohn
City Attorney
City of Laguna Beach
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626-1931
Telephone: 714 641-5100
Facsimile: 714 546-9035

Attorneys for Petitioner
City of Laguna Beach (S168078)

John Russo, City Attorney
Barbara Parker
Oakland City Attorney
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, CA 94612
Telephone: 510 238-3601
Facsimile: 510 238-6500

Attorneys for Petitioner
City of Oakland (S168078)

Michael J. Aguirre, City Atty.
Office of City Attorney, Civil
Division
1200 Third Avenue, Suite 1620
San Diego, CA 92101-4178
Telephone: 619 236-6220
Facsimile: 619 236-7215

Attorneys for Petitioner
City of San Diego (S168078)

Atchison, Barisone, Condotti &
Kovacevich
John G. Barisone
Santa Cruz City Attorney
333 Church Street
Santa Cruz, CA 95060
Telephone: 831 423-8383
Facsimile: 831 423-9401

Attorneys for Petitioner
City of Santa Cruz (S168068)

Marsha Jones Moutrie, City
Attorney
Joseph Lawrence
Santa Monica City Attorney's
Office
City Hall
1685 Main Street, 3rd Floor
Santa Monica, CA 90401
Telephone: 310 458-8336
Facsimile: 310 395-6727

Attorneys for Petitioner
City of Santa Monica (S168078)

Lawrence W. McLaughlin, City
Attorney
City of Sebastopol
7120 Bodega Avenue
Sebastopol, CA 95472
Telephone: 707 579-4523
Facsimile: 707 577-0169

Attorneys for Petitioner
City of Sebastopol (S168078)

Edmund G. Brown, Jr., Attorney
General of the State of California
James M. Humes
Manuel M. Mederios
David S. Chaney
Christopher E. Krueger
Mark R. Beckington
Kimberly J. Graham
Office of the Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814-2951
Telephone: 916 322-6114
Facsimile: 916 324-8835
E-mail:
Kimberly.Graham@doj.ca.gov

State of California; Edmund G.
Brown, Jr.

Edmund G. Brown, Jr.
Office of the Attorney General
1515 Clay Street, Room 206
Oakland, CA 94612
Telephone: 510 622-2100

Kenneth C. Mennemeier
Andrew W. Stroud
Kelcie M. Gosling
Mennemeier, Glassman &
Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814-2736
Telephone: 916 553-4000
Facsimile: 916 553-4011
E-mail: kcm@mgslaw.com

Attorneys for Respondents
Mark B. Horton, State Registrar
of Vital Statistics of the State of
California, and Linette Scott,
Deputy Director of Health
Information and Strategic
Planning for CDPH

By MAIL as follows: I am readily familiar” with Bate, Peterson, Deacon, Zinn & Young LLP’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of party served, service shall be presumed invalid if postal cancellation date or postage meter is more than one (1) day after date of deposit for mailing in affidavit.

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

Executed on January 15, 2009, at Los Angeles, California.



Larissa Alarcon