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15 CARDINAL NORBERTO RIVERA AND THE  
16 DIOCESE OF TEHUACAN

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

19 JOAQUIN AGUILAR MENDEZ,

20 Plaintiff,

21 v.

22 CARDINAL ROGER MAHONY, THE  
23 ROMAN CATHOLIC ARCHBISHOP OF LOS  
24 ANGELES, A CORPORATION SOLE,  
25 CARDINAL NORBERTO RIVERA, THE  
26 DIOCESE OF TEHUACAN, FATHER  
27 NICHOLAS AGUILAR DOES 1-100,

28 Defendants.

**FILED**  
LOS ANGELES SUPERIOR COURT

MAR 14 2007

John A. Clark, Executive Officer/Clerk  
BY Kendra HIRANO DEPUTY

Case No. BC358718

**MEXICAN DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR JURISDICTIONAL  
DISCOVERY**

**Filed concurrently herewith:**

**[1] Declaration of Evan Wooten; and**

**[2] Appendix of Foreign Authorities**

Date: March 21, 2007

Time: 8:30 a.m.

Dept: 42

Judge: Elihu M. Berle

**INTRODUCTION**

Plaintiff Joaquin Aguilar Mendez requests that this Court permit discovery on the issue of whether California courts may exercise personal jurisdiction over Defendants Cardinal Norberto Rivera and the Diocese of Tehuacan (jointly, the "Mexican Defendants")<sup>1</sup> in the above-captioned matter. Plaintiff claims he expects to discover numerous facts pertaining to the Mexican

<sup>1</sup> The term "Mexican Defendants" does not include Defendant Fr. Nicholas Aguilar, as the undersigned does not represent him and is not moving on his behalf.

1 Defendants' alleged contacts with the State of California in 1987 and 1988. During this time,  
2 Defendant Fr. Nicholas Aguilar (Fr. Aguilar), a Mexican resident, allegedly served in the Los  
3 Angeles Archdiocese and allegedly molested several California residents. Such facts, however,  
4 are entirely unrelated to the claim that Fr. Aguilar allegedly molested Plaintiff, a Mexican  
5 resident, in Mexico *in 1994*. Plaintiff's allegations, even taken as true, do not warrant an  
6 exertion of personal jurisdiction over the Mexican Defendants. Discovery will not alter the  
7 fundamentally Mexican nature of the instant dispute.

8 No amount of discovery will change the fact that Plaintiff, the Mexican Defendants and  
9 the alleged abuser all are Mexican citizens and that the alleged abuse took place in Mexico six  
10 and seven years after any alleged contact between the Mexican Defendants and the State of  
11 California. As such, this Court should deny Plaintiff's Motion for Jurisdictional Discovery (the  
12 "Motion for Discovery").

### 13 STATEMENT OF FACTS

14 The facts, as alleged, are recounted at length in the Mexican Defendants' Motion to  
15 Quash Service of Summons for Lack of Personal Jurisdiction (the "Motion to Quash"), (Defs.'  
16 Mot. 4-6), and, as such, will be summarized here in briefest detail. As alleged in the complaint,  
17 in 1987, Defendant Cardinal Norberto Rivera, then Bishop of Defendant the Diocese of  
18 Tehuacan, wrote to Cardinal Roger Mahony, then Archbishop of the Los Angeles Archdiocese,  
19 allegedly to discuss the transfer of Fr. Aguilar from the Tehuacan Diocese to Los Angeles.  
20 (Compl. ¶ 19). Subsequently, Fr. Aguilar allegedly was transferred to the Los Angeles  
21 Archdiocese and Cardinal Rivera sent Cardinal Mahony a confidential letter allegedly  
22 summarizing Fr. Aguilar's "homosexual problems." (*Id.* ¶¶ 20, 23). Thereafter, Fr. Aguilar  
23 allegedly molested several children in California (Plaintiff not among them). (*Id.* ¶¶ 25-26).  
24 When confronted with allegations of molestation, Fr. Aguilar fled to Mexico in January 1988.  
25 (*Id.* ¶¶ 33-34).

26 In March 1988, Cardinal Mahony wrote Cardinal Rivera to request that Fr. Aguilar be  
27 returned to California. (*Id.* ¶ 39). Cardinal Rivera responded that he was unaware of Fr.  
28 Aguilar's location and, thus, unable to facilitate Fr. Aguilar's return to Los Angeles for

1 prosecution. (*Id.* ¶ 39). Six years later – and seven years after the alleged transfer of Fr. Aguilar  
2 to Los Angeles – Fr. Aguilar allegedly molested Plaintiff in Mexico. (*Id.* ¶ 49). The complaint  
3 does not allege that Plaintiff, a Mexican resident, has ever stepped foot in California.

4 **ARGUMENT**

5 **I. The Mexican Defendants Are Not Subject to Personal Jurisdiction in California**

6 **A. Plaintiff's Claims Are Unrelated to the Mexican Defendants' Forum**  
7 **Contacts.**

8 In arguing for discovery, Plaintiff asserts that “[t]he Mexican Defendants essentially  
9 refuted each and every jurisdictional allegation in the complaint” in their Motion to Quash. (Pl.  
10 Mem. 8). The bulk of the Mexican Defendants’ argument, however, assumes the veracity of  
11 Plaintiff’s allegations. (Defs.’ Mot. 6-13).<sup>2</sup> Even taking Plaintiff’s allegations as true,  
12 jurisdiction over the Mexican Defendants is improper as a matter of law. No amount of  
13 discovery will change the fact that Plaintiff, the Mexican Defendants and the alleged perpetrator  
14 all are Mexican citizens and that the alleged abuse took place in Mexico six and seven years after  
15 any alleged contact between the Mexican Defendants and California.

16 It is not enough for the exercise of specific personal jurisdiction that a Defendant have  
17 contact with the forum state; rather, “the litigation [must] result[] from alleged injuries that arise  
18 out of or relate to” the defendant’s forum contacts. *Burger King Corp. v. Rudzewicz* (1985) 471  
19 U.S. 462, 472-73. Put simply, the alleged abuse of a Mexican plaintiff by a Mexican priest in  
20 Mexico neither arises from nor remotely relates to the Mexican Defendants’ limited contacts  
21 with California some six and seven years prior. To this argument, Plaintiff makes no response in  
22 his Motion for Discovery.

23 No discoverable fact will correlate the Mexican Defendants’ alleged California contacts  
24 in 1987/1988 and the alleged rape of Plaintiff in Mexico in 1994. For example, “Plaintiff  
25 believes that discovery will show that \* \* \* Aguilar was an agent of the Mexican Defendants and  
26 working in California under their control and direction and taking actions based on the Mexican

27 \_\_\_\_\_  
28 <sup>2</sup> By contrast, a mere two pages of the Motion to Quash are devoted to controverting Plaintiff’s  
allegations. (Defs.’ Mot. 14-15).

1 Defendants' guidance." (Pl. Mem. 4). Even if this allegation were true (it is not), such facts,  
2 once discovered would have no bearing on the alleged rape of Plaintiff in Mexico six to seven  
3 years later. Because the alleged molestation of Plaintiff is unrelated to any discoverable  
4 jurisdictional fact, the Court should deny Plaintiff's Motion for Discovery.

5 **B. The Mexican Defendants Are Not Subject to Jurisdiction on a Theory of**  
6 **Tort.**

7 Plaintiff contends that the Mexican Defendants are subject to jurisdiction in California by  
8 virtue of committing a tort in the State. The cases on which Plaintiff relies, however, make plain  
9 that tortious conduct does not afford a basis for jurisdiction unless that conduct occurs within  
10 California or affects its residents.

11 *1. No tort within the State warrants jurisdiction.*

12 Plaintiff posits that "[a] state has a special interest in exercising jurisdiction over those  
13 who commit tortious acts *within its territory*." (Pl. Mem. 3 (quoting *Kaiser Aetna v. Deal* (1978)  
14 86 Cal. App. 3d 896, 901) (emphasis added)). The tortious act at issue, however, *i.e.*, the alleged  
15 rape of Plaintiff, was committed in Mexico. Moreover, any allegedly negligent supervision or  
16 failure to warn necessarily would have occurred in Mexico, where the alleged rape occurred and  
17 where the alleged victim and perpetrator resided. Whatever torts may have been committed by  
18 Fr. Aguilar in California in 1987 or 1988 are entirely unrelated to the alleged abuse of Plaintiff in  
19 Mexico in 1994 (see above). As such, there is no tort within the territory on which to ground  
20 Californian jurisdiction over the Mexican Defendants.

21 *2. No tortious effect on a Californian resident warrants jurisdiction.*

22 As Plaintiff points out, "[a] tortious act, standing alone, is sufficient to find personal  
23 jurisdiction if the act is aimed at a *resident of the state* or has effects in the state." (Pl. Mem. 3-4  
24 (citing *Paccar Int'l Inc. v. Commercial Bank of Kuwait, S.A.K.* (9th Cir. 1985) 757 F.2d 1058,  
25 1064-65) (emphasis added)). Here, however, any allegedly tortious conduct targeted a Mexican  
26 citizen rather than a California resident. Indeed, in *Paccar Int'l* the Ninth Circuit concluded that  
27 it would be unreasonable to exercise jurisdiction over a Kuwaiti bank accused of defrauding a  
28 Delaware corporation. Central to the court's conclusion was the fact that "[the bank's] only

1 purposeful interjection into California was \* \* \* aimed at a nonresident.” 757 F.2d at 1065.  
2 Moreover, because the plaintiff “[was] not a California corporation[,] \* \* \* California ha[d] little  
3 or no interest in adjudicating th[e] dispute.” *Id. Cf. Calder v. Jones* (1984) 465 U.S. 783, 791  
4 (1984) (holding that jurisdiction over Florida residents was proper “because of their intentional  
5 conduct \* \* \* calculated to cause injury to respondent in California”).

6 Here, as well, the alleged tort victim is not a California resident and, as such, jurisdiction  
7 over the alleged tortfeasors, the Mexican Defendants, is inappropriate.

8 3. *It is not enough that California seek to deter tortious conduct.*

9 Plaintiff cites *Abbott Power Corp. v. Overhead Elec. Co.*, (1976) 60 Cal. App. 3d 272,  
10 278-79, for the proposition that “California may properly exercise jurisdiction over a defendant  
11 whose tortious conduct California seeks to deter.” (Pl. Mem. 3). Yet the jurisdiction of the  
12 California courts clearly does not extend to all tortious conduct with which the State takes  
13 offense. *Abbot Power* involved a New Mexico corporation that induced a California corporation  
14 to breach its contract with another California corporation. 60 Cal. App. 3d at 274-76. In  
15 determining that jurisdiction over the New Mexico corporation was proper, the court emphasized  
16 that the corporation’s acts outside the forum “allegedly resulted in an intentional interference *in*  
17 *California* with the contract between \* \* \* two California corporations \* \* \*.” *Id.* at 279  
18 (emphasis added). Further, in asserting the reasonableness of exerting jurisdiction over the New  
19 Mexico defendant, the court stated that “[t]he contract involved [was] between two California  
20 corporations and was presumably entered into in California. The breach of that contract will  
21 most seriously affect plaintiff, a California corporation.” *Id.* at 280.

22 Nothing in the *Abbot Power* decision supports the broad proposition for which Plaintiff  
23 cites it, i.e., that California may exert jurisdiction over defendants whose tortious conduct it  
24 seeks to deter even where the effects of the tort are felt without the State. To the contrary, *Abbot*  
25 *Power* underscores the position that actions taken outside the State must have a tortious effect on  
26 a California resident in order to support an exercise of personal jurisdiction.

1 C. The Mexican Defendants Are Not Subject to Jurisdiction on a Theory of  
2 Agency.

3 Plaintiff argues that “[f]or purposes of personal jurisdiction, the actions of an agent are  
4 attributable to the principal,” (Pl. Mem. 4 (quoting *Sher v. Johnson* (9th Cir. 1990) 911 F.2d  
5 1357, 1362)). Even assuming that the existence of an agency relationship is sufficient to impose  
6 jurisdiction on the principal,<sup>3</sup> such a relationship does not obviate the requirement that a  
7 plaintiff’s claims relate to the defendant’s imputed forum contacts. *Sher v. Johnson*, on which  
8 Plaintiff relies, is instructive. In representing the Shers, a partner in a Floridian law firm  
9 contacted California via “correspondence with and phone calls to Sher, a California resident, and  
10 \* \* \* trips to California.” *Sher*, 911 F.2d at 1364. In imputing the partner’s contacts to the law  
11 firm for purposes of jurisdiction, the Ninth Circuit stated that “[t]he Shers’ claims all relate[d] to  
12 the alleged incompetence of the [defendant’s] representation of Sher,” which included the  
13 correspondence, calls and trips to California. *Id.*<sup>4</sup>

14 Plaintiff asserts that discovery will demonstrate that Fr. Aguilar was an agent of the  
15 Mexican Defendants while in California, (*E.g.*, Pl. Mem. 4 (“Plaintiff believes that discovery  
16 will show that the Aguilar was an agent of the Mexican Defendants and working in California  
17 under their control \* \* \*.”)). Fr. Aguilar’s contacts with California, however, do not relate to the  
18 alleged molestation of Plaintiff in Mexico many years later. Put simply, Plaintiff cannot impute  
19 Fr. Aguilar’s contacts with California in 1987 and 1988 to the Mexican Defendants for the  
20 purpose of establishing jurisdiction with regard to events that took place in 1994. *See DVI, Inc.*  
21 *v. Superior Court (Papworth)* (2002) 104 Cal. App. 4th 1080, 1100 (stating that the contacts  
22 relevant to the jurisdictional inquiry are “defendant’s contacts when the alleged conduct occurred  
23 and at the time of service of summons”). Because Fr. Aguilar’s alleged forum contacts do not

24 <sup>3</sup> “Personal jurisdiction must be based on forum-related acts that were personally committed by  
25 each nonresident defendant. The purposes and acts of one party \* \* \* cannot be imputed to a  
26 third party to establish jurisdiction over the third party defendant.” *In re Auto. Antitrust Cases I*  
& *II* (2005) 135 Cal. App. 4th 100, 113.

27 <sup>4</sup> Moreover, the tort of an agent still must injure a California resident in order to subject the  
28 principal to personal jurisdiction. *See, e.g., Sher*, 911 F.2d at 1364-65 (“California has an  
interest in protecting *its citizens* against legal malpractice, regardless of where the malpractice  
occurs.” (emphasis added)).

1 relate to Plaintiff's claims, those contacts cannot ground personal jurisdiction over the Mexican  
2 Defendants, even assuming an agency relationship between those Defendants and Fr. Aguilar.

3 **II. Plaintiff Is Not Entitled to Jurisdictional Discovery**

4 **A. Discovery Is Not Likely to Produce Jurisdictional Evidence**

5 "The granting of a discovery request lies in the discretion of the trial court, whose ruling  
6 will not be disturbed in the absence of manifest abuse." *Goehring v. Superior Court (Bernier)*  
7 (1998) 62 Cal. App. 4th 894, 911 (internal citations omitted) (cited in Pl. Mem. 7). The extent of  
8 this discretion is evident in the disposition of *Goehring*. In that case, several Californian  
9 residents sued, among others, a Texas corporation and two partners therein, alleging participation  
10 in a fraudulent scheme involving pay telephones perpetrated by a Californian corporation. The  
11 two Texas partners moved to dismiss, arguing that California lacked personal jurisdiction over  
12 them, but the trial court denied their motion. *Id.* at 899-903. The Court of Appeal reversed the  
13 trial court's decision, holding that the Texas partners "did not purposefully avail themselves of  
14 California benefits;" rather, the transaction was quintessentially Texan in nature:

15 The contract negotiations occurred in Texas. The sales and security agreements  
16 and promissory notes were governed by Texas law. The transaction documents  
17 were prepared by a Texas law firm. The transaction closed in Texas. The doc-  
18 uments were executed in Texas and payments necessary to close the transaction  
19 were provided to a bank in Texas. The sales and security agreements concerned  
20 only Texas-based pay telephones that were required to remain in Texas; thus, all  
21 future consequences were in Texas.

19 *Id.* at 907.<sup>5</sup>

20 In reversing the trial court, however, the Court of Appeal did not acquiesce to the  
21 plaintiffs' "request that they be provided the opportunity to conduct discovery." *Id.* at 911.  
22 Instead, the Court of Appeal committed the issue of jurisdictional discovery to the discretion of  
23 the trial court and stated that, "[i]f the court exercises its discretion to deny discovery, the court  
24 should enter an order granting petitioners' motion to dismiss." *Id.*

25 *Goehring* makes clear that this Court, within its discretion, may deny Plaintiff's motion

26 <sup>5</sup> The *Goehring* court focused on the Texan nature of the transactions at issue, despite that (i) the  
27 Texas partners had signed and filed a financial statement with the California Secretary of State  
28 giving assurances to creditors with regard to the security agreement negotiated and signed in  
Texas, 62 Cal. App. 4th at 907-08, and (ii) the Texas partners' actions had effects within  
California, *id.* at 908-09.

1 for jurisdictional discovery, especially in the context of an action that is essentially Mexican in  
2 character. *See also Thomson v. Anderson* (2003) 113 Cal. App. 4th 258, 271-72 (holding that  
3 trial court did not abuse its discretion in denying request for jurisdictional discovery and  
4 affirming order to quash service of summons for lack of jurisdiction); *Beckman v. Thompson*  
5 (1992) 4 Cal. App. 4th 481, 486-87 (same).

6 “In order to prevail on a motion for \* \* \* jurisdictional discovery, the plaintiff should  
7 demonstrate that discovery is likely to lead to the production of evidence of facts establishing  
8 jurisdiction.” *In re Auto. Antitrust Cases I & II* (2005) 135 Cal. App. 4th 100, 127. The  
9 plaintiffs in *Automobile Antitrust* alleged that various automobile manufacturers conspired to  
10 prevent the exportation of Canadian vehicles into California. *Id.* at 111-12. The court held that  
11 the plaintiffs could not subject four nonresident defendants to jurisdiction in California merely  
12 by presenting evidence that other, resident defendants participated in a conspiracy to harm  
13 California consumers. *Id.* at 112-14. The court reiterated this reasoning in holding that the trial  
14 court did not abuse its discretion by denying the plaintiffs’ motion for a continuance for  
15 jurisdictional discovery. *Id.* at 127 (“Even when the underlying complaint alleges a conspiracy,  
16 the plaintiff must still offer evidence tending to support the existence of personal jurisdiction  
17 over each named nonresident defendant.”). Because “[t]he plaintiffs failed to show that further  
18 discovery was likely to lead to the production of evidence establishing jurisdiction” it was proper  
19 for the trial court to deny the plaintiffs’ motion for a continuance for jurisdictional discovery. *Id.*

20 Plaintiff fails to demonstrate that jurisdictional discovery likely would lead to evidence  
21 establishing jurisdiction. The Declaration of Michael Finnegan in support of Plaintiff’s Motion  
22 for Discovery enumerates numerous facts that Plaintiff “would expect to find” by virtue of  
23 jurisdictional discovery. (Finnegan Decl. *passim*). It is not at all clear, however, on what  
24 Plaintiff bases such expectations, apart from Mr. Finnegan’s experience in other “cases involving  
25 childhood sexual abuse.” (*Id.* ¶¶ 3-5). This is a sparse and tenuous basis on which to ground the  
26 expansive discovery proposed by Plaintiff (see below). Moreover, as the Mexican Defendants  
27 argued at length in their opposition to the coordination of this action with other clergy abuse  
28 cases, the instant controversy is fundamentally distinct from typical clergy abuse cases.



1 (Mexican Defendants' Opposition to Forty-first Request To Add On Coordinated Cases With  
2 Regard to Case No. BC358718 [Decl. of Evan Wooten in Support of Mexican Defendants'  
3 Opposition to Plaintiff's Motion for Jurisdictional Discovery Ex. A])). Because jurisdictional  
4 discovery would not alter the decidedly Mexican character of the instant dispute and because  
5 Plaintiff has done little to show that discovery likely would produce jurisdictional evidence, this  
6 Court would be well within its discretion to deny Plaintiff's Motion for Discovery.

7 **B. The Expansive Nature of the Proposed Discovery Exceeds Issues of**  
8 **Jurisdiction.**

9 "[A] motion to quash, like most pretrial motions made in civil cases, does not involve a  
10 determination of facts related to the merits of the case." *Sch. Dist. of Okaloosa County v.*  
11 *Superior Court (City of Orange)* (1997) 58 Cal. App. 4th 1126, 1133-34. The scope of  
12 Plaintiff's proposed discovery, however, goes beyond issues of jurisdiction to reach the merits of  
13 the case. For example, Plaintiff "expect[s] to find evidence that the Defendants do or did have  
14 sub secreto or secret files for scandalous materials, as required by \* \* \* the code of canon law"  
15 and "evidence relating to whether the Mexican Defendants conspired to violate California  
16 laws."<sup>6</sup> (Finnegan Decl. ¶¶ 8, 19). Such aspects of the proposed discovery go directly to the  
17 merits of the case, rather than to jurisdiction. As such, Plaintiff's request is improper and should  
18 be denied.

19 Alternatively, the expansive scope of Plaintiff's Motion for Discovery requires that any  
20 discovery order be tailored to the issue of jurisdiction. Defendants "cannot be required to answer  
21 any question which is not relevant to the subject matter of the [discovery] motion," i.e.,  
22 jurisdiction. *1880 Corp. v. Superior Court (Atlas Corp.)* (1962) 57 Cal. 2d 840, 843. In *1880*  
23 *Corp.*, the California Supreme Court authorized a series of "[i]nterrogatories which [were]  
24 relevant to the subject matter of a motion to quash" but did not authorize additional discovery.  
25 *Id.* Similarly, if the Court grants Plaintiff's Motion for Discovery, it should do so only after  
26 tempering Plaintiff's request to comport with the limited aims of jurisdictional discovery.

27 <sup>6</sup> Allegations of conspiracy concern the merits of the case and do not suffice to establish personal  
28 jurisdiction: "The jurisdictional facts shown must pertain to each separate nonresident defendant,  
even in a case alleging a conspiracy." *Auto. Antitrust*, 135 Cal. App. 4th at 110.

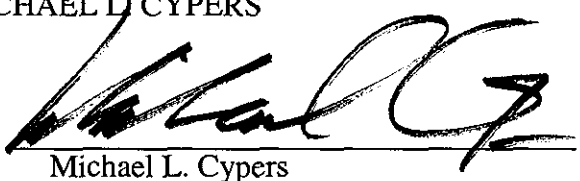
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CONCLUSION

For the foregoing reasons, the Mexican Defendants respectfully request that the Court deny Plaintiff's Motion for Jurisdictional Discovery, or, in the alternative, limit any discovery order to the issue of jurisdiction.

Dated: March 14, 2007

MAYER, BROWN, ROWE & MAW LLP  
MICHAEL D. CYPERS

By: 

Michael L. Cypers  
Attorneys for Defendants Appearing Specially  
CARDINAL NORBERTO RIVERA AND THE  
DIOCESE OF TEHUACAN

1 **PROOF OF SERVICE**

2 I, Elena G. Griffin, declare:

3 I am employed in Los Angeles County, California. I am over the age of eighteen years  
4 and not a party to the within-entitled action. My business address is 350 South Grand Avenue,  
5 25th Floor, Los Angeles, California 90071-1503. On March 14, 2007, I served a copy of the  
6 within document(s):

7 **MEXICAN DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR**  
8 **JURISDICTIONAL DISCOVERY**

- 9  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
forth below on this date before 5:00 p.m.
- 10  by placing the document(s) listed above in a sealed envelope with postage thereon  
11 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
forth below.
- 12  by placing the document(s) listed above in a sealed UPS envelope and affixing a  
13 pre-paid air bill, and causing the envelope to be delivered to a UPS agent for  
delivery.
- 14  by personally delivering the document(s) listed above to the person(s) at the  
15 address(es) set forth below.

16 *Please see attached service list.*

17 I am readily familiar with the firm's practice of collection and processing correspondence  
18 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
19 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
20 motion of the party served, service is presumed invalid if postal cancellation date or postage  
21 meter date is more than one day after date of deposit for mailing in affidavit.

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

24 Executed on March 14, 2007, at Los Angeles, California.

25   
26 \_\_\_\_\_  
Elena G. Griffin

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