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Defendant and Cross-Complainant *pro se*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

KENDRICK MOXON

Plaintiff,

v.

GRAHAM BERRY,

Defendants.

GRAHAM E. BERRY, an individual;

Cross-Complainant,

v.

KENDRICK L. MOXON, an individual;

Cross-Defendant.

Case No. BC429217

**DEFENDANT AND CROSS-
COMPLAINANT'S APPENDIX NO. II
OF EXHIBITS AND REQUEST FOR
JUDICIAL NOTICE FILED AS PART OF
THE UNVERIFIED ANSWER AND
VERIFIED COMPULSARY CROSS-
COMPLAINT HEREIN.**

Action filed: January 5, 2010

[Filed concurrently with: (1) Judicial Council
of California Form MC-701 (C.C.P. §391.7;
(2) Appendix No. I of Exhibits [Exhibit A];
(4) Appendix No. III of Exhibits [Exhibits
E-J] ; Unverified answer and verified cross-
complaint]

Ex D

EXHIBIT D

1
2
3 **DECLARATION OF ROBERT J. CIPRIANO**

4 I, Robert J. Cipriano, hereby declare and state as follows:

5 1. I currently reside in the City of Palm Springs, California. I have personal knowledge of
6 the matters set forth herein and, if called upon to do so, could and would competently testify
7 thereto under oath.

8 2. I am writing and signing this declaration because I have learned that the truth always
9 comes out eventually, and that the truth will set one free. I wish to testify and clarify, for all time,
10 how I was used by my former attorney, Kendrick L. Moxon ("Moxon"), to try and destroy
11 Graham E. Berry for Moxon's clients, the Church of Scientology International, and scientologists
12 Rev. Ken Barton and Isadore Chait.
13
14

15 3. I did not seek Moxon's representation. Moxon came to me asking me to allow him to
16 represent me.
17

18 4. Moxon did not inform me that he was a potential witness and defendant in the litigation
19 that he came to me asking me to allow him to represent me in.
20

21 5. Moxon never advised me of any conflicts of interest issues either before or during his
22 representation of me.

23 6. Moxon never requested I sign any waiver of conflict of interest agreement.

24 7. He also never told me to seek the advice of independent counsel before having me agree
25 to allow him to represent me.
26

27 6. The signature of "Robert Cipriano" on the retainer agreement between Moxon and me
28



1 was not signed by me. The retainer agreement was also backdated to reflect a period of time
2 when I was not represented by Mr. Moxon.

3
4 7. During the winter of 1999, I had minimal contact with Graham E. Berry. In this regard,
5 we occasionally communicated by telephone and e-mail.

6
7 8. During April 2000, I re-established contact with Graham Berry and told him that I had
8 been under further pressure and harassment by Mr. Moxon and Mr. Ingram, Moxon's and
9 scientology's private investigator, and that I was terrified as to what Moxon or Eugene Ingram
10 might do or have done to me.

11
12 9. I wanted to totally set the record straight on all matters pertaining to scientology, Moxon,
13 Ingram and others.

14
15 9. I wanted Mr. Berry to take me back to Los Angeles from Palm Springs to give a
16 deposition clearing him of the statements that I had previously made about him.

17
18 10. Mr. Berry said that he would come to Palm Springs and drive me back to Los Angeles to
19 meet with his attorney and the Los Angeles District Attorney's office which had been wanting to
20 interview me in relation to my involvement with Mr. Ingram and Mr. Moxon with regard to at
21 least one law suit that Mr. Moxon had filed against Mr. Berry.

22
23 11. However, before I could meet with Mr. Berry I became falsely involved in a domestic
24 dispute for which I was briefly arrested and released. Several days later my girlfriend was visited
25 by, but refused to open the door to, a man she described as fitting the description of Eugene
26 Ingram, whom she had never met or seen before.

27
28 //

DECLARATION OF ROBERT J. CIPRIANO

1 12. I then recontacted Mr. Berry and said that I still wanted to come to Los Angeles, have
2 my deposition taken, and to meet with law enforcement authorities regarding the matters I have
3 testified to in my August 9, 1999, and September 26, 1999, declarations.

5 13. I told Mr. Berry that I had several requirements; First, I was so terrified of what Moxon
6 and Ingram would try to do to me that I had to leave Palm Springs when notice of my deposition
7 was given. Second, I wanted my girlfriend to be with me while I was out of Palm Springs, for
8 safety purposes and to help me prepare my self mentally and emotionally to testify at deposition
9 about the matters set forth in my August 9, 1999, and September 26, 1999, declarations. Third,
10 that I did not have the money to travel to Los Angeles, or anywhere else, and stay for the
11 approximately 12 days before and during my deposition.

14 14. During several telephone conversations in late May 2000, Graham Berry told me that he
15 understood that his insurance carrier would not pay for my accommodation costs in connection
16 with my deposition in the *Hurtado v. Berry* case. Mr. Berry told me that, under the
17 circumstances, I could not stay at his apartment, but that he would pay for the travel,
18 accommodations and some food expenses associated with my being subpoenaed and traveling to
19 Los Angeles to give my testimony in the *Hurtado v. Berry* case.

22 15. I intend to testify, among other things, as to how I helped Mr. Moxon and Mr. Ingram
23 locate Anthony Apodaca to give testimony against Mr. Berry.

25 16. Mr. Berry said it would be very frugal and basic accommodations.

27 17. There was to be only one understanding Mr. Berry and me and that was that I would tell
28 the truth whatever that might be and wherever the chips may fall was of no consequence only

DECLARATION OF ROBERT J. CIPRIANO

1 that I tell the truth.

2 18. That has not changed and Mr. Berry has not coached me in connection with any
3 testimony that I might give.
4

5 19. He also has spent virtually no time with me.

6 20. He has provided my girlfriend and me with bus transportation to Los Angeles, a \$400.00
7 per week motel room for 10¹⁴ days. One dinner at Norm's Diner valued at approsomately \$15.00
8 and an additional \$65.00 total for 10 days' food. His only request has been and is that I just tell
9 the truth whatever that is. His request has not changed.
10
11

12 21. My deposition was scheduled to be taken on Monday June 12, 2000, at the Robie &
13 Matthai law offices which represent Mr. Berry in the *Hurtado v. Berry* case. I was advised by
14 Kim Sellers, Esq., who was to take my deposition, that Mr. Moxon's office had made an
15 unsuccessful *ex parte* application to prevent my deposition from going forward, but that the
16 judge had ordered it to go forward without limitation as to its scope.
17
18

19 22. My deposition commenced at approximately 10.45 A.M. on June 12, 2000.

20 23. We took a brief break and then another brief break at about 11:30 A.M.

21 24. Ava Paquette of the Moxon & Kobrin law firm represented Hurtado
22

23 25. During the approximately 30 minutes of actual deposition time, Ms. Sellers had me identify
24 about four documents I had previously signed, including two declarations.

25 26. I testified that the signature on my retainer agreement with Mr. Moxon was not mine,
26 although the terms were accurate.
27

28 //

DECLARATION OF ROBERT J. CIPRIANO

1 27. I testified that Mr. Moxon had not charged me any money at all for his representation of
2 me in the *Berry v. Cipriano* case and that he had paid for the separate representation of me by
3 Gary Soter, Esq.
4

5 28. I agreed that all of my files in the custody of Mr. Berry's attorney could be photocopied
6 and held by them and for use by Mr. Berry.
7

8 29. I also testified that the only legal representation Mr. Berry had ever provided me was for
9 the sole purpose of requesting and trying to obtain a court order that Mr. Moxon return my files,
10 papers and valuable stock certificates and other securities. Those requests were made during mid
11 to late August 1999.
12

13 30. Mr. Moxon still has not returned those papers and files to me.
14

15 31. By way of explanation, which has not been testified to so far in my deposition, on
16 August 20, 1999, I appeared before Judge Williams to speak on Mr. Berry's behalf, and against
17 my former lawyer, Moxon and his motion on behalf of his other "client" (Isadore Chait), his
18 usual client Church of Scientology International, and fellow scientology executive Rev. Glen
19 Barton. This was in the *Berry v. Cipriano*, *Berry v. Barton* and *Berry v. Miscavige* consolidated
20 cases, in which Mr. Berry said he was going to file a motion to have Moxon added as a
21 defendant.
22
23

24 32. When I appeared before Judge Williams he very rudely refused to allow me to speak on
25 my own behalf, he refused to allow me the opportunity to object to my former attorney Mr.
26 Moxon and my former attorney Mr. Soter proceeding to have Mr. Berry declared a vexatious
27 litigant in the *Berry v. Cipriano* case.
28

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1 33. Judge Williams also refused to allow me to address the Court regarding the motion that
2 had been filed, and that he was refusing to hear, a motion to have Mr. Moxon ordered to return
3 my files that he had so far refused to do and still, to this date, has not returned.
4

5 34. I near as I could tell, having been in many courtrooms myself in my prior work as a
6 litigation paralegal, this was a "kangaroo court" before which Mr. Berry did not have a chance of
7 a fair and unprejudiced hearing.
8

9 35. Judge Williams also stunned me by declaring that he thought he had seen my [August 9,
10 1999] declaration but that it was "irrelevant", that he was in his final term on the bench, that he
11 did not have to face the voters again and that he could behave like a "federal judge" while sitting
12 in the state court.
13

14 36. Mr. Moxon had solicited and manufactured my defense and the defense of his other
15 clients, as far as I could tell.
16

17 37. In my own case, Mr. Moxon could never have successfully defended me in the *Berry v.*
18 *Cipriano* case without having me lie that the contents of my May 5, 1994, declaration were true,
19 and that was what the *Berry v. Cipriano*, *Barton* and *Miscavige* cases were mainly about.
20

21 38. Mr. Moxon also told me that the *Berry v. Cipriano* case had been dismissed and that Mr.
22 Berry could never sue for the contents of my May 5, 1994, declaration again.
23

24 39. Later I found that Mr. Berry had only filed a voluntary dismissal and that I could then
25 sign a settlement agreement, with mutual general releases and a covenant not to execute, with
26 Mr. Berry who it seemed to me now had even more reason to sue me because of what Mr.
27 Ingram and Mr. Moxon had blackmailed, bribed and intimidated me into doing.
28

DECLARATION OF ROBERT J. CIPRIANO

1 40. I am also a victim of Mr. Moxon.

2 41. Mr. Berry and I filed a joint motion to have Judge Williams approve the settlement
3 agreement as being in good faith. The settlement figure (not to be collected) was based on a
4 formula that Mr. Berry explained at the time.
5

6 42. Judge Williams refused to approve the agreement and has not heard the motion for good
7 faith settlement between Mr. Berry and me.
8

9 43 Having digressed for the purpose of clarification I am now returning to my June 12,
10 2000, deposition in the *Hurtado v. Berry* case. Shortly before we took a break at about 11:30
11 A.M., I expressly waived the attorney client privilege between myself and Kendrick L. Moxon,
12 Esq., and the Moxon & Kobrin law firm, except to the extent that I am entitled (potentially along
13 with Mr. Moxon) to claim a Fifth Amendment privilege against self-incrimination (but not as to
14 the matters already testified to).
15

16 44. I hereby also waive the attorney client privilege with regard to Gary Soter, Esq., and the
17 Wasserman, Comden & Casselman law firm.
18

19 45. I again request both Mr. Moxon and Mr. Soter to deliver me all of my client files and
20 documents, in tape-sealed boxes, to me care of Edith Matthai, Esq., of Robie & Matthai.
21

22 46. The deposition resumed at approximately 11:40 A.M.

23 47. To the best of my recollection, there had been no problems at the deposition and Ms.
24 Paquette had made only one objection which was a continuing objection as to relevancy.
25

26 48. Ms. Paquette put Mr. Moxon on a conference call telephone.
27

28 //


DECLARATION OF ROBERT J. CIPRIANO

1 49. Mr. Moxon said he was in Florida and was going to participate by telephone. He then
2 said he was suspending the deposition.

3
4 50. Ms. Sellers was outraged. She said he had given ten days notice, his law partner was
5 there and the judge had denied his *ex parte* application and ordered the deposition to go forward
6 without limitation. Ms Sellers gave Mr. Moxon notice of an *ex parte* motion to allow the
7 deposition to proceed and to award sanctions for what he had just done.
8

9 51. I believe that Mr. Moxon terminated my deposition in order to prevent Mr. Berry from
10 being able to give a transcript of my testimony to the court which is hearing his Rule 60(b)
11 motion in the *Pattinson* case.
12

13 52. I also believe that Mr. Moxon and Mr. Ingram will use the termination to try to harass,
14 intimidate and try to bribe me again, either to testify against my free will, as they had me do
15 before, or to disappear from the country as they have previously tried to do.
16

17 53. I have read Mr. Moxon's Opposition to Mr. Berry's Rule 60(b) motion. The following
18 statements in that Opposition are absolutely untrue:
19

20 a) Page 6:9-10. [The Berry cases were dismissed] " . . . but only after the
21 defendants were required to expend substantial sums for attorneys' fees and
22 costs." As I have previously testified, Mr. Moxon had Mr. Ingram fly to New
23 York, locate me, blackmail [me] into signing the May 5, 1994, declaration
24 (which was false), published that declaration on the Internet where it still
25 remains and damages Mr. Berry and myself to this day, and probably forever.
26 Mr. Berry was then goaded into suing me. Mr. Ingram then located me,
27 resumed his intimidation of me and had me meet "his boss", Mr. Moxon. Mr.
28 Moxon solicited my representation, bribed me to commit perjury with

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1 payments totaling hundreds of thousands of dollars, all for the sole purpose of
2 destroying Mr. Berry as I testified at the end of my August 9, 1999,
3 declaration. The Church of Scientology and Mr. Moxon precipitated, procured,
4 purchased and manufactured a totally malicious and bad faith law suit against
5 Mr. Berry for the purpose of punishing him and stopping him from
6 representing anyone against the Church again, or from practicing law again. It
7 appears to me that they have succeeded and on June 13, 2000, Mr. Berry told
8 me he was down to his last \$200.00.

9 b) Page 7: 11-14 Mr. [Cipriano] " . . . not only did not repudiate the
10 contents of his earlier affidavit, or that he recently has reaffirmed the truth of
11 his statements in his earlier affidavit (Exhibit E, hereto) . . . "

12 This is an utter falsehood.

13
14 54. My May 5, 1994, declaration is not true in the following respects:

15 a) Paragraph 4. I never knew Graham Berry to prefer "young underage men
16 for sexual gratification." Also, Mr. Berry was not "a classic example of
17 'Chicken Hawk.'" To the best of my knowledge at all times, Graham Berry is
18 not and never has been a "Chicken Hawk" or a person who engaged in sex with
19 underage males or any minor;

20 b) Paragraphs 5, 6, 7 and 8 are also, to the best of my own personal
21 knowledge and recollection, totally false and without any factual foundation.

22 c) Paragraph 10 is also partially false. I never saw or knew of Mr. Berry
23 being surrounded at any time by any underage males, under the age of 18,16 or
24 "whatever," whom [sic] he used for sex."

25 55. Because I want to get the truth out before Mr. Moxon can possibly get to me again, I am
26 signing this declaration for Mr. Berry to file with such Courts and other authorities as may be
27 appropriate.
28

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1 56. In this regard, my fear is based upon past experience and communications with Mr.
2 Moxon and Mr. Ingram, and upon Mr. Moxon's reported refusal to agree that he will not try to
3 communicate with me between now and the resumption of my deposition in the *Hurtado v. Berry*
4 case.
5

6 56. I am also preparing a separate and more comprehensive declaration and I want to testify
7 at an immediate Examination Under Oath, as to the following matters of fact:
8

9 a) Because the contents of my May 5, 1994, declaration are false as
10 explained above, so also is the related testimony in my April 27, 1998,
11 declaration and at my July 1 and 2, 1998, depositions taken for use in the *Berry*
12 *v. Cipriano*, *Berry v. Barton* and *Berry v. Miscavige* cases.
13

14 b) In relation to my deposition testimony, and in addition to my testimony
15 recanting my prior evidence as described above, it is totally untrue that I saw
16 Graham Berry using cocaine or other drugs to procure sexual favors from
17 underage males; or that he was procuring young male prostitutes as I had
18 testified or that he had males staying with him in his offices, as I had also
19 testified to at my deposition in the *Berry v. Cipriano* and *Berry v. Barton*
20 cases.
21

22 c) Had it not been for the intimidation, blackmail and bribery of me by Mr.
23 Moxon, his law firm (Moxon & Kobrin), the Church of Scientology and Mr.
24 Ingram, I would never have testified falsely against Graham Berry or anyone.
25

26 //
27
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DECLARATION OF ROBERT J. CIPRIANO

1 d) Eugene Ingram telling me how the Church of Scientology, Mr. Moxon
2 and he had "investigated" Graham Berry's former senior partner, Bob Lewis,
3 Esq., found that he was having an extra-marital affair, and had used this
4 information to pressure Bob Lewis into taking actions against Graham Berry
5 and Dr. Geertz in the *Fishman* case.
6

7
8 e) After my declaration dated August 9, 1999, was filed in *the Berry v.*
9 *Cipriano. Berry v. Barton and Berry v. Miscavige* cases, Mr. Moxon arranged
10 for one of his private investigators, Edwin Richardson, to get me from a
11 friend's home, pay for my overnight accommodation at a hotel near Los
12 Angeles International Airport and then meet Mr. Moxon in the morning. In the
13 morning I spoke by telephone with Mr. Moxon who told me he was sending a
14 group of people to get me and to take me to an "old lawyer" at his office on
15 Wilshire Boulevard and that this "old lawyer" "would make everything all
16 right." I got scared and telephoned Graham Berry, told him what had happened
17 and asked him to come and rescue me. Soon after, banging on the door
18 commenced and continued about 20 minutes until Graham Berry and Jane
19 Scott arrived, rescued me from Mr. Moxon's private investigator Edwin
20 Richardson, and took me to a "safe house" to stay in;
21

22
23 f) On December 23, 1999, I was at my then place of work in Palm Springs,
24 California when Mr. Moxon turned up in the office. I said that I could
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DECLARATION OF ROBERT J. CIPRIANO

1 not see him so he waited until I had finished work. He met outside of my
2 work and pointed out a white van parked opposite to my place of
3 employment. He told me that he was videotaping and recording our
4 meeting on the street which made me uncomfortable and fearful. He also
5 gave me two documents. One, he said, would exonerate him from having
6 suborned perjury from me in the *Berry v. Cipriano*, *Berry v. Barton and*
7 *Berry v. Miscavige* cases. The other, he said, was a settlement agreement
8 releasing him from any liability to me for what he had had me do to try
9 and destroy Graham Berry. I was appalled. I stared for maybe 10 minutes
10 at both documents. I thought they had to be unenforceable so it did not
11 matter whether I signed them or not. I also felt intimidated by Mr.
12 Moxon, and this intimidation extended right back to Mr. Ingram's first
13 visit to me on May 4, 1994. He then told me that he had \$500.00 for me.
14 I could see the parked van keeping me under observation (and
15 audio/visual surveillance). Mr. Moxon then said to "just sign it" and he
16 would give me \$800.00 instead. Because of my fear of what Mr. Moxon
17 would do or have done if I did not comply, I signed both the declaration
18 dated December 23, 1999, and the settlement agreement. After I signed
19 the two documents, Mr. Moxon and I went to the Bank of America where
20 I observed him writing a Bank of America check to either cash or
21 himself in the amount of \$800.00 and drawn upon a Moxon & Kobrin
22
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DECLARATION OF ROBERT J. CIPRIANO

1 bank account. He then gave me the money, we went outside and he got
2 into the white van and drove with the occupants in the van.
3

- 4 g) It was Mr. Moxon who did not afford me the opportunity to make any
5 changes to the declaration he had prepared for my signature and with no
6 prior discussion as to it's contents.
7

8 57. That December 23, 1999, declaration is false in the following respects:

- 9 a) Paragraph 3 is untrue. Mr. Moxon knew the May 5, 1994, declaration
10 was untrue. In fact, attached to my September 26, 1999, declaration is a
11 transcript of an attorney client (whose privilege is now waived) conversation
12 between Mr. Moxon and me where Mr. Moxon actually discusses the
13 fabrication of testimony in order to "fair game" Mr. Berry and to defeat his
14 defamation lawsuit against me. In fact, as testified to in my August 9, 1999,
15 declaration, I had originally wanted Mr. Moxon to settle with Mr. Berry, but he
16 ignored and did not convey my instructions regarding my settlement letter to
17 Mr. Berry.
18
19 b) Paragraph 4 regarding my deposition testimony is also untrue for the
20 reasons set forth in my August 9, 1999, declaration, and above.
21
22 c) Paragraph 5 is untrue except as to the dates. Mr. Berry did not write my
23 August 9, 1999, declaration. I did. In fact, I made it clear to both Mr.
24 Berry and his friend and occasional legal assistant, Jane Scott, that unless
25 it was my own document then I was not going to provide the testimony.
26
27
28

DECLARATION OF ROBERT J. CIPRIANO

1 Later, Jane Scott helped me with spelling and grammar and Graham
2 Berry suggested paragraph headings. As I have previously testified in my
3 August 9, 1999, and September 26, 1999, declarations, Mr. Moxon and
4 Mr. Rosen did suborn perjury from me, and they instructed and
5 suggested that I make false statements in my deposition and at other
6 times as I testified in my August 9, 1999, declaration.
7
8

9 58. I wish to make it absolutely clear that I recant my declarations dated: May 5, 1994; April
10 27, 1998; December 23, 1999, and my deposition testimony taken July 1 and 2, 1998, as set forth
11 above.
12

13 59. I confirm as true in every respect, then and now, the contents of my August 9, 1999,
14 declaration, my September 26, 1999, declaration, and my June 12, 2000, deposition testimony.
15

16 60. Graham Berry drafted this declaration after conversing with me, at my insistence, on June
17 13, 2000. Although Mr. Berry drafted it, I have had every opportunity to make whatever changes
18 that I wish and to consult with a lawyer. Mr. Berry has not provided me advice in any respect,
19 and he has not pressured or induced me in any manner. I have reviewed the original draft of this
20 declaration, made changes during the day of June 14, 2000, taken it back to my motel overnight
21 and further reviewed and revised it. Only when I was satisfied that it accurately expressed the
22 facts and chronology of events did I sign it and authorize Mr. Berry to use it however he needed
23 to.
24
25

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28 //
29

DECLARATION OF ROBERT J. CIPRIANO

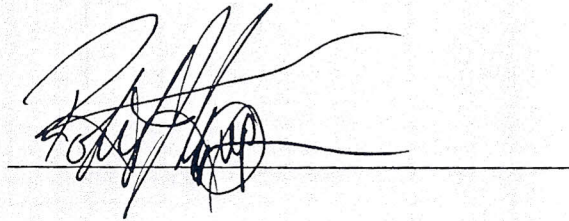
1 61. All Mr. Berry has consistently said to me is that he wants me to tell the truth and this
2 declaration is the truth because I believe it will set me free spiritually from being a victim of Mr.
3 Moxon, Mr. Ingram and the Church of Scientology in all of this.
4

5 62. Although I cannot pay Mr. Berry damages for the loss of his legal career which Mr.
6 Moxon, Mr. Ingram and the Church of Scientology had me help them cause, I can try and make
7 some amends though assisting him to try and recover what I understand to be his prior good
8 name, reputation and position in the California and other legal communities in which Graham
9 Berry has been licensed to practice law.
10
11

12 I declare under penalty of perjury under the laws of the United States of America and the
13 State of California that the foregoing is true and correct.
14

15 Executed this 14th day of June 1999 in Los Angeles, California
16

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ROBERT J. CIPRIANO

DECLARATION OF ROBERT J. CIPRIANO

PROOF OF SERVICE BY HAND

STATE OF CALIFORNIA

)
) ss.:
)

COUNTY OF LOS ANGELES

MOXON V. BERRY BC42917

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 3384 McLaughlin Avenue, Los Angeles, CA 90066. I am an officer of the court herein.

On February __, 2010, I personally served on interested parties in said action the within:

DEFENDANT AND CROSS-COMPLAINANT'S APPENDIX NO. II OF EXHIBITS AND REQUEST FOR JUDICIAL NOTICE FILED AS PART OF THE UNVERIFIED ANSWER AND VERIFIED COMPULSARY CROSS-COMPLAINT HEREIN.

by placing a true copy thereof in sealed envelope(s) addressed as stated below and by delivering the envelope (s) by hand to the offices of the addressee (s).

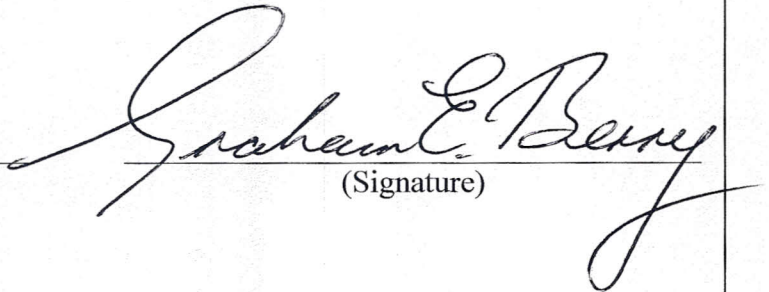
Kendrick L. Moxon, Esq,
Moxon & Kobrin
3055 Wilshire Boulevard, Suite 900
Los Angeles, CA 90010

Telephone: (213) 487-4468
Facsimile: (213) 487-5385
Email: kmoxon@earthlink.net

Executed on February __, 2010, at Los Angeles, California.

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

Graham E. Berry
(Type or print name)


(Signature)