

1 JEFFREY P. SIEGEL, ESQ.
2 Jeffrey P. Siegel, State Bar No. 165962
3 333 South Hope Street, Suite 3650
4 Los Angeles, California 90071
5 (213) 473-1940

6 Attorneys for Respondent
7 Matt Nolan

FILED
LOS ANGELES SUPERIOR COURT

DEC 04 1997 *TS*

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11
12 ZOE MCLELLAN,

13 Petitioner,

14
15 MATT NOLAN,

16 Respondent

17) Case No.: BD267396

18) RESPONDENT MATTHEW NOLAN'S
19) OPPOSITION TO ORDER TO SHOW CAUSE
20) RE RESTRAINING ORDER,
21) DECLARATIONS OF MATT NOLAN, AMY
22) MAYNE, CHARLES CALL, JOE ACOSTA
23) AND ROSE BOSWORTH

24) Date: December 10, 1997

25) Time: 10:00 am

26) Place: Department 8

27
28 Respondent Matt Nolan ("Nolan") respectfully submits this Opposition to the Order to Show Cause re entry of Restraining Order issued by this Court on October 3, 1997.

29 **I. FACTS**

30 Nolan and Petitioner had a dating relationship from March 1996 to January 1997
(Nolan Dec. ¶ 2, 3). Petitioner abruptly ended the relationship without explanation in January
1997. (Nolan Dec. ¶ 7.) From May 1, 1997 to September 17, 1997, Nolan had no personal contact
with Petitioner except for a brief meeting on June 12 at a Fitness Spa at which they were both
members. (Nolan Dec. ¶ 11.)

1 On September 17, 1997, Mr. Nolan was at the residence of Charles Call ("Call"), the
2 director of a film in which he played the lead character. (Nolan Dec. ¶ 12; Call Dec. ¶¶ 2, 3.) Both
3 Petitioner and Call reside on Rossmore Avenue. (Nolan Dec. ¶ 12; Call Dec. ¶ 2.) Call's residence
4 is three buildings north of Petitioner. (Nolan Dec. ¶ 12; Call Dec. ¶ 2.) While waiting outside Call's
5 building for Call to arrive, Nolan saw Petitioner walking down the street, and approached her.
6 (Nolan Dec. ¶ 12.) Nolan and Petitioner walked around the neighborhood and talked. (Nolan Dec.
7 ¶ 12.) Nolan asked Petitioner whether they could be friends, and to go out for coffee sometime.
8 Petitioner told Nolan that she would call him. (Nolan Dec. ¶ 12.)

9 On October 1, 1997, Nolan was again at his director's residence, to view a "rough cut"
10 of the film they were working on. (Nolan Dec. ¶ 13; Call Dec. ¶ 3.) At approximately 9 p.m.,
11 Nolan walked down to Petitioner's building to ask her to have a drink with him. As Nolan
12 approached, Petitioner coincidentally walked out of the building and onto the sidewalk. Petitioner
13 was brusque, and stated that she was busy and had to leave. (Nolan Dec. ¶ 13.)

14 Confused over Petitioner's change of demeanor towards him since their last meeting,
15 Nolan went back to Petitioner's apartment building later that evening. (Nolan Dec. ¶ 13.) Nolan
16 was ambivalent about whether to knock on her door or not, and stood outside the apartment thinking.
17 A neighbor of Petitioner walked by. Nolan then knocked on Petitioner's door. Petitioner opened the
18 door and told Nolan she was on the telephone. Nolan asked Petitioner whether she was ever going
19 to call as promised. Petitioner said "get out of here Matt" and slammed the door. Nolan then walked
20 out of the rear of the building, which is accessible from inside the building. The window to
21 Petitioner's first floor apartment is approximately 10 feet above the ground. Moreover, the windows
22 are set at least 8 feet high in the wall of the apartment. Mr. Nolan was emotionally distraught, and
23 shouted at petitioner through the window. He then left the premises. (Nolan Dec. ¶ 13.)

24 On October 2, 1997, Mr. Nolan watched the baseball playoff game between the New
25 York Yankees and the Cleveland Indians between approximately 5:00 and 8:00 p.m. From 9:00 to
26 9:30 p.m., Mr. Nolan watched "Seinfeld." From 10 p.m. to 11 p.m., Mr. Nolan watched the live
27 episode of "FR." (Nolan Dec. ¶ 14.) Throughout the evening, Mr. Nolan spoke with a number of
28 people on the telephone, and ordered a pizza delivery. (Nolan Dec. ¶ 14; Call Dec. ¶ 4.) Nolan went

1 to bed after "E.R." At no time did Mr. Nolan venture off the premises of his apartment complex.
2 (Nolan Dec. ¶ 14.)

3 **II. ARGUMENT**

4 **A. Petitioner is Not Entitled to Relief Under the Domestic Violence Prevention Act.**

5 Petitioner requests this Court to enter a restraining order pursuant to the California
6 Family Code, Sections 6200 et seq.¹ Division 10 of the Family Code is entitled "Prevention of
7 Domestic Violence." Its purposes are to: 1) prevent the recurrence of acts of violence and sexual
8 abuse, and 2) to provide for a separation of the persons involved in the domestic violence for a
9 period sufficient to enable these persons to seek a resolution of the causes of the violence. Family
10 Code, Section 6220. Pursuant to Section 6211 of the Family Code, "Domestic Violence" is defined
11 as "abuse" perpetrated against: 1) a spouse or former spouse; 2) a cohabitant or former cohabitant; 3)
12 a person with whom the respondent is having or has had a dating or engagement relationship; 4) a
13 person with whom the respondent has had a child; or 5) a child of a party. Here, Petitioner alleges
14 entitlement to a restraining order as a "person with whom the respondent is having or has had a
15 dating relationship." See Application and Declaration for Order, 4f.

16 However, Section 6300 of the Family Code provides that a restraining order may be
17 issued only if Petitioner shows by affidavit reasonable proof of a past act or acts of abuse. "Abuse"
18 is defined in Section 6203 as "intentionally or recklessly to cause or attempt to cause bodily injury,
19 or sexual assault, or to place a person in reasonable apprehension of imminent serious bodily injury
20 to that person or another." Here, there is no allegation in Petitioner's Application and Declaration for
21 Order that Respondent caused or attempted to cause bodily injury or sexual assault. See Application
22 and Declaration for Order, 5a, b, & d. Thus, Petitioner is entitled to relief only if the evidence
23 establishes that Respondent placed Petitioner "in reasonable apprehension of imminent serious
24 bodily injury."

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27 ¹ Each page of the Application and Declaration for Order, Order to Show Cause and
28 Temporary Restraining Order states in the bottom right corner "Family Code 6200 et Seq." The
forms used by Petitioner were specifically promulgated by the judicial council for applying for
orders under the California Family Code, Section 6226.

1 In her Declaration, Petitioner describes two incidents that allegedly frightened her.
2 The first, on October 1, 1997 was when Mr. Nolan shouted at her through her window. The second,
3 on October 2, 1997 is based entirely on inadmissible hearsay

4 1. Nolan Was Nowhere Near Petitioner's Residence on October 2, 1997

5 As to the October 2 incident, there is not, and cannot be, one shred of admissible
6 evidence to show that the person whom Petitioner was told was "hanging around" outside
7 Petitioner's building and attempting to climb a fence to the back of that building was in fact Mr.
8 Nolan. Indeed, the evidence clearly shows that Mr. Nolan was nowhere near Petitioner's residence at
9 any time on October 2.

10 2. Petitioner Was Not Placed in Reasonable Apprehension of Imminent
11 Serious Bodily Injury on October 1

12 As to the October 1 incident, there is no evidence to support the conclusion that
13 Petitioner was placed in "reasonable apprehension of imminent serious bodily injury" because Mr. Nolan
14 made no threatening moves toward Petitioner, and made no threats, implied or otherwise, to
15 implied, to Petitioner. Nor did Mr. Nolan attempt to enter Petitioner's window or
16 window. All Mr. Nolan did was shout at Petitioner from the back of the building
17 Petitioner heard through an open window set high in her wall.

Something more
is required than
some undefined
subjective fear

18 Cases construing similar standards in other contexts clearly show that something
19 more is required than some undefined subjective fear. Thus, it is patently unreasonable for
20 Petitioner to claim "apprehension of imminent serious bodily injury" from a slightly built, 5'7 1/2" tall
21 man standing approximately 10 feet below her window. Accordingly, even if Petitioner was a fool
22 that Nolan would injure her, such injury was not "imminent." "Imminent" means "immediate and
23 present and not prospective or even in the near future." An imminent peril is one that, from
24 appearances, must be instantly dealt with." In re Christian S., 7 Cal. 4th 76, 783, 30 Cal. Rptr. 2d 33
25 (1994) (emphasis added). Petitioner may have justly been startled by Mr. Nolan's voice coming
26 through the window, but could not have reasonably been placed in "apprehension of imminent
27 serious bodily injury." For this reason alone, the Petition must be denied.

1 B. Even if Petitioner is Entitled to Relief, the Requested Restraining Order is
2 Impermissibly Overbroad.

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4 1. Respondent Cannot Be Restrained From Travelling on Public
5 Thoroughfare

6 The right to travel has long been held to be a fundamental constitutional right
7 Shapiro v. Thompson, 394 U.S. 618, 22 L. Ed 2d 600, 89 S.Ct. 1322 (1969). Petitioner requests that
8 this Court order Respondent to stay at least 100 yards away from Petitioner's residence. Such an
9 order would enjoin Respondent from travelling on Rossmore Avenue.

10 2. Respondent Cannot Be Restrained From Pursuing Lawful Employment

11 The right to pursue a lawful occupation is a fundamental constitutional right.
12 Townsend v. County of Los Angeles, 49 Cal. App.3d 263, 267, 122 Cal. Rptr. 500 (1975), citing
13 Purdy & Fitzpatrick v. State of California, 71 Cal. 2d 566, 579, 79 Cal. Rptr. 77 (1969). Thus,
14 Respondent cannot be enjoin from attending auditions or taking acting jobs.

15 As stated in Petitioner's Application, both Petitioner and Respondent are professional
16 actors. There is a possibility that Petitioner and Respondent may be both present at auditions, and
17 may be cast together. See Application and Declaration for Order, p. 3, question 10. Accordingly, the
18 requested Order is overbroad as to such circumstances.

19 The requested Order may also impinge on Respondent's right to pursue a lawful
20 occupation by enjoining him from meeting with Mr. Call, who holds many business meetings at his
21 Rossmore Avenue residence. Since Mr. Call's residence is nearby Petitioner's residence,
22 Respondent may be precluded from pursuing his occupation if required to stay 100 yards away from
23 Petitioner's residence.

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1 **III. CONCLUSION**

2 For all the foregoing reasons, Respondent respectfully requests that this Court deny
3 Petitioner's request for entry of a Restraining Order.

4 DATED: December 4, 1997

JEFFREY P. SIEGEL, ESQ.

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7 By 

Jeffrey P. Siegel
Attorney for Respondent
Matt Nolan

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DECLARATION OF MATT NOLAN

Matt Nolan declares as follows:

1 I am the respondent in this matter. I make this declaration in support of my
2 Opposition to Petitioner Zoe McLennan's ("Zoe") request for entry of a Restraining Order against me.
3 I have personal knowledge of all facts set forth herein, and if called, could and would testify
4 competently thereto.

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7 I have known Zoe since approximately February 1996. Zoe and I dated
8 exclusively from approximately March through December 1996. Throughout that time, Zoe lived
9 across the driveway from me in an apartment complex of which I was assistant manager. Zoe also
10 had a key to my apartment.

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12 I was very much in love with Zoe, and based on her numerous statements to
13 that effect, believed that she was in love with me. For instance, as late as December 3, 1996, Zoe
14 told me out of the blue that she wanted to spend the rest of her life with me.

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16 On December 20, 1996, Zoe left Los Angeles for Portland, Oregon, where she
17 was to spend the holidays. I also had plans to visit my family in Portland, so Zoe and I made plans
18 to spend New Year's Eve together there.

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20 On December 26, 1996, I spoke with Zoe on the telephone. Zoe told me that
21 she "needed space" and intended to stay at her friend's house near the Oregon coast for New Year's,
22 rather than spend it with me. This conversation was the first indication to me that there were any
23 problems with our relationship. Needless to say, I was very hurt, confused and upset.

24
25 On December 30, 1996, I called Zoe at her uncle's house. Her uncle told me
26 that Zoe was not at his house and not on the coast, but was in Portland. I called her there, and we
27 had an argument over the phone.

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29 On January 7, 1997, Zoe called me collect in Los Angeles from Portland to
30 tell me without explanation that she was breaking off our relationship. Thereafter, Zoe maintained
31 her residence in an apartment complex until February 1, when she moved to Rossmore Avenue.

1 8 From January 1997 until she moved to Rosamore Avenue, Zoe lived with a
2 friend. On January 16, 1997, Zoe gave me permission to store some things in her apartment while my
3 roof was being replaced. While moving my things, Zoe's telephone rang and her answering machine
4 came on. The caller was someone from the television show "Silk Stalkings," from which Zoe told
5 me approximately a week earlier she had gotten a call-back for an upcoming role. I overheard
6 something about travel arrangements to San Diego, so I knew Zoe had gotten the part.
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8 9 I knew where Zoe stayed during her previous job with the "Silk Stalkings"
9 producer and called Zoe there several times in late January. On January 27, Zoe called me to say she
10 was sorry and that she had tried to write me a letter explaining things, but could not.

11 10 I was heartbroken by our breakup. I contacted Zoe sporadically from
12 February to May 1997, including one fax (the only fax I ever sent her). My sole motive was to
13 understand what had happened and to obtain a sense of closure so that I could move on emotionally.
14 Also, Zoe was my best friend, and I had hoped to preserve a friendship.

15 11 On May 1, 1997, Zoe told me that she was changing her telephone number. I
16 have not known her phone number since then. From May 1 to September 17, 1997, I had no
17 personal contact with Zoe other than a brief chance meeting at a fitness club to which we both
18 belong. During those approximately 5 months, I went to Zoe's apartment once (I was filming at
19 Call's apartment, she wasn't home), and wrote her 3 letters, one of which was to inform her of a
20 conversation I had with a producer who wanted Zoe to act in a TV show.

21 12 On September 17, 1997, I was at the residence of Charles Call ("Call"), the
22 director of a film in which I played the lead character. Call resides on Rosamore Avenue, three
23 buildings North of Zoe. I had been to Call's residence on numerous occasions for production
24 meetings and principal photography filming in July through October 1997. I arrived early at Call's
25 apartment, and he was not at home, so I waited for him outside his building. While waiting outside
26 Call's apartment building, I saw Zoe walking down the street, and I approached her. She and I
27 walked around the neighborhood and talked pleasantly. I asked Zoe whether we could be friends,
28 and she agreed. Zoe told me that she would call me.

1. 13. On October 1, 1997, I again went to Call's residence to view a "rough cut" of
2 the film. At approximately 9 p.m., I walked down to Zoe's building to ask her to have a drink with
3 me. As I approached her building, Zoe walked out of the building. Zoe was brusque towards me,
4 and stated that she was busy and had to leave. I was very confused over Zoe's change of attitude
5 towards me since our last meeting and went back to Zoe's apartment building a short time later.
6 Another resident let me in the building. I was ambivalent about whether to knock on her door or not
7 and stood outside her apartment door for a few moments. One of Zoe's neighbors walked by, we
8 chatted briefly, and I knocked on Zoe's door. Zoe opened the door and told me that she was on the
9 telephone. I asked Zoe whether she was ever going to call me as she said she would on September
10 17. Zoe told me to "get out of here" and slammed the door. I was very upset, hurt and confused. I
11 walked out of the rear of the building, which is accessible from inside the building, and shouted at
12 Zoe from underneath her open window. The window to Zoe's first floor apartment is approximately
13 10 feet above the ground. Moreover, the windows are set at least 8 feet high in the wall of the
14 apartment. I am slightly built, and 5'7" tall. I do not believe that it would have even been possible
15 for me to climb up to or through Zoe's window. Moreover, the thought never entered my mind. I
16 said my peace, and then left the premises. I made no threats, and absolutely no attempts to enter her
17 apartment. In my mind, these were to be my last words to Zoe.

19 14. On October 2, 1997, I watched the baseball playoff game between the New
20 York Yankees and the Cleveland Indians between approximately 5:30 and 8:30 p.m. At
21 approximately 8:30 p.m., I spoke on the telephone to a friend. At 9:00 p.m., I called Raffalo's Pizza
22 for a delivery, which arrived at 9:45 p.m. From 9:00 to 9:30 p.m., I watched "Seinfeld." During
23 "Seinfeld," I spoke on the telephone with Call. From 10 p.m. to 11 p.m., I watched "ER."
24 Throughout the evening, I received phone calls from several friends and acquaintances, including
25 Call, Joe Acosta, Rose Bosworth and Amy Mayne. I went to bed at approximately 11:30 p.m. In
26 short, I did not leave my apartment complex on the night of October 2, 1997, did not loiter around
27 Zoe's apartment building and did not try to climb any fences.
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1 15. At 1:30 a.m., a friend of Zoe's named "Alan" knocked on my door. Alan told
2 me that I had been "identified" as being at Zoe's building that night. Alan held up a length of pipe,
3 with which he threatened to strike me. I was very frightened, and told Alan that I was nowhere near
4 Zoe's apartment that night. Alan told me that if it was me, I'd better hope the police get me before
5 he did.

6 16. I have never threatened Zoe with violence, have never struck her or made any
7 threatening moves toward her. I have not loitered around her apartment or her building, and have
8 never followed her. Moreover, I no longer have any interest in talking to or seeing Zoe ever again.

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

11 Executed on December 4, 1997 at Los Angeles, California.

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Matt Nolan

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DECLARATION OF AMY MAYNE

Amy Mayne declares as follows:

1. I am a professional singer, actress, and a director of "Murder Mysteries" performed at Yamashiro Restaurant and Madame Woo's. I make this Declaration in support of Matt Nolan's Opposition to the Court's Order to Show Cause re Restraining Order. I have personal knowledge of all matters set forth herein, and if called, could and would testify competently thereon.

2. I have known Matt Nolan for approximately 3 years. Matt and I are very close friends and talk to each other over the telephone on a regular basis.

3. On the night of October 2, 1997, I called Matt on his home telephone number. I do not recall the specific time I called, but I do remember speaking with Matt for approximately 45 minutes at sometime between 8 p.m. and 10 p.m. on that evening. I recall this because I remember calling Matt sometime before the live episode of the television show "ER" started and talking with Matt about the upcoming episode.

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

Executed on December 3, 1997 at Los Angeles, California.



Amy Mayne

DECLARATION OF CHARLES CALL

Charles Call declares as follows:

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1. I am a director and producer of independent feature films. Specifically, I am the director and producer of a film entitled "Frank Finds Out," which stars Matt Nolan as the lead character. I make this Declaration in support of Matt Nolan's Opposition to the Court's Order to Show Cause re Restraining Order. I have personal knowledge of all matters set forth herein, and if called, could and would testify competently thereto.

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2. Throughout the filming and post-production work on "Frank Finds Out," all of which took place in July through October 1997, numerous project meetings were held at my apartment, located at 607 North Rossmore Avenue in Los Angeles, California. Some of the principal photography also took place in my apartment. 607 North Rossmore Avenue is three buildings north of 569 North Rossmore Avenue.

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3. On the evening of October 1, 1997, I held a meeting at my apartment to view a "rough cut" of "Frank Finds Out," and to discuss the status of the project. A "rough cut" is a version of the film simply showing the basic structure of the film and is not the final product. The meeting commenced at approximately 6:30 p.m. and lasted until approximately 9 p.m. Among others, and at my request, Matt Nolan attended this October 1, 1997 meeting and stayed until the end of the meeting.

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4. On October 2, 1997, I spoke with Matt Nolan on the telephone at approximately 7 p.m. I initiated the conversation in response to a message Matt had left me earlier that evening by calling Matt at his home. We spoke for approximately 15 minutes.

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

Executed on Dec 3, 1997 at Los Angeles, California.


Charles Call

DECLARATION OF JOE ACOSTA

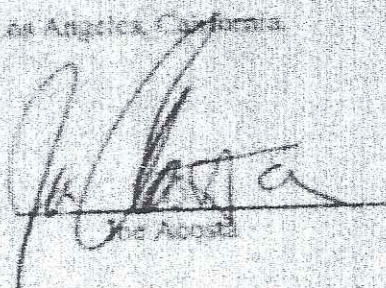
Joe Acosta declares as follows:

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3 1. I have known Matt Nolan since we attended the University of Oregon together
4 approximately 10 years ago. For much of the 2 years since I moved to Los Angeles to pursue an
5 acting career, and especially during the last 10 months, we have been close friends and in regular
6 contact, both in person and by telephone. I make this Declaration in support of Matt Nolan's
7 Opposition to the Court's Order to Show Cause re Restraining Order. I have personal knowledge of
8 all matters set forth herein, and if called, could and would testify competently thereto.

9 2. On the night of October 2, 1997, I called Matt on his home telephone number
10 I do not recall the specific time that I called, but I do remember that it was during the first half hour
11 of the live episode of "ER," which I was watching on my television. Matt answered his telephone,
12 and we spoke for approximately 10-15 minutes. I know that Matt was also watching "ER," because
13 I heard the show in the background over the telephone and because we were discussing the show as
14 it progressed.

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

17 Executed on December 3, 1997 at Los Angeles, California.

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Joe Acosta

DECLARATION OF ROSE BOSWORTH

Rose Bosworth declares as follows:

1. I am a professional actress and an assistant manager for a Victoria's Secret retail store. I make this Declaration in support of Matt Nolan's Opposition to the Court's Order to Show Cause re Restraining Order. I have personal knowledge of all matters set forth herein, and if called, could and would testify competently thereto.

2. I have known Matt Nolan for approximately 6 months. In that time, we have become close friends. Matt and I see and talk to each other over the telephone on a regular basis.

3. On the night of October 2, 1997, I called Matt on his home telephone number just before 10:00 p.m. I recall this because I remember calling him just before the live episode of the television show "ER" started. The week before we had talked about whether we would watch the show, and I called to make sure that Matt was watching it. We talked for several minutes as the show began.

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

Executed on December 2 1997 at Los Angeles, California


Rose Bosworth

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DECLARATION OF SERVICE

Jeffrey P. Siegel declares as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to this action. My business address is 333 S. Hope Street, Suite 3650, Los Angeles, California 90071. I am readily familiar with the office practices of Jeffrey P. Siegel, Esq. for the collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to that practice, envelopes placed for collection at designated locations during designated hours are deposited with the United States Postal Service with first class postage thereon fully prepaid that same day in the ordinary course of business. On December 4, 1997, I served the attached:

**RESPONDENT MATTHEW NOLAN'S OPPOSITION TO ORDER TO SHOW
CAUSE RE RESTRAINING ORDER**

by placing a true copy thereof in an envelope addressed to each of the persons shown below:

Zoe Mclellan
569 N. Rossmore Avenue, Apt 110
Los Angeles, CA 90004

and by then sealing and placing said envelope(s) for collection at a designated location at 333 S. Hope Street, Suite 3650, Los Angeles, California 90071 during designated hours, for mailing on the

1 above date, following ordinary business practice

2 I declare under penalty of perjury under the laws of the United States that the
3 foregoing is true and correct and that this declaration was executed on December 4, 1997 at Los
4 Angeles, California.

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8 _____
9 Jeffrey P. Siegel
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