

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
CITY OF DANA POINT

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 18 2010

ALAN CARLSON, Clerk of the Court

BY: R. LUCEY , DEPUTY

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
MALINDA TRAUDT by and through her guardian ad litem, Shelly White

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

CASE NUMBER: **30-2010**
(Número del Caso):
00373287

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jeffrey M. Schwartz, Esq., 629 Camino De Los Mares, Suite 203, San Clemente, CA 92673 (888) 7300-LAW

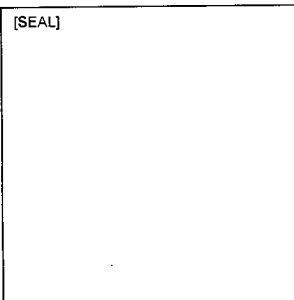
Tam Nomoto Schumann

DATE: **MAY 18 2010** **ALAN CARLSON** Clerk, by **R. LUCEY**, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



SCHWARTZ LAW, P.C.
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San Clemente, CA 92673
(888) 7300-LAW

1 Jeffrey M. Schwartz, Esq. SBN 254916
2 SCHWARTZ LAW, P.C.
3 629 Camino De Los Mares, Suite 203
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5 Ph: (888) 7300-LAW
6 Fax: (949) 481-8836

7 Attorney for Plaintiff
8 MALINDA TRAUDT by and through her guardian ad litem, Shelly White

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
MAY 13 2010
ALAN CARLSON, Clerk of the Court
BY: R. LUCEY, DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE **30-2010**

9 MALINDA TRAUDT by and through her
10 guardian ad litem, Shelly White

Case No.: **00373287**

VERIFIED COMPLAINT FOR:

11 Plaintiff,

- 1. DECLARATORY RELIEF(DUE PROCESS)
- 2. DECLARATORY RELIEF(EQUAL PROTECTION)
- 3. DECLARATORY RELIEF(PRIVACY)

12 vs.

13 CITY OF DANA POINT
14 and DOES 1 to 100, inclusive

Tam Nomoto Schumann
CIO

15 Defendants.
16

17 Plaintiff MALINDA TRAUDT, by and through her guardian ad litem, Shelly White,
18 brings this action against defendants CITY OF DANA POINT and DOES 1 to 100,
19 inclusive (collectively, DEFENDANTS), and alleges, on information and belief except as
20 to those allegations relating to Plaintiff herself, which are asserted on personal
21 knowledge, as follows:
22

INTRODUCTION

23
24 Plaintiff MALINDA TRAUDT was born with cerebral palsy, epilepsy, total
25 blindness, and severe cognitive delays. She has been in a wheelchair her entire life. In
26 2007, TRAUDT was diagnosed with severe osteoporosis, an extremely degenerative
27 bone disease. Despite receiving bone-building medicine, she experienced excruciating
28

1 and uncontrollable pain due to acute, continued bone deterioration. TRAUDT was given
2 pain medication to manage her pain. Unfortunately, within 24 hours, the pain medication
3 caused TRAUDT's kidneys to begin shutting down, her lungs filled with fluid causing
4 pneumonia, and she developed a high fever. TRAUDT's breathing was very shallow and
5 she vomited for 3 straight days. After 72 hours, TRAUDT's physician recommended that
6 her mother contact hospice to arrange for TRAUDT's final hours.

7 In a last-ditch effort to keep TRAUDT alive while managing her pain, her mother
8 and pain specialist agreed to try replacing the pain medication with medical marijuana.
9 Almost immediately, TRAUDT's fever subsided, she stopped vomiting, and her
10 suffering lessened. Within 3 days, she began to recover. Through the continued use of
11 medical marijuana, TRAUDT's kidneys regained function, she became lucid, she was
12 able to eat, and she began smiling again. Her pain became manageable and her quality
13 of life improved significantly.

14 TRAUDT is a medical marijuana patient and a member of Beach Cities Collective,
15 the only medical marijuana collective located within wheelchair-distance of her home.
16 Unfortunately for TRAUDT, DEFENDANTS are attempting to close Beach Cities
17 Collective along with all other medical marijuana collectives and/or dispensaries in the
18 City. If DEFENDANTS succeed, TRAUDT will be deprived of reasonable access to her
19 life-preserving medicine.

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PARTIES

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1. Plaintiff MALINDA TRAUDT (TRAUDT) is an individual who is and was, at all
23 relevant times, a resident of Orange County, California.

24

2. Defendant CITY OF DANA POINT (DANA POINT) is a municipality located in
25 Orange County, California.

26

3. The true names and capacities, whether individual, corporate, associate,
27 representative or otherwise, of the defendants identified herein as DOEs 1 through
28 100, inclusive, are unknown to plaintiff, who therefore sues these defendants by

1 said fictitious names. Plaintiff will amend this complaint to allege the true names
2 and capacities of said DOEs when they have been ascertained. All said DOEs are
3 in some manner legally responsible for the wrongs and injuries alleged herein.
4 4. Each defendant acted as the agent or employee of the others and each acted
5 within the scope of that agency or employment.

6
7 **JURISDICTION AND VENUE**

8 5. This Court has general personal jurisdiction over defendant because it is located in
9 the State of California.
10 6. Venue is proper because the acts and omissions alleged herein occurred in
11 Orange County, California.

12
13 **FACTUAL ALLEGATIONS**

14 7. TRAUDT is a 29 year-old woman who was born with cerebral palsy, total
15 blindness, epilepsy, and severe cognitive delays. She has been in a wheelchair
16 her entire life and is not expected to ever gain independent mobility.
17 8. TRAUDT's mother, Shelly White (WHITE), is TRAUDT's primary caregiver.
18 9. In July of 2007, TRAUDT suffered a broken femur and was diagnosed with severe
19 osteoporosis, an extremely degenerative bone disease. She was given Actonel, a
20 bone-building medicine. However, she experienced excruciating and
21 uncontrollable pain due to acute, continued bone deterioration.
22 10. When TRAUDT's pain could no longer be managed, WHITE sought help through
23 TRAUDT's orthopedic specialist. He referred WHITE to a pain specialist who
24 prescribed pain medication for TRAUDT.
25 11. Within 24 hours, the pain medication caused TRAUDT's kidneys to begin shutting
26 down, her lungs filled with fluid causing pneumonia, and she developed a high
27 fever. Her breathing was very shallow and she vomited for 3 straight days. After
28

- 1 72 hours, TRAUDT's general physician recommended that WHITE contact
2 hospice to arrange for TRAUDT's final hours.
- 3 12. In a last-ditch effort to keep TRAUDT alive while managing her pain, WHITE and
4 TRAUDT's pain specialist agreed to try replacing TRAUDT's pain medication with
5 medical marijuana.
- 6 13. Almost immediately, TRAUDT's fever subsided, she stopped vomiting, and her
7 suffering lessened. Within 3 days, she began to recover. Through the continued
8 use of medical marijuana, TRAUDT's kidneys regained function, she became
9 lucid, she was able to eat, and she began smiling again. Her pain became
10 manageable and her quality of life improved significantly.
- 11 14. TRAUDT is a medical marijuana patient, pursuant to her doctor's
12 recommendation.
- 13 15. TRAUDT is a member of Beach Cities Collective (COLLECTIVE), the only medical
14 marijuana collective located within wheelchair-distance of TRAUDT's home.
- 15 16. WHITE usually walks to the COLLECTIVE, pushing TRAUDT in her wheelchair, to
16 obtain TRAUDT's medical marijuana.
- 17 17. DEFENDANTS are attempting to shut down the COLLECTIVE, along with all other
18 medical marijuana collectives and/or dispensaries in Dana Point.
- 19 18. Upon information and belief, all of the cities in reasonable proximity to TRAUDT's
20 home have banned medical marijuana collectives and/or dispensaries. The only
21 city in Orange County that has approved dispensaries is Laguna Woods.
22 However, section 13.26.025(k)(4) of Laguna Woods' municipal code prohibits
23 dispensaries from providing medical marijuana to non-residents, such as
24 TRAUDT.
- 25 19. Article 1, § 1 of the California Constitution states that "All people are by nature free
26 and independent and have inalienable rights. Among these are enjoying and
27 defending life and liberty, acquiring, possessing, and protecting property, and
28 pursuing and obtaining safety, happiness, and privacy."

- 1 20. Article 11, § 7 of the California Constitution states that “A county or city may make
2 and enforce within its limits all local, police, sanitary, and other ordinances and
3 regulations not in conflict with general laws.”
- 4 21. In 1996, the voters of California adopted Proposition 215, the Compassionate Use
5 Act (CUA), codified at Health & Safety (H&S) Code § 11362.5. The CUA’s
6 purpose is “**To ensure that seriously ill Californians have the right to obtain**
7 **and use marijuana for medical purposes** where that medical use is deemed
8 appropriate and has been recommended by a physician who has determined that
9 the person's health would benefit from the use of marijuana in the treatment of
10 cancer, anorexia, AIDS, **chronic pain**, spasticity, glaucoma, arthritis, migraine, or
11 any other illness for which marijuana provides relief.” (emphasis added).
- 12 22. The CUA “occupies the field” with respect to patients’ rights to obtain marijuana for
13 medical purposes.
- 14 23. In 2003, the California Legislature enacted the Medical Marijuana Program Act
15 (MMP), H&S §§ 11362.7, et seq. The MMP “occupies the field” in terms of
16 establishing the minimum rights of patients.
- 17 24. Senate Bill 420(b)(3), enacted by the California Legislature, states that “**It is the**
18 **intent of the Legislature**, therefore, **to...Enhance the access of patients** and
19 **caregivers to medical marijuana through collective**, cooperative cultivation
20 projects.” (emphasis added).
- 21 25. Ensuring that seriously-ill Californians, whose physicians have recommended
22 medical marijuana, have access to medical marijuana is a matter of statewide
23 concern.

24
25 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF (DUE PROCESS)**

- 26 26. All paragraphs of this complaint are incorporated herein as if fully restated.
- 27 27. TRAUDT has fundamental rights, under the California Constitution, to enjoy and
28 defend her life and liberty and pursue and obtain safety, happiness, and privacy.

- 1 28. Inherent in such fundamental rights is access to legal medical treatment.
- 2 29. The California Legislature has also recognized the fundamental right to control
3 one's own medical treatment.
- 4 30. If DEFENDANTS are permitted to shut down the COLLECTIVE, TRAUDT will be
5 deprived of reasonable access to the medical marijuana she needs to stay alive
6 and manage her chronic and excruciating pain.
- 7 31. If DEFENDANTS are permitted to shut down all of the medical marijuana
8 collectives in Dana Point, TRAUDT will be deprived of any legal place in Orange
9 County where she can obtain the medical marijuana she needs to stay alive and
10 manage her chronic and excruciating pain.
- 11 32. DEFENDANTS' attempts to shut down the COLLECTIVE substantially interfere
12 with TRAUDT's constitutionally-protected fundamental rights to enjoy and defend
13 her life and pursue and obtain safety.
- 14 33. DEFENDANTS' refusal to permit medical marijuana collectives, especially the
15 COLLECTIVE, to operate in Dana Point substantially interferes with TRAUDT's
16 constitutionally-protected fundamental rights to enjoy and defend her life and
17 pursue and obtain safety.
- 18 34. By denying (or attempting to deny) TRAUDT access to the medical marijuana she
19 needs to stay alive while managing her extreme pain, DEFENDANTS are
20 substantially interfering with TRAUDT's fundamental rights to life and safety,
21 guaranteed her under the California Constitution.
- 22 35. By denying TRAUDT access to the medical marijuana she needs to stay alive
23 while managing her extreme pain, DEFENDANTS are forcing TRAUDT to put her
24 life in unnecessary danger and to endure unnecessary suffering, which
25 substantially interfere with TRAUDT's fundamental rights to life and safety,
26 guaranteed her under the California Constitution.
- 27
- 28

- 1 36. If a land use regulation infringes upon a constitutionally-protected personal liberty
2 or fundamental right, it must be narrowly drawn and must further a sufficiently
3 substantial government interest.
- 4 37. State actions which substantially interfere with fundamental rights are evaluated
5 under strict scrutiny.
- 6 38. Refusing to permit the COLLECTIVE to dispense medical marijuana to qualified
7 patients does not serve a “compelling state interest.”
- 8 39. Refusing to permit medical marijuana collectives to operate in Dana Point does not
9 serve a “compelling state interest.”
- 10 40. Denying TRAUDT access to the medical marijuana she needs to stay alive while
11 managing her extreme pain, does not serve a “compelling state interest.”
- 12 41. Even if this Court finds that banning collectives does further a compelling state
13 interest, such as reducing crime or loitering, DEFENDANTS’ wholesale ban on
14 medical marijuana collectives is not narrowly-tailored to affect only the legitimate
15 state interests at stake without unduly interfering with TRAUDT’s individual rights.
- 16 42. If DEFENDANTS are permitted to deprive TRAUDT of access to medical
17 marijuana, it will be forcing her to choose between a life of chronic, excruciating
18 pain or death.
- 19 43. DEFENDANTS are attempting to deprive TRAUDT of her life and liberty without
20 due process of law, in violation of Art. 1, § 7 of the California Constitution.
- 21 44. Since DEFENDANTS will not be able to prove that their ban on medical marijuana
22 collectives serves a compelling state interest and is narrowly-tailored to affect only
23 the legitimate state interests at stake without unduly interfering with TRAUDT’s
24 fundamental rights, TRAUDT is entitled to an order declaring such ban
25 unconstitutional.

26
27 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF (EQUAL PROTECTION)**

- 28 45. All paragraphs of this complaint are incorporated herein as if fully restated.

- 1 46. All Californians have fundamental rights, under the California Constitution, to enjoy
2 and defend their life and liberty and pursue and obtain safety, happiness, and
3 privacy.
- 4 47. The California Legislature has also recognized the fundamental right to control
5 one's own medical treatment.
- 6 48. It is axiomatic that enjoying and defending life and pursuing and obtaining safety
7 requires reasonable access to legal medical treatment.
- 8 49. DEFENDANTS permit ill patients whose physicians have recommended
9 pharmaceutical drugs, including the highly-addictive oxycodone, to obtain their
10 medications within the City of Dana Point.
- 11 50. DEFENDANTS refuse to permit ill patients whose physicians have recommended
12 medical marijuana, like TRAUDT, to obtain their medications within the City of
13 Dana Point.
- 14 51. DEFENDANTS' refusal to permit TRAUDT to obtain her physician-recommended
15 medicine in the City of Dana Point, combined with similar refusals from other cities
16 in Orange County, threaten to force TRAUDT either to travel entirely outside of her
17 county of residence to obtain her medicine or to obtain it via an illegal drug deal.
- 18 52. DEFENDANTS' unequal treatment of ill patients, depending upon the medication
19 recommended by their physician, are discriminatory and in violation of TRAUDT's
20 equal protection rights under Art. 1, § 7 of the California Constitution.
- 21 53. State actions which violate equal protection guarantees regarding fundamental
22 rights are reviewed under strict scrutiny.
- 23 54. Refusing to permit ill patients whose physicians have recommended medical
24 marijuana, like TRAUDT, to obtain their medicine within a city does not serve a
25 "compelling state interest."
- 26 55. Denying TRAUDT access to the medical marijuana she needs to stay alive while
27 managing her extreme pain, does not serve a "compelling state interest."
28

- 1 56. Even if this Court finds that banning collectives does further a compelling state
2 interest, such as reducing crime or loitering, DEFENDANTS' wholesale ban on
3 medical marijuana collectives is not narrowly-tailored to affect only the legitimate
4 state interests at stake without unduly interfering with TRAUDT's fundamental
5 rights under the California Constitution.
- 6 57. Since DEFENDANTS will not be able to prove that their ban on medical marijuana
7 collectives serves a compelling state interest and is narrowly-tailored to affect only
8 the legitimate state interests at stake without unduly interfering with TRAUDT's
9 fundamental rights, TRAUDT is entitled to an order declaring such ban
10 unconstitutional.

11
12 **THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF (PRIVACY)**

- 13 58. All paragraphs of this complaint are incorporated herein as if fully restated.
- 14 59. The California Constitution grants all Californians fundamental privacy rights.
- 15 60. The California Legislature has also recognized the fundamental right to control
16 one's own medical treatment.
- 17 61. Individuals, such as TRAUDT, have a fundamental privacy right to make intimate
18 personal decisions, such as choosing to avoid pain, without governmental
19 intrusion.
- 20 62. DEFENDANTS' substantial interference with TRAUDT's privacy rights, including
21 her right to avoid pain, violate her fundamental rights under the California
22 Constitution.
- 23 63. State actions which substantially interfere with fundamental privacy rights are
24 reviewed under strict scrutiny.
- 25 64. Denying TRAUDT access to the medical marijuana she needs to stay alive while
26 managing her extreme pain, does not serve a "compelling state interest."
- 27 65. Even if this Court finds that banning collectives does further a compelling state
28 interest, such as reducing crime or loitering, DEFENDANTS' wholesale ban on

- 1 medical marijuana collectives is not narrowly-tailored to affect only the legitimate
2 state interests at stake without unduly interfering with TRAUDT's privacy rights.
- 3 66. If DEFENDANTS are permitted to deprive TRAUDT of access to medical
4 marijuana, it will be forcing her to choose between a life of chronic, excruciating
5 pain or death.
- 6 67. Since DEFENDANTS will not be able to prove that their ban on medical marijuana
7 collectives serves a compelling state interest and is narrowly-tailored to affect only
8 the legitimate state interests at stake without unduly interfering with TRAUDT's
9 fundamental rights, TRAUDT is entitled to an order declaring such ban
10 unconstitutional.

11
12 **WHEREFORE, TRAUDT SEEKS JUDGMENT AS FOLLOWS:**

13 **On All Causes of Action**

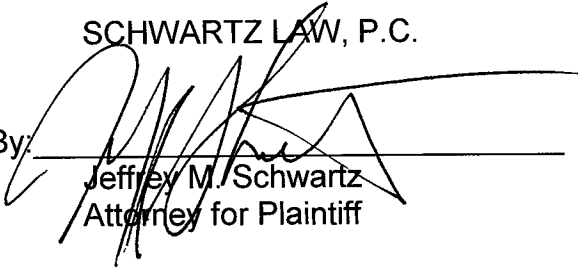
- 14 1. An order declaring that DANA POINT's ban on medical marijuana
15 collectives is unconstitutional;
- 16 2. An order declaring that DEFENDANTS' efforts to shut down the
17 COLLECTIVE are unconstitutional;
- 18 3. An order declaring that DEFENDANTS' efforts to shut down all medical
19 marijuana dispensaries and/or collectives in Dana Point are
20 unconstitutional;
- 21 4. A permanent injunction preventing DEFENDANTS from attempting to shut
22 down the COLLECTIVE;
- 23 5. A permanent injunction preventing DEFENDANTS from attempting to shut
24 down medical marijuana dispensaries and/or collectives in Dana Point;
- 25 6. Reasonable attorney's fees (including but not limited to those provided
26 under CCP § 1021.5), expenses and costs;
- 27
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629 Camino De Los Mares, Suite 203
San Clemente, CA 92673
(888) 7300-LAW

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7. Such other and further relief as the Court deems proper.

Dated: May 17, 2010

SCHWARTZ LAW, P.C.
By: 
Jeffrey M. Schwartz
Attorney for Plaintiff

SCHWARTZ LAW, P.C.
629 Camino De Los Mares, Suite 203
San Clemente, CA 92673
(888) 7300-LAW

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VERIFICATION

I am a party to this action, and I have read the foregoing Complaint and know its contents. The matters stated therein are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed on May 17, 2010 at San Clemente, California.

18

MALINDA TRAUDT by and through her guardian ad litem, Shelly White