

1 FREEDMAN + TAITELMAN, LLP
Bryan J. Freedman (State Bar No. 151990)
2 E-mail: bfreedman@ftllp.com
Sean M. Hardy (State Bar No. 266466)
3 E-mail: smhardy@ftllp.com
1901 Avenue of the Stars, Suite 500
4 Los Angeles, California 90067
Telephone: (310) 201-0005
5 Facsimile: (310) 201-0045

6 Attorneys for Non-Party,
JONATHAN SPENCE
7

FILED
Superior Court Of California
County Of Los Angeles

AUG 29 2017

Sherri R. Carter, Executive Officer/Clerk
By Charles L. Coleman, Deputy

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – WEST DISTRICT**

11 WADE ROBSON, an individual,

12 Plaintiff,

13 vs.

14 MJJ PRODUCTIONS, INC., a California
15 corporation; MJJ VENTURES, INC., a
16 California corporation; and DOES 4 to 50,
inclusive,

17 Defendants.

) Case No. BC508502
) [Related to LASC Case No. BC545264]

) [*Assigned to Hon. Mitchell L. Beckloff*]

) Unlimited Civil Case
) Amount in excess of \$25,000

) **NON-PARTY JONATHAN SPENCE'S**
) **NOTICE OF MOTION AND MOTION**
) **FOR PROTECTIVE ORDER AND**
) **REQUEST FOR MONETARY**
) **SANCTIONS IN THE AMOUNT OF**
) **\$5,135.00; MEMORANDUM OF POINTS**
) **AND AUTHORITIES AND**
) **DECLARATION OF SEAN M. HARDY IN**
) **SUPPORT THEREOF**

) [*Request for Judicial Notice; Declaration of*
) *Sean M. Hardy; [Proposed] Order filed*
) *concurrently therewith*]

23) Date: February 20, 2018
24) Time: 8:30 a.m.
25) Dept: M

26) Action filed: May 10, 2013
27) Trial Date: March 5, 2018

28 **RESERVATION ID: 170818244235**

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 20, 2018, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in Department M of the above-entitled court located at 1725 Main Street,
4 Santa Monica, California, 90401, Non-Party Jonathan Spence ("Spence") will, and does move this
5 Court for an order pursuant to California Code of Civil Procedure Sections 2017.020, 2019.030,
6 2023.010, and 2025.420 that plaintiff Wade Robson's ("Plaintiff") deposition for personal
7 appearance of Spence pursuant to subpoena: (1) be taken at a different time, after the December 5,
8 2017 hearing on Defendants' pending motion for summary judgment (Code of Civil Procedure
9 Sections 2025.420(b)(1)); (2) be taken at the offices of Spence's counsel in Los Angeles (Code of
10 Civil Procedure Sections 2025.420(b)(4)); and (3) matters protected by Spence's right to privacy not
11 be inquired into (Code of Civil Procedure Sections 2025.420(b)(9)).

12 PLEASE TAKE FURTHER NOTICE that, in connection with the foregoing Motion, Spence
13 will, and hereby does, pursuant to California Code of Civil Procedure Sections 2017.020, 2019.030,
14 2023.010, and 2025.420(d), move the Court for an order for monetary sanctions against Plaintiff
15 and/or Plaintiff's counsel in the sum of \$5,135, as reasonable attorneys' fees and costs incurred by
16 Spence in connection with this Motion.

17 This Motion is made pursuant to California Code of Civil Procedure Sections 2017.020,
18 2019.030, 2023.010, and 2025.420 on the grounds that, without limitation, Plaintiff seeks inquiry
19 into information from Spence that violates his constitutional right to privacy of Spence; the burden,
20 expense, and intrusiveness of the deposition clearly outweighs the likelihood that the information
21 sought will lead to the discovery of admissible evidence; and the timing and location of the
22 deposition constitutes unwarranted annoyance, embarrassment, or oppression.

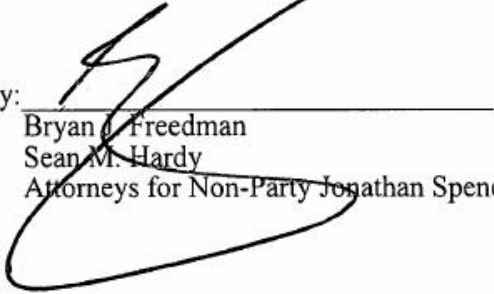
23 This Motion will be based upon this Notice, the attached Memorandum of Points and
24 Authorities, the concurrently filed declaration of Sean M. Hardy; the concurrently filed Request for
25 Judicial Notice, upon the pleadings, records and papers on file in this action, and such evidence as
26 may be presented at the time of the hearing on this Motion.
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1 Dated: August 28, 2017

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By: 
Bryan J. Freedman
Sean M. Hardy
Attorneys for Non-Party Jonathan Spence

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Non-Party Jonathan Spence (“Spence”) is a stranger to this action, which has been pending
4 since **May 10, 2013**. Despite this, Plaintiff Wade Robson (“Plaintiff”) and his counsel have treated
5 Spence in the most abominable manner – without the slightest regard for Spence’s concerns and
6 objections regarding Spence’s unilaterally-noticed deposition. Following a timely objection to the
7 deposition subpoena for Spence’s personal appearance, Spence’s counsel informed Plaintiff’s
8 counsel that neither he nor Spence was available for the unilaterally-noticed deposition. Spence’s
9 counsel requested a phone call to meet and confer regarding the deposition. In response, Plaintiff’s
10 counsel **refused to meet and confer** and threatened to move forward with the deposition - despite
11 knowing Spence and his counsel were unavailable – and then seek sanctions against Spence.

12 Given the utter lack of professional courtesy and strong-arm tactics of Plaintiff and his
13 counsel toward a non-party, Spence’s counsel undertook a review of the files in this case on his own.
14 The Fourth Amended Complaint sounds in salacious and disturbing allegations of child sexual abuse
15 of the most horrific nature. The underlying acts were allegedly committed by Michael Jackson
16 against Plaintiff in the early 1990s. Spence is mentioned nowhere in the pleadings, and is not a
17 percipient witness to any of the allegations in the pleadings.

18 Moreover, Spence’s counsel learned that Defendants MJJ Productions, Inc. and MJJ
19 Ventures, Inc. (collectively, “Defendants”) have a pending Motion for Summary Judgment (the
20 “MSJ”) set for hearing on December 5, 2017. The MSJ is based on the same grounds on which this
21 Court sustained Defendants’ demurrer to the third amended complaint without leave to amend in the
22 related case of *Safechuck v. MJJ Productions, et al.*, LASC Case No. BC545264 (the “Related
23 Case”). As the allegations in the case at bar and the Related Case are substantially similar, and both
24 cases contain identical causes of action, there is a strong likelihood that the MSJ will be granted and
25 judgment will be entered against Plaintiff. Indeed, Plaintiff’s counsel has admitted that there is no
26 reason for the instant case to proceed if the Related Case is dismissed. Case law is clear that non-
27 party Spence should be spared from the burden and expense of a deposition given that Plaintiff’s
28 claims are not viable.

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1 Spence now brings the instant Motion for Protective Order (“Motion”) to shield certain
2 highly-sensitive and private information from discovery by Plaintiff, as Plaintiff has no compelling
3 reason to inquire into Spence’s medical, psychotherapeutic, or sexual histories. Given the
4 allegations in the underlying complaint, and the complete refusal of Plaintiff’s counsel to discuss the
5 substance of the deposition, there is a strong likelihood that inquiries will be made into these
6 categories absent protection from the Court. Moreover, the Court should issue a protective order
7 setting the deposition for a date after the MSJ hearing, as Plaintiff should be spared from the burden
8 and expense. Finally, Spence’s deposition should be taken at the offices of his counsel in Los
9 Angeles, rather than the offices of Plaintiff’s counsel in Orange County. Spence is a non-party and
10 the commute to Irvine from his home in Encino would be highly inconvenient and burdensome.
11 Spence would also be required to pay for his attorneys’ travel time to Irvine.

12 Therefore, a protective order should issue, commanding that Spence’s deposition: (1) be
13 taken at a different time, after the December 5, 2017 hearing on Defendants’ MSJ; (2) be taken at the
14 offices of Spence’s counsel in Los Angeles; and (3) matters protected by Spence’s right to privacy
15 not be inquired into, including Spence’s medical, psychotherapeutic, and sexual histories.

16 **II. SUMMARY OF REVELANT FACTS**

17 On August 3, 2017 Plaintiff served his Notice of Taking Deposition of Jonathan Spence
18 pursuant to a deposition subpoena (the “Deposition Notice”). *See* Declaration of Sean M. Hardy
19 (“Hardy Decl.”) at ¶ 2, Ex. 1. The deposition was unilaterally noticed for August 22, 2017. *See id.*
20 Spence did not obtain counsel to represent him in connection with this deposition until August 17,
21 2017. That same date, Spence’s counsel personally served a timely objection to the Deposition
22 Notice pursuant to Code of Civil Procedure section 2025.410. *See id.* at ¶ 3, Ex. 2.

23 On August 17, 2017 – the same date Spence’s objection was personally served – Plaintiff’s
24 counsel confirmed receipt of the objection and inquired as to whether Spence would be appearing at
25 the deposition on August 22, 2017. *See id.* at ¶ 4, Ex 3. Spence’s counsel confirmed that neither he
26 nor Spence were available on August 22, and requested that a telephone call be scheduled so the
27 parties could meet and confer regarding Spence’s deposition. *See id.* at ¶ 4, Ex. 3.

28 In response, Plaintiff’s counsel testily replied, “[w]e will not agree to move the deposition

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1 until we have a new date agreed to, as Mr. Spence was duly served with a valid subpoena at
2 substantial cost to us.” *Id.* Plaintiff’s counsel **refused to meet and confer** regarding the deposition,
3 stating that, “[t]here is no need for a phone call.” *Id.* In response, Spence’s counsel agreed to accept
4 service on his client’s behalf and reiterated that the deposition had been unilaterally noticed for a
5 date on which Spence and his counsel were not available. *Id.* Spence’s counsel informed Plaintiff’s
6 counsel that he was unable to meet and confer regarding the deposition until the following week. *Id.*
7 This was unacceptable to Plaintiff’s counsel, who demanded to be immediately provided with new
8 dates for Spence’s deposition. *Id.* Unless this was done, Plaintiff’s counsel threatened to proceed
9 with the unilaterally noticed deposition on August 22 – knowing that Spence and his counsel could
10 not attend – and then seek a contempt order against Spence. *Id.*

11 Faced with Plaintiff’s illogical and harassing recalcitrance and steadfast refusal to meet and
12 confer with a non-party, Spence has moved for a protective order.

13 **III. THE UNILATERALLY-NOTICED DEPOSITION SHOULD BE MOVED TO A**
14 **DATE AFTER THE HEARING ON DEFENDANTS’ MSJ**

15 **A. It is Improper to Unilaterally Notice and Proceed with a Deposition on a Date**
16 **Which the Deponent and its Counsel are Unavailable.**

17 The scope of discovery is not unlimited. Cal. Code. Civ. Proc. § 2017(c). Crucially,
18 discovery against a non-party is more limited than discovery against parties, and a non-party is
19 therefore entitled to broader protections. See *Monarch Healthcare v. Superior Court* (2000) 78
20 Cal.App.4th 1282, 1289; *Dart Indus. Co. v. Westwood Chem. Co.* (9th Cir. 1980) 649 F.2d 646, 649;
21 *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366, fn. 6. In the instant
22 case, Plaintiff’s counsel displayed the most abusive sort of litigation behavior toward a fellow
23 member of the bar – refusing his offer to meet and confer and sending an ultimatum that, unless new
24 deposition dates were immediately provided, he would knowingly proceed with the deposition on a
25 date he *knew* Spence and his counsel were unavailable.

26 “To begin with, it is widely held that ‘An attorney has an obligation not only to protect his
27 client’s interests but also to *respect the legitimate interests of fellow members of the bar, the*
28 *judiciary, and the administration of justice.*” *Tenderloin Housing Clinic, Inc. v. Sparks* (1992) 8

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1 Cal.App.4th 299, 306 (emphasis in original). Indeed, courts have long held that it is “obvious that
2 even if a legal step taken or legal procedure pursued has justification in law, the timing thereof may
3 be oppressive and may constitute harassment if it unjustifiably neglects or ignores the legitimate
4 interest of a fellow attorney.” *Id.* Indeed, courts have upheld sanctions where a deposition was
5 purposefully scheduled on a date the noticing party knew opposing counsel would be unavailable.
6 *Id.* at 308-08.

7 Plaintiff’s counsel was specifically informed that he unilaterally noticed Spence’s deposition
8 for a date on which neither Spence nor his counsel was available. Despite this, Plaintiff’s counsel
9 announced his intent to proceed with the deposition. The law is clear that, under such
10 circumstances, to proceed with a deposition is to demonstrate that it has been conducted solely to
11 harass the opposing party (in this case, non-party). *Tenderloin Housing Clinic*, 8 Cal.App.4th at 306-
12 307. That is exactly what Plaintiff has done.

13 Los Angeles Superior Court Rules, Appendix 3.A 3.201 contains the Court’s Guidelines for
14 Civility in Litigation. The very first such guideline concerns “Continuances and Extensions of
15 Time.” Los Angeles Superior Court Rules, Appendix 3.A 3.201(a). The Court admonishes counsel
16 that:

17 First requests for reasonable extensions of time to respond to litigation deadlines, whether
18 relating to pleadings, discovery or motions, should ordinarily be granted as a matter of
19 courtesy unless time is of the essence. A first extension should be allowed even if the counsel
20 requesting it has previously refused to grant an extension.

21 Los Angeles Superior Court Rules, Appendix 3.A 3.201(a)(1).

22 Plaintiff’s counsel violated this guideline, by absolutely refusing to continue the unilaterally
23 noticed deposition of Spence unless Spence’s counsel immediately provided him with new dates,
24 even though Plaintiff’s counsel knew that Spence’s counsel could not provide such dates until after
25 he had spoken with his client the following week. In doing so, Plaintiff’s counsel violated another of
26 this Court’s guidelines by attaching an unfair condition on any continuance of the deposition. “A
27 lawyer should not attach to extensions unfair and extraneous conditions.” Los Angeles Superior
28 Court Rules, Appendix 3.A 3.201(a)(5). This was despite the agreement of Spence’s counsel to

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1 accept service on behalf of his client, as Plaintiff's counsel only stated concern was that he had spent
2 money personally serving Spence with a deposition subpoena. "In scheduling depositions,
3 reasonable consideration should be given to accommodating schedules of opposing counsel and of
4 the deponent, where it is possible to do so without prejudicing the client's rights." Los Angeles
5 Superior Court Rules, Appendix 3.A 3.201(e)(2). Plaintiff's counsel failed to give any consideration
6 to the availability of Spence and his counsel, and simply proceeded with a deposition on a date he
7 knew they were unavailable. Plaintiff's actions relative to the scheduling of Spence's deposition
8 violated the Los Angeles Superior Court Rules without justification.

9 Given the evident disregard for the availability of Spence and his counsel, and the refusal of
10 Plaintiff's counsel to engage in a meaningful meet and confer discussion, Spence has good cause to
11 bring this Motion. Plaintiff has shown that the Deposition Notice was served solely for the purpose
12 of harassing Spence. When the timing of discovery proceedings would cause unfair advantage to
13 accrue to one of the parties, then that unfair advantage may constitute annoyance, embarrassment, or
14 oppression which the Court is empowered to prevent by means of a protective order. *See Rosemont*
15 *v. Superior Court* (1964) 60 Cal. 2d 709, 714 (deposition stayed until after certain conditions
16 occurred).

17 **B. Good Cause Exists to Continue the Deposition Date until After the Hearing on the**
18 **MSJ.**

19 On June 28, 2017, this Court sustained Defendants' demurrer to the third amended complaint
20 in the Related Case without leave to amend. (*See* Request for Judicial Notice ("RJN"), Ex. 1.) The
21 Court's ruling was based on the fact that all claims in the Related Case were time-barred pursuant to
22 Code of Civil Procedure section 340.1(b)(2), as the plaintiff in the Related Case failed to file his
23 claims prior to his 26th birthday. *Id.* The third amended complaint in the Related Case alleged
24 causes of action for: (1) intentional infliction of emotional distress; (2) negligence; (3) negligent
25 supervision; (4) negligent retention/hiring; (5) negligent failure to warn, train or educate; and (6)
26 breach of fiduciary duty. (RJN, Ex. 2.)

27 Just like the Related Case, the operative fourth amended complaint in the instant case alleges
28 causes of action for: (1) intentional infliction of emotional distress; (2) negligence; (3) negligent

1 supervision; (4) negligent retention/hiring; (5) negligent failure to warn, train or educate; and (6)
2 breach of fiduciary duty. (RJN, Ex. 4.) Both cases sound in very similar patterns of alleged child
3 abuse by Michael Jackson and rely on the same theories of liability relative to Defendants. There is
4 no meaningful distinction between the cases, from a legal perspective.

5 Critically, at the May 31, 2017 hearing on the demurrer in the Related Case, Plaintiff's
6 counsel admitted that, if the Related Case was dismissed, the instant case could not proceed.
7 Specifically, Plaintiff's counsel admitted:

8 ANOTHER POINT I'D LIKE TO MAKE IS THAT THE ROBSON CASE IS
9 PROCEEDING. IT'S BEEN RELATED TO THIS CASE. IT HAS A NEGLIGENCE
10 CLAIM. THIS CASE HAS A NEGLIGENCE CLAIM AS WELL. IT ALSO HAS A
11 NEGLIGENT SUPERVISION CLAIM, BUT IT ALSO HAS A GENERAL NEGLIGENCE
12 CLAIM. THERE'S NO WAY TO EXPLAIN THE REASON WHY ONE CASE WOULD
13 BE ABLE TO PROCEED AND ONE CASE CAN'T PROCEED WHEN
14 BOTH OF THEM ARE SUING THE ENTITY, BOTH OF THEM WERE
15 EMPLOYEES OF THE ENTITY, THEY WERE ABUSED BY AGENTS OF THE
16 ENTITY AT THE SAME TIME. THERE'S NO WAY TO SEPARATE THAT
17 OUT IN OUR OPINION. (RJN, Ex. 3 at 25:23-28, 26:1-5.)

18 The statements of a party's attorney constitute admissions of the party itself, as the attorney is the
19 party's agent. *Jay v. Mahaffey* (2010) 218 Cal. App. 4th 1522, 1531 n.10. As such, Plaintiff has
20 conceded that the instant case will be disposed of when this Court rules on the MSJ.

21 **C. It is Proper for a Court to Enter a Protective Order to Stay a Deposition Until After**
22 **a Dispositive Motion Hearing.**

23 When a dispositive motion is pending, courts are empowered to stay the taking of depositions
24 until after that motion has been ruled upon. (*Pacific Architects Collaborative v. State of California*
25 (1979) 100 Cal.App.3d 110, 126-127.) In *Pacific Architects*, the trial court issued a protective order
26 precluding, until after the summary judgment hearing, the depositions of various marginal witnesses.
27 *Id.* at 126. The Court of Appeal affirmed, noting that the "[i]ssuance of a protective order is proper
28 where the complaint fails to state a cause of action." *Id.* at 127.

1 In *Silver v. City of Los Angeles* (1966) 245 Cal. App. 2d 673, the trial court had granted a
2 protective order to prohibit the taking of depositions until after a demurrer hearing. The Court of
3 Appeal ruled that this protective order was correct in that the infirmity in the complaint was not one
4 of form and that there was no contention that the complaint could have been improved by
5 amendment. 245 Cal. App. 2d at 674. "Once it is recognized that the complaint shows that plaintiff
6 has no claim, all concerned should be spared the expense of further proceedings." *Id. See also*
7 *Terminals Equip. Co. v. City* (1990) 221 Cal.App.3d 234, 247 (all discovery stayed pending
8 demurrer hearing).

9 Here, no sound reason exists to burden Spence with the expense, discomfort, and disruption
10 of an intrusive deposition until this Court has ruled on the MSJ. Given the ruling that the Related
11 Case was time-barred, there is every reason to expect that the instant action will be disposed of
12 through summary judgment. Plaintiff filed this action after he turned the age of 26, which makes all
13 of his claims untimely pursuant to Code of Civil Procedure section 340.1((b)(2). The interest of
14 justice strongly recommends that Spence's deposition be stayed until after the MSJ has been
15 decided. In the unlikely event that this case survives summary judgment, Spence will make himself
16 available for deposition – subject to the protections requested below.

17 **IV. A PROTECTIVE ORDER SHOULD ISSUE BARRING INQUIRY INTO MATTERS**
18 **PROTECTED BY SPENCE'S RIGHT TO PRIVACY**

19 **A. A Protective Order is Necessary to Prevent Intrusion into a Non-Party's**
20 **Constitutional Right of Privacy.**

21 It is without question that privacy is a fundamental liberty explicitly guaranteed under the
22 California Constitution as an inalienable right. Cal. Const., art. I, § 1. Even highly relevant, non-
23 privileged information will be deemed non-discoverable if disclosure would violate a person's
24 "inalienable right of privacy" set forth by the California and United States Constitutions. *Britt v.*
25 *Superior Court* (1978) 20 Cal.3d 844, 855-856 ("*Britt*"); *Griswold v. Connecticut* (1965) 381 U.S.
26 479, 484. If a party seeks discovery within a "zone of privacy" protected by the California and
27 United States Constitutions, the Court must vigilantly balance the right of privacy against the need
28 for discovery. *Britt*, 20 Cal.3d at 855-856. The Court may only order disclosure if a compelling

1 need requires it. *Ibid.* Thus, the burden is on the party seeking discovery to show that the
2 confidential information is directly relevant to a cause or defense and essential to the resolution of
3 the case. *Id.* at 859-862. Further, the Court must not permit discovery if the information is
4 available from other sources or through less intrusive means. *Allen v. Superior Court* (1984) 151
5 Cal.App.3d 447, 449. Finally, if the Court finds that discovery sought is directly relevant, essential,
6 and is not available through other sources, the Court must still make certain that the discovery is
7 narrowly tailored to only seek that information which is permissible. *Britt*, 30 Cal.3d at 859.

8 In balancing the interests involved, the Court should consider: (1) the purpose of the
9 information sought; (2) the nature of the objections to disclosure; (3) the effect that allowing
10 disclosure will have on the litigation; and (4) the possibility that the court make an alternative order
11 which the court deems just. *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 657.
12 The more sensitive the nature of the discovery at issue, the greater the requirement of the requesting
13 party to demonstrate an increased need for the information. *Hoffman Corp. v. Superior Court*
14 (1985) 172 Cal.App.3d 357, 362.

15 The law is clear that Spence's medical, psychotherapeutic, and sexual histories are within
16 his constitutionally protected zone of privacy. *Bearman v. Superior Court* (2004) 117 Cal.App.4th
17 463, 473; *Scull v. Superior Court* (1988) 206 Cal.App.3d 784, 789-790; *Barbara A. v. John*
18 *G.* (1983) 145 Cal.App.3d 369, 380.

19 Indeed, so strong is a party's interest in information encompassed by the right to privacy
20 that a court will prohibit its disclosure absent an extraordinary showing. In *San Diego Trolley, Inc.*
21 *v. Superior Court* (2001) 87 Cal.App.4th 1083, 1088, the plaintiff was injured by a trolley driven by
22 the defendant's employee. The plaintiff sought the allegedly negligent trolley driver's personnel
23 file. *Id.* at 1089. The Court of Appeal vacated the trial court's decision, and held that the driver's
24 employment records were protected by her right of privacy. *Id.* Finding that there was no showing
25 of a compelling need for their production, the records were ordered withheld. *Id.*

26 The deposition of Spence is subject to heightened scrutiny given that he is a non-party.
27 Discovery against a non-party is more limited than discovery against parties, and a non-party is
28 therefore entitled to broader protections. See *Monarch Healthcare v. Superior Court* (2000) 78

1 Cal.App.4th 1282, 1289; *Dart Indus. Co. v. Westwood Chem. Co.* (9th Cir. 1980) 649 F.2d 646,
2 649; *Catholic Mutual Relief Society v. Superior Court* (2007) 42 Cal.4th 358, 366, fn. 6.

3 Here, Plaintiff has made no showing whatsoever that he has a compelling need for
4 information protected by Spence's right to privacy. Rather, Plaintiff has merely proffered an
5 argument that such information is generally relevant. This fact alone compels the issuance of a
6 protective order prohibiting inquiry into matters protected by Spence's right to privacy. Such an
7 argument does not come close to demonstrating a compelling need for this constitutionally-
8 protected information. A protective order should issue prohibiting Plaintiff from inquiring into
9 matters protected by Spence's right to privacy generally, as specifically as to the subject of
10 Spence's medical psychotherapeutic, and sexual histories.

11 **B. Spence's Testimony is Not Directly Relevant to this Action and any Attempt to**
12 **Inquire into His Medical, Psychotherapeutic, or Sexual Histories Constitutes a**
13 **Patent and Unnecessary Violation of the Constitutional Right of Privacy.**

14 When a party seeks to discover information subject to the constitutional right to privacy,
15 that party bears the burden of establishing a compelling need for the discovery. *Davis v. Superior*
16 *Court* (1992) 7 Cal.App.4th 1008, 1014; *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839,
17 1855. *This burden is significant, and one that is not easily overcome.* To meet this burden, the
18 party seeking discovery must first establish that each of the information sought is directly relevant
19 to the action and essential to its fair resolution. *Lantz*, 28 Cal.App.4th at 1854; *see also Britt*, 20
20 Cal.3d at 859. Moreover, even if directly relevant and essential to the case, the discovery permitted
21 must be drawn with narrow specificity to seek only directly relevant information. *Lantz*, 28
22 Cal.App.4th at 1855. Additionally, the Court must not permit discovery if the information is
23 available from other sources or through less intrusive means. *Allen*, 151 Cal.App.3d at 449. *Mere*
24 *speculation* as to the possibility that some aspect of a person's testimony might be relevant to some
25 substantive issue does not constitute a showing of direct relevance. *Davis*, 7 Cal.App.4th at 1017;
26 *Mendez v. Superior Court* (1988) 206 Cal.App.3d 557, 570-571 (mere conjecture about what might
27 be found is an insufficient basis for discovery of matters protected by the constitutional right to
28 privacy); *Huelter v. Superior Court* (1978) 87 Cal.App.3d 544, 549 ("mere speculation . . . does not
justify the discovery of privileged matter").

1 Because information concerning a person's medical, psychotherapeutic, and sexual histories
2 is constitutionally protected, the ordinary yardstick for discoverability, i.e., that the information
3 sought might or may lead to relevant evidence, is inapplicable. See *Kahn v. Superior Court* (1987)
4 188 Cal.App.3d 752, 766. An inquiry into one's private affairs will not be constitutionally justified
5 simply because the matter sought to be discovered *might* lead to admissible evidence. See *Board of*
6 *Trustees v. Superior Court of Santa Clara County* (1981) 119 Cal. App. 3d 516, 525. It follows,
7 fishing expeditions that would require the disclosure of private information are not allowed. See
8 *Tylo v. Superior Court* (1997) 55 Cal. App. 4th 1379, 1386-1387. "Therefore, real parties' argument
9 relating to the scope of discovery and the ability to undertake a fishing expedition misses the mark.
10 While the filing of the lawsuit by petitioner may be something like issuing a fishing license for
11 discovery, as with a fishing license, the rules of discovery do not allow unrestricted access to all
12 species of information. Discovery of constitutionally protected information is on a par with
13 discovery of privileged information and is more narrowly proscribed than traditional discovery."
14 *Tylo*, 55 Cal. App. 4th at 1387. Certainly, speculation as to the possibility that Spence's private
15 information might lead to relevant information is insufficient. See *Davis*, 7 Cal. App. 4th at 1017-
16 1018 ("Mere speculation as to the possibility that some portion of the records might be relevant to
17 some substantive issue does not suffice.").

18 To justify the proposed intrusion into the presumptively private affairs of Spence, Plaintiff
19 has the burden of demonstrating a "compelling need" for this information. See *Britt*, 20 Cal.3d at
20 848, 859; *In re Lifschutz* (1970) 2 Cal.3d 415, 43. Again, it is not enough to show the matters
21 encompassed by the right of privacy are merely relevant to the issues of ongoing litigation. See
22 *Kahn*, 188 Cal.App.3d at 766. Rather, Plaintiff is required to demonstrate and the Court must be
23 convinced that the information is "directly relevant" and "essential to the fair resolution" of the
24 lawsuit. *Britt*, 20 Cal.3d 844, 848, 859 (holding that a trial court could properly compel disclosure
25 only if "such associational activities are directly relevant to the plaintiff's claim, and disclosure of the
26 plaintiff's affiliations is essential to the fair resolution of the lawsuit ...") (emphasis added). "Mere
27 relevance is not sufficient; indeed, such private information is presumptively protected. The need
28 for discovery is balanced against the magnitude of the privacy invasion, and the party seeking

1 discovery must make a higher showing of relevance and materiality than otherwise would be
2 required for less sensitive material. [Citations.]” *Rancho Publications v. Superior Court* (1999) 68
3 Cal.App.4th 1538, 1549-1550 (emphasis added). The more sensitive the nature the information that
4 is sought to be discovered, the more substantial the showing of the need for the discovery that will
5 be required before disclosure will be permitted. *See Hooser v. Superior Court* (2000) 84 Cal. App.
6 4th 997, 1004-1005.) This arduous burden is “a particularly heavy one: to justify any impairment
7 there must be present [a] compelling ... interest ... [which] justifies the substantial infringement of .
8 . . . First Amendment rights. It is basic that no showing merely of a rational relationship to some
9 colorable state interest would suffice; in this highly sensitive constitutional area [only] the gravest
10 abuses, endangering paramount interests, give occasion for permissible limitation, [citation].”
11 *Morales v. Superior Court* (1979) 99 Cal. App. 3d 283, 290.

12 In determining the question of materiality of the information sought, the court “is entitled to
13 consider the contents of the pleadings filed in the case which showed, or might show, the
14 materiality of the evidence sought to be obtained.” *See Pelton Motors, Inc. v. Superior Ct.* (1953)
15 120 Cal. App. 2d 565, 570.

16 Plaintiff’s operative pleading does not sound in any allegations concerning Spence.
17 Moreover, Spence does not know Plaintiff and is not a percipient witness to any of the allegations
18 alleged in the pleadings. Indeed, it seems the only reason Spence is being deposed is that he was
19 childhood friends with Michael Jackson’s nephews. This “needle in a haystack” theory is not
20 sufficient to waive the constitutional right to privacy of Spence. Plaintiff *must* show a compelling
21 interest prior to obtaining the information. When a party seeks constitutionally protected private
22 information, “the burden rests on the proponents of discovery of this information--the plaintiffs
23 here--to justify compelling production of this material. They must *do more than show the*
24 *possibility it may lead to relevant information. Instead they must show a compelling and*
25 *opposing state interest.*” *Hinshaw Winkler v. Superior Court* (1996) 51 Cal. App. 4th 233, 239
26 (1996) (emphasis added).

27 Plaintiff has not even attempted to do so. *See Hinshaw Winkler*, 51 Cal. App. 4th at 239.
28 Therefore, a protective order should issue to prohibit the inquiry into matters protected by Spence’s

1 right to privacy. (Code of Civil Procedure Sections 2025.420(b)(9).)

2 **V. GOOD CAUSE EXISTS FOR THIS COURT TO ISSUE A PROTECTIVE ORDER**

3 “California courts are . . . authorized to issue protective orders, for good cause shown, to
4 protect any party or other person from ‘unwarranted annoyance, embarrassment, or oppression’ in
5 connection with civil discovery.” *Oiye v. Fox*, 211 Cal. App. 4th 1036, 1069 (2012). Accordingly,
6 California Code of Civil Procedure Section 2023.010(a) lists, as one of the misuses of the discovery
7 process, for a party to “[persist], over objection and without substantial justification, in an attempt to
8 obtain information or materials that are outside the scope of permissible discovery.”

9 Further, California Code of Civil Procedure Section 2025.420 provides in relevant part that:

10 “(b) The court, for good cause shown, may make any
11 order that justice requires to protect any party, deponent,
12 or other natural person or organization from unwarranted
13 annoyance, embarrassment, or oppression, or undue
14 burden and expense.

15 As set forth above, Plaintiff’s insistence on proceeding with a deposition without agreeing to limit
16 inquiry into matters facially encompassed by the right to privacy is the very definition of an
17 unwarranted annoyance designed to cause embarrassment and oppression. Plaintiff unilaterally
18 noticed the deposition without any regard for the availability of Spence or his counsel, and
19 proceeded even though Plaintiff knew they were unavailable. Plaintiff even refused to meet and
20 confer with Spence regarding his objections to the Deposition Notice.

21 Lastly, Spence is a resident of Encino, in Los Angeles County. Plaintiff noticed his
22 deposition in Irvine, in Orange County. This is highly inconvenient for Spence, as the commute
23 from Encino to Irvine during the work week is long and prone to traffic congestion. Spence’s
24 attorneys charge for their travel time, and holding the deposition in Irvine would incur Spence at
25 least another \$1,580 in attorney’s fees solely due to the time it takes for his attorneys to drive to and
26 back from Irvine. Good cause therefore exists to move the location of the deposition to the offices
27 of Spence’s counsel, in the Century City area of Los Angeles County. Such a location is far more
28 convenient to Spence, and would save him substantial attorney’s fees. (Code of Civil Procedure
Sections 2025.420(b)(4).)

08/30/2017

1 Therefore, respectfully, the Court should grant this Motion and issue a protective order as
2 requested.

3 **VI. SPENCE IS ENTITLED TO SANCTIONS AGAINST PLAINTIFF**

4 As Plaintiff has opposed this Motion without substantial justification, Spence is entitled to
5 sanctions against Plaintiff in the amount of \$5,135.00 under Code Civ. Proc. § 2025.420(h). Hardy
6 Decl., ¶ 6. Sanctions are required unless Plaintiff can demonstrate substantial justification. *See* Code
7 Civ. Proc. § 2025.420(h); *Doe v. U.S. Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434.
8 “Substantial justification” has been understood to mean that a justification is clearly reasonable
9 because it is well grounded in both law and fact. *U.S. Swimming*, 200 Cal.App.4th at 1434. For the
10 reasons already discussed, Plaintiff’s position is entirely without merit and unreasonable. Moreover,
11 Plaintiff’s discovery conduct is particularly egregious given the utter refusal of Plaintiff’s counsel to
12 meet and confer to discuss Spence’s objections to the Deposition Notice. Plaintiff’s bullying
13 behavior toward a non-party is inexcusable and speaks for itself.

14 **VII. CONCLUSION**

15 For the aforementioned reasons, Spence respectfully requests that the Court issue a protective
16 order that: (1) Spence’s deposition be taken at a different time, after the December 5, 2017 hearing
17 on Defendants’ pending motion for summary judgment (Code of Civil Procedure Sections
18 2025.420(b)(1)); (2) Spence’s deposition be taken at the offices of Spence’s counsel in Los Angeles
19 (Code of Civil Procedure Sections 2025.420(b)(4)); and (3) matters protected by Spence’s right to
20 privacy not be inquired into at deposition (Code of Civil Procedure Sections 2025.420(b)(9)).

21 DATED: August 28, 2017

FREEDMAN + TAITELMAN, LLP

22
23
24 By: _____

Bryan J. Freedman
Sean M. Hardy
Attorneys for Non-Party Jonathan Spence

08/30/2017
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1 DECLARATION OF SEAN M. HARDY

2 I, Sean M. Hardy, declare as follows:

3 1. I am a member of the bar of the State of California and an associate with the law firm of
4 Freedman + Taitelman, LLP ("F+T"), counsel for Non-Party Jonathan Spence ("Spence") in
5 connection with the above-captioned litigation. I am responsible for making and keeping the
6 litigation file in the above-captioned litigation and am familiar with the documents therein. I make
7 this declaration of my personal, firsthand knowledge, and/or from the records that F+T makes and
8 keeps in the ordinary course of its business, and, if called and sworn as a witness, I could and would
9 testify competently thereto.

10 2. Attached hereto as Exhibit 1 is a true and correct copy of the August 2, 2017 Notice of
11 Taking Deposition of Jonathan Spence.

12 3. My office was retained to represent Spence on August 17, 2017. Neither my office, nor
13 Spence, was available to attend his deposition as originally noticed for August 22, 2017. Attached
14 hereto as Exhibit 2 is a true and correct copy of the Objections to Notice of Taking Deposition of
15 Jonathan Spence and Deposition Subpoena for Personal Appearance, personally served on August
16 17, 2017.

17 4. Attached hereto as Exhibit 3 is a true and correct copy of the email correspondence between
18 myself and counsel for Plaintiff Wade Robson from August 17, 2017 through August 18, 2017.

19 5. My firm charges Spence for our travel time. I estimate that, based on my history of
20 travelling throughout the Southern California region, should Spence's deposition take place in
21 Irvine, it would incur an additional four (4) hours of travel time that would be billed to Spence as
22 attorney's fees. Spence is a resident of Encino, California.

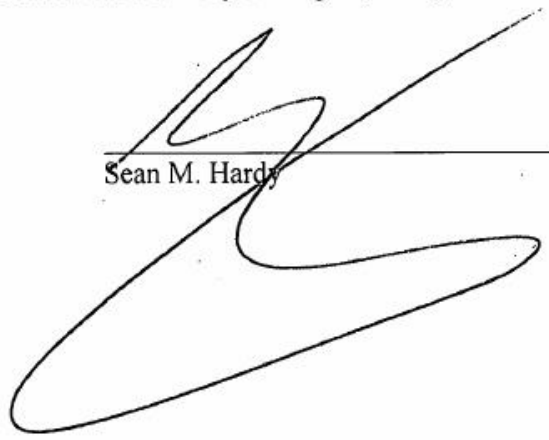
23 6. Due to Spence's need to prepare this motion for protective order, Spence has incurred and
24 will incur reasonable attorney's fees in the amount of \$5,135. I spent a combined five (5) hours
25 preparing these motion papers (\$1,975). I also anticipate spending an additional five (5) hours
26 preparing a reply and three (3) hours attending the hearing (\$3,160). My billing rate is \$395 per
27 hour.

28 7.

08/30/2017

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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of August, 2017, in Los Angeles, California.



Sean M. Hardy

08/30/2017

daily@michael.com

08/30/2017

MANLY, STEWART & FINALDI
ATTORNEYS AT LAW
19100 Von Karman Ave., Suite 800
Irvine, California 92612
Telephone: (949) 252-9990

08/30/2017

1 JOHN C. MANLY, Esq. (State Bar No. 149080)
VINCE W. FINALDI, Esq. (State Bar No. 238279)
2 **MANLY, STEWART & FINALDI**
19100 Von Karman Ave., Suite 800
3 Irvine, CA 92612
Telephone: (949) 252-9990
4 Fax: (949) 252-9991
5
6 Attorneys for Plaintiff, WADE ROBSON, an individual

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 WADE ROBSON, an individual,
12 Plaintiff,
13 vs.
14 MJJ PRODUCTIONS, INC., a California
15 corporation; MJJ VENTURES, INC., a
California corporation; and DOES 4-50,
16 inclusive,
17 Defendants.

Case No.: BC508502
[Related to Probate Case No. BP117321, In re
the Estate of Michael Joseph Jackson, and civil
case BC545264, James Safechuck v. Doe 1, et
al.]
[Assigned to the Hon. Mitchell L. Beckloff,
Dept. M]

**NOTICE OF TAKING DEPOSITION OF
JONATHAN SPENCE**

Date: August 22, 2017
Time: 10:00 a.m.
Location: Manly, Stewart & Finaldi
19100 Von Karman Ave., Suite 800
Irvine, CA 92618
Date Action Filed: May 10, 2013
Trial Date: March 5, 2018

23 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**
24 **PLEASE TAKE NOTICE** that on August 22, 2016, at 10:00 a.m., at Manly, Stewart &
25 Finaldi, 19100 Von Karman Ave., Suite 800, Irvine, CA 92618, (949) 252-9990, Plaintiff will
26 take the oral deposition of Jonathan Spence. If for any reason the taking of such deposition is not
27 completed on the date scheduled, said deposition shall continue, day-to-day, Sundays and
28

E-1

MANLY, STEWART & FINALDI
ATTORNEYS AT LAW
19100 Von Karman Ave Suite 800
Irvine, California 92612
Telephone: (949) 252-9990

08/30/2017

1 holidays excepted, until completed, or will be continued to such other dates and times as shall be
2 designated by the party noticing the deposition.

3 **PLEASE TAKE FURTHER NOTICE** that if an interpreter is required to translate
4 testimony, notice of same must be given to this noticing party at least five (5) working days prior
5 to the deposition date, and the specific language and/or dialect thereof designated.

6 **PLEASE TAKE FURTHER NOTICE** that pursuant to Code of Civil Procedure section
7 2025(d)(5) and (d)(6), Plaintiff reserves the right to record the deposition testimony of the
8 deponent by audio tape and/or videotape in addition to recording the testimony by stenographic
9 method.

10 SAID DEPONENT WILL BE SERVED WITH A DEPOSITION SUBPOENA, A COPY
11 OF WHICH IS ATTACHED HERETO AND SERVED HERewith.

12 Dated: August 3, 2017

MANLY, STEWART & FINALDI

13
14 By: Vince W. Finaldi
15 VINCE W. FINALDI, Esq.
16 Attorneys of Record for Plaintiff
17 WADE ROBSON
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Vince W. Finaldi, Esq. SBN 238279 MANLY, STEWART & FINALDI 19100 Von Karman Ave., Suite 800 Irvine, CA 92612 TELEPHONE NO.: 949-252-9990 FAX NO. (Optional): 949-252-9991 E-MAIL ADDRESS (Optional): vfinaldi@manlystewart.com ATTORNEY FOR (Name): Plaintiff WADE ROBSON	FOR COURT USE ONLY CASE NUMBER: BC508502
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 1725 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Monica, CA 90401 BRANCH NAME: Santa Monica Courthouse	
PLAINTIFF/ PETITIONER: WADE ROBSON DEFENDANT/ RESPONDENT: MJJ PRODUCTIONS, INC., et al.	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE	

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 JONATHAN SPENCE, 18155 Lake Encino Drive, Encino, 91316

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: August 22, 2017 Time: 10:00 a.m. Address:
 Manly, Stewart & Finaldi - 19100 Von Karman Ave., Suite 800, Irvine, CA 92612 - 949-252-9990

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.230.)
- b. This deposition will be recorded stenographically through the instant visual display of testimony and by audiotape videotape.
- c. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

3. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: July 27, 2017

VINCE W. FINALDI, ESQ.

(TYPE OR PRINT NAME)

Vince W. Finaldi

(SIGNATURE OF PERSON ISSUING SUBPOENA)

ATTORNEYS FOR PLAINTIFF

(TITLE)

(Proof of service on reverse)

Page 1 of 2

PLAINTIFF/PETITIONER: WADE ROBSON	CASE NUMBER:
DEFENDANT/RESPONDENT: MJJ PRODUCTIONS, INC., et al.	BC508502

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

1. I served this Deposition Subpoena for Personal Appearance by personally delivering a copy to the person served as follows:

- a. Person served (name):
- b. Address where served:
- c. Date of delivery:
- d. Time of delivery:
- e. Witness fees and mileage both ways (check one):
 - (1) were paid. Amount \$ _____
 - (2) were not paid.
 - (3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____
- f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Registered professional photocopier
- g. Exempt from registration under Business and Professions Code section 22451
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

(For California sheriff or marshal use only) I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

08/30/2017

MANLY, STEWART & FINALDI
ATTORNEYS AT LAW
19100 Von Karman Ave., Suite 800
Irvine, California 92612
Telephone: (949) 252-9990

08/30/2017

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 19100 Von Karman Ave., Suite 800, Irvine, CA 92612.

On August 3, 2016, I served the following document described as **NOTICE OF TAKING DEPOSITION OF JONATHAN SPENCE** on the interested parties in this action.

by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED MAILING LIST

BY U.S. MAIL

I deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY PERSONAL SERVICE

I personally delivered the documents to the persons at the addresses listed above.

BY FEDERAL EXPRESS DELIVERY - I caused such envelopes to be delivered via

Federal Express service with instructions to personally deliver same to offices of the addressee on the next business date.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 3, 2017, at Irvine, California.

Kathleen Frederiksen

Kathy Frederiksen

MANLY STEWART & FINALDI
ATTORNEYS AT LAW
19100 Von Karman Ave Suite 800
Irvine, California 92612
Telephone: (949) 252-9990

08/30/2017

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MAILING LIST

Wade Robson v. MJJ Productions, et al.
LASC Case No. BC508502

Howard L. Weitzman, Esq.
Jonathan P. Steinsapir, Esq.
Kinsella Weitzman Iser Kump & Aldisert LLP
808 Wilshire Boulevard, Third Floor
Santa Monica, California 90401
(310) 566-9800-main
(310) 566-9850 – fax
HWeitzman@kwikalaw.com
jsteinsapir@kwikalaw.com
Attorneys for Defendants

daily michael.com

08/30/2017

1 Bryan J. Freedman, Esq. (SBN 151990)
Sean M. Hardy, Esq. (SBN 266446)
2 FREEDMAN + TAITELMAN, LLP
1901 Avenue of the Stars, Suite 500
3 Los Angeles, CA 90067
Telephone: (310) 201-0005
4 Facsimile: (310) 201-0045
E-mail: BFreedman@ftllp.com
5 SMHardy@ftllp.com
6 Attorneys for Non-Party Jonathan Spence

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 WADE ROBSON, an individual,) Case No.: BC 508502
11 Plaintiff,) Unlimited Civil Case
12 vs.) Amount in excess of \$25,000
13 MJJ PRODUCTIONS, INC., a California) **OBJECTIONS TO NOTICE OF TAKING**
corporation; MJJ VENTURES, INC., a) **DEPOSITION OF NON-PARTY**
14 California corporation; and Does 4 through 50,) **JONATHAN SPENCE AND DEPOSITION**
inclusive,) **SUBPOENA FOR PERSONAL**
15 Defendants.) **APPEARANCE**
16 Date: August 22, 2017
17 Time: 10:00 a.m..
18 Place: Manly, Stewart & Finaldi
19 19100 Von Karman Ave., Suite 800
20 Irvine, CA 92618
21
22
23

24 Non-Party Jonathan Spence ("Spence") hereby objects to the Notice of Taking Deposition of
25 Jonathan Spence and Deposition Subpoena for Personal Appearance (the "Subpoena") served by
26 Plaintiff Wade Robson ("Plaintiff") as follows:

27 ///

OBJECTIONS TO NOTICE OF TAKING DEPOSITION OF NON-PARTY JONATHAN SPENCE AND DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

08/30/2017

GENERAL OBJECTIONS

1
2 Objection: Spence objects to the Subpoena, in its entirety, on the ground that the date of the
3 deposition was unilaterally determined without consideration for Spence's or Spence's counsel's
4 calendar in violation of Los Angeles County Superior Court, Local Rule 3.26 and Appendix 3.A(e)(2).

5 Objection: Spence objects to the Subpoena, in its entirety, on the ground that the date for the
6 depositions was unilaterally chosen by Plaintiff for dates upon which Spence and/or her counsel are not
7 available for deposition.

8 Objection: Spence objects to the Subpoena in that it is reasonably calculated to result in the
9 disclosure of sensitive, proprietary, information protected by the right to privacy, or confidential
10 business information or trade secrets without Spence being provided a suitable protective order
11 protecting this confidentiality.

12 Objection: Spence objects to the Subpoena in that it violates the seven hour limitation on the
13 length of a deposition mandated by Code of Civil Procedure section 2025.290. The Subpoena
14 improperly requires that the deposition continue "day-to-day" until completed.

15 Objection: Spence objects to the Subpoena to the extent it fails to comply with the
16 requirements on Code of Civil Procedure section 2025.210, *et seq.*

17 Objection: Spence objects to the Subpoena to the extent the deposition is noticed for a
18 location more than 75 miles from Defendant's residence.

19 Objection: Spence objects to the Subpoena to the extent it imposes an undue burden on
20 Spence that outweighs any potential discovery of admissible evidence, which Spence denies.

21 Objection: Spence objects to the Subpoena to the extent it seeks to invade his right to
22 privacy.

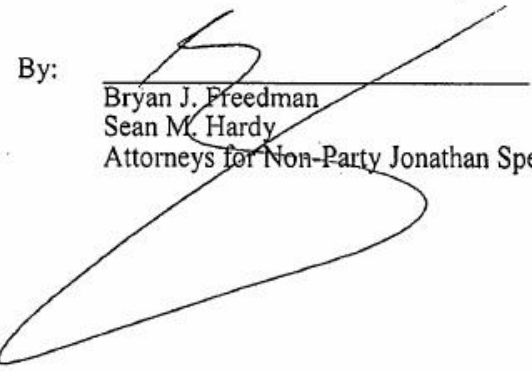
23 Objection: Spence objects to the Subpoena in that it seeks information not likely to lead to
24 the discovery of admissible evidence.

25 Objection: Spence objects to the Subpoena to the extent that it was served for purposes of
26 harassment.

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Dated: August 17, 2017

FREEDMAN + TAITELMAN, LLP

By: 
Bryan J. Freedman
Sean M. Hardy
Attorneys for Non-Party Jonathan Spence

08/30/2017

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA]
3]ss.
4 COUNTY OF LOS ANGELES]

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is Express Network 1533 Wilshire Blvd,
7 Los Angeles, CA 90017.

8 On August 17, 2017, I served the following document(s) on the interested parties in this
9 action as follows:

10 **OBJECTIONS TO NOTICE OF TAKING DEPOSITION OF NON-PARTY JONATHAN
11 SPENCE AND DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE**

12 **By Personal Service.** I personally delivered said document(s) to the offices of the
13 addressee(s) listed below.

14 John C. Manly
15 Vince W. Finaldi
16 MANLY, STEWART & FINALDI
17 19100 Von Karman Ave., Suite 800
18 Irvine, CA 92612
19 Phone: (949) 252-9990
20 Fax: (949) 252-9991

21 **STATE - I declare under penalty of perjury under the laws of the State of California that
22 the above is true and correct. CCP §2015.5.**

23 Executed on August 17, 2017, at Los Angeles, California.

24 
25 _____

26 08/30/2017
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PROOF OF SERVICE

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

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 1901 Avenue of the Stars, Suite 500, Los Angeles, CA 90067.

On August 17, 2017, I served the following document(s) on the interested parties in this action as follows:

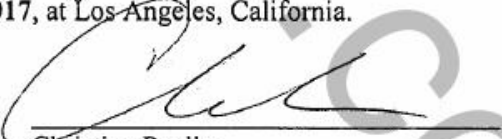
OBJECTIONS TO NOTICE OF TAKING DEPOSITION OF NON-PARTY JONATHAN SPENCE AND DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

By United States Mail: I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date deposit for mailing in affidavit.

Howard Weitzman
Jonathan P. Steinsapir
KINSELLA WEITZMAN ISER KUMP
& ALDISERT LLP
808 Wilshire Blvd., 3rd Floor
Santa Monica, CA 90401
Phone: (310) 566-9800
Fax: (310) 566-9850
Attorneys for Defendants

STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct. CCP §2015.5.

Executed on August 17, 2017, at Los Angeles, California.


Christina Puello

08/30/2017

daily michael.com

08/30/2017

Sean M. Hardy

From: Vince Finaldi <vfinaldi@manlystewart.com>
Sent: Friday, August 18, 2017 7:14 AM
To: Sean M. Hardy
Cc: Alex Cunny; Bryan Freedman; Kathy Frederiksen; Christina Puello
Subject: Re: Robson v. MJJ Productions, Inc. - Objection to Subpoena for Appearance by Jonathan Spence

Mr. Hardy,

Your client is a third party witness. Of course we unilaterally set it-that is standard practice, especially when we know the witness will evade service and be uncooperative, which is now readily apparent from the improper objection which was filed. This is a simple issue-obtain an available date from your client, provide it to us, and we will move the deposition. That can be done in ten minutes and there is no reason to wait until early next week. That is just a transparent delay tactic. Without the aforementioned agreement, we will proceed with the deposition as noticed, take a notice of non-appearance if he does not show, and immediately move forward with an OSC re: contempt for willful violation of a subpoena-a valid court order.

Vince William Finaldi, Esq.
MANLY, STEWART & FINALDI
19100 Von Karman Ave. Ste. 800
Irvine, CA 92613
P (949) 252-9990
F (949) 252-9991
vfinaldi@manlystewart.com

On Aug 17, 2017, at 11:00 PM, Sean M. Hardy <smhardy@ftllp.com> wrote:

Counsel:

You unilaterally noticed the deposition of a nonparty in violation of the local rules, and a timely objection has been served. This case has apparently been pending since 2014. We will meet and confer with you regarding alternative dates as soon as possible, but I will not have any dates until early next week after we have had a chance to speak with our client. We are authorized to accept service on behalf of our client and all further communications regarding this deposition should be sent directly to our address below.

<image001.png>
Sean M. Hardy, Esq.
1901 Avenue of the Stars, Suite 500
Los Angeles, CA 90067
310-201-0005
310-201-0045 facsimile
www.ftllp.com

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08/30/2017

From: Vince Finaldi [<mailto:vfinaldi@manlystewart.com>]
Sent: Thursday, August 17, 2017 9:41 PM
To: Sean M. Hardy
Cc: Alex Cunny; Bryan Freedman; Kathy Frederiksen; Christina Puello
Subject: Re: Robson v. MJJ Productions, Inc. - Objection to Subpoena for Appearance by Jonathan Spence

Mr. Hardy,

We will not agree to move the deposition until we have a new date agreed to, as Mr. Spence was duly served with a valid subpoena at substantial cost to us. Thus, time is of the essence. There is no need for a phone call. When are you and your client available for deposition? Provide a new date, confirm that you are authorized to and will accept service of the subpoena for the new date via email, and we will be more than happy to move it.

Thank you,

Vince William Finaldi, Esq.
MANLY, STEWART & FINALDI
19100 Von Karman Ave. Ste. 800
Irvine, CA 92613
P (949) 252-9990
F (949) 252-9991
vfinaldi@manlystewart.com

On Aug 17, 2017, at 9:17 PM, Sean M. Hardy <smhardy@ftllp.com> wrote:

Counsel:

The deposition was unilaterally noticed on a date which neither this firm nor our client is available. It will not be going forward as noticed, pursuant to the timely objection. I have copied our assistant Christina to schedule a telephone call for next week so we can meet and confer regarding this deposition. Thank you.

Sincerely,

Sean M. Hardy

<image002.png>
Sean M. Hardy, Esq.
1901 Avenue of the Stars, Suite 500
Los Angeles, CA 90067
310-201-0005
310-201-0045 facsimile
www.ftllp.com

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08/30/2017

From: Alex Cunny [<mailto:acunny@manlystewart.com>]
Sent: Thursday, August 17, 2017 4:19 PM
To: Bryan Freedman; Sean M. Hardy
Cc: Vince Finaldi; Kathy Frederiksen
Subject: Robson v. MJJ Productions, Inc. - Objection to Subpoena for Appearance by Jonathan Spence

Good afternoon Mssrs. Freedman and Hardy,

I received your objection to deposition subpoena of Jonathan Spence. While there are several grounds set forth in your objection, there is no clear indication as to whether you will be producing him on August 22, 2017 for deposition at our office. Will you be producing him at the time/location set forth in his subpoena? Please let me know as soon as possible, as the 22nd is coming up.

Thank you,

Alex E. Cunny, Esq.

Attorney

MANLY, STEWART & FINALDI

19100 Von Karman Ave.

Suite 800

Irvine, CA 92612

P (949) 252-9990

F (949) 252-9991

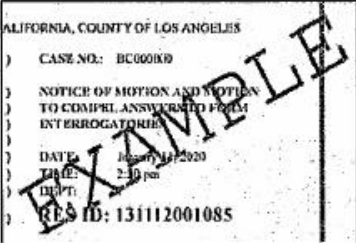
acunny@manlystewart.com

<image003.jpg>

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08/30/2017

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INSTRUCTIONS	
Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.	
	

RESERVATION INFORMATION

Reservation ID: 170818244235
Transaction Date: August 18, 2017
Case Number: BC508502
Case Title: WADE ROBSON VS DOE 1 ET AL
Party: JONATHAN SPENCE (Non-Party)
Courthouse: Santa Monica Courthouse
Department: M
Reservation Type: Motion for Protective Order
Date: 2/20/2018
Time: 08:30 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	\$435.00
Total Fees:	\$435.00

Receipt Number: 1170818K1188

PAYMENT INFORMATION

Name on Credit Card: Michael Taitelman
Credit Card Number: XXXX-XXXX-XXXX-6956

0830/2017

A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.