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13

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 JAMES PARKER,

18 Plaintiff,

19 v.

20 MM ENTERPRISES USA, LLC, a limited
liability company, and DOES 1 through 25,
21 inclusive,

22 Defendants.
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Case No. 19SMCV00189

Assigned to the Honorable Mark A.
Young for all purposes

**DEFENDANT MM ENTERPRISES
USA, LLC'S ANSWER TO PARKER'S
COMPLAINT**

Trial Date: TBD

Action Filed: January 29, 2019

Dept: M

1 Defendant MM ENTERPRISES USA, LLC (“Defendant,” “MM USA,” or the
2 “Company”), by and through its attorneys, Baker & McKenzie LLP, hereby answers Plaintiff
3 JAMES PARKER’s (“Parker”) Verified Complaint (“Complaint”) and asserts its defenses. MM
4 USA denies any liability to Parker whatsoever and that Parker has suffered any damages for which
5 MM USA is responsible. MM USA expressly reserves the right to amend and/or supplement its
6 Answer and defenses. All allegations not specifically admitted herein are denied.

7 Subject to the foregoing, MM USA states as follows:

8 **J’ACCUSE...¹**

9 1. MM USA admits that Parker resigned, and denies each and every other allegation
10 in Paragraph 1 of the Complaint.

11 2. MM USA denies each and every allegation in Paragraph 2 of the Complaint.

12 **I. INTRODUCTORY ALLEGATIONS**

13 3. MM USA admits the allegations in Paragraph 3 of the Complaint.

14 4. MM USA lacks information or belief sufficient to answer the allegations in
15 Paragraph 4 of the Complaint, and, upon that basis, denies each and every one.

16 5. MM USA lacks information or belief sufficient to answer the allegations in
17 Paragraph 5 of the Complaint, and, upon that basis, denies each and every one.

18 **II. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

19 6. MM USA admits that Adam Bierman is its Chief Executive Officer, and Andrew
20 Modlin is its President. MM USA further admits that Bierman and Modlin founded the businesses
21 that were restructured into MM Enterprises, Inc. (“MM Inc.”) in a reverse takeover transaction in
22 2018. MM Inc.’s public disclosures speak for themselves; thus, MM USA need not admit or deny
23 allegations as to their content or legal effect. MM USA lacks information and belief sufficient to
24 answer Parker’s allegations concerning the personal circumstances of various unidentified MM
25 Inc.’s employees, and, upon that basis, denies each and every such allegation. MM USA likewise
26 lacks information and belief sufficient to answer Parker’s allegations concerning his purported
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¹ Defendant incorporates the headings from the Complaint for ease of organization only.

1 U.S. government security clearance, and, upon that basis, denies each and every such allegation.
2 Except as stated herein, MM USA denies each and every allegation in Paragraph 6 of the
3 Complaint.

4 7. MM USA lacks information or belief sufficient to answer the allegations in
5 Paragraph 7 of the Complaint, and, upon that basis, denies each and every one.

6 8. MM USA admits that Parker was the Chief Operating Officer (“COO”) of MM
7 USA’s predecessor company, Treehouse Capital, before becoming the Company’s CFO. MM
8 USA lacks information or belief sufficient to answer Parker’s allegations concerning his education
9 and work history, and, upon that basis, denies each and every one. Except as stated herein, MM
10 USA denies each and every allegation in Paragraph 8 of the Complaint.

11 9. MM USA admits that Parker executed a letter agreement regarding his employment
12 with the Company in February 2018. That letter agreement speaks for itself, and MM USA need
13 not admit or deny allegations as to its content or legal effect. MM USA further admits that it was
14 privately held in February 2018. Except as stated herein, MM USA denies each and every
15 allegation in Paragraph 9 of the Complaint.

16 10. MM USA admits that Bierman, Modlin, Chris Ganan, and Lisa Sergi Trager each
17 executed letter agreements regarding their employment with the Company. Those letter
18 agreements speak for themselves, and MM USA need not admit or deny allegations as to the
19 content or effect of those agreements. Except as stated herein, MM USA denies each and every
20 allegation in Paragraph 10 of the Complaint.

21 11. Parker’s letter agreement with MM USA speaks for itself, and MM USA need not
22 admit or deny allegations as to its content or legal effect. Except as stated herein, MM USA
23 denies each and every allegation in Paragraph 11 of the Complaint.

24 12. MM USA admits that MM was listed on the Canadian Securities Exchange on May
25 29, 2018. The accompanying publicly-available listing Prospectus speaks for itself, and MM USA
26 need not admit or deny allegations as to its content. Except as stated herein, MM USA denies
27 each and every allegation in Paragraph 12 of the Complaint.

28 13. MM USA admits that a public company’s officers and directors generally owe

1 fiduciary duties to shareholders. Except as stated herein, MM USA denies each and every
2 allegation in Paragraph 13 of the Complaint.

3 14. MM USA lacks information or belief as to the meaning of the phrase “an enormous
4 boon” as it is used in Paragraph 14 of the Complaint, and, upon that basis, denies the
5 corresponding allegations. Except as stated herein, MM USA expressly denies the remaining
6 allegations in that paragraph.

7 15. MM USA denies each and every allegation in Paragraph 15 of the Complaint.

8 16. MM USA denies each and every allegation in Paragraph 16 of the Complaint.

9 17. MM USA lacks information and belief sufficient to answer Parker’s allegations
10 concerning the purported statements by Company employees described in Paragraph 17 of the
11 Complaint, and, upon that basis, denies each and every one. MM USA further lacks information
12 and belief as to individuals’ subjective feelings and opinions as alleged in that paragraph, and,
13 upon that basis, denies each and every such allegation. MM USA’s CSE Form 2A Listing
14 Statement speaks for itself, and MM USA need not admit or deny allegations about its contents.
15 Except as stated herein, MM USA expressly denies the remaining allegations in Paragraph 17 of
16 the Complaint.

17 18. MM USA admits that Parker did not directly participate in the Company’s
18 discussions with PharmaCann, and that PharmaCann’s CFO participated in certain discussions
19 with MM USA. Except as expressly stated herein, MM USA denies the remaining allegations in
20 Paragraph 18 of the Complaint.

21 19. The communications between MM USA and its attorneys as described in Paragraph
22 19 of the Complaint, if any, would be privileged, and the Company need not admit or deny
23 allegations as to the content or legal effect of those communications. Except as stated herein, MM
24 USA denies each and every allegation in Paragraph 19 of the Complaint.

25 20. MM USA denies each and every allegation in Paragraph 20 of the Complaint.

26 21. MM USA lacks information and belief sufficient to answer Parker’s allegations
27 concerning the explanation he purportedly received about the so-called “Management
28 Assessment,” and, upon that basis, denies each and every such allegation. Except as stated herein,

1 MM USA expressly denies the remaining allegations in Paragraph 21 of the Complaint because
2 they are false, inaccurate, incomplete, and/or materially misleading.

3 22. MM USA admits that its CEO and President possess all of the Company's super-
4 voting shares. Further, MM USA admits that Parker and Bierman discussed issues related to
5 Parker's employment at a meeting on or about October 27, 2018. MM USA expressly denies each
6 and every remaining allegation in Paragraph 22 because they are false, inaccurate, incomplete,
7 and/or materially misleading.

8 23. Modlin's e-mail communications speak for themselves, and MM USA need not
9 admit or deny allegations concerning their content or legal effect. Except as stated herein, MM
10 USA denies each and every allegation in Paragraph 23 of the Complaint.

11 24. Parker's e-mail communications speak for themselves, and MM USA need not
12 admit or deny allegations concerning their content or legal effect. Except as stated herein, MM
13 USA denies each and every allegation in Paragraph 24 of the Complaint.

14 25. Modlin's e-mail communications speak for themselves, and MM USA need not
15 admit or deny allegations concerning their content or legal effect. Except as stated herein, MM
16 USA denies each and every allegation in Paragraph 25 of the Complaint.

17 26. MM USA denies each and every allegation in Paragraph 26 of the Complaint,
18 including Parker's allegations about other Company employees, because they are false, inaccurate,
19 incomplete, and/or materially misleading.

20 27. MM USA denies each and every allegation in Paragraph 27 of the Complaint
21 because they are false, inaccurate, incomplete, and/or materially misleading.

22 28. MM USA expressly denies that Bierman or Modlin breached their respective duties
23 to the Company and its shareholders. Further, MM USA expressly denies that Parker was
24 prevented or otherwise discouraged from satisfying his own duties to the Company and its
25 shareholders. MM USA denies each and every allegation in Paragraph 28 of the Complaint
26 because they are false, inaccurate, incomplete, and/or materially misleading.

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1 **III. FIRST CAUSE OF ACTION**

2 **(Breach of Contract-Demotion)**

3 **(Against Defendant MM Enterprises)**

4 29. MM USA realleges and incorporates by reference its responses to Paragraphs 1-28
5 of the Complaint as if fully set forth herein.

6 30. MM USA admits that the Company and Parker executed a letter agreement related
7 to his employment on or about May 18, 2018.

8 31. MM USA denies each and every allegation in Paragraph 31 of the Complaint.

9 32. MM USA states that the allegations in Paragraph 32 state a legal conclusion to
10 which no response is required. To the extent a response is required, MM USA denies each and
11 every allegation in Paragraph 32.

12 33. MM USA denies each and every allegation in Paragraph 33 of the Complaint.

13 **IV. SECOND CAUSE OF ACTION**

14 **(Breach of The Implied Covenant Of Good Faith And Fair Dealing)**

15 **(Against Defendant MM Enterprises)**

16 34. MM USA realleges and incorporates by reference its responses to Paragraphs 1-33
17 of the Complaint as if fully set forth herein.

18 35. MM USA states that the allegations in Paragraph 35 state a legal conclusion to
19 which no response is required. Upon that basis, MM USA denies each and every allegation in that
20 paragraph.

21 36. MM USA admits that Parker was the Chief Operating Officer of MM USA's
22 predecessor company. MM USA further admits that the Company and Parker entered into a letter
23 agreement regarding his employment on or about February 19, 2018, and again on or about May
24 18, 2018. Except as stated herein, MM USA denies the remaining allegations in Paragraph 36 of
25 the Complaint because they are false, inaccurate, incomplete, and/or materially misleading.

26 37. MM USA expressly denies that Bierman or Modlin breached their respective duties
27 to the Company and its shareholders. Further, MM USA expressly denies that Parker was
28 prevented or otherwise discouraged from satisfying his own duties to the Company and its

1 shareholders. MM USA denies each and every allegation in Paragraph 37 of the Complaint
2 because they are false, inaccurate, incomplete, and/or materially misleading.

3 38. MM USA expressly denies that Bierman or Modlin breached their respective duties
4 to the Company and its shareholders. Further, MM USA expressly denies that Parker was
5 prevented or otherwise discouraged from satisfying his own duties to the Company and its
6 shareholders. MM USA denies each and every allegation in Paragraph 38 of the Complaint
7 because they are false, inaccurate, incomplete, and/or materially misleading.

8 39. MM USA denies each and every allegation in Paragraph 39 of the Complaint.

9 **V. THIRD CAUSE OF ACTION**

10 **(Breach of Contract-Termination Without Cause)**

11 **(Against Defendant MM Enterprises)**

12 40. MM USA realleges and incorporates by reference its responses to Paragraphs 1-39
13 of the Complaint as if fully set forth herein.

14 41. Parker's letter agreement with MM USA speaks for itself, and MM USA need not
15 admit or deny allegations as to its content or legal effect. Upon that basis, MM USA denies each
16 and every allegation in Paragraph 41 of the Complaint.

17 42. Parker's letter agreement with MM USA speaks for itself, and MM USA need not
18 admit or deny allegations as to its content or legal effect. Upon that basis, MM USA denies each
19 and every allegation in Paragraph 42 of the Complaint.

20 43. MM USA denies each and every allegation in Paragraph 43 of the Complaint.

21 44. MM USA denies each and every allegation in Paragraph 44 of the Complaint
22 because they are false, inaccurate, incomplete, and/or materially misleading. In particular, MM
23 USA expressly denies that Bierman or Modlin breached their respective duties to the Company
24 and its shareholders. MM USA further expressly denies that Parker was prevented or otherwise
25 discouraged from satisfying his own duties to the Company and its shareholders.

26 45. MM USA denies each and every allegation in Paragraph 45 of the Complaint.

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1 **VI. FOURTH CAUSE OF ACTION**

2 **(Wrongful Discharge In Violation of Public Policy)**

3 **(Against Defendant MM Enterprises And Does 1 through 25)**

4 46. MM USA realleges and incorporates by reference its responses to Paragraphs 1-45
5 of the Complaint as if fully set forth herein.

6 47. MM USA admits that Parker owed a fiduciary duty to MM Inc. and its
7 shareholders. MM USA further admits that Parker signed MM Inc.'s publicly disclosed financial
8 statements. Except as stated herein, MM USA denies each and every allegation in Paragraph 47 of
9 the Complaint.

10 48. MM USA states that the allegations in Paragraph 48 state a legal conclusion to
11 which no response is required. Upon that basis, MM USA denies each and every allegation in that
12 paragraph.

13 49. MM USA denies each and every allegation in Paragraph 49 of the Complaint
14 because they are false, inaccurate, incomplete, and/or materially misleading. In particular, MM
15 USA expressly denies that Bierman or Modlin breached their respective duties to the Company
16 and its shareholders. MM USA further expressly denies that Parker was prevented or otherwise
17 discouraged from satisfying his own duties to the Company and its shareholders.

18 50. MM USA denies each and every allegation in Paragraph 50 of the Complaint
19 because they are false, inaccurate, incomplete, and/or materially misleading. In particular, MM
20 USA expressly denies that Bierman or Modlin breached their respective duties to the Company
21 and its shareholders. MM USA further expressly denies that Parker was prevented or otherwise
22 discouraged from satisfying his own duties to the Company and its shareholders.

23 51. MM USA denies each and every allegation in Paragraph 51 of the Complaint
24 because they are false, inaccurate, incomplete, and/or materially misleading. In particular, MM
25 USA expressly denies that Bierman or Modlin breached their respective duties to the Company
26 and its shareholders. MM USA further expressly denies that Parker was prevented or otherwise
27 discouraged from satisfying his own duties to the Company and its shareholders.

28 52. MM USA denies each and every allegation in Paragraph 52 of the Complaint.

1 53. MM USA denies each and every allegation in Paragraph 53 of the Complaint. In
2 particular, MM USA expressly denies that Bierman or Modlin acted toward Parker with malice,
3 fraud, and oppression, or otherwise breached their respective duties to the Company and its
4 shareholders. MM USA further expressly denies that Parker is entitled any of the damages he is
5 seeking from the Company.

6 **VII. PRAYER**

7 In response to the unnumbered WHEREFORE clause, and the paragraphs numbered 1
8 through 25 in Section VII of the Complaint, MM USA denies the propriety of each and every
9 request or prayer for relief. MM USA requests that the Court deny the requested relief.

10 **REQUEST FOR JURY TRIAL**

11 MM USA admits that Parker has requested a jury trial.

12 **SEPARATE AND AFFIRMATIVE DEFENSES**

13 MM USA separately states and pleads each of the following separate and affirmative
14 defenses, without assuming the burden of proof where such burden is otherwise on Parker under
15 applicable law. As MM USA presently has insufficient knowledge or information in which to
16 form a belief as to whether it has additional, unstated, affirmative defenses, MM USA reserves the
17 right to assert any additional defenses should discovery reveal that such defenses are appropriate.
18 MM USA reserves the right to amend any affirmative defenses in the event that discovery
19 indicates it may be appropriate to do so.

20 1. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's Complaint, and
21 each and every claim stated therein, fails to state a claim on which relief can be granted.

22 2. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claims are barred in
23 whole or in part by the applicable statutes of limitations, including, but not limited to, California
24 Code of Civil Procedure §§ 337, 340, and 343.

25 3. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claims are barred in
26 whole or in part by the doctrine of estoppel.

27 4. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claims are barred in
28 whole or in part by the doctrine of unclean hands.

1 5. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claims are barred in
2 whole or in part by the doctrine of *in pari delicto*.

3 6. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claim for breach of
4 contract is barred in whole or in part because Parker breached the Letter Agreement, and therefore
5 excused MM USA from its obligations.

6 7. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claim for breach of
7 contract is barred in whole or in part because he procured the Letter Agreement in breach of his
8 fiduciary duty to MM USA.

9 8. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claim for breach of
10 contract is barred because Parker breached the covenant of good faith and fair dealing implied in
11 every contract governed by California law, and therefore excused MM USA from its obligations.

12 9. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claim for breach of
13 contract is barred because he has not suffered any damages from any such alleged breach.

14 10. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claim for breach of
15 contract is barred by the doctrines of misunderstanding, mistake, or fraud.

16 11. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claims are barred in
17 whole or in part because of ratification, agreement, acquiescence, or consent to MM USA's
18 alleged conduct.

19 12. AS A SEPARATE AND AFFIRMATIVE DEFENSE, to the extent that Parker has
20 suffered damages, if at all, he has failed to take reasonable measures to mitigate his damages in
21 whole or in part, and is barred from recovering damages that it could have reasonably avoided.

22 13. AS A SEPARATE AND AFFIRMATIVE DEFENSE, to the extent that Parker has
23 suffered damages, if at all, all damages were caused by Parker's own actions.

24 14. AS A SEPARATE AND AFFIRMATIVE DEFENSE, to the extent that Parker has
25 suffered damages, if at all, his damages are subject to offset in the amount of any obligations
26 Parker owes MM USA.

27 15. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker's claims are barred in
28 whole or in part because any recovery would result in unjust enrichment to Parker.

1 16. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker is barred from any
2 recovery in this action because MM USA acted reasonably and in good faith at all times material
3 herein based on all relevant facts and circumstances known to MM USA at the time it acted.

4 17. AS A SEPARATE AND AFFIRMATIVE DEFENSE, to the extent MM USA
5 acquires any evidence of wrongdoing by Parker during the course of this litigation, which
6 wrongdoing would have materially affected the terms and conditions of Parker’s employment or
7 would have resulted in Parker being demoted, disciplined, or terminated, such after acquired
8 evidence shall bar and/or limit the amount of damages Parker can recover on his claims, assuming
9 he can establish liability.

10 18. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker is barred from
11 recovering any damages pursuant to the doctrine of avoidable consequences.

12 19. AS A SEPARATE AND AFFIRMATIVE DEFENSE, the complaint fails to state
13 facts sufficient to constitute a claim upon which punitive damages may be sought under California
14 Civil Code § 3294 or on any other basis.

15 20. AS A SEPARATE AND AFFIRMATIVE DEFENSE, an award of punitive
16 damages under the circumstances of this case would constitute an excessive fine and otherwise
17 would be in violation of MM USA’s due process and other rights under the United States and
18 California constitutions.

19 21. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker’s claims for damages
20 are precluded to the extent those alleged damages are speculative.

21 22. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Parker’s alleged injuries are
22 the result, in whole or in part, of the acts or omissions of entities or individuals other than MM
23 USA, including Parker, and MM USA’s liability, if any, must be reduced by any percentage of
24 fault attributable to Parker and those other entities and/or individuals.

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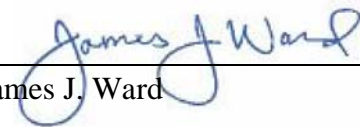
PRAYER

WHEREFORE, Defendant prays for judgment from the court as follows:

1. Parker takes nothing by this action;
2. Complaint, and each cause of action therein, be dismissed in its entirety with prejudice;
3. Defendant be awarded its costs of suit incurred herein;
4. Defendant be awarded its attorneys' fees pursuant to law; and
5. Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: March 1, 2019

BAKER & McKENZIE LLP

By: 
James J. Ward
Attorneys for Defendant
MM Enterprises USA, LLC

VERIFICATION

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I, Adam Bierman, declare as follows:

I am the Chief Executive Officer of MM Enterprises USA, LLC, and am authorized to make this verification on behalf of Defendant MM Enterprises USA, LLC. I have read the foregoing VERIFIED ANSWER TO PLAINTIFF'S COMPLAINT and know its contents. I am informed and believe, and on that ground allege, that the statements included therein are true and correct.

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

Executed on March 1, 2019, at Boston , Massachusetts.



Adam Bierman

1 **PROOF OF SERVICE**

2 I, Jennifer Ilas, declare as follows:

3 I am over the age of eighteen years and not a party to the case. I am employed in the
4 County of Santa Clara, State of California, where the mailing occurs; and my business address is
5 **BAKER & McKENZIE LLP**, 660 Hansen Way, Palo Alto, CA 94304.

6 On March 1, 2019, I served a copy of the within document(s):

7 **DEFENDANT MM ENTERPRISES USA, LLC'S ANSWER TO PARKER'S
8 COMPLAINT**

9 on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes
10 addressed as follows:

11 Philip Heller Attorneys for Plaintiff
12 Jerold Fagelbaum JAMES PARKER
13 Fagelbaum & Heller LLP
14 2029 Century Park East, Suite 3550
15 Los Angeles, California 90067
16 ph@fhllplaw.com
17 jfagelbaum@fhllplaw.com

18 Michael J. Kump
19 Suann C. MacIsaac
20 Kinsella Weitzman Iser Kump &
21 Aldisert LLP
22 808 Wilshire Boulevard, Third Floor
23 Santa Monica, California 90401
24 mkump@kwikalaw.com
25 smacisaac@kwikalaw.com

26 (BY U.S. MAIL) I placed each such sealed, prepaid envelope, for collection and mailing
27 at Baker & McKenzie LLP, Palo Alto, California, following ordinary business practices. I
28 am familiar with the practice of collection for U.S. mail, said practice being that in the
ordinary course of business, correspondence is picked up at our office the same day as it is
placed for collection pursuant to Code of Civil Procedure § 1013(a). 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 of deposit for mailing in affidavit.

(BY EXPRESS MAIL) I placed each such sealed envelope, to be collected at
Baker & McKenzie LLP, Palo Alto, California, following ordinary business practices. I
am familiar with the practice of Baker & McKenzie for collection and processing of
overnight packages, said practice being that in the ordinary course of business, overnight
packages are picked up by a representative of that company to be sent that same day
pursuant to Code of Civil Procedure § 1013(c).

(BY ELECTRONIC MAIL) I caused said document(s) to be transmitted to the email
address(es) to the addressee(s) above.

Executed on March 1, 2019, at Palo Alto, California.

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



Jennifer Ilas