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

11
12
13 IN RE. TV WRITERS CASES
14 THIS DOCUMENT RELATES TO
15 ALL ACTIONS

Case No BC 286836

CLASS ACTION

**OBJECTION OF CLASS MEMBER JOHN S
KEATING TO PROPOSED SETTLEMENT
AND ATTORNEYS FEES REQUEST**

Date May 14, 2010
Time 1:45 p m
Dept 324
Judge. Honorable Emilie Elias

1 Pursuant to the Order of this Court Preliminarily Approving Class Action Settlements and
2 Directing Notice in the above-captioned case, Aspiring Television Writers Settlement Class member
3 John S Keating, hereby appears through his undersigned counsel and submits this objection to the
4 proposed settlement of this case and the attorneys' fees requested by class counsel Mr Keating further
5 gives notice that he intends to appear through his designated counsel at the final approval hearing
6 presently Scheduled for May 14, 2010

7
8 Mr Keating's date of birth is June 26, 1962 He resides at 8 Parish Pathe, Marshfield, MA
9 02050 Mr Keating submitted four to six treatments for reality TV shows to William Morris in January
10 2008, at which time he was forty-five years old Mr Keating objects to the proposed settlement as
11 structured, the claim form deadline, and the proposed award of attorney's fees of 33% of the \$70 million
12 settlement fund

13 OBJECTIONS

14 **A. The Time Period for Filing Claims Is Unduly Short and Inconveniently Timed, Particularly** 15 **Given the Demands and Complexity of the Claim Form**

16
17 The settlement notice sets a claim filing deadline of April 13, 2010, two days before tax returns
18 are due, even though the final approval hearing was not to be held until May 14, 2010, and the allocation
19 formula was not to be disclosed until 90 days after the claims deadline Although the date for the final
20 approval hearing and related filings was later continued, the claims deadline remained unaffected

21
22 There is no rational basis for setting such an early and inconvenient claims deadline, especially
23 when distribution of any claim amounts will not occur until August 2010, or later That is particularly
24 so given the length and complexity of the claim form Objector Keating expected to be able to complete
25 his claim form in one day Therefore, on April 13, 2010, Mr Keating began filling out his claim form
26 and answering all of the voluminous questions therein Mr Keating estimates that he spent four to five
27 hours filling out his claim form, and that he easily could have spent three full days doing so

28
The claim form is one of the most demanding and time-consuming forms that undersigned
counsel has ever encountered in a class action settlement The number of attachments alone can run into

1 the hundreds of pages Mr Keating's final claim submission totaled more than 50 pages, and he is not
2 even a professional television writer By comparison, someone with extensive work experience in the
3 industry could spend weeks completing the claim form and gathering records Mr Keating was able to
4 complete his claim form in time to have it postmarked on April 14, 2010 Mr Keating's claim form
5 should be accepted despite his failure to have it postmarked by April 13, and he respectfully requests that
6 it be considered
7

8 He further suggests an extension of the claims deadline for other claimants, as well In most
9 cases, class action claim forms take less than thirty minutes to complete, and perhaps a few hours for
10 cases requiring documentation Instead, class members were met in this case with a document more
11 extensive and burdensome than a tax return, just two days before class members' federal tax returns
12 were due That may be nothing more than a very unfortunate coincidence, but it is one that should be
13 remedied by an extension of the claim deadline, or at least the liberal acceptance of late-filed claims that
14 are otherwise valid
15

16 Although the number of claims received was to be posted on the website maintained by the
17 settlement administrator, as of this date the page dedicated to that purpose has no such information, and
18 merely states that "No information will be posted on this page until about April 16, 2010 "
19 Nevertheless, the website does contain a copy of plaintiffs' motion for final approval, which discloses
20 2,500 claimants as of April 13, 2010 Motion for Final Approval at 4 14-18 That is not a large number
21 of claimants
22

23 The time commitment necessary to complete the claim form in this case is such that class
24 members faced with completing it have to decide whether the potential award is worth the investment of
25 time in gathering the information and completing the form. But, because the allocation formula in this
26 case has yet to be finalized, class members have no way of knowing what the potential return will be for
27 the investment of this considerable time, beyond the minimum awards set forth in the settlement. At the
28 very least, class members who file claims postmarked by April 30, 2010, two weeks before the fairness
hearing, should have their claims included

1 **B. The Proposed Cy Pres Relief in this Case is Too Indefinite on the Present Record**

2 The Settlement contains a provision for a “Fund for the Future” (“FFF”) to be used to create an
3 entity that will, among other things, finance networking events and projects. However, the operations
4 and primary decisionmaking of the FFF will be guided by a single manager. The settlement documents,
5 apart from a reference to dispute resolution, do not specify the rights of class members going forward to
6 monitor or weigh in on the conduct of the FFF and its board. Keating suggests that the Court require
7 the parties to address the issue of the organization of the FFF under the California Corporations Law and
8 the rights of class members in connection with its operation.

9
10 As it is, the FFF’s open-ended and vague charter could lead to serious, even if unintentional,
11 inequities in the administration of the FFF. Mr. Keating objects to the FFF as currently configured, for
12 example, because it favors professional writers at the expense of aspiring writers such as himself, who
13 do not live in the Hollywood or Tribeca areas, and therefore could not take advantage of most of the
14 expected networking events, or be in the best position to access the grants and loans. Thus, Mr. Keating
15 suggests that the FFF be required to consider and address the issue of the fair geographic distribution of
16 its bounty.

17
18 More fundamentally, Keating asserts that the FFF should be primarily concerned with addressing
19 the issues of known class members. Surely, what class members want most is an opportunity to have
20 their work assessed on its merits, and so Mr. Keating would recommend that it is appropriate that FFF
21 resources be directed primarily toward facilitating re-review of the existing body of work submitted by
22 class members, rather than being expended on feel-good networking events and grants to finance the
23 production of non-settlement scripts. The gravamen of this lawsuit is that older writers were not given a
24 fair shake in having their works considered. Mr. Keating, for example, has written some first-rate
25 treatments, and merely asks for the opportunity to have his treatments be given an unbiased and thorough
26 consideration. The claim form in this settlement requires that class members attach the actual rejected
27 scripts and treatments they submitted to networks or talent agencies to their Claim Forms. This means
28 that Class Counsel and the Claims Administrator will be in possession of a treasure trove of creative

1 work accomplished by the class members in this case

2 **C. Keating Objects to Class Counsel's Fee Request**

3 The one-page published notice (also mailed to some class members) states that "One-third of the
4 Settlement will be used to pay Class Counsel's court-approved contingent fee award " That is
5 misleading, because it implies that this Court has already approved the fee request Class members are
6 also told that, if they stay in the class, they may "comment on the settlement" but they are not expressly
7 told that they may also comment on the requested attorneys' fees Paragraph 23 of the long-form
8 "mailed" Notice raises another issue It states
9

10 Class Counsel will ask the Court to approve attorneys' fees of one-third (the percentage
11 specified in the contingent retainer agreements with the named Plaintiffs) of the
12 Settlement amount, including interest, or roughly \$23.3 million

13 First, in a class action, a fee agreement with a named plaintiff is not binding on the rest of the
14 class or the trial court, and is entitled to no deference in the calculation of a proper fee (*Flannery v*
15 *Prentice* (2001) 26 Cal 4th 572, 590 n 17 ["In a class action, for example, written fee agreements with
16 the entire class may not be feasible and any fee agreement class attorneys have with named plaintiffs
17 does not bind other class members or the court "] citing *Long Beach City Employees Assn, Inc v City*
18 *of Long Beach* (1981) 120 Cal App 3d 950, 959 On the contrary, the existence of a fee agreement has
19 no effect on this Court's fiduciary duty to the class to make an independent inquiry to ensure that any fee
20 awarded is justified and reasonable ¹ Therefore, the fact that individual lead plaintiffs may have been
21

22 ¹ See also, e.g., *In re UnitedHealth Group, Inc PSLRA Litig* (D Minn 2009) 643 F Supp
23 2d 1094, 1102

24 [T]he Court, not lead plaintiff and its lawyers, ultimately sets class action attorneys' fees
25 This is fully appropriate It is, after all, the Court, not lead plaintiff, who must protect
26 absent class members against excessive fees The purported fee agreement may well bind
27 lead plaintiff and its counsel but there is no reason at all why this two-party agreement
28 must bind hundreds of thousands of additional, absent, plaintiffs in this class action

See also *In re Cavanaugh*, 306 F 3d 726, 733 (9th Cir 2002) (PSLRA case) [allegedly unfavorable fee
agreement made with prospective lead counsel did not bear on representative's adequacy because "the
court must approve the actual fees paid"], *In re Leapfrog Enterprises, Inc Sec's Litig* (N D Cal
September 29, 2008) No C-03-05421 RMW, at 4-6 (PSLRA case) [holding that percentage-based fee
arrangement negotiated between lead plaintiff and class counsel was not entitled to a presumption of

1 induced by their counsel to sign contingency agreements for one-third of their recoveries is not a
2 justification for imposing a one-third, or any percentage, attorney's fee on absent class members

3 The fee sought and awarded in this case must be reasonable in light of the benefits conferred
4 upon the class. At this point, the level of participation (in the form of claims) does not seem to be high,
5 and it is still unclear what claiming class members will recover, individually or collectively.
6 Accordingly, Keating urges that the Court should withhold approval of any fee until the claims process
7 and allocation formula are determined.

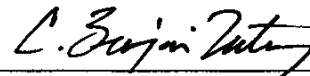
9 **D. Additional Objections**

10 1. Because the allocation formula is unknown at this time, it is impossible for class
11 members to object to it based upon things such as inadequate representation of adverse subclasses or
12 other potential unfairness to aspiring writers as opposed to the professional writer subclass. Mr. Keating
13 reserves his right to object to any proposed allocation formula at such time as it is proposed to the Court.

14 2. The settlement and claim form purport to impose confidentiality upon claimants as to the
15 amount of their award, with a purported "liquidated damages" provision for violation. There does not
16 seem to be a principled explanation or adequate legal justification to meet the high burden necessary to
17 take this unusual step.

18
19
20 Dated April 23, 2010

KENDRICK & NUTLEY

21
22 

23 C Benjamin Nutley

24 Attorneys for Objecting Class Member
25 John S. Keating

26
27
28 _____
reasonableness, even though negotiated after the recovery was obtained, concluding "Whether the 20%
fee request is reasonable must be determined based on the work counsel has done and the results they
have achieved"]

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3 P.O. Box 570092
4 Tarzana, CA 91357-4031
(818) 343-4434



5 Attorney for Objector &
6 Intervener C Prada

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

11)
12 In re: TV WRITERS CASES,) [Assigned to the Hon. Emile H Elias for
13) all purposes]
14)

Case No.: BC 268 836

15 This Document Relates to:)
16 Alch, et al., v Time Warner) **(1) OBJECTIONS TO FINAL**
17 Entertainment, Company, et al ,) **APPROVAL OF PROPOSED**
18 Case No. BC 268 836;) **SETTLEMENT BY CLASS MEMBER**
19 Neal, et al., v Viacom Inc. and) **C. PRADA;**
20 United Paramount, Network, et al.,) **(2) NOTICE OF INTENTION OF C.**
21 Case No. BC 268 837;) **PRADA TO APPEAR AT HEARING**
22 Young, et al , v DreamWorks) **ON FINAL APPROVAL BY**
23 SKG TV LLC, Case No. BC 268) **COUNSEL,**
24 838,) **(3) NOTICE OF INTERVENTION**

BY FAX

25 Bast, et al., v. Fox, Broadcasting)
26 Company, et al., Case No BC 268)
27 839;)
28 Levy, et al., v The Gersh Agency,)
Inc., Case No. BC 268 840;)
Edwards, et al., v. The Carsey-)
Werner, Company, et al., Case No.)
BC 268 841,)
Wynn, et al., v. National)

DATE: May 14, 2010
TIME: 1:45 P M.
COURTROOM. 324
Civil Central West Courthouse
600 South Commonwealth Ave
Los Angeles, CA 90005

1 Broadcasting Company, Inc , et al.,)
Case No. BC 268 842;)
2 Brooks, et al., v. William Morris)
Agency, Case No. BC 268 843;)
3 Brett, et al., v. The Walt Disney)
4 Company, et al., Case No. BC 268)
844,)
5 DiStefano, et al , v Columbia)
6 TriStar Television, Inc., Case No)
BC 268 845,)
7 Eisenson, et al , v. Lucy Stille &)
8 Associates, Inc., d/b/a Paradigm)
Talent & Literary Agency, et al.,)
9 Case No. BC 268 847;)
10 Lang, et al., v. Shapiro-Lichtman,)
11 Inc., d/b/a Shapiro-Lichtman-Stein,)
Case No. BC 268 848;)
12 Neal, et al., v. The Endeavor)
13 Agency, Inc., Case No. BC 268 849;)
Kinghorn, et al., v. Universal)
14 Studios, Inc., et al., Case No. BC)
15 268 877;)
Moriarty, et al., v. Viacom Inc ,)
16 and Paramount, Studios, Inc., et al.,)
Case No. BC 268 878;)
17 Yanok, et al., v. Agency for the)
18 Performing Arts, Inc., Case No. BC)
19 268 880;)
Schwartz, et al., v. United Talent)
20 Agency, Inc., Case No BC 268 881,)
21 Shayne, et al , v. Viacom Inc and)
CBS Broadcasting, Inc., Case No.)
22 BC 268 882,)
23 Kalish, et al., v Viacom Inc , et)
24 al., Case No. BC 268 883.)

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26
27
28

1 **THE CONFIDENTIALITY AGREEMENT DEMANDED OF CLASS**
2 **CLAIMANTS SHOULD BE STRUCK FROM ANY FINALLY APPROVED**
3 **SETTLEMENT—FULL, PUBLICALLY FILED, DISCLOSURE OF WHO GETS**
4 **WHAT UNDER SETTLEMENT SHOULD BE REQUIRED—**
5 **SUNLIGHT IS THE BEST DISINFECTANT**

6
7
8 “Sunlight is said to be the best of disinfectants; electric light the most
9 efficient policeman.”

10 Mr. Justice Louis D. Brandeis, *Other People's Money* (Stokes Pub.,
11 NY, NY, 1914) at Chapter 5, page 92,

12 Online at

13 <http://www.law.louisville.edu/library/collections/brandeis/node/196>

14
15 “I agree not to disclose information regarding the amount of any
16 award I may receive in connection with this Settlement to anyone ...

17 Accordingly, if I am found to have breached this confidentiality
18 provision by revealing the amount of my award to an unauthorized
19 person or by failing to take appropriate precautions against my
20 attorney, tax advisor, spouse, domestic partner, or child revealing the
21 amount of my award, **I shall be liable for liquidated damages to the**
22 **Defendants in the amount of the lesser of fifty thousand dollars**
23 **(\$50,000.00) or twenty-five percent (25%) of the net amount (after**
24 **withholding of taxes and any amounts payable to the Writers Guild-**
25 **Industry Health Fund and Producer-Writers Guild of America Pension**
26 **Plan) of my award. The liquidated damages shall be payable to**
27 Defendants' Liaison Counsel for distribution among Defendants.
28

1 This is not a penalty, but reflects the parties' best, reasonable
2 estimate at the time of entry into the Settlement and this Agreement
3 of the injury that Defendants would sustain from any such
4 disclosure." [Bold & underlining in original].

5 From Television Writers Settlement Fund Claim Form, headed
6 "Confidentiality Agreement," Section XI, page 24

7
8 There is no good reason for any confidentiality here Why shouldn't the
9 sun be allowed to shine on this settlement? Why shouldn't class members
10 reveal and discuss what they have received in the settlement process?

11 The inferential reason is clearly that the distribution of benefits will be
12 unfair and inequitable with certain favored persons receiving the lion's share of
13 the monies.

14 If the disfavored class members were to discover what was awarded, who
15 got it, and then compare the compensation with their own they might be justly
16 unhappy and do something about it. Class members, purportedly deprived of
17 any right or ability to compare results by the *in terrorem* Confidentiality
18 Agreement will have to accept whatever is done to them with no effective way
19 to contest (or even know about) inequitable results.

20
21 If the class members are able to compare notes they may note injustice.

22
23 Hence the Settling Parties efforts at "confidentiality."

24
25 The Draconian fifty thousand dollar (!) penalty which, it is recited, "is
26 not a penalty" according to the Confidentiality Agreement, is both completely
27 unrelated to any damages which could even arguably flow from disclosure and
28

1 is an unenforceable penalty provision See discussion in *Ridgley v Topa Thrift*
2 & *Loan Assn.* (1998) 17 Cal 4th 970, 977 [Reversing Court of Appeals and
3 holding that the penalty at issue was unreasonable and unenforceable. *Supra*, at
4 982.].

5 Further, secrecy is abhorrent to the class action process and violates the
6 public's right to know what transpires within its Courts. California Courts and
7 their proceedings are presumptively open to the public. *NBC Subsidiary*
8 (*KNBC-TV, Inc v Sup. Ct* (1999) 20 Cal 4th 1178, 1192.

9
10 As the Fifth Circuit discussed in a class action attorney fee award dispute
11 involving frantic efforts to keep things secret, a situation not so very different
12 from the matter at hand:

13 "The only justification posited for sealing the record here is to
14 discourage internecine fee sharing disputes among the plaintiffs'
15 lawyers. This is a weak and unconvincing reason for dispensing with
16 the public nature of our judicial proceedings. Sealing the record
17 protects no legitimate privacy interest that would overcome the
18 public's right to be informed.

19 "On a broad public level, fee disputes, like other litigation with
20 millions at stake, ought to be litigated openly. Attorneys' fees, after
21 all, are not state secrets that will jeopardize national security if they
22 are released to the public. As the Third Circuit has noted, "[p]ublic
23 confidence [in our judicial system] cannot long be maintained where
24 important judicial decisions are made behind closed doors and then
25 announced in conclusive terms to the public, with the record
26 supporting the court's decision sealed from public view." *United*
27 *States v. Cianfrani*, 573 F.2d 835, 851 (3d Cir. 1978). **From the**

28

1 perspective of class welfare, publicizing the process leading to
2 attorneys' fee allocation may discourage favoritism and unsavory
3 dealings among attorneys even as it enables the court better to
4 conduct oversight of the fees. “

5 *In Re: High Sulfur Content Gasoline Products Liability*
6 *Litigation* (2008, 5th Cir) 517 F.3d 220, 230¹ [Bold added].
7

8 Similarly, here, from the perspective of class welfare, publicity as to who
9 gets what dollars and benefits with full disclosure of the process and amounts
10 will enable the Court to better execute its duties to the class members, including
11 ensuring that any settlement is fair, reasonable and adequate—which the
12 present, proposed settlement is not

13
14 The Court should, it is respectfully submitted, require that a detailed,
15 publicly filed, report on the disposition of the class settlement funds be filed
16 including the names and amounts received in settlement and details as to how
17 the amounts were determined -- as well as requiring that the unlawful
18 Confidentiality Agreement be struck from the proposed settlement.

19
20 No Settlement Agreement which includes a confidentiality clause should
21 be approved.

22
23 **CLASS COUNSEL SHOULD NOT BE PERMITTED TO SERVE AS LAWYER**
24 **FOR THE FUND FOR THE FUTURE—SETTLEMENT AGREEMENT NEEDS**
25

26 ¹ California's Courts have often looked to Federal authority in class action matters *Linder v*
27 *Thrifty Oil Co* (2000) 23 Cal 4th 429, 437
28

1 **LIMITS ON FFF LOANS AND COMPENSATION TO EMPLOYEES—NO**
2 **REAL NEED FOR FUND—MONEY BETTER DISTRIBUTED TO CLASS**
3 **MEMBERS**

4 It is evident from the proposed Settlement Agreement that a decision has
5 been made that one or more of the Provisional Class Counsel are to act as
6 lawyer(s) for the Fund for the Future (“FFF”) which the Settling Parties are
7 eager to set up. See page 27 of the proposed Settlement Agreement which
8 explicitly states Class Counsel may be lawyer(s) for the FFF—just which of the
9 Class Counsel is planning to take the position(s) is left unsaid.

10 First, there appears to be no need at all for the FFF. And, the governance
11 proposals of Settling Parties, which would pay the class member volunteer
12 Directors nothing and the Executive Director and lawyer(s) for the FFF large
13 sums is a prescription for control by the Executive Director and the lawyer(s)
14 who are richly rewarded for their hours while the volunteer directors get no
15 such reward. And, there is no real restriction on how much the Executive
16 Director and the lawyer(s) may pay themselves

17 It is respectfully submitted that explicit and exact statement of what these
18 folks are going to be paid out of class funds is needed before the proposed
19 settlement is approved, if the FFF proposal is approved at all.

20 Additionally, there appears to be nothing in the proposed settlement
21 which would prevent financial abuses, e.g. the FFF may make loans to any class
22 member, in any amount, without restriction, including, apparently, the volunteer
23 Directors.² This is a recipe for future disaster.

24 Organizations such as the proposed FFF are wide-open to looting—for an
25 example of one such event we need look no further than the New York Times

26 ² ¶ 7 (c) at page 28 of the Settlement Agreement authorizes the Board of the FFF to
27 give out money to any class member with no limits. There is nothing to keep it from all
28 being given to favored applicants

1 of April 21, 2010: *Report Describes Corruption in State-Funded Institute*,
2 which opens with:

3 An obscure upstate theater group that receives far more state aid
4 than any of New York's world-renowned cultural institutions is rife
5 with corruption, mismanagement, nepotism and possibly illegal
6 conduct, according to a scathing report released on Tuesday by the
7 state inspector general's office. The 127-page report accuses Patricia
8 Snyder, the longtime artistic director of the group, the New York
9 State Theater Institute, of improperly using state money to enrich
10 herself and her family, while the institute's board and its chairman,
11 David W. Morris, looked the other way or claimed ignorance.

12 Full article online at:

13 [http://www.nytimes.com/2010/04/21/nyregion/21theater.html?scp=2&sq=th](http://www.nytimes.com/2010/04/21/nyregion/21theater.html?scp=2&sq=theater&st=cse)
14 eater&st=cse

15
16 Indeed, why does the FFF need to be lending out funds to class members
17 or providing them with social and education functions? Certainly, the Los
18 Angeles area is not lacking in TV and film related parties or TV and cinema
19 educational opportunities and classes as a glance at any of a number of film
20 industry publications will quickly show.

21
22 The funds would be better distributed directly to the claimant class
23 members.

24
25 **SETTLEMENT ADMINISTRATOR SHOULD BE REQUIRED TO INFORM**
26 **CLASS MEMBERS WHOSE CLAIMS ARE DENIED AS TO JUST WHAT**

27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

I, the undersigned, am employed at the Law Offices of Howard Strong, Postal Box 570092, Tarzana, CA 91357-0092 in the County of Los Angeles
On the date below, I served the foregoing document(s) described as

**(1) OBJECTIONS TO FINAL APPROVAL OF PROPOSED SETTLEMENT BY CLASS MEMBER C. PRADA;
(2) NOTICE OF INTENTION OF C. PRADA TO APPEAR AT HEARING ON FINAL APPROVAL BY COUNSEL,
(3) NOTICE OF INTERVENTION**

___ by placing true copies thereof enclosed in a sealed envelope or envelopes addressed as stated on the attached mailing list

X by placing a true copy thereof enclosed in sealed envelopes addressed as follows

CLASS COUNSEL	Claims Administrator	DEFENSE COUNSEL
Paul Sprenger Lead Class Counsel Sprenger Lang Foundation Building 1614 20th Street NW Washington, DC 20009	TV Writers' Settlement Claims Administrator P O. Box 8894 Melville, NY 11747-8894	Seth E Pierce Defendants Liaison Counsel Mitchell, Silberberg & Knupp LLP 11377 W Olympic Boulevard Los Angeles, CA 90064

BY PERSONAL SERVICE ___ I delivered such envelope or envelopes by hand

BY MAIL X I deposited such envelope or envelopes in the United States mail at Los Angeles, California The envelope or envelopes were mailed with first class postage thereon fully prepaid

BY EXPRESS MAIL ___ I deposited such envelope or envelopes in the United States mail at Los Angeles, California The envelope or envelopes were mailed with Express Mail postage thereon fully prepaid and in an envelope provided by the United States Post Office for Express Mail service

BY FAX___ I faxed a copy of aforesaid document to Fax # at approximately on the date below

I declare under penalty of perjury under the laws of the United States that the above is true and correct

Date April 22, 2010

H. Strong: _____