

Filed By Fax

1 C.D. Michel - SBN 144258  
Joseph A. Silvos, III - SBN 248502  
2 Sean A. Brady - SBN 262007  
Anna M. Barvir - SBN 268728  
3 MICHEL & ASSOCIATES, P.C.  
180 East Ocean Blvd., Suite 200  
4 Long Beach, CA 90802  
Telephone: (562) 216-4444  
5 Facsimile: (562) 216-4445  
Email: cmichel@michellawyers.com

6 Attorneys for Plaintiffs

FILED

AUG 25 2015

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF FRESNO

10 KIM BELEMJIAN; JONATHAN  
11 FAIRFIELD; T.J. JOHNSTON; MATTHEW  
PIMENTEL; STANLEY ROY; FFLGUARD,  
12 INC.; CALIFORNIA RIFLE AND PISTOL  
ASSOCIATION;

13 Plaintiffs,

14 vs.

15 KAMALA D. HARRIS, in her official  
16 capacity as Attorney General for the State of  
California; STEPHEN LINDLEY, in his  
17 official capacity as CHIEF OF THE  
CALIFORNIA DEPARTMENT OF JUSTICE  
18 BUREAU OF FIREARMS; CALIFORNIA  
DEPARTMENT OF JUSTICE; and DOES 1 -  
19 10;

20 Defendants.

CASE NO. 15-CE-CG-00029

**DECLARATION OF SEAN A. BRADY IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR ATTORNEYS' FEES; EXHIBITS D-  
E**

Date: December 16, 2015

Time: 3:30 pm

Dept.: 503

Judge: Honorable Alan M. Simpson

Action Filed: January 6, 2015

1 **DECLARATION OF SEAN A. BRADY**

2 I, Sean A. Brady, declare as follows:

3 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of record for  
4 Plaintiffs in this action. I am licensed to practice law before the courts of the state of California. I  
5 am also licensed to practice before the Supreme Court of the United States, the Ninth Circuit  
6 Court of Appeal, the Fourth Circuit Court of Appeal, and the United States District Courts for the  
7 Southern, Central, Northern and Eastern Districts of California. I have personal knowledge of the  
8 facts set forth herein and, if called and sworn as a witness, could and would testify competently  
9 thereto.

10 **Plaintiffs' Counsel's Background and Experience**

11 2. I began my full-time legal career in August 2008 as a law clerk at Trutanich-  
12 Michel, LLP. In January 2009, I became an associate attorney for Trutanich-Michel, LLP, which  
13 soon thereafter became Michel and Associates, P.C., where I have worked exclusively ever since.

14 3. My practice for the past approximately seven years has been primarily dedicated to  
15 matters involving California and federal firearm laws.

16 4. In that capacity, I have advised individuals, businesses, and governments on how to  
17 comply with complicated firearm regulation schemes, provided analyses of proposed state and  
18 local firearm and ammunition related legislation, as well as potential legal challenges thereto, and  
19 drafted numerous legal memoranda concerning firearm laws.

20 5. I have drafted or assisted in drafting various amicus curiae briefs in important  
21 firearm-related cases throughout the country. And I have litigated or assisted in litigating civil  
22 rights lawsuits concerning Second Amendment and other constitutional rights violations in  
23 various phases of both trial and appellate proceedings in state and federal courts, including  
24 petitions to the United States Supreme Court. In doing so, I have personally argued before the  
25 Ninth Circuit Court of Appeal and the California Court of Appeal.

26 **Authentication of Billing**

27 6. Plaintiffs' billing records, attached to the Declaration of Haydee Villegas filed  
28 simultaneously herewith, include true and accurate copies of my billing records for which fee

1 recovery is sought in this matter. The records include detailed descriptions of the work I  
2 performed on this case and the time spent on each task between December 1, 2014, and June 1,  
3 2015.

4 7. In the regular course and scope of my daily business activities, I prepared the  
5 descriptions contained in each billing record that shows my name as the "Timekeeper," and I did  
6 so at or near the time of the occurrence of the work that I performed on this matter.

7 8. The descriptions contained within my billing records are a fair and accurate  
8 description of the work I performed on this matter and time spent on each task. In my professional  
9 judgment, the amount of time indicated for each task described in my billing records is a  
10 reasonable amount of time for me to have spent on the type of work described therein.

#### 11 **Factual and Procedural History of the Case**

12 9. On January 2, 2015, I received an email from my colleague, Mr. Joseph A. Silvosio,  
13 informing Ms. Kimberly Granger and Mr. Jeffrey Rich, attorneys for Defendants, that Ms. Anna  
14 M. Barvir and I would be assuming representation of Plaintiffs in this case. Attached hereto as  
15 Exhibit D is a true and correct copy of the January 2, 2015 e-mail I received from Mr. Silvosio.

16 10. On January 2, 2015, I e-mailed Mr. Rich and Ms. Granger asking whether it was  
17 their clients' position that Plaintiffs must provide the TRO/OSC papers they intended to file  
18 before the hearing. I informed them that my office was working diligently to complete the draft  
19 complaint and writ of mandate that afternoon, but could not guarantee that Plaintiffs' TRO/OSC  
20 papers would be available until the day of the hearing. I copied Ms. Barvir and Mr. Silvosio on this  
21 communication. (Ex. D.)

22 11. On January 2, 2015, I received an email from Mr. Silvosio, primarily addressed to  
23 Mr. Rich and Ms. Granger, wherein he asked whether Defendants intended to appear and oppose  
24 the TRO/OSC on January 5, 2015. (Ex. D.) Later that day, I received an email from Mr. Rich in  
25 response to Mr. Silvosio's communication, wherein he informed my office for the first time that he  
26 believed Mr. Silvosio's December 30, 2014 e-mail did not comply with the required notice  
27 contents for an ex parte application. Mr. Rich also stated that he intended to object to the  
28 TRO/OSC on both procedural and substantive grounds, though he did not indicate what those

1 substantive grounds might be. I responded to Mr. Rich, stating that Mr. Silvosos's December 30  
2 e-mail was simply a courtesy and that Plaintiffs would continue the hearing to a later date to  
3 provide Defendants with sufficient notice. I also asked that Mr. Rich confirm that he was the  
4 proper person to provide notice for the ex parte TRO/OSC hearing. Mr. Rich responded in the  
5 affirmative. He did not, during any of these many exchanges, disclose that Defendants were in the  
6 process of drafting, considering, or adopting permanent or emergency regulations in compliance  
7 with the Administrative Procedure Act—or that they ever intended to. (Ex. D.)

8         12.       On January 6, 2015, I e-mailed Mr. Rich and copied others, including Ms. Barvir.  
9 The purpose of my communication was to provide proper notice to Defendants of Plaintiffs' ex  
10 parte TRO/OSC hearing. I attached a courtesy copy of the documents to be filed with the court. In  
11 response, Mr. Rich requested copies of Plaintiffs' papers after their submission to the court. I  
12 responded asking if Mr. Rich would accept Plaintiffs' papers via e-mail as proper service. Mr.  
13 Rich responded in the affirmative. Shortly thereafter, having discussed the matter with my  
14 paralegal, I e-mailed Mr. Rich, requesting to fax the papers instead due to the size of the  
15 documents. Mr. Rich asked whether my office could instead either send the documents through  
16 multiple e-mails or create a zip file. I agreed that I would send the documents through e-mail if  
17 Defendants agreed to serve notice on all the parties and file with the court a notice that Mr. Rich  
18 was accepting electronic service, per California Rules of Court, Rule 2.25.1. The parties  
19 ultimately agreed such was unnecessary as Defendants did not intend to accept e-mail service for  
20 all case-related documents. Some time later that day, Mr. Rich e-mailed again, demanding to  
21 know when to expect the papers through e-mail. Shortly thereafter, the minor delay due only to the  
22 fact that the documents were still being formatted, I sent Plaintiffs' ex parte TRO/OSC papers to  
23 Mr. Rich via email and requested confirmation of receipt and satisfaction of California Rules of  
24 Court, Rule 3.1206. Mr. Rich then confirmed receipt and satisfaction of the rules. He did not,  
25 during any of these many exchanges, disclose that Defendants were in the process of drafting,  
26 considering, or adopting permanent or emergency regulations in compliance with the  
27 Administrative Procedure Act—or that they ever intended to. (Ex. D.)

28

1           13.     On January 7, 2015, Ms. Barvir caused to be filed an ex parte application for an  
2 order to show cause and temporary restraining order. The application was heard on the same date.  
3 I, along with Ms. Barvir, personally appeared. Mr. Rich filed opposition papers and appeared on  
4 behalf of all Defendants. Neither in the papers nor during oral argument did Defendants claim that  
5 Plaintiffs would not prevail for lack of controversy because the Defendants were in the process of  
6 complying with the Administrative Procedure Act or that they ever intended to. In fact, Mr. Rich  
7 instead stated that it was his clients' "position that there may be some problems that need to be  
8 worked out, maybe the Department of Justice can work these problems out." (Ex. M, p. 4:6-8,  
9 attached to the Declaration of Anna M. Barvir filed simultaneously herewith.) Plaintiffs'  
10 application was ultimately denied for lack of sufficient showing of irreparable harm to justify such  
11 extraordinary relief. (Ex. M, pp. 3:18-4:5, 9:21-10:9, 10:22-11:3, 14:6-9, attached to the  
12 Declaration of Anna M. Barvir filed simultaneously herewith.)

13           14.     On January 8, 2015, I sent an email to Mr. Rich and others, asking if Mr. Rich was  
14 available to discuss whether Defendants might be open to settlement of the issues, including the  
15 Defendants' voluntary suspension of the underground regulations until formal regulations had  
16 been adopted, because my colleagues and I believed the Court's handling of the TRO/OSC  
17 application strongly suggested it would ultimately rule in Plaintiffs' favor. Attached hereto as  
18 Exhibit E is a true and correct copy of my January 8, 2015 e-mail correspondence with  
19 Defendants' counsel regarding Plaintiffs' offer to settle.

20           15.     Later that day, Mr. Rich responded to my email, raising a number of issues, but not  
21 addressing my request to open settlement discussions. Mr. Rich and I thereafter engaged in a chain  
22 of back-and-forth email communications regarding the parties' disagreement over whether  
23 Plaintiffs had been authorized by the Court to re-file their TRO/OSC application, the statutory  
24 authority for Plaintiffs' attorney's fee request, and Plaintiffs' duty to provide evidence of  
25 irreparable harm to obtain preliminary relief. Not once during any of these many exchanges did  
26 Mr. Rich disclose that Defendants were in the process of drafting, considering, or adopting  
27 permanent or emergency regulations in compliance with the Administrative Procedure Act—or  
28 that they ever intended to. (Ex. E.)

1 16. On January 9, 2015, Mr. Rich e-mailed me and others and attached a formal letter  
2 which notified Plaintiffs for the first time that Defendants were “in the process of preparing  
3 emergency regulations and final regulations, pursuant to the Administrative Procedures [sic] Act.  
4 . . .” (Ex. N, attached to the Declaration of Anna M. Barvir filed simultaneously herewith.)

5 17. On January 26, 2015, I received an email from Ms. Barvir, primarily addressed to  
6 Mr. Rich, asking if and when Defendants intended to begin the emergency rule-making process.  
7 Defendants’ counsel responded on January 27, 2015, informing Ms. Barvir that he would send a  
8 status report on January 28, 2015. (Ex. O, attached to the Declaration of Anna M. Barvir filed  
9 simultaneously herewith.)

10 **Role in Litigation**

11 18. I assisted in the pre-litigation phase by engaging in litigation strategy and status  
12 discussions with Ms. Barvir and Mr. Silvos, communicating with opposing counsel, and  
13 reviewing and revising drafts of the complaint.

14 19. During the TRO/OSC phase, I engaged in litigation strategy discussions with Ms.  
15 Barvir and Mr. Michel, reviewed and revised Plaintiffs’ Ex Parte TRO/OSC application and  
16 associated documents, assisted Ms. Barvir with preparation for, travel to, and appearance at the  
17 TRO/OSC hearing, and corresponded with co-counsel and opposing counsel regarding notice and  
18 the Court’s ruling via email.

19 20. During the Motion for Preliminary Injunction phase, I coordinated, reviewed, and  
20 revised all the declarations that would have been submitted in support of Plaintiffs’ Motion for  
21 Preliminary Injunction. I also met with Ms. Barvir to discuss litigation strategies relating to and  
22 preparing evidence in support of Plaintiffs’ Motion for Preliminary Injunction.

23 21. During the emergency regulations phase, I reviewed and analyzed the impact of the  
24 proposed emergency regulations, analyzed and developed litigation strategies, and met and  
25 corresponded with co-counsel to discuss litigation strategies.

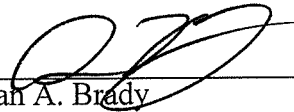
26 22. During the demurrer phase, I analyzed and developed potential litigation strategies,  
27 met with co-counsel to discuss strategies for responding to Defendants’ Demurrer, and reviewed,  
28 revised, and suggested edits to Plaintiffs’ Non-Opposition to Defendants’ Demurrer.

1           23.     During the post-dismissal activity phase, I met with Ms. Barvir to discuss and  
2 analyze litigation strategies.

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

5           Executed August 24, 2015 at Long Beach, California.

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Sean A. Brady  
Declarant

**EXHIBIT D**



**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Tuesday, January 06, 2015 5:11 PM  
**To:** Sean Brady  
**Cc:** Stepan Haytayan; Anna M. Barvir  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Confirmed and confirmed.

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Tuesday, January 06, 2015 4:53 PM  
**To:** Jeffrey Rich  
**Cc:** Stepan Haytayan; Anna M. Barvir  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements  
**Importance:** High

Mr. Rich,

Can you please confirm receipt of Plaintiffs' ex parte application papers that I sent you at 3:45p.m. today? Also, please confirm that you accept that 3:45 email as sufficient service of Plaintiffs' ex parte application papers, in satisfaction of California Rules of Court, Rule 3.1206.

Thank you,

<b>Sean Brady</b> Attorney	Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental • Land Use • Firearms • Employment Law Civil Litigation • Criminal Defense	

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**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Tuesday, January 06, 2015 2:31 PM  
**To:** Sean Brady  
**Cc:** Stepan Haytayan  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements  
**Importance:** High

When can I expect to receive the papers by e-mail; or, am I engaging in futile acts by my repeated requests to you to send them? At 12:55 p.m. I sent you an e-mail stating that I agree that e-mailing of the application papers by your office would be acceptable for service of the papers. It is now 2:31 p.m. and I am still waiting.

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Tuesday, January 06, 2015 1:44 PM  
**To:** Jeffrey Rich  
**Cc:** Stepan Haytayan; Kimberly Granger; Anna M. Barvir  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements  
**Importance:** High

Sure, but then we will also need you to serve notice on all parties and file with the court notice that you are accepting electronic service per CRC 2.25.1. Serving by fax would eliminate both the size issue and the notice issue.

We will send it to you via email as well in multiple parts so you have a clean copy, but were trying to avoid you having to file the required notice for electronic filing or having to be personally served.

Please let me know whether you will accept service via fax and at what number, and we will send you a courtesy copy via email as well. Otherwise, please file the CRC 2.25.1 notice or let us know if we should personally serve you instead.

Thanks,

<b>Sean Brady</b> Attorney	Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	

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**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Tuesday, January 06, 2015 1:37 PM  
**To:** Sean Brady  
**Cc:** Stepan Haytayan; Kimberly Granger  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Can your office send multiple smaller pdf documents or create a zip file? Thanks.

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Tuesday, January 06, 2015 1:29 PM  
**To:** Jeffrey Rich  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements  
**Importance:** High

Mr. Rich,

My secretary believes that there may be a potential issue with electronically serving you the documents, due to their size. So, just in case, would you also be willing to accept service of Plaintiffs' applications papers via facsimile? If so, can you please provide me your fax number?

Thank you,

<b>Sean Brady</b> Attorney	Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a>
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<b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
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**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Tuesday, January 06, 2015 12:55 PM  
**To:** Sean Brady  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Yes.

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Tuesday, January 06, 2015 12:54 PM  
**To:** Jeffrey Rich; Joseph Silvos; Kimberly Granger  
**Cc:** Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods; C.D. Michel  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Rich,

Will you accept my sending you Plaintiffs' applications papers via email as proper service of such?

Regards,

<b>Sean Brady</b> Attorney  <b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense	Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802
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**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Tuesday, January 06, 2015 10:47 AM  
**To:** Sean Brady; Joseph Silvos; Kimberly Granger  
**Cc:** Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods; C.D. Michel  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Brady,

Please provide me with copies of plaintiffs' application papers when they are submitted to the court. Thank you.

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Tuesday, January 06, 2015 9:50 AM  
**To:** Jeffrey Rich; Joseph Silvos; Kimberly Granger  
**Cc:** Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods; C.D. Michel  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements  
**Importance:** High

Mr. Rich,

As designated counsel for Attorney General Kamala Harris, Bureau of Firearms Chief Stephen Lindley, and the California Department of Justice ("Defendants") in this matter, I send you this correspondence to provide notice that on Wednesday, January, 7 at the Fresno Superior Courthouse located at 1130 O Street Fresno, CA 93721, at approximately 3:30 p.m., our office, as counsel for individuals Kim Belemjian, Matthew Pimentel, Jonathan Fairfield, T.J. Johnston, and Stan Roy, and organizations FFLGuard, Inc. and the California Rifle Pistol Association, will apply for a Temporary Restraining Order (TRO) against Defendants.

With the TRO, Plaintiffs seek to enjoin Defendants from: (1) implementing any of the requirements relating to the Firearm Safety Certificate (FSC) program specified in two separate letters dated October 2 and December 18, 2014 that were distributed by the Department of Justice to firearm vendors and Handgun Safety Certificate Instructors, specifically the requirements that all California Department of Justice Certified Instructors: (a) have access to a personal computer, printer, and email; (b) make all Firearm Safety Certificate payments only by major credit cards; (c) include the "steps in long guns safety" procedures contained in the "Firearm Safety Certificate Manual" in all long gun safe handling demonstrations; and (d) obtain Certificates of Eligibility, on the basis that such requirements constitute unlawful "underground regulations"; and (2) enforcing the long-gun safe handling requirements located in subsections (a), (c), and (d) of Penal Code section 26860, on the basis that compliance with those subsections is not possible unless and until the Department promulgates regulations implementing section 26860, as subsection (b) thereof expressly requires.

The TRO will be filed along with a complaint for declaratory and injunctive relief seeking relief as described above and a verified writ of mandate seeking to compel the Department to open the rulemaking process pursuant to the Administrative Procedures Act for regulations implementing the long-gun safe handling requirements, as expressly required in Penal Code section 26860(b). The writ, however, will not be at issue in the TRO.

Please confirm whether you or someone on behalf of the above-named Defendants intends to appear at the designated courthouse to oppose Plaintiffs' TRO application. If someone does plan on appearing to oppose Plaintiffs' TRO application, please confirm whether that person intends to appear on behalf of all or just some (and which ones) of the above-named Defendants, and we will notify that person of which department the matter is assigned to as soon as we learn such from the Fresno Courthouse.

Additionally, while we have not received the filed copy of the complaint from the court, attached please find a courtesy copy of what was sent to be filed with the court.

If you have any questions or concerns please call me at the direct number below or send me an e-mail.

Sincerely,

<p><b>Sean Brady</b> Attorney</p> <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Friday, January 02, 2015 5:13 PM  
**To:** Sean Brady; Joseph Silvano; Kimberly Granger

**Cc:** Anna M. Barvir; Stepan Haytayan; Stephen Lindley; Douglas Woods  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Brady,

Thank you for your further professional courtesy.

I am the proper person to receive ex parte notice for all defendants.

Jeffrey A. Rich  
Deputy Attorney General  
Office of the Attorney General  
California Department of Justice  
1300 I Street, P.O. Box 944255  
Sacramento, CA 94244-2550  
(916) 324-5154

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Friday, January 02, 2015 5:08 PM  
**To:** Jeffrey Rich; Joseph Silviso; Kimberly Granger  
**Cc:** Anna M. Barvir; Stepan Haytayan  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Mr. Rich,

Out of professional courtesy, our office provided Ms. Granger (with whom our office has regular contact on these types of matters) notice of our intent to pursue ex parte relief in this matter four days ago, almost a week in advance of the hearing thereon (when all that is required under the rules is 24 hours). Yet, you waited until now to raise concerns about that notice being insufficient, a half hour after the time you believe we were required to submit our papers to the court, preventing us from curing the alleged defects.

While I believe your analysis that our notice was insufficient to be erroneous on several grounds, to avoid such a pointless dispute we will continue the hearing to a later day to be determined, likely Tuesday or Wednesday afternoon. So we will not be going in on Monday, January 5<sup>th</sup>. We will provide you sufficient notice as required per the rules. To be clear, however, nothing in the rules requires us to provide in our notice the department where the hearing will take place (only the courthouse), as such may not be determinable in time. That being said, we will provide you the department for the hearing as soon as we have it.

If you have an issue with that, I suggest you let us know at your earliest convenience so as to avoid wasting the court's and the parties' time and resources arguing over fixable procedural matters, because reaching the merits here is inevitable.

Finally, our complaint names as defendants Attorney General Kamala Harris (in her official capacity), Chief Stephen Lindley (in his official capacity), and the Department of Justice itself. Can you confirm that you are the proper person to provide notice of the ex parte hearing to for all of those named defendants?

Sincerely,

<b>Sean Brady</b> Attorney	Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445
-------------------------------	---

**MICHEL & ASSOCIATES, P.C.**  
Attorneys at Law

Environmental - Land Use - Firearms - Employment Law  
Civil Litigation - Criminal Defense

Email: [SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)  
Web: [www.michellawyers.com](http://www.michellawyers.com)  
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**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Friday, January 02, 2015 2:31 PM  
**To:** Joseph Silvosio; Kimberly Granger  
**Cc:** Anna M. Barvir; Sean Brady; Stepan Haytayan  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Counsel,

Mr. Silvosio's e-mail to Kimberly Granger sent on December 30, 2014 at 7:25 p.m. does not comply with the required contents for ex parte application notice under California Rules of Court, rule 3.1204(a)(1). Specifically, the e-mail fails to identify the applying parties and the department in which the ex parte application will be heard. "A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice." (*Id.*, rule 3.1203(a).) Accordingly, in addition to substantive grounds, defendants hereby and will object to your clients' ex parte application on the ground that proper notice has not been given. (See *id.*, rules 3.1203(a), 1204(a)(1); see also local rule 2.7.1.A [applications failing to comply with Cal. Rules of Court, rules 3.1200 through 3.1207 will be rejected].) Defendants request that your clients continue the January 5 ex parte hearing so that proper notice may be given.

Pursuant to local rule 2.7.1.B your clients' application and supporting papers were due to be submitted to the Court by 2:00 p.m. this afternoon. Accordingly, defendants renew their request for copies of such papers.

If your clients are not continuing the January 5 ex parte hearing, I will be attending the hearing on behalf of defendants to oppose the ex parte application on procedural and substantive grounds. Please advise me of the correct department that will hear the application and confirm that the application will be heard at 8:30 a.m.

Please attach this e-mail to your supporting declaration.

**From:** Joseph Silvosio [<mailto:jsilvosio@michellawyers.com>]  
**Sent:** Friday, January 02, 2015 1:33 PM  
**To:** Kimberly Granger; Jeffrey Rich  
**Cc:** Anna M. Barvir; Sean Brady  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Does DOJ plan on appearing and opposing the TRO?

**Joseph Silvosio**  
Attorney

**MICHEL & ASSOCIATES, P.C.**  
Attorneys at Law

Environmental - Land Use - Firearms - Employment Law  
Civil Litigation - Criminal Defense

Direct: (562) 216-4461  
Main: (562) 216-4444  
Fax: (562) 216-4445  
Email: [jsilvosio@michellawyers.com](mailto:jsilvosio@michellawyers.com)  
Web: [www.michellawyers.com](http://www.michellawyers.com)  
180 E. Ocean Blvd.  
Suite 200  
Long Beach, CA 90802

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**From:** Sean Brady  
**Sent:** Friday, January 02, 2015 12:37 PM  
**To:** Kimberly Granger; Jeffrey Rich  
**Cc:** Anna M. Barvir; Joseph Silviso  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Ms. Granger and Mr. Rich,

Please correct me if I am wrong, but I do not see anywhere in the rules that require us to provide you the papers we intend on filing prior to the hearing. If the rules do require such, please let me know at your earliest convenience so we can plan accordingly. That being said, we are currently trying to get a draft of our complaint and writ of mandate completed in the next few hours so that we can send it to you today. The actual TRO motion, however, will likely not be available for us to send you until the hearing, but we may send it over the weekend. There is no real mystery here, though. The complaint basically explains what our arguments are. If you have any questions or concerns, please feel free to contact me.

Regards,

<p><b>Sean Brady</b> Attorney</p> <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4464 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:SBrady@michellawyers.com">SBrady@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Joseph Silviso  
**Sent:** Friday, January 02, 2015 12:14 PM  
**To:** Kimberly Granger; Jeffrey Rich  
**Cc:** Anna M. Barvir; Sean Brady  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

Ms. Granger and Mr. Rich,

Anna Barvir and Sean Brady will be handling this matter for our office. They are cc'ed on this e-mail and can be reached by calling our main office number.

<p><b>Joseph Silviso</b> Attorney</p> <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:jsilviso@michellawyers.com">jsilviso@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Kimberly Granger [<mailto:Kimberly.Granger@doj.ca.gov>]  
**Sent:** Friday, January 02, 2015 11:48 AM  
**To:** Joseph Silviso  
**Cc:** Jeffrey Rich

**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements  
**Importance:** High

Mr. Silvoso,

Please be advised that Deputy Attorney General Jeffrey Rich has been assigned to handle this case on behalf of the Department of Justice and the Bureau of Firearms. Please send all documents/correspondence regarding the upcoming TRO to Jeff. His contact information is:

Jeffrey Rich, Deputy Attorney General  
1300 I Street, Sacramento, CA 95814  
Email: [Jeffrey.Rich@doj.ca.gov](mailto:Jeffrey.Rich@doj.ca.gov)  
Phone: (916) 324-5154

Please continue to copy me on emails regarding this case. Also, please provide a time frame from when we can expect to see your papers in support of your TRO request.

Best,

Kimberly

Kimberly Granger  
Deputy Attorney General IV  
California Department of Justice, Bureau of Firearms  
Email: [kimberly.granger@doj.ca.gov](mailto:kimberly.granger@doj.ca.gov)  
Direct phone: 916.227.4003  
Fax: 916.324.8835

**From:** Joseph Silvoso [<mailto:jsilvoso@michellawyers.com>]  
**Sent:** Tuesday, December 30, 2014 7:39 PM  
**To:** Kimberly Granger  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

We will try to have it to you on Friday. We still need to see the actual requirements implemented Thursday.

<p><b>Joseph Silvoso</b> Attorney</p> <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental • Land Use • Firearms • Employment Law Civil Litigation • Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:jsilvoso@michellawyers.com">jsilvoso@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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**From:** Kimberly Granger [<mailto:Kimberly.Granger@doj.ca.gov>]  
**Sent:** Tuesday, December 30, 2014 7:36 PM  
**To:** Joseph Silvoso  
**Subject:** RE: TRO for FSC and Long Gun Safe Handling requirements

When will you provide us with the actual papers that you intend to file?

Kimberly



---

**From:** Joseph Silvoso [jsilvoso@michellawyers.com]  
**Sent:** Tuesday, December 30, 2014 7:25 PM  
**To:** Kimberly Granger  
**Subject:** TRO for FSC and Long Gun Safe Handling requirements

Ms. Granger,

This e-mail is sent to provide you and the California Department of Justice (DOJ) notice that on Monday, January, 5 at the Fresno Superior Courthouse located at 1130 O Street Fresno, CA 93721, at approximately 8:30 am, we will seek a Temporary Restraining Order (TRO) against the enforcement of the long gun safe handling requirements located in Penal Code section 26860.

Additionally, we will seek a TRO against the implementation of the requirements specified by the DOJ in the letters dated October 2 and December 18 sent to Firearm dealers and Handgun Safety Certificate Instructors relating to the Firearm Safety Certificate (FSC) program. This TRO will include any further requirements not specified by the Penal Code once the program is in place on January 1, 2015.

This TRO will be filed along with a complaint seeking to enjoin the enforcement of the long gun safe handling demonstration requirements and the requirements set forth by DOJ concerning the FSC program as these requirements constitute "underground regulations." We will also seek a Writ of Mandate requiring DOJ to implement regulations pursuant to the Administrative Procedures Act for the safe handling requirements outlined in Penal Code section 26860(b).

If you have any questions or concerns please call me at the number below.

<p><b>Joseph Silvoso</b> Attorney</p> <p><b>MICHEL &amp; ASSOCIATES, P.C.</b> Attorneys at Law</p> <p>Environmental - Land Use - Firearms - Employment Law Civil Litigation - Criminal Defense</p>	<p>Direct: (562) 216-4461 Main: (562) 216-4444 Fax: (562) 216-4445 Email: <a href="mailto:jsilvoso@michellawyers.com">jsilvoso@michellawyers.com</a> Web: <a href="http://www.michellawyers.com">www.michellawyers.com</a> 180 E. Ocean Blvd. Suite 200 Long Beach, CA 90802</p>
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# **EXHIBIT E**

**Attachments:** Ltr to Brady.pdf

**From:** Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
**Sent:** Friday, January 09, 2015 3:15 PM  
**To:** Sean Brady  
**Cc:** Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan  
**Subject:** RE: Belemjian v. Harris

Please see attached letter.

**From:** Sean Brady [<mailto:SBrady@michellawyers.com>]  
**Sent:** Thursday, January 08, 2015 5:54 PM  
**To:** Jeffrey Rich  
**Cc:** Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan  
**Subject:** RE: Belemjian v. Harris

Mr. Rich,

First, there was no written order. Second, I copied and pasted from the transcript verbatim, albeit limited to the relevant sections. But I am happy to consider your position on what the Court said, if you would like to provide it with support. I have provided the relevant part of the transcript in full below so you can do so.

Sincerely,

6                   Here's my suggestion: I could do a couple of  
7 different things. One I could just deny the T.R.O.  
8 Two, I could deny the T.R.O. without prejudice for you  
9 to refile now having the benefit of this conversation  
10 and knowing the evidence that you would need to muster,  
11 if you are able. And then it also gives Mr. Rich more  
12 time -RBG because he was -- not to use bad stale PUPBZ,  
13 but he was under the gun somewhat to get this in; right?  
14 So that's probably the better of the two options.

15                   MR. RICH: May I offer what defendants think  
16 is an appropriate disposition, and that is deny the  
17 application in it's entirety. And then if plaintiffs'  
18 want to bring on a noticed motion for preliminary  
19 injunction, maybe that is what your Honor is saying,  
20 then they can go ahead and do that. But we would ask  
21 that the O.S.C. also be denied along with the T.R.O.

22                   THE COURT: Okay.

23                   MS. BARVIR: Plaintiffs would like to -- like  
24 to see the court deny without prejudice has it suggested  
25 in its second option.

26                   THE COURT: Okay. 50EU78 going to deny the

22 THE COURT: Okay.

23 MS. BARVIR: Plaintiffs would like to -- like  
24 to see the court deny without prejudice has it suggested  
25 in its second option.

26 THE COURT: Okay. 50EU78 going to deny the

---

ROUGH DRAFT

1 application as before the court without O.S.C. without  
2 prejudice although -- he and that's the courts ruling.  
3 This is just now a friendly conversation. It doesn't  
4 sounds like, you know, in many instances in litigation  
5 the parties are pole arrestly opposed; right? Very very  
6 different positions looking at the same thing. So it  
7 sounds like we have the tunnel as litigants both on the  
8 states side and plaintiffs' side here to maybe get  
9 things worked out. If you give Mr. Rich a little bit of  
10 time, these are very difficult, these short cause  
11 matters. I mean for you, also, you did a great job, by

12 the weigh, in your drafting it of it. You work with him  
13 and give him a little more time I think maybe things can  
14 work out well for everyone.

15 MR. BRADY: We did submit.

16 THE COURT: -- for -- what's that.

17 MR. BRADY: We did submit on O.R. L. we let  
18 them know a week.

19 THE COURT: I know I saw your letter. I'm not  
20 faulting you guys I think you did a great job. Okay?

21 MS. BARVIR: Thank you, your Honor.

22 THE COURT: You bet.

23

24

Sean Brady  
Attorney

Direct: (562) 216-4464  
Main: (562) 216-4444  
Fax: (562) 216-4445  
Email: [SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)  
Web: <http://www.michellawyers.com>

180 E. Ocean Blvd.  
Suite 200  
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-----Original Message-----

From: Jeffrey Rich [<mailto:Jeffrey.Rich@doj.ca.gov>]  
Sent: Thursday, January 08, 2015 5:45 PM  
To: Sean Brady  
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan  
Subject: RE: Belemjian v. Harris

Btw, I can see that you cut and pasted the order to say what you wanted it to say. I will address this more fully tomorrow.

---

From: Sean Brady [SBrady@michellawyers.com]  
Sent: Thursday, January 08, 2015 4:55 PM  
To: Jeffrey Rich  
Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan  
Subject: RE: Belemjian v. Harris

Mr. Rich:

Thank you for your response. Here are my responses to your points:

- 1) See section of the written transcript copied below showing Judge Hamilton expressly saying he was denying our TRO motion without prejudice for the express purpose that we could refile a TRO if plaintiffs deemed it appropriate;
- 2) See Code of Civil Procedure 1021.5 (mentioned in the prayer for relief section of our complaint);
- 3) We intend on doing just that if the Department does not agree to voluntarily suspend enforcement of the provisions at issue in this litigation and forces us to file a TRO or preliminary injunction (see 1 above);

Yes, I believe you should expect to be served with the summons tomorrow before close of business.

If you cannot provide us a final answer as to the Department's position (or at least that you are willing to submit to mediation) by Monday at noon we may decide to seek a TRO on Wednesday (not certain, but our clients are not interested in continuing to suffer irreparable harm caused by Defendants much longer; especially when the Department could give them relief immediately).

Please let me know if you continue to believe I am misunderstanding anything or if you have any questions. Thanks for your cooperation.

Sincerely,

[cid:image002.png@01D02B61.0AB1A220]  
[cid:image003.png@01D02B61.0AB1A220]

Sean Brady  
Attorney  
[cid:image001.png@01D02B62.6446B810]<<http://www.michelandassociates.com/>>

Direct: (562) 216-4464  
Main: (562) 216-4444  
Fax: (562) 216-4445  
Email: SBrady@michellawyers.com<<mailto:SBrady@michellawyers.com>>  
Web: [www.michellawyers.com](http://www.michellawyers.com)<<http://www.michellawyers.com>>  
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From: Jeffrey Rich [mailto:Jeffrey.Rich@doj.ca.gov]

Sent: Thursday, January 08, 2015 4:28 PM

To: Sean Brady

Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir; Stepan Haytayan

Subject: RE: Belemjian v. Harris

Mr. Brady,

Thank you for your e-mail. Before I respond to your request for a discussion as to how DOJ intends to respond to the court's ruling, I believe I should respond to certain assertions made in your e-mail:

(1) defendants do not agree that the court's ruling permits plaintiffs to file another TRO/OSC application—rather, the court's ruling is that plaintiffs are permitted to file a noticed motion for preliminary injunction;

(2) defendants are not aware of any legal authority that would authorize plaintiffs' recovery of attorney's fees; and

(3) plaintiffs are required to offer admissible evidence showing a high degree of irreparable harm that will be suffered by them without the availability of a legal remedy.

Further, I am not aware of plaintiffs' service of a summons and complaint on defendants. Please let me know if that has occurred or will occur.

We would not be available to engage in your requested discussions until sometime next week because we need to first engage in discussions with our clients concerning your e-mail and further actions needed.

From: Sean Brady [mailto:SBrady@michellawyers.com]

Sent: Thursday, January 08, 2015 1:21 PM

To: Jeffrey Rich

Cc: Kimberly Granger; C.D. Michel; Anna M. Barvir

Subject: Belemjian v. Harris

Importance: High

Mr. Rich,

Would you be available today or tomorrow to discuss how the Department intends to respond to the Court's ruling yesterday? While the Court denied the emergency relief Plaintiffs were seeking, by doing so without prejudice and explaining what evidence would be needed to make a showing of irreparable harm and possibly the granting of a TRO, the Court seemed to be indicating that it will rule in Plaintiffs' favor, whether at the TRO stage or later on in the litigation. In other words, Plaintiffs will likely obtain the relief they seek eventually.

As such, we believe it behooves the Department to voluntarily cease enforcing its rules concerning the FSC Program that form the basis of Plaintiffs' first four causes of action and to the long-gun safe handling demonstration per their fifth cause of action, and to open the rulemaking process pursuant to the APA for the regulations required to be adopted under PC section 26860. The Department is obviously free to open up the rulemaking process for regulations implementing the FSC Program, and our clients encourage it to do so in order to get the best system in place for everyone's sake, but we recognize the Department is not obligated to issue any regulations concerning the FSC Program.

Should the Department formally agree to do so, Plaintiffs are willing to cease their pursuit of another TRO or an expedited preliminary injunction (we have not determined which route we would take yet) and effectively stay the case. Should the Department refuse, Plaintiffs will continue such pursuit. Before we do so, we are willing to consider going to mediation with you on this issue. If the Department does not intend to voluntarily comply with the relief Plaintiffs seek, would you be amenable to mediation sometime next week?

In considering this proposal, I would again like to remind you that if Plaintiffs prevail in this matter, we will be seeking costs and attorneys' fees. If we can avoid unnecessary litigation by the Department voluntarily doing what appears will be inevitable, i.e., suspend enforcement of the underground FSC regulations and the long-gun safe handling demonstration until proper regulations are put in place, any such costs and fees will be mitigated, which benefits everyone involved, including the public (whose money is at issue here).

Please let me know your client's position about the above proposal or if you have any questions or concerns at your earliest convenience.

Sincerely,

Sean Brady  
Attorney

[cid:image001.png@01D02B62.6446B810]<<http://www.michelandassociates.com/>>

Direct: (562) 216-4464

Main: (562) 216-4444

Fax: (562) 216-4445

Email: [SBrady@michellawyers.com](mailto:SBrady@michellawyers.com)<<mailto:SBrady@michellawyers.com>>

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1 **PROOF OF SERVICE**

2 I, Laura Quesada, am employed in the City of Long Beach, Los Angeles County,  
3 California. I am over the age eighteen (18) years and am not a party to the within action. My  
business address is 180 East Ocean Blvd., Suite 200, Long Beach, California 90802.

4 On August 25, 2015, I served the foregoing document(s) described as:

5 **DECLARATION OF SEAN A. BRADY IN SUPPORT OF**  
6 **PLAINTIFFS' MOTION FOR ATTORNEYS' FEES; EXHIBITS D - E**

7 on the interested parties in this action by placing  
8  the original  
 a true and correct copy  
thereof enclosed in sealed envelope(s) addressed as follows:

9 Mr. Jeffrey Rich  
10 Deputy Attorney General  
1300 I Street  
11 Sacramento, CA 95814

12  (PERSONAL SERVICE) I caused such envelope to delivered by hand to the offices of the  
addressee.

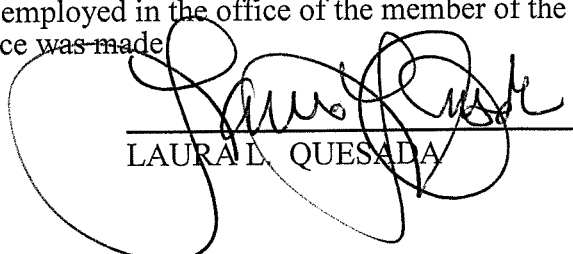
13 Executed on \_\_\_\_\_, 2015, at Long Beach, California.

14  (OVERNIGHT MAIL) As follows: I am "readily familiar" with the firm's practice of  
15 collection and processing correspondence for overnight delivery by UPS/FED-EX. Under  
the practice it would be deposited with a facility regularly maintained by UPS/FED-EX for  
16 receipt on the same day in the ordinary course of business. Such envelope was sealed and  
placed for collection and delivery by UPS/FED-EX with delivery fees paid or provided for  
in accordance.

17 Executed on August 25, 2015, at Long Beach, California.

18  (STATE) I declare under penalty of perjury under the laws of the State of California that  
19 the foregoing is true and correct.

20  (FEDERAL) I declare that I am employed in the office of the member of the bar of this  
21 court at whose direction the service was made

22   
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24 LAURAL L. QUESADA  
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