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10 The National Shooting Sports Foundation, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

U.S. FIREARMS COMPANY LLC, a)
limited liability company; ERIC W.)
15 FISHER; and THE NATIONAL)
SHOOTING SPORTS)
16 FOUNDATION, INC., a non-profit)
trade association,)
17)
Petitioners,)
18)
v.)
19)
CITY OF SUNNYVALE; THE)
20 SUNNYVALE CITY COUNCIL; and)
DOES 1 through 30, inclusive,)
21)
Respondents.)
22)

CASE NO. 113CV257353
**REPLY MEMORANDUM IN SUPPORT OF
PETITIONERS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION**
Dept: 20
Judge: Hon. Kevin E. McKenney
Complaint Filed: December 9, 2013
Trial Date: None

1 Petitioners submit the following reply to Respondents' opposition and supplemental
2 opposition ("Supp. Opp.) to their *ex parte* request for a Temporary Restraining Order
3 ("TRO") and Order to Show Cause ("OSC") re: Preliminary Injunction.

4 **A. Petitioners Have Satisfied The Requirements for Issuance of a TRO.**

5 "A judge may issue a TRO when the plaintiff shows sufficient grounds for a TRO . .
6 . and has complied with the notice requirements" found in Civil Procedure Code § 527(c).
7 2 *Cal. Judges Benchbook Civ. Proc. Before Trial* (2008) § 14.21. At an "ex parte hearing
8 on a TRO, the judge merely reviews the conflicting contentions to determine *whether*
9 *there is sufficient evidence to support the issuance of a TRO to keep the subject of the*
10 *litigation in status quo pending a full hearing*" on a preliminary injunction." *Id.* (citing
11 *Landmark Holding Group, Inc. v Superior Court* (1987) 193 Cal.App.3d 525, 528)
12 (emphasis added).

13 In its moving papers and supporting declarations, Petitioners have made that
14 showing.

15 **B. Respondents Concede That U.S. Firearms Has No Adequate Legal Remedy.**

16 Faced with the authorities cited by Petitioners during oral argument, Respondents
17 concede that U.S. Firearms has no adequate legal remedy for damages (Supp. Opp.
18 6:25-27). Cal. Gov't. Code § 818.2; *HFH, Ltd. v. Superior Court* (1975) 15 Cal.3d 508,
19 519. Instead, Respondents try to avoid a finding of irreparable injury with two other
20 equally baseless arguments: (i) that U.S. Firearms has failed to show how its business
21 would be destroyed between now and the date of the preliminary injunction hearing,
22 January 13, 2014; and (ii) that U.S. Firearms must show that it will be put out of business
23 by Section 9.44.060 to merit injunctive relief.

24 First, Respondents claim that the seven former U.S. Firearms ammunition
25 customers who gave declarations to the contrary will nevertheless continue to purchase
26 from U.S. Firearms and will not be permanently lost. The declarations are under oath and
27 say what they say. Respondents offer no contrary evidence. Moreover, U.S. Firearms
28 lost three out of four potential ammunition sales to *other* customers on December 6, 2013,

1 representing \$1,100 (Fisher Dec. dated Dec. 9, 2013, ¶ 15.) Thus many other customers
2 besides the seven declarants will be lost.

3 As stated by Petitioners in oral argument, U.S. Firearms is worth less today than it
4 was on December 6 because of the reduction in number of customers, which results in a
5 loss of both ammunition sales revenues and goodwill value to the business.

6 Secondly, the law does not require U.S. Firearms to show it will be put out of
7 business to establish irreparable injury. The threatened loss of a vendor's "livelihood[], in
8 whole or in part" is irreparable injury. *Barajas v. City of Anaheim* (1993) 15 Cal.App.4th
9 1808, 1812-13 & n.2.

10 C. Petitioners Are Likely to Succeed on the Merits.

11 "The issuance of a TRO is not a determination of the merits of the controversy,"
12 and it is not the proper place to resolve contested matters. *Landmark Holding Group*, 193
13 Cal.App.3d at 528. Nevertheless, Petitioners address Respondents' other arguments.

14 1. Section 9.44.060 is a "Registration" Law Preempted by Section 53071.

15 Petitioners inaccurately refer to Section 9.44.060 as an "ammunition sales logging
16 requirement." It is a *registration* law expressly preempted by Section 53071.

17 In *Galvan v. Superior Court* (1969) 70 Cal.2d 851, the California Supreme Court
18 upheld a San Francisco firearms registration ordinance against a preemption challenge
19 based on Penal Code section 12026, which prohibited local governments from requiring a
20 "permit or license to purchase, own, possess, or keep any [concealable] firearms at [the
21 owner's] place of residence or place of business."

22 *Galvan* determined that the San Francisco ordinance at issue "is a registration law"
23 because it required owners to disclose, to police, their name and address, a description of
24 the firearm, including the make, model, manufacturer's number, caliber, and other
25 identifying marks, and police could exercise discretion in denying a certificate of
26 registration. *Id.* at 855 n.1 and 858. Significantly, *Galvan* observed the Penal Code used
27 the term registration "only in connection with the information required to be compiled and
28 submitted by weapons dealers." *Id.* at 857. In contrast, licensing laws signified permission

1 or authorization to own firearms. *Id.* Because it was a registration law, and not a licensing
2 law, the Penal Code did not preempt the ordinance. *Id.* at 858.

3 The "Legislature's response to *Galvan* was to adopt former Government Code
4 section 9619, the predecessor to current Government Code Section 53071, which made
5 clear an 'intent 'to occupy the whole field of registration or licensing of ... firearms.'" *Great*
6 *Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 862.

7 Like the ordinance at issue in *Galvan*, Section 9.44.060 is a *registration* law. It
8 requires sellers to capture and record for police ammunition purchasers' identities,
9 personal information, and fingerprints, as well as the quantity and type of caliber of
10 ammunition sold. The Legislature's intent to preempt precisely this type of law is plain.
11 See *Fiscal v. San Francisco* (2008) 158 Cal.App.4th 895, 911-15 (Section 53071
12 preempts law banning sale of firearms and ammunition).¹

13
14 **2. Regardless of the Outcome in *Parker*, the Anti-Gang Act Continues to Preempt Local Law.**

15 Although *Parker v. State* (2013) 221 Cal.App.4th 340 is not final, and will not be
16 until at least January 5, 2014, when the time for *sua sponte* review by the California
17 Supreme Court, CRC 8.512(c)(2), and depublication, CRC 8.1152(a)(4), have expired,
18 finality does not drive the outcome here. Petitioners have not found a case deciding
19 whether an invalid statute continues to preempt local laws, but the rationale for State law
20 preemption necessarily indicates that it does. Moreover, the statement of legislative
21 intent behind the Anti-Gang Act, and the inseparable relationship between firearm and
22 ammunition regulation, remain unchanged.

23 Under California law, an invalidated statute is not void *ab initio*; instead, it follows
24 the rule that "a statute declared unconstitutional is void in the sense that it is inoperative
25 or unenforceable, but not void in the sense that it is repealed or abolished." *Kopp v. Fair*
26 *Pol. Practices Com.* (1995) 11 Cal.4th 607, 623.² California's rule is predicated on the

27
28 ¹ Firearms and ammunition are inseparable for this analysis (see Petitioners' Memorandum at 10:1-10).

² Under the Federal rule that "[a]n unconstitutional act is not a law" and it is "as though it had never been

1 common-sense conclusion that “the text of an unconstitutional statute can be rendered
2 legally operative by amending it to repair the constitutional defect,” or by a narrowing
3 judicial construction. *Id.* (citing 1 Sutherland, *Statutory Construction* (5th ed. 1994)
4 *Limitations on Legislative Power*, § 2.07, p. 38. Thus the constitutional infirmity may
5 always be fixed by amendment or narrowing judicial construction. *Id.*; see, e.g., *River*
6 *Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 939 (after
7 statute declared invalid, franchise tax board exercised statutory authority to craft valid tax
8 rules to remedy dormant commerce clause violation).

9 Such a conclusion is especially apt where, as here, a court “enjoined
10 enforcement of those sections as written.” *Id.* at 624; see RJN Ex. F at 2:8-10 (enjoining
11 “versions” of the Anti-Gang Act “in effect as of the date of this Injunction”).

12 Because *Parker* invalidated the Anti-Gang Act on vagueness grounds, the law
13 remains on the books, but may not be enforced because of a defect in language.
14 *Dombrowski v. Pfister* (1965) 380 U.S. 479, 492 (“Our view of the proper operation of the
15 vagueness doctrine does not preclude district courts from modifying injunctions to permit
16 prosecutions in light of subsequent state court interpretation clarifying the application of a
17 statute to particular conduct.”), *cited with approval by Kopp*, 11 Cal.4th at 623.

18 Moreover, *Parker’s* finding of invalidity does not erase the Legislature’s
19 displacement of Respondents’ authority to regulate. When a statute is invalidated, “[t]he
20 actual existence of a statute, prior to such a determination, is an operative fact and may
21 have consequences which cannot justly be ignored.” *Chicot County Drainage Dist. v.*
22 *Baxter State Bank* (1940) 308 U.S. 371, 374.

23 By enacting the Anti-Gang Act and declaring ammunition registration a statewide
24 concern, the Legislature deprived Respondents of the authority to regulate in the field.
25 *Am. Fin. Services Ass’n v. City of Oakland* (2005) 34 Cal.4th 1239, 1253 (“Whenever the

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passed.” *Norton v. Shelby County* (1886) 118 U.S. 425, 442. Under the Federal rule, such statutes do not preempt state laws. *Chicago, I. & L.R. Co. v. Hackett* (1913) 228 U.S. 559, 567 (because first Federal Employers’ Liability Act was invalid, it was “as inoperative as if it had never been passed,” and did not “operate to supersede any existing valid law.”). *Kopp*, 11 Cal.4th at 623, specifically rejected *Norton*.

1 Legislature has seen fit to adopt a general scheme for the regulation of a particular
2 subject, the entire control over whatever phases of the subject are covered by state
3 legislation ceases as far as local legislation is concerned.”). The denial of power to a
4 local body is not based “solely upon the superior authority of the state,” but also to
5 prevent confusion resulting from dual regulation on the same subject. *Id.* at 1252.

6 The determinative issue in preemption cases is always Legislative intent, and it “is
7 not to be measured alone by the language used but by the whole purpose and scope of
8 the legislative scheme.” *Id.* at 1252. By enacting an ordinance that largely duplicates the
9 Anti-Gang Act, Respondents purported to regulate in an area that has been denied them
10 by the Legislature. *Id.* at 1253 (“Where a statute and an ordinance are identical it is
11 obvious that the field sought to be covered by the ordinance has already been occupied
12 by state legislation.”).

13 Respondents’ convoluted legislative history arguments (Supp. Opp., 3:17-4:12),
14 which make no mention of *Fiscal*, show the Legislature’s intent to occupy the field, and
15 *Parker* cannot erase such intent. *Chicot County Drainage Dist.*, 308 U.S. at 374 (“The
16 past cannot always be erased by a new judicial declaration.”).

17 **3. Respondents’ Authorities are Inapposite.**

18 Respondents cite a number of cases for the proposition that Section 53071 does
19 not preempt the entire field of gun control. Petitioners agree. Section 53071, on its face,
20 occupies the “whole field of regulation of the registration or licensing of commercially
21 manufactured firearms as encompassed by the provisions of the Penal Code.” See
22 *Sippel v. Nelder* (1972) 24 Cal.App.3d 173, 177 (Gov’t. Code § 53071 “fully occup[ies] the
23 field of firearm control, both in terms of registration and licensing.”)

24 Accordingly, Section 53071 operates to preempt all local laws “relating to” firearms
25 and ammunition sales, registration and licensing. *Fiscal*, 158 Cal.App.4th at 911-15;
26 accord *Doe v. San Francisco* (1982) 136 Cal.App.3d 509, 517 (if local ordinance creates
27 licensing or registration scheme, it is preempted by Section 53071).

28 Because it encompasses the Penal Code, Section 53071 also has the effect of

1 denying local government authority to regulate firearms dealers, except where the Penal
2 Code specifically grants them authority to deviate from statewide standards. *Suter v.*
3 *Lafayette* (1997) 57 Cal.App.4th 1109, 1122-1125 (ordinance regulating dealers' storage
4 of firearms preempted by former Penal Code § 12071(b)(14); “[w]here, as here, the state
5 expressly permits operation under a certain set of standards, it implies that the specified
6 standards are exclusive.”).³

7 The cases relied upon by Respondents are inapposite. *Calguns Foundation, Inc.*
8 *v. County of San Mateo* (2013) 218 Cal.App.4th 661, 676 upheld a county law to prohibit
9 the use of guns on specific portions of its property. The court of appeal specifically noted
10 that it was not considering a firearms and ammunition sales and registration law. *Id.* at
11 674 n.16.

12 *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853 and
13 *Nordyke v. King* (2002) 27 Cal.4th 875 are inapposite because the Supreme Court
14 carefully “confine[d] its preemption analysis” to conclude that local governments acting in
15 a proprietary capacity did not have to permit firearms sales and possession on their own
16 property. *Fiscal*, 158 Cal.App.4th at 917-918; *accord Calguns*, 218 Cal.App.4th at 675.

17 Finally, *California Rifle & Pistol Assn. v. City of West Hollywood* (“CRPA”) (1998)
18 66 Cal.App.4th 1302, 1319, is distinguishable⁴ because, unlike a ban on the sale of all so-
19 called “Saturday Night Specials” within City limits, Section 9.44.060 is a true registration
20 measure, requiring the collection and submission of ammunition sales data by firearms
21 sellers. See *Galvan*, 70 Cal.2d at 856-858.

22
23 **4. The CCRA Prohibits Respondents From Compelling the Unauthorized
Disclosure of Customer Information on their own Authority.**

24 Respondents miss the point when they argue that Section 9.44.060 and the CCRA
25 do not conflict, and “there is no indication” the CCRA “occup[ies] the field of customer
26

27 ³ Given *Suter*'s holding, the footnote quoted by Respondents is nothing more than *dicta*.

28 ⁴ *CRPA* is of “dubious precedential value” concerning local jurisdictions' authority to regulate sales, as the decision was superseded by the Unsafe Handgun Act. See *Fiscal*, 158 Cal.App.4th at 916-917.

1 information recordation.”

2 Taken as a whole, the CCRA preempts local laws requiring businesses to make
3 unauthorized *disclosures* of customer information. The CCRA obligates Petitioners to
4 protect purchaser’s personal information from “unauthorized access, destruction, use,
5 modification, or disclosure.” Cal. Civ. Code § 1798.81.5(b). The CCRA does not define
6 unauthorized access or disclosure. Yet, in numerous other privacy statutes, authorized
7 access to personal information requires the customer’s written consent, legal process, or
8 when disclosure is compelled by state law. Civ. Code §§ 56.11 (medical information);
9 1798.24 (personal information collected by state agencies).

10 Consistent with the Legislature’s manifest intent to preempt local laws (RJN ¶ 14,
11 Ex. L), and the disclosure provisions found in other privacy statutes,⁵ the CCRA must be
12 interpreted to preclude Respondents from compelling unauthorized *disclosure* of
13 customer personal information to them *on their own authority*.

14
15 **5. Respondents Do Not Controvert Petitioners’ Prima Facie Privacy Case,
and Make No Attempt to Justify Section 9.44.060.**

16 Respondents’ argument that U.S. Firearms lacks standing to assert its customers’
17 privacy claims confuses the common law tort of invasion of privacy, and an action to
18 enjoin harmful privacy invasions. U.S. Firearms does not have standing to seek damages
19 for common law invasion of privacy torts. *Huntingdon Life Sciences, Inc. v. Stop*
20 *Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1260. But U.S.
21 Firearms has standing to enforce its customers’ privacy rights by seeking an injunction
22 and declaratory and writ of mandate relief against Section 9.44.060 because exposes it to
23 liability for otherwise lawful business conduct. *Ballard v. Anderson* (1971) 4 Cal.3d 873,
24 877 (doctors may assert patients’ privacy rights if they are exposed to liability under
25 challenged law).

26 _____
27 ⁵ *Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal.3d 584, 591 (“statutes should be construed
28 together if they harmonize and achieve a uniform and consistent legislative purpose”); *Landrum v. Superior*
Court (1981) 30 Cal.3d 1, 14 (“every statute should be construed with reference to the whole system of law
of which it is a part so that all may be harmonized and have effect”).

1 Respondents dismiss Petitioners' privacy interests. They wholly fail to address
2 *White v. Davis* (1975) 13 Cal. 3d 757, or deny that Section 9.44.060's purpose is to collect
3 information and compile computerized police records concerning lawful conduct.

4 This is crucial. The core interest protected by the constitutional right to privacy is
5 protection from government "collecting and stockpiling unnecessary information and from
6 misusing information"—and the right itself "create[s] a threshold reasonable expectation of
7 privacy in the data at issue." *Hill v. NCAA* (1994) 7 Cal.4th 1, 35 (quoting *White*, 13
8 Cal.3d at 774). It also protects against Petitioners and their customers' autonomy
9 interests, *i.e.*, the ability to conduct "personal activities without observation, intrusion, or
10 interference." *Id.*; see *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 1000
11 (petitioners stated a claim because they had an autonomy privacy interest against invalid
12 searches in the form of pat downs by stadium security personnel).

13 Respondents do not dispute that Petitioners' make a *prima facie* showing under
14 *White* of violation of privacy rights (Memo. at p. 12). As such, Respondents were
15 obligated to put forward a compelling justification for Section 9.44.060. *White*, 13 Cal.3d
16 at 772; see *John B. v. Sup.Ct.* (2006) 38 Cal.4th 1177, 1199 (judicially-compelled
17 disclosure of private information must be justified by compelling interest).

18 They offer none. Instead, relying on cases from the 1970s and 1980s,
19 Respondents attempt to show that Petitioners do not have a reasonable expectation of
20 privacy in their personal information because they do not have such an expectation for the
21 various items contained on their driver's licenses (Supp. Opp. at 7:8-25). But Petitioners
22 ignore statutes and misconstrue case law that prohibit state agencies' use and disclosure
23 of the information contained in drivers' licenses. See *Perkey v. DMV* (1986) 42 Cal.3d
24 185, 194 (while DMV could collect drivers' thumbprints, the constitutional right to privacy
25 requires that such information be kept confidential); see also Vehicle Code § 1808
26 (driver's license information is public except where disclosure is prohibited by other
27 provision of law), and *id.* at §§ 1808.1-1808.51, 1809, 1810-1810.7 (specifying
28 confidentiality, and permissible use and disclosure, of particular DMV information and

1 records). Other cases cited by Respondents are plainly distinguishable, as they arise
2 within the context of judicially-supervised discovery. *See Puerto v. Superior Court* (2008)
3 158 Cal.App.4th 1242, 1251, 1259 (trial court erred in requiring opt-out mechanism for
4 plaintiffs to discover contact information of previously-identified witnesses).

5 More importantly, Respondents take these cases out of context; the analysis must
6 look at existing community norms. *See Folgelstrom v. Lamps Plus, Inc.* (2011) 195
7 Cal.App.4th 986, 992 (disclosure of ZIP code to merchant did not violate privacy rights
8 because it "is not an egregious breach of social norms, but routine commercial
9 behavior."). Petitioners have established, by uncontroverted evidence, that compelled
10 disclosure of personal information to police incident to ammunition purchases is not
11 customary in Sunnyvale or in California (Cordell Decl. ¶ 3; Nielsen Decl. ¶ 3; Nunn Decl. ¶
12 4; Sanderson Decl. ¶ 3; Sarette Decl. ¶ 9; Tan Decl. ¶ 3).

13 Respondents dismiss this testimony, arguing that the declarants have no
14 expectation of privacy in their personal information because they must disclose that
15 information when they register their firearms on statutorily-required DROS forms.

16 This argument proves too much. First, the CCRA makes Respondents' implied
17 consent theory unworkable as any waiver of its protections is void as against public
18 policy. Cal. Civ. Code § 1798.84(a).

19 Second, Petitioners' have a reasonable expectation of privacy in their DROS
20 information because dealers are obligated to keep that information confidential, and may
21 only disclose such information upon the purchasers' written authorization, pursuant to
22 search warrant or subpoena, to the DOJ for regulatory purposes, and to police officers
23 conducting regulatory inspections. Cal. Code Regs. tit. 11, § 4035; Cal. Penal Code §§
24 28210-28215. Moreover, police are prohibited from compiling information concerning
25 long guns, and may disseminate such information only after legal proceedings are begun
26 against firearms owners. Penal Code § 28210(c)(3).

27 Third, Section 9.44.060 contains no privacy or confidentiality provisions, making it
28 a serious invasion of Petitioners' objectively-recognized privacy rights. *Life Technologies*

1 *Corp. v. Superior Court* (2011) 197 Cal.App.4th 640, 652 (trial court erred compelling
2 discovery of third parties' confidential personnel records without providing procedural and
3 protective safeguards for disclosure and maintenance of disclosed information). Here,
4 Respondents have no duty to keep any information they gather confidential. *Cf.* Cal. Civ.
5 Code § 1798-1798.78 (Information Practices Act of 1977, which protects confidentiality of
6 information in possession of state agencies, does not apply to local government.).

7 Indeed, not only are the DOJ and police expressly prohibited from using DROS
8 forms to compile any information concerning long guns purchased prior to January 1,
9 2014, it is a misdemeanor for DOJ and local law enforcement to "retain or compile any
10 information from a [federally- or state-mandated] firearm transaction record . . . for
11 firearms that are not handguns unless retention or compilation is necessary for use in a
12 criminal prosecution or in a proceeding to revoke a license" issued to a dealer. *Id.* at §
13 11106(b)(2). Section 9.44.060 enables police to mount an end run around these Penal
14 Code provisions and collect the same, proscribed information concerning long guns.
15 Because the indiscriminate collection of long gun registration information constitutes a
16 misdemeanor under state law, Section 9.44.060 represents a serious invasion of
17 Petitioners' reasonable expectation of privacy. *Shulman v. Group W Productions, Inc.*
18 (1998) 18 Cal.4th 200, 237 (violation of law constitutes serious invasion of privacy, "even
19 if the information sought was of weighty public concern").

20 CONCLUSION

21 The finding of irreparable harm is unavoidable in this case. Petitioners have claims
22 that are likely to succeed. For these reasons, the Court should enter a temporary
23 restraining order to maintain the *status quo*.

24 WRIGHT & L'ESTRANGE
25 Attorneys for Petitioners

26
27 Dated: December 13, 2013

By 

Robert C. Wright

SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA					FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) U.S. FIREARMS COMPANY LLC, et al. v. City of Sunnyvale, et al.					
ATTORNEY(S) NAME AND ADDRESS AND TELEPHONE & FAX NOS. Robert C. Wright, Esq. (SBN 051864) (619) 231-4844 Andrew E. Schouten, Esq. (SBN 263684) (619) 231-6710 (Fax) WRIGHT & L'ESTRANGE 401 West A Street, Suite 2250 San Diego, CA 92101					
ATTORNEY(S) FOR: Petitioners	HEARING:	DATE	TIME	DEPT 20	CASE NUMBER 113CV257353
PROOF OF SERVICE					

I am a resident of the state of California over the age of 18 years, and not a party to the within action. My business address is 401 West A Street, Suite 2250, San Diego, CA 92101. On **December 13, 2013**, I served the within documents:

REPLY MEMORANDUM IN SUPPORT OF PETITIONERS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

 U.S. Mail: I placed a copy in a separate envelope, with postage fully prepaid, for each addressee named herein for collection and first class mailing on the below indicated date. I am readily familiar with Wright & L'Estrange's practices for collection and processing of correspondence for mailing with the United States Postal Service.

 Federal Express: By placing a copy in a separate Federal Express envelope, addressed to the addressee(s) named herein. I am readily familiar with the practice of this firm for collection and processing for delivery by Federal Express. Pursuant to this practice, correspondence would be deposited in the Federal Express box located at 401 West A Street, San Diego, CA 92101, in the ordinary course of business on the date of this transaction.

 Facsimile: By transmitting the document(s) via facsimile on the date of this declaration to the addressee(s) listed herein and that the transmission was reported as complete and without error. The number of the transmitting facsimile machine is (619) 231-6710.

 X **Electronic Mail:** By transmitting the document(s) via e-mail on the date of this declaration as indicated below.

Anthony P. Schoenberg FARELLA BRAUN + MARTEL LLP Russ Building 235 Montgomery Street, 17th Floor San Francisco, CA 94104 (415) 954-4963 (415) 954-4480 (fax) tschoenberg@fbm.com	
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Executed on **December 13, 2013**, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



 Connie Soto Aguilar