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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE

12 GHOST GUNNER FIREARMS CASES

13 Included actions:

14 30-2019-01111797-CU-PO-CJC *Cardenas v. Ghost*  
15 *Gunner, Inc. dba GhostGunner.net, et al.*

16 CIV-DS-1935422 *McFayden, et al. v. Ghost Gunner,*  
17 *Inc., dba GhostGunner.net, et al.*

JCCP No. 5167

Superior Court of California  
County of Orange  
Case No. 30-2019-01111797-CU-PO-  
CJC

Superior Court of California  
County of San Bernardino  
Case No. CIV-DS-1935422

**Proposed Add-On Case:**

**Sacramento County Superior Court**  
**Case No**  
**34-2021-00302934-CU-PO-GDS**

Dept.: CX 104  
Judge: Hon. William D. Cluster

24  
25  
26 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' PETITION FOR INCLUSION OF**  
27 **ADD ON CASE IN GHOST GUNNER FIREARMS CASES, JUDICIAL COUNCIL**  
28 **PROCEEDING NO. 5167, MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT THEREOF**

1 TO ALL PARTIES OF AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
2 NOTICE that at the September 24, 2021 Case Management Conference this Court set a further  
3 Case Management Conference for November 12, 2021 at 1:30p.m. Case Management Statements  
4 are due November 5, 2021.

5 **I. INTRODUCTION**

6 Only six (Juggernaut Tactical, Inc., Blackhawk Manufacturing Group, Inc., Ryan Beezley  
7 and Bob Beezley, Ghost Firearms, LLC, MFY Technical Solutions, LLC, and Thunder Guns,  
8 LLC) of the 15 defendants named in the consolidated cases of *Cardenas v. Ghost Gunner, Inc.*  
9 *dba Ghostgunner.net, et al.*, Case No. 30-2019-0111797-CU-PO-CJC (Orange County) and  
10 *McFayden et al. v. Ghost Gunner, Inc. dba Ghostgunner.net*, Case No. DS 1935422 (San  
11 Bernardino County) (collectively, the “*Ghost Gunner cases*”) are petitioning this Court to add the  
12 *O’Sullivan v. Ghost Gunner, Inc., et al.*, Case No. 34-2021-00302934-CU-PO-GDS (Sacramento  
13 County) (“the *O’Sullivan case*” to the currently coordinated matters. There are a total of 17  
14 defendants in the *O’Sullivan case*, only 12 of which overlap with the 15 named defendants in the  
15 *Ghost Gunner cases*. Thus, most of the defendants in the coordinated *Ghost Gunner cases* and  
16 most of the defendants in the *O’Sullivan case* are not joining the Petitioning Defendants’ Petition  
17 for Inclusion of Add-On Case in Ghost Gunner Firearms Cases. That fact, alone, rings alarm  
18 bells about the propriety of adding the *O’Sullivan case* to the coordinated proceedings since most  
19 of the defendants do not support further coordination.

20 There are good reasons why most of the defendants across the *Ghost Gunner* and  
21 *O’Sullivan cases* have not joined the petition. Most obviously, the *Ghost Gunner* and *O’Sullivan*  
22 cases involve two entirely separate shooting rampages that were perpetrated by entirely different  
23 shooters in entirely different California counties and occurring some two years apart. There is no  
24 overlap of facts between the two shootings whatsoever. This is in stark contrast to the *Cardenas*  
25 and *McFayden cases* that were coordinated as the *Ghost Gunner cases*, because those cases both  
26 involved the exact same November 2017 shootings by the same shooter in the same county.

27 The Petitioning Defendants try to gloss over this critical defect by pronouncing that the  
28 two different shooting incidents described in the coordinated *Ghost Gunner cases* and the

1 O'Sullivan case that is the subject of the add-on petition are "asserting effectively identical causes  
2 of action against the same defendants, for the same conduct, and for the same type of injuries,  
3 albeit arising from a separate incident." Pet. at 4. This is simply not true. The plaintiffs are  
4 asserting *some* of the same causes of action, for totally and completely different and unrelated  
5 events, for markedly different injuries (*e.g.*, O'Sullivan's case claims include claims for the delay  
6 in the ability to get Officer O'Sullivan out of harm's way to seek medical treatment), and (the one  
7 thing Petitioning Defendants get right) "arising from a separate incident." Surely Petitioning  
8 Defendants do not claim that every case in which a party asserts tortious interference should be  
9 coordinated with every other case in which another party asserts tortious interference and yet, at  
10 base, that is what the sum total of Petitioning Defendants' argument amounts to. Indeed, on  
11 Petitioning Defendants' theory, it seems they might seek coordination of potentially every case  
12 involving ghost gun manufacturers that comes to be filed no matter how different the underlying  
13 facts and parties may be.

14 It is the Petitioning Defendants' burden to show that there is a "common question of fact  
15 or law" that "is predominating and significant to the litigation." They have not come close to  
16 making that showing and the Add-On Petition should be denied.

## 17 **II. STATEMENT OF FACTS**

18 The facts giving rise to the matters in the *Ghost Gunner* cases have been alleged in detail  
19 in the complaints and summarized in the parties' prior Joint Status Conference Statement. In  
20 brief, the *Ghost Gunner* cases seek recovery of damages for Kevin Neal's November 13-14, 2017  
21 shooting spree in Rancho Tehama Reserve during which five victims were killed and 12 others  
22 were injured at eight separate crime scenes, including an elementary school. Neal used at least  
23 one ghost gun (a semi-automatic rifle) and two handguns during the perpetration of his rampage  
24 (additional evidence, including guns, may have been destroyed when Neal's house subsequently  
25 was burned down by the Tehama County sheriff's department). The claims in the *Ghost Gunner*  
26 cases arise out of these same events and are asserted against the same 15 defendants. Neal died  
27 during the rampage, either by his own hand or during a shoot-out with police. Accordingly, there  
28 is no criminal case pending against Neal.

1           The *O’Sullivan* matter, on the other hand, involves claims related to the murder of a  
2 rookie Sacramento Police Officer, Tara O’Sullivan, who was shot in the line of duty in  
3 Sacramento County in 2019, some two years after the Neal killing spree in Tehama County. The  
4 *O’Sullivan* case involves complex, still evolving facts about a shooting and subsequent shoot-out  
5 that occurred when Officer O’Sullivan was assisting an alleged victim of a domestic disturbance  
6 to gather some personal items to leave the residence. Adel Sambano Ramos allegedly shot Officer  
7 O’Sullivan as she assisted Ramos’ girlfriend during a “civil standby.” A shoot-out between  
8 Ramos and the police allegedly then occurred and, because of that shoot-out, it took responding  
9 officers over 45 minutes to be able to evacuate the injured Officer O’Sullivan to seek medical  
10 treatment. During that entire time and for hours afterward, Ramos is alleged to have engaged in  
11 gun battle with the police. Ramos was reportedly armed with at least three high-caliber firearms,  
12 including two .223-caliber semiautomatic assault rifles, at least some of which were illegal “ghost  
13 guns.” The *O’Sullivan* Plaintiffs have sued 17 defendants, including 12 of the defendants named  
14 in the *Ghost Gunner* cases. Ultimately, police took Ramos into custody and he’s since been  
15 charged with murder and other felony charges. His trial is anticipated at the end of 2022 at the  
16 earliest and more likely in early 2023. Prosecutors in the Ramos case have expressed their intent  
17 to resist civil discovery until after the criminal trial has been completed.

18           The *Ghost Gunner* cases have been stayed, initially pending service of all defendants  
19 (which was completed in November 2020), and later pending coordination of the *Cardenas* and  
20 *McFayden* cases. Once coordinated, the *Ghost Gunner* cases have continued to be stayed pending  
21 resolution of the present petition. The *O’Sullivan* case is stayed by stipulation of the parties until  
22 resolution of the present petition as well.

### 23   **III.   ARGUMENT**

24           Coordination of the *Ghost Gunner* cases with *O’Sullivan* will not “promote the ends of  
25 justice” as required by California Code of Civil Procedure, section 404.1 because: (1) the  
26 substantial differences in fact arising out of entirely different events predominate over any  
27 underlying commonalities of law; (2) coordination is only alleged to be convenient for a small  
28 subset of the Defendants; (3) the *Ghost Gunner* cases are likely to proceed at a significantly faster

1 pace than *O’Sullivan* because of the related criminal proceeding pending against Officer  
2 *O’Sullivan’s* alleged murderer in Sacramento County; (4) the *Ghost Gunner* cases and *O’Sullivan*  
3 have completely different Plaintiffs (over 15 in all) and there is not even complete overlap of the  
4 named Defendants across them; (5) coordination will halt, rather than further, settlement  
5 opportunities in both cases, and (6) the Petitioning Defendants have failed to identify any specific  
6 risk of inconsistent rulings.<sup>1</sup>

7 **A. Substantial factual differences predominate the *Ghost Gunner* and *O’Sullivan***  
8 **cases.**

9 The Petitioning Defendants summarily conclude that common questions of law  
10 undeniably predominate yet fail to grapple with what those common issues of law might be or  
11 if/how there would be a potential for inconsistent results. Pet. at 8. More importantly, the  
12 Petitioning Defendants neglect to meaningfully address the drastically different facts underlying  
13 the *Ghost Gunner* and *O’Sullivan* cases—facts that almost certainly mean that there will not be  
14 common legal issues (as the law will be applied to different factual circumstances). The vastly  
15 different underlying facts predominate and dictate against coordination.

16 The Petitioning Defendants argue that common legal theories and common causes of  
17 action are pled across the *Ghost Gunner* and *O’Sullivan* cases. Pet. at 8-9. Common legal  
18 theories and causes of action exist in thousands of civil cases pending across the state, but merely  
19 pleading the same types of claims does not suggest that common issues of law predominate.  
20 They further claim that “the fate of each case depends on the viability of plaintiffs’ market share  
21 liability theory” and that the *Ghost Gunner* and *O’Sullivan* plaintiffs will each have to show (1)  
22 actual injury by an inherently harmful product; (2) the origin of the product(s) that allegedly  
23 caused Plaintiffs’ injuries cannot be identified; (3) Defendants’ products are fungible goods; and  
24 (4) Plaintiffs have joined as defendants the manufacturers of a substantial share of the market. Pet.  
25 at 9. The Petitioning Defendants pronounce that the “answers to these inquiries will be the same  
26 in each matter.” *Id.*

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiffs do not dispute that the coordinated the *Ghost Gunner* and *O’Sullivan* cases are each complex within the  
meaning of California Rule of Court 3.400. However, the mere fact that the cases are complex does not merit or  
require coordination.

1 But there is no reason to believe that the answers to those issues will be the same in each  
2 matter, particularly since different defendant sets are named in the *Ghost Gunner* cases than in the  
3 *O'Sullivan* case. Moreover, it is far from clear whether the market share theory will ultimately be  
4 relied upon in both the *Ghost Gunner* and *O'Sullivan* cases since the weapons that were allegedly  
5 used by the shooter in the *O'Sullivan* case were recovered at the scene whereas it is unclear (and  
6 likely may never be known) whether all the weapons used by the *Ghost Gunner* shooter were  
7 recovered. As the *O'Sullivan* plaintiffs note in their opposition, they expect to dismiss defendants  
8 (if any) who can demonstrate that their ghost gun kits were not used in the *O'Sullivan* shooting.  
9 In contrast, the plaintiffs in the *Ghost Gunner* case expect to rely on the market share theory of  
10 liability at least in part because of the inherent uncertainty over knowing exactly what gun kits  
11 were used.<sup>2</sup>

12 Setting aside the lack of legal commonalities, the *Ghost Gunner* and *O'Sullivan* cases  
13 have no common underlying facts whatsoever. Though the Petitioning Defendants attempt to  
14 reduce the complex facts of Neal and Ramos' shooting sprees to "a third-party allegedly  
15 assembling a rifle from various component parts of purportedly unknown origin, which the third-  
16 party criminally misused to cause Plaintiffs' respective injuries," Pet. at 8, as discussed *supra*, the  
17 two shootings have nothing in common whatsoever besides the allegation of the use of one or  
18 more ghost guns in each shooting. The shootings occurred two years apart in different counties  
19 and involve entirely different victims, plaintiffs, and alleged shooters, as well as drastically  
20 different (and disputed) facts regarding how each of the shooting sprees unfolded. The *Ghost Gun*  
21 shootings took place at over eight separate crime scenes whereas the *O'Sullivan* shooting all  
22 occurred at a single apartment complex. Discovery into when and how each alleged shooter may  
23 have come into possession of the ghost guns used during the shooting sprees will be completely  
24 different, as will discovery into the victim's injuries, the potential culpability of other parties. For  
25 example, the Tehama County Sheriff is being sued by some of the *Ghost Gunner* plaintiffs for  
26 failing to enforce a court order to remove all weapons from Neal's possession prior to the date of

27 \_\_\_\_\_  
28 <sup>2</sup> Of course, should it become clear that specific gun kits were definitively used in the *Ghost Gunner* shootings while others could not have been, the *Ghost Gunner* plaintiffs will consider whether dismissals are appropriate. It is just less clear that this will be a viable option than it appears to be for the *O'Sullivan* plaintiffs.

1 the shooting. Indeed, any overlapping discovery to the Defendants (who, again, are not even  
2 identical across the *Ghost Gunner* and *O’Sullivan* cases), is a small fraction of the discovery to be  
3 taken in each case. These overwhelming factual distinctions predominate each case and thus  
4 undermine the efficacy of the further coordination that the Petitioning Defendants request.

5 Indeed, if the Petitioning Defendants succeed in convincing the Court to add the  
6 *O’Sullivan* case to the coordinated matters despite the complete lack of factual overlap, where  
7 does it stop? Cases against ghost gun manufacturers have begun to proliferate in California, with  
8 the San Francisco District Attorney filing a complaint in August 2021 for violations of the  
9 California Business and Professions Code against three ghost gun manufacturers (Blackhawk  
10 Manufacturing Group Inc., GS Performance LLC, and MDX Corporation),<sup>3</sup> while noting an  
11 intent to amend to name other ghost gun manufacturers as they become known.<sup>4</sup> Likewise, two  
12 Los Angeles County Sheriff’s deputies who were shot by ghost guns while on duty also filed suit  
13 for negligence and public nuisance in August 2021 against Polymer80, one of the defendants  
14 named in both the *Ghost Gunner* and *O’Sullivan* cases.<sup>5</sup> With ghost guns being recovered at  
15 more and more crime scenes, additional civil lawsuits against ghost gun manufacturers can be  
16 expected to be filed with regularity.

17 **B. Only a Small Subset of Defendants Contend that Coordination is Convenient.**

18 Once again incorrectly arguing that the *Ghost Gunner* and *O’Sullivan* cases “are  
19 effectively identical, the Petitioning Defendants contend that “[c]oordination will also advance the  
20 convenience of the parties, counsel, and at least some witnesses.” Pet. at 9-10. As established above,  
21 the *Ghost Gunner* and *O’Sullivan* cases are far from “effectively identical” and, for that reason alone,  
22 should not be coordinated. Additionally, there is no commonality of plaintiffs or counsel across the  
23 *Ghost Gunner* and *O’Sullivan* cases, and only partial overlap of the named defendants. Thus, there is  
24 no reason to believe that coordination will, in fact, advance the convenience of the parties, counsel,  
25 and at least some witnesses. To the contrary, coordination would shoehorn two disparate fact patterns

26 <sup>3</sup> Notably, Blackhawk Manufacturing Group Inc. is also a party in these cases too.

27 <sup>4</sup> See Glenn Thrush, *San Francisco Sues Three Online Retailers for Selling ‘Ghost Guns’*, N.Y. Times (Aug. 18,  
2021), <https://www.nytimes.com/2021/08/18/us/sf-ghost-guns.html>.

28 <sup>5</sup> See Robert Jablon, *L.A. County deputies who were shot in Compton ambush sue maker of ‘ghost gun’ kit*, L.A.  
Times (Aug. 10, 2021), <https://www.latimes.com/california/story/2021-08-10/sheriff-deputies-sue-ghost-gun-kit-maker>

1 into the same pretrial schedule, forcing plaintiffs and counsel into, at a minimum, tracking discovery  
2 that has nothing to do with their cases whatsoever. This is the antithesis of what coordination is  
3 meant to do.

4           Indeed, though the Petitioning Defendants minimize this issue, most of the named defendants  
5 across the *Ghost Gunner* and *O'Sullivan* cases have opted not to join the petition to add the  
6 *O'Sullivan* case to the coordinated matters. It bears emphasis that only six of the fifteen *Ghost*  
7 *Gunner* defendants are petitioning to add the *O'Sullivan* case, and only those same six of the  
8 seventeen *O'Sullivan* defendants are on board. The very fact that there is not complete identity of  
9 defendants across the *Ghost Gunner* and *O'Sullivan* cases is further reason to dismiss the Petition.  
10 The fact that only a small minority of defendants is interested in coordination should concern the  
11 Court.

12           Moreover, the convenience of the Petitioning Defendants is not the relevant consideration  
13 on coordination. It is the convenience of *all* parties, witnesses, and counsel that is determinative.  
14 As noted, the Plaintiffs between the *Ghost Gunner* and *O'Sullivan* cases do not overlap. Just as the  
15 events in the *O'Sullivan* case have no connection to Orange County (or Tehama County, where  
16 the shootings occurred), the events in the *Ghost Gunner* cases have no connection to Sacramento  
17 County. Furthermore, there is no overlap concerning the percipient witnesses to the underlying  
18 incidents for each case. For example, information regarding the recovered firearms rest with at  
19 least two different law enforcement agencies—the Tehama County Sheriff's Department for the  
20 *Ghost Gunner* cases and the Sacramento Police Department for the *O'Sullivan* case.

21           Additionally, arguments regarding the potential for duplicative discovery requests or  
22 demurrers are red herrings. First, to the extent there is any overlap between discovery requests to  
23 named Defendants in each of the *Ghost Gunner* and *O'Sullivan* cases, it would take minimal  
24 resources on the part of those Defendants to conform their responses in one action to be used in  
25 the other. Second, and more importantly, there is not likely to be any overlap in the Plaintiffs'  
26 discovery responses across the *Ghost Gunner* and *O'Sullivan* cases because of the different factual  
27 circumstances. Accordingly, the convenience of the parties, counsel, and potential witnesses  
28 dictates against coordination.

1           **C. The Ghost Gunner and O’Sullivan cases are set to proceed at radically**  
2           **different paces.**

3           The Petitioning Defendants argue that both the *Ghost Gunner* and *O’Sullivan* cases are “at a  
4 very early stage” and thus that this factor dictates in favor of coordination. Pet. at 10-11. However,  
5 the *Ghost Gunner* cases were filed two years ago in 2019 and are ripe for discovery. The alleged  
6 shooter, Neal, in the *Ghost Gunner* cases is dead and there are no co-pending criminal  
7 proceedings that will delay discovery. In contrast, the *O’Sullivan* case was only recently filed in  
8 2021 and there is a pending criminal case against the alleged shooter, Ramos, is not expected to  
9 go to trial until the end of 2022 at the earliest, more likely in 2023. The prosecutor and law  
10 enforcement in the *O’Sullivan* case have informed the *O’Sullivan* plaintiffs that they intend to  
11 resist discovery until the criminal case is complete. As a result, the *Ghost Gunner* and *O’Sullivan*  
12 cases can be expected to proceed according to radically different schedules.

13           The Petitioning Defendants emphasize the fact that both the *Ghost Gunner* and *O’Sullivan*  
14 cases are stayed as reason to support coordination. Pet. at 11. Yet they fail to explain that the  
15 very reason that both matters are currently stayed is due to the pending Petition. But for the  
16 Petition, the *Ghost Gunner* case would almost certainly already be in discovery whereas the  
17 *O’Sullivan* case would still be awaiting resolution of the criminal case, at least on some key  
18 issues. As a result, the case schedules dictate against coordination.

19           **D. Coordination of the O’Sullivan case with the Ghost Gunner cases would**  
20           **decrease judicial efficiency.**

21           The Petitioning Defendants argue that judicial resources will be preserved by coordination  
22 because “two courts should [not] have to review what will essentially be identical demurrers” and  
23 “there would be a single courtroom hearing [on] the potentially large volume of essentially  
24 identical pretrial motions anticipated in the cases.” Pet. at 11. However, the Petitioning  
25 Defendants merely presume that there will be “essentially identical demurrers” even though most  
26 of the case Defendants are not even joining the Petition. Their failure to be able to garner  
27 agreement among the Defendants for the Petition does not bode well for the Defendants’ ability to  
28 congregate around a single set of issues for a demurrer. Likewise, the Petitioning Defendants fail  
to explain why there would be a “potentially large volume of essentially identical pretrial

1 motions” in cases that are predicated on starkly disparate facts. Indeed, the fact that the  
2 Petitioning Defendants are not seeking coordination for trial purposes suggests that there would  
3 be little, if any pretrial commonalities between the cases. They have not come close to proving  
4 that judicial economies would occur because of further coordination.

5 In contrast, there are strong reasons to leave the *Ghost Gunner* cases coordinated as they  
6 currently stand (since the *Cardenas* and *McFayden* cases are predicated on the same shooting  
7 event) while leaving the *O’Sullivan* case in the jurisdiction where those relevant events occurred.  
8 To the extent that the Defendants intend to demurrer, each trial court can set a consolidated  
9 briefing schedule (if it so chooses) under the inherent power of the court to manage its own  
10 docket. Shoehorning two distinct cases into one coordinated matter will not preserve judicial  
11 resources but instead will only serve to complicate the present case.

12 **E. The Petitioning Defendants have not established a likelihood for duplicative**  
13 **or inconsistent legal rulings.**

14 The Petitioning Defendants once again use fact that the *Ghost Gunner* and *O’Sullivan*  
15 plaintiffs have pled similar causes of action to argue that “there is a significant risk of duplicative  
16 or inconsistent rulings on significant filings if the cases are not coordinated.” Pet. at 11.  
17 However, as discussed, *supra*, even though the Plaintiffs have asserted similar (though not  
18 identical) causes of actions, those claims are predicated on different fact patterns that would make  
19 the application of the law to those facts result in potentially different outcomes for good reason.  
20 Further, because there is not an identity of Plaintiffs or Defendants across the *Ghost Gunner* and  
21 *O’Sullivan* cases, there is scant chance of issue preclusion or res judicata applying. Thus, it is  
22 irrelevant whether one case might have some issues on appeal while another goes to trial. This  
23 occurs every day in courts across the state where different plaintiffs are accusing different  
24 defendants of similar causes of action and some cases go to appeal while others continue to trial.  
25 It is not a basis for coordinating otherwise unrelated cases, as is the situation here. Once again,  
26 this factor does not favor coordination.  
27  
28



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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE  
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12 GHOST GUNNER FIREARMS CASES  
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JCCP No. 5167  
Superior Court of California  
County of Orange  
Case No. 30-2019-01111797-CU-PO-  
CJC  
Superior Court of California  
County of San Bernardino  
Case No. CIV-DS-1935422

**PROOF OF SERVICE**

Dept.: CX 104  
Judge: Hon. William D. Cluster

1 I am employed in the County of San Mateo, State of California. I am over the age of  
2 eighteen years old and not a party to this action. My business address is Orrick, Herrington &  
3 Sutcliffe LLP, 1000 Marsh Rd., Menlo Park, CA 94025.

4 On October 7, 2021, I served the following document(s) entitled:

- 5 • **PLAINTIFFS' OPPOSITION TO DEFENDANTS' PETITION FOR INCLUSION**  
6 **OF ADD ON CASE IN GHOST GUNNER FIREARMS CASES, JUDICIAL**  
7 **COUNCIL PROCEEDING NO. 5167, MEMORANDUM OF POINTS AND**  
8 **AUTHORITIES IN SUPPORT THEREOF**

9 on all interested parties to this action in the manner described as follows:

10	<b>X</b> (VIA EMAIL) I caused to be transmitted via electronic mail the document(s) listed above to the electronic address(es) set forth below.
11	(VIA U.S. MAIL) By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Menlo Park, California addressed as set forth below.

12  
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