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CALGUNS FOUNDATION, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF VENTURA

CALGUNS FOUNDATION, INC, Plaintiff/Petitioner, v. COUNTY OF VENTURA, VENTURA COUNTY SHERIFF'S DEPARTMENT, BOB BROOKS, in his individual capacity and official capacity as Ventura County Sheriff, and DOES 1 through 10, inclusive, Defendants/Respondents.	**Case No.: 56-2010-00383664-CU-WM-VTA** **PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE** Hearing Date: May 6, 2011 Time: 8:30 Location: Department 42 Reservation Number: 1545418 Petition filed: October 15, 2010

SUMMARY OF RESPONDENT'S ARGUMENT

Respondents' argue that the documents requested by Petitioner pursuant to the California Public Records Act request should not be produced because: 1) the information that Petitioner seeks would compromise the privacy, safety, and security of carry applicants and licensees; and 2) the Court should not order production because redacting records in response to Petitioner's request would create an undue burden.

These issues are more appropriately framed as: 1) whether the records are required to be produced pursuant to the California Public Records Act and public policy; and 2) if such records are required to be disclosed, what, if any of the information requested may be redacted. Each argument is addressed below, as well as in Petitioner's Points and Authorities.

But, in briefly addressing the issue of redaction, it is important to note that, thought the Respondents repeatedly argue that Petitioner is seeking information that may place applicants in jeopardy, this is factually inaccurate. The record clearly indicates that 1) the Petitioner did not object to the redaction of sensitive information; and 2) the Petitioner identified specific categories of information that may legally be redacted.[1]

REPLY ARGUMENTS

I. DISCLOSURE OF THE SELECT PAGES FROM THE CARRY APPLICATIONS THAT PETITIONER SEEKS IS MANDATED BY PUBLIC POLICY TOWARDS DISCLOSURE

In support of their argument, the Respondent's have included the Declaration of James Bullington, in which he states that the public interest in protecting the privacy, safety, and security of applicants by withholding such information outweighs the public interest in disclosure of such information.[2] And, they argue that the information is also privileged official information acquired in

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[1] *See* Verified Petition for Writ of Mandate and Request for Declaratory Relief, Ex. 1, p. 2 ("Because ***I do not seek the disclosure of private or confidential information***, this request does not encompass the following information which may be redacted from existing applications (1) the disclosure of ***times and places of vulnerability***; (2) ***social security numbers, driver's license numbers, and dates and places of birth***."); Ex. 3, p. 2 ("I do not seek the disclosure of ***exempt private or confidential information***."), Ex. 6, p1-2. ("Ventura County Sheriff's Office – may (at its option) withhold information . . . contained in applications . . . ***that indicates when or where the applicant is vulnerable to attack*** . . or that concern ***applicant's medical or psychological history or that of members or his or her family*** . . .***the home address and telephone number of peace officers, judges, court commissioners, and magistrates*** . . . "the disclosure of ***times and places of vulnerability*** . . . ***social security numbers, drivers license numbers, and dates and places of birth***.")

[2] *See* Bullington Decl.

confidence under Evidence Code section 1040 and as such exempt under Government Code 6254, subdivision (k). While that is his *opinion* held under penalty of perjury, it is his perceived opinion. It is not the law. In fact, it is the same exact position that the *CBS v. Block,* 42 Cal.3d 646 (1986) court rejected. (Thus, this court's rejection of the claim of exemption under section 6255 on the ground that the public interest weighs in favor of disclosure similarly requires rejection of the claims of exemption under section 6254, subdivision (k) and Evidence Code section 1040.)[3]

Specifically in *CBS*, the sheriff (Block) argued in his opposition to the motion for a preliminary injunction the following justification for his refusal to disclose the records:

> All of the concealed weapons licenses presently outstanding were issued by the Sheriff's Department to protect the applicant's life or that of his family from threats of violence made against them. In each case, there is a clear and present danger to the safety of these persons which cannot be protected by law enforcement resources. To make public the licenses issued or the information contained therein would subject the licensees to the increased risk of serious injury or death that the issuance of concealed weapons is designed to prevent.
>
> Many times a criminal's plans to commit a serious crime or serious injury to an intended victim fails for lack of proper planning and preparation. In this instance, if the identity of the licensee or the reason for issuance of a concealed weapons license became known to the criminal, the likelihood is that crime planning would become much more sophisticated and would involve an escalated use of force. This would substantially increase the likelihood of success of the crime at the risk of the safety to the licensee and his or her family. In short, if the criminal is aware that his victim is armed, he is likely to better plan his crime and use a more sophisticated weapon to ensure its success.
>
> In addition, some of the Department's licensees are prominent, well known people. It is quite likely that if their status as concealed weapons licensees became public, they would be subject to an *increased risk of personal harm.* Many persons who commit crimes of violence do so to get back at society and to obtain publicity for their criminal acts. If the identity of these officials and business people were made public, *it is quite likely that these criminals would view an attack on these citizens as a larger challenge with all of the corresponding increased publicity.*
>
> Lastly, to make public the identity of persons who possess concealed weapons would greatly inhibit the issuance of licenses to people who need them. For all of the reasons referred to above, if prospective applicants knew their identity was going to be made public, it is probable that they would not carry a concealed weapon. Because law enforcement cannot adequately protect these individuals and they would possess no weapon to protect themselves, specific and identifiable threats to them and their families would go unprotected, increasing the risk of physical harm.

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[3] *Id* at 656.

> [An] in camera examination of the records [] also convinced [the court below] that each of the 35 permits were issued by the sheriff's department to protect the applicant's life or that of his or her family from threats of violence made against them. *In each instance there is a clear and present danger to the safety of these persons which cannot be protected by law enforcement resources. Public disclosure of the licenses issued or the information contained therein would undoubtedly subject the licensees to the increased risk of serious injury or death.*
>
> *Public disclosure of the records would clearly jeopardize the safety of the permit holders, for it would provide a veritable shopping list of weapons potentially available for theft, and it would expose the particular vulnerabilities of the individuals who possess such weapons.*[4]

There is nothing new or unique in Respondents' argument. Respondents are merely attempting to re-litigate *CBS* relying on Justice Stanley Mosk's dissent, which raised each and every one of these arguments.[5] These arguments were held to not outweigh the public policy towards disclosure in 1986 when California Supreme Court held that "without the applications which accompany the licenses and which set forth the reasons why a license is necessary, the public cannot judge whether the sheriff has properly exercised his discretion in issuing the licenses."[6] Respondents are, *ipso facto*, asking this court to overturn 25 years of historical precedence of the Public Records Act, which stands on all fours this case, without citing any additional statutes or case law in support of the same.

Respondents do make the colorful argument that now, 25 years later, the Act should be applied differently because of the reach of the internet. However, the *CBS* court already considered the issue of broad distribution of carry applications and the information contained therein, and still held in favor of production, distribution and disclosure:

> CBS in addition, however, wants the names and addresses of the license holders together with the reasons for which the licenses were issued. The first and most obvious result of obtaining that information would be the probability that the licensees would be subject to contact and questioning by media representatives -- not always a pleasant experience.
>
> The second and more serious consequence would undoubtedly be the

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[4] *Id.* at 663-664.

[5] *See Id.* at 657-666. For the sake of brevity, and since the Respondents' opposition reargues the dissents' opinion from *CBS v. Block*, 42 Cal.3d 646 (1986), Petitioner incorporates by reference the majority court's opinion from CBS herein in its entirety.

[6] *Id.* at 657.

> *dissemination via television of the names, addresses, pictures and backgrounds of the licensees together with their assigned reasons for needing the licenses.* [2]
>
> [2] CBS makes the assertion that it is a "responsible" organization and that we should not presume that indiscriminate disclosure would result. The problem with that argument is that if the information is subject to disclosure, there is no way that this court or the sheriff could limit it to CBS.[7]

Again, despite the concerns of broad, unfettered distribution and disclosure, the California Supreme Court already held that public policy towards disclosure and production outweighs any other policy or statute against disclosure.[8]

Respondents then argue that, because *CBS* only addressed a County with 35 carry applications, primarily renewals, with either "no reason for issuance" or where a one sentence "good cause" statement was used (i.e. "Needed for Protection of life and property") it is factually inapplicable.[9] Specifically, Respondents argue that the sparse *pro forma* applications statements did not disclose an applicant's specific vulnerability. First, without disclosure of the existing "good cause" statements Petitioner seeks, it is impossible to determine what, if any, difference there is between the applications in the current matter and those in *CBS*. Secondly, and more importantly, while it is true that the applications were sparse, it was cited not as the court's reason for disclosure, but rather as a validation of the policy towards disclosure, where such facts demonstrates actions contrary to the Sheriff's own public policy:

> Even more significant is the fact that the reason for issuance proffered in the majority of the current applications is the blanket statement: "For protection of life and property." The current licenses are primarily renewals. Contrary to the policy promulgated by the sheriff, these applications for renewal *do not provide* "convincing evidence of a clear and present danger to life or great bodily harm to the applicant.[10]

In fact, Respondents raise the issue of the question presented, and it is important to reexamine the

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[7] *Id.* at 664.

[8] *Id.* at 657. Additionally, Respondents' own Opposition on the topic of electronic distribution calls for redaction, not non-production stating: "Cal. Rules of Court, Rule 2.503(e)[calling for redaction of information including address and telephone numbers; U.S. Central District Court Order No. 10.07 [calling for redaction of sensitive information including home address].)" (Respondents' Opp. p.9, ¶¶2-5.) Though, reliance on these provisions is misplaced, as Rule 2.503 applies to electronic access of criminal court records, which Petitioner is not seeking in this manner. Though it should be noted that Cal. Rules of Court, Rule 2.503 (e) does not mandate redaction, but encourages it, and subsection (i) states that "[c]ourts should encourage availability of electronic access to court records at public off-site locations." And, this matter is not before the Central District Court; thus orders applying thereto are inapplicable herein.

[9] Respondents' Opp. at p.9.

question at issue in the *CBS* case, which was:

> Are the press and public prohibited from obtaining the information contained in the application for and the license to possess a concealed weapon under the California Public Records Act (Gov. Code, § 6250 *et seq*., hereafter the PRA or the Act) even though this information was open to public inspection from 1957-1968 and the Act did not specifically exempt this information from disclosure?[11]

The California Supreme Court held that the answer is . . . *No*.[12]

Respondents argue that the carry applicants do not have the option of obtaining a carry license "without filling out the standard [sic] Department of Justice Standard Application ["Application"] . . ." no matter how much danger an applicant may face, and no matter how much in need that applicant may be of carrying a concealed weapon for his or her protection. This is correct. And, on the Application itself, there is an admonition on Page 3, which states "I understand that *all of the information disclosed by me* in this application, may be subject to public disclosure") and another similar admonition on Page 14 of the Application.

These admonitions were placed there by a committee of California law enforcement officers, including the Sheriffs' representative, when they created the standardized form pursuant to Penal Code12051(3)(A), which states:

> Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. The Attorney General shall convene a committee composed of one representative of the *California State Sheriffs' Association*, one representative of the *California Police Chiefs' Association*, and one representative of the *Department of Justice* to develop a standard application form for licenses. The application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. The Attorney General shall adopt and implement this standard application form for licenses on or before July 1, 1999.

Despite these two express admonitions contained in the state issued standardized Application created by a committee of law enforcement representatives, Respondents argue that the information is provided in "confidence" and that such information may not be disclosed. Yet, they provide no legal authority for their position that select pages from the Application should be withheld in their

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[10] *CBS*, at 654, fn.12.
[11] *Id.* at 648-649.
[12] *Id.* at 657.

entirety.

Further, the circularity of Respondents arguments is chilling when considered against the reason that *CBS* mandated that good cause statements are public records. Respondents correctly note that Plaintiff is an entity that advocates for the civil rights of gun owners. Petitioner posits that no gun owner in Ventura County would be required to disclose "[s]ensitive information" in their good cause statements if the Respondents accepted the Constitutionally-appropriate good cause statement of "I wish to carry a firearm for self-defense" (as the Sheriff of Sacramento County now does after coming to an amicable agreement with Plaintiffs and being removed from a federal challenge). However, because Ventura Sheriff Brooks requires an applicant to prove some undefined nature of "heightened risk" to exercise 14th and 2nd Amendment rights, Plaintiffs have no choice but to review and make public which types of heightened risks are deigned "good cause" enough to allow a Ventura County resident to exercise their fundamental right of self-defense[13].

CBS, decided a quarter-century ago, clarified that applications and supporting materials in connection with carry permits are subject to public disclosure under the Public Records Act, "to ensure that public officials are acting properly in issuing licenses for legitimate reasons."[14] In the 25 years that have passed since *CBS*, the Legislature has *not* taken the opportunity to amend the California Public Records Act to exempt carry applications, despite having made many amendments to the Public Records Act, including 24 amendments since 1986 to Gov't Code section 6254 alone.[15]

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[13] See *McDonald v. City of Chicago, Ill.*, 130 S. Ct. 3020 (2010), citing *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008): "Self-defense is a basic right, recognized by many legal systems from ancient times to the present day,[15] and in *Heller,* we held that individual self-defense is "the *central component*" of the Second Amendment right. "

[14] *CBS* at 655.

[15] Amendments to Cal. Gov't Code § 6254 since 1986 include: Stats 1987 ch 634 § 1, effective September 14, 1987, ch 635 § 1; Stats 1988 ch 870 § 1, ch 1371 § 2; Stats 1989 ch 191 § 1; Stats 1990 ch 1106 § 2 (SB 2106); Stats 1991 ch 278 § 1.2 (AB 99), effective July 30, 1991, ch 607 § 4 (SB 98); Stats 1992 ch 3 § 1 (AB 1681), effective February 10, 1992, ch 72 § 2 (AB 1525), effective May 28, 1992, ch 1128 § 2 (AB 1672), operative July 1, 1993; Stats 1993 ch 606 § 1 (AB 166), effective October 1, 1993 (ch 1265 prevails); Stats 1993 ch 610 § 1 (AB 6), effective October 1, 1993; Stats 1993 ch 611 § 1 (SB 60), effective October 1, 1993; Stats 1993 ch 1265 § 14 (SB 798); S tats 1994 ch 82 § 1 (AB 2547), ch 1263 § 1.5 (AB 1328); Stats 1995 ch 438 § 1 (AB 985), ch 777 § 2 (AB 958), ch 778 § 1.5 (SB 1059); Stats 1996 ch 1075 § 11 (SB 1444); Stats 1997 ch 623 § 1 (AB 1126); Stats 1998 ch 13 § 1 (AB 487), ch 110 § 1 (AB 1795) (ch 110 prevails), ch 485 § 83 (AB 2803); Stats 2000 ch 184 § 1 (AB 1349); Stats 2001 ch 159 § 105 (SB 662); Stats 2002 ch 175 § 1 (SB 1643); Stats 2003 ch 230 § 1 (AB 1762), effective August 11, 2003, ch 673 § 12 (SB 2); Stats 2004 ch 8 § 1 (AB 1209), effective January 22, 2004, ch 183 § 134 (AB 3082), ch 228 § 2 (SB 1103), effective August 16, 2004, ch 882 § 1 (AB 2445), ch 937 § 2.5 (AB 1933); Stats 2005 ch 22 § 71 (SB 1108), ch 476 § 1 (AB 1495), effective October 4, 2005, ch 670 § 1.5 (SB 922), effective October 7, 2005; Stats 2006 ch 538 § 232 (SB 1852); Stats 2007 ch 577 § 1 (AB 1750), effective October 13, 2007, ch 578 § 1.5 (SB 449); Stats 2008 ch 344 § 1 (SB 1145), effective September 26,

If the legislature had desired to keep the records confidential, it could have done so, as it did with other firearms related records.[16] And, though the Legislature has not restricted access to carry applications, the People of the State of California enacted Proposition 59 in 2004, which amended the California Constitution and, among other things, requires that court rules, statutes, or other authority *be construed broadly when they further the public's right of access, and narrowly when they limit that right*.[17] Thus, if anything, public policy already favorable to Petitioner's request has shifted towards disclosure and places a greater burden on the Respondents in their attempt to limit production. As such, the Court should order production of the requested Application pages.

II. SPECIFIC INFORMATION MAY BE REDACTED, BUT REDACTION IS NOT OVERLY BURDENSOME SO AS TO BAR PRODUCTION

A clearly framed request which requires an agency to search an enormous volume of data for a "needle in the haystack" or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome.[18] That is not the issue here, as the records have been specifically identified and located. Records requests, however, inevitably impose some burden on government agencies. An agency is obliged to comply so long as the record can be located with reasonable effort.[19] Such was the case in *Cal. First Amendment Coalition v. Superior Court*, where the Court mandated disclosure despite the government's overstating the burden of segregating the exempt from the nonexempt material:

> Here, the public interest in disclosure is substantial, the manifest public interest in the avoidance of secret law and a correlative interest in the disclosure of an agency's working law. On the other side of the equation, the Board overstates the burden of segregating the exempt from the nonexempt

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2008, ch 358 § 2 (AB 2810), ch 372 § 1.3 (AB 38), effective January 1, 2009; Stats 2010 ch 32 § 1 (AB 1887) (ch 32 prevails), effective June 29, 2010, ch 178 § 33 (SB 1115), effective January 1, 2011, operative January 1, 2012.

[16] *Expressio unius est exclusio alterius* (the expression of one thing is the exclusion of another). *People v. Rowland* (1999) 75 Cal.App, 61. Here, the lack of a confidentiality provision in the carry laws suggests the legislature intended that carry Applications remain public, where there are specific restrictions placed on other firearm records. For instance, Pen. Code §12082 (b) states "The Attorney General shall adopt regulations under this section to . . . [a]llow the seller or transferor or the person loaning the firearm, and the purchaser or transferee or the person being loaned the firearm, to complete a sale, loan, or transfer through a dealer, and to allow those persons and the dealer to comply with the requirements of this section and Sections 12071, 12072, 12076, and 12077 *and to preserve the confidentiality of those records*." *See also, inter alia*, "assault weapon" registrations (Pen. Code §12285.5). No such provision applies to carry Applications.

[17] Cal. Const. Art. I, § 3(b)(2).

[18] *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal. 3d 440.

[19] *See Cal. First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159. *See also State Bd. of Equalization v. Superior Court* (1992) 10 Cal. App. 4th 1177, 1186.

> material . . . Unlike *American Civil Liberties Union Foundation*, segregation here would not impose a burden on the Board to inquire from numerous outside sources whether information contained on the documents is confidential.[20]

Respondents claim that *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 454) permits them to withhold the requested documents on the basis that they would have to redact the records and that such redaction would be too burdensome. Respondents focus upon the number of records (100) at issue in one portion of the request discussed in *American* as opposed to the rational used by the court in the limiting the disclosure. Specifically, the court in *American* held that the redaction would be unduly burdensome because some of the information on the cards came from "confidential" outside sources and, *after redaction*, the benefit of the remaining unredacted information would be substantially reduced:

> After careful examination of the LEIU index cards in camera, we conclude that in the present case the public interest predominates against disclosure of the cards. . . . cards do not indicate which material is *confidential, might reveal a confidential source, or identify the subject of the report . . . the deletion of confidential information will defeat its efforts to learn if any person is listed on the basis of inaccurate or unsubstantiated rumor.*
>
> . . . . When this marginal and speculative benefit is weighed against the cost and burden of segregating the exempt and nonexempt material on the cards, we conclude that on the facts of this particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. [[14]] . . .
>
> [[14]] Section 6255 requires the courts to look to "the facts of the particular case" in balancing the benefits and burdens of disclosure under the Act. Thus our decision against requiring disclosure is necessarily limited to the facts of this particular case; in another case, with different facts, the balance might tip in favor of disclosure of nonexempt information on the LEIU cards. . . .[21]

Contra *CBS v. Block*, where *American* was raised by the respondents and the court already examined the benefit versus the burden of redaction, and responded by ruling:

> Any information on the applications and licenses that indicate times or places when the licensee is vulnerable to attack may be deleted. The fact that parts of a requested document fall within the terms of an exemption does not justify withholding the entire document. (*Northern Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 123-124 [153 Cal.Rptr. 173].)[22]

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[20] *Id.*

[21] *American*, at 453-4.

[22] *CBS*, at 653.

It is also important to note that the court in *American* ordered the production of records obtained from non-confidential sources.

> *The IOCI printouts, however, stand on a different footing. All information on the printouts is derived from public records. Information so acquired is not confidential, and the public records in question are not confidential sources.* Consequently, the task of segregating exempt material on the printouts reduces to one of excising the personal identifiers. This is a much less onerous burden than the deletion of personal identifiers, confidential information, and confidential sources from the LEIU cards. Weighing the burden of segregation against the benefit of disclosure of the IOCI printouts, the balance tips in favor of disclosure.[23]

And here, the Applications expressly warn the applications, twice, that the information is subject to disclosure, i.e. non-confidential.

Finally, and quite notably, unlike all of the cases cited above, the matter at hand comes after the California Constitution was amended requiring statutes *be construed broadly when they further the public's right of access, and narrowly when they limit that right.*[24] Thus, the requested documents cannot be withheld on the basis that the documents, having been identified with specificity, are too burdensome or onerous to produce.

CONCLUSION

In view of the public's interest in government accountability and public disclosure enshrined in the California Constitution, Article I, §3(b)(2), The California Public Records Act, the 25-year precedence of *CBS v. Block* - all of which clearly outweigh the government's burden in producing these non-confidential and facially public carry Applications - Petitioners respectfully request that this court grant Petitioner's motion in support of Petitioner's writ of mandate and order Respondent to pay Petitioner's fees and costs in the above entitled matter.

Date: April 29, 2011

Respectfully submitted,

By: _____

Jason Davis
Davis & Associates
Attorneys for Plaintiff/Petitioner

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[23] *American,* at 453-4.
[24] Cal. Const. Art. I, § 3(b)(2).

PROOF OF SERVICE
(CCP Sec. 1013(a))

The Calguns Foundation, Inc. v. County of Ventura, et al.

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

I am employed in the County of Orange, State of California, I am over the age of 18 years and not a party to the within action; my business address is 27281 Las Ramblas, Ste: 200, Mission Viejo, CA 92691.

On this date, I served the foregoing document described as:

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE

Said document was served on the interested party or parties in this action by placing a true copy thereof, enclosed in a sealed envelope, and addressed as noted below.

I am familiar with our firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Mission Viejo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one working day after the date of deposit for mailing in this declaration.

____ (By Mail) I deposited such envelope in the mail at City of Mission Viejo, California. The envelope was mailed with postage thereon fully prepaid.

__X__ (By Facsimile) In addition to regular mail, I sent this document via facsimile, number(s) as listed on the attached mailing list.

____ (By Personal Service) Such envelope was delivered by hand to the below addressee.

____ (By Overnight Mail) I arranged for such envelope to be delivered to the following addresses by overnight mail.

Executed on April, 29, 2011, at City of Mission Viejo, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

JASON DAVIS

MAILING LIST

Case Name: *The Calguns Foundation, Inc. v. County of Ventura, et al.*

Court: Ventura Superior Court

Case Number: 56-2010-00383664-CU-WM-VTA

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