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8 Attorneys for Plaintiff/Petitioner,  
9 **CALGUNS FOUNDATION, INC.**

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11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF VENTURA**

13 CALGUNS FOUNDATION, INC, ) **Case No.: 56-2010-00383664-CU-WM-VTA**  
14 )  
15 Plaintiff/Petitioner, ) **MEMORANDUM IN SUPPORT OF THE**  
16 ) **CALGUNS FOUNDATION, INC.'S**  
17 v. ) **PETITION FOR WRIT OF MANDATE**

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COUNTY OF VENTURA, VENTURA ) Hearing Date: May 6, 2011  
COUNTY SHERIFF'S DEPARTMENT, BOB ) Time: 8:30  
BROOKS, in his individual capacity and ) Location: Department 42  
official capacity as Ventura County Sheriff, ) Reservation Number: 1545418  
and DOES 1 through 10, inclusive, )  
Defendants/Respondents. ) Petition filed: October 15, 2010

1 **INTRODUCTION**

2 Petitioner, The Calguns Foundation, Inc.<sup>1</sup> (“Calguns”), a non-profit corporation, brings  
3 this writ petition under the California Public Records Act, Government Code §§6250 *et seq.*  
4 (“PRA”), to obtain access to certain pages of applications for permits to carry firearms.

5 After repeated requests by The Calguns Foundation, respondents the County of Ventura,  
6 the Ventura County Sheriff’s Department (hereinafter “VCSD”), and Sheriff Bob Brooks, refused  
7 to release any part of said applications – even refusing to redact the portions of the applications  
8 that they allege are exempt from required disclosure.

9 As shown below, the carry permit Applications sought by The Calguns Foundations  
10 require mandatory disclosure due to the public interest in the issuance of permits to carry.  
11 Indeed, that is the only result consistent with the legislative mandate that the PRA be interpreted  
12 broadly in favor of disclosure. Accordingly, the requested portions of the CCW applications  
13 must be released in their entirety. Moreover, even if for some reason the CCW applications are  
14 not mandatorily disclosed under the PRA, neither of the exemptions cited by the Respondents  
15 would allow them to withhold from the public, in their entirety, the contents of each CCW  
16 applications.

17 **STATEMENT OF FACTS**

18 **CALIFORNIA’S CARRY PERMIT SCHEME**

19 California law allows the carrying of loaded handguns in public, for self-defense, upon  
20 issuance of a permit to carry a handgun or, in certain counties, a license to carry an exposed  
21 handgun. Penal Code § 12050(a).

22 Applications for a permit to carry a handgun are made to the Sheriff of the county in  
23 which the applicant either resides or spends a substantial period of time owing to the applicant’s  
24 principal place of employment or business being located in that county. Penal Code  
25 §12050(a)(1)(D). Alternatively, application may be made to the chief or other head of a  
26 municipal police department of any city or city and county in which the applicant resides.

27 \_\_\_\_\_  
28 <sup>1</sup> Verified Complaint (“Ver. Compl.”), p. 2, ¶3, Answer p.2, ¶3.

1 §12050(a)(1)(B).

2 Applicants seeking a license to carry a handgun must pass a criminal background check,  
3 Penal Code § 12052, and successfully complete a course of training in the proper use of  
4 handguns. Penal Code § 12050(a)(1)(E). In addition to the successful completion of a  
5 background check and training, the issuance of a permit to carry a handgun is left to the  
6 discretion of the issuing authority, based upon that authority's subjective determination of  
7 whether the applicant "is of good moral character, [and] that *good cause* exists for the issuance"  
8 of the permit. Penal Code §§ 12050(a)(1)(A), (B). (Emphasis added.)

9 Applications for amendments to licenses, applications for licenses, and amendments to  
10 licenses shall be uniform throughout the state, upon forms prescribed by the Attorney General.  
11 Penal Code § 12051(a)(3). (A copy of the Standard Application for License to Carry (CCW)  
12 ["Standard Application"] is attached hereto as **Exhibit A**.)

13 The Standard Application requires each applicant to sign, and have a witness sign, a  
14 certification and release, which informs both the applicant and the issuing agency that the  
15 information contained in the application "shall be made available upon request" pursuant to the  
16 California Public Records Act:

17 I hereby give my permission to the agency to which this application is made to  
18 conduct a background investigation of me and to contact any person or agency  
19 who may add to or aid in this investigation. **I further authorize persons, firms,  
20 agencies and institutions listed on this application to release or confirm  
information about me and statements I have made as contained in this  
application.**

21 **Notwithstanding any other provision of law and pursuant to the Public  
22 Records Act (Government Code section 6250 et seq.), I understand that  
23 information contained in this application may be a matter of public record  
and shall be made available upon request or court order.**

24 I hereby certify under penalties of perjury and Penal Code section 12051(b) and  
25 (c), that the answers I have given are true and correct to the best of my  
26 knowledge and belief, and that **I understand and agree to the provisions,  
conditions, and restrictions herein or otherwise imposed.**<sup>2</sup> (Emphases  
added.)

27  
28 <sup>2</sup> See Exhibit A [Standard Application], p. 14. Emphasis added.

1 In practice, the issuance of permits varies widely among California jurisdictions. Some  
2 issuing authorities almost never issue handgun carry permits, others issue permits only  
3 occasionally, and yet other counties like Sacramento<sup>3</sup> liberally issue permits to most if not all  
4 law-abiding applicants. Regardless, a local sheriff or police chief has the duty to consider,  
5 investigate, and make a determination, on an individual basis, as to every license application  
6 under Penal Code § 12050.<sup>4</sup> To avoid equal protection violations, this duty must be administered  
7 so as to not unjustly discriminate between persons similarly situated.<sup>5</sup>

### 8 COUNTY OF VENTURA POLICY ON PUBLIC RECORDS ACT REQUESTS

9 The County of Ventura has published their own policy on the topic of California Public  
10 Records Act requests, entitled "County of Ventura Guide to the California Public Records Act –  
11 2008 – Office of the County Counsel." (Attached hereto as **Exhibit B.**) In this manual, the  
12 County Counsel has identified a list of decisions balancing the public interests under  
13 Government Code section 6255, including the following:

#### 14 **Information in Concealed Weapons Permit Applications**

15 (Gov. Code § 6254, subd. (u).)

16 Information on applications that shows vulnerability to attack or that concerns the  
17 applicant's medical or psychological history of the applicant or family, e.g. home  
address and telephone numbers of peace officers, judges, court commissioners  
and magistrates are exempt.<sup>6</sup>

18 \*\*\*

19 **Names, home addresses, and application forms of persons who obtained  
concealed weapons permits must be disclosed. (CBS, Inc. v. Block, supra, 42  
Cal.3d at pp. 656-657.)<sup>7</sup>**

20 (Emphasis added.)

### 21 CALGUNS' PUBLIC RECORDS ACT REQUESTS

22 Calguns is dedicated to, *inter alia*, defending and protecting the civil rights of law-  
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24 <sup>3</sup> Sacramento liberalized their policy to settle a dispute with The Calguns Foundation, Inc. See *Sykes v.*  
25 *McGinness sub noms Richards v. Prieto* (E.D. Cal. 2009) No. 2:09-cv-1235-MCE-KJM.

26 <sup>4</sup> *Salute v. Pitchess* (1976) 61 Cal. App. 3d 557, 560-6. See also Ops. Cal. Atty. Gen. IL 77-121 Formerly CR  
77/30 (1977).

27 <sup>5</sup> *Guillory v. County of Orange* (9<sup>th</sup> Cir. 1984) 731 F2d 1379.

28 <sup>6</sup> County of Ventura Guide to the California Public Records Act – 2008 – Office of the County Counsel p 22.  
(Exhibit B.)

<sup>7</sup> County of Ventura Guide to the California Public Records Act – 2008 – Office of the County Counsel p 22.  
(Exhibit B.)

1 abiding California gun owners. Calguns is a “member of the public” under Government Code §  
2 6252(b).<sup>8</sup> Beginning July 9, 2010, Brandon Combs (“Combs”), at all times acting on behalf of  
3 Calguns, began seeking records relating to County’s and VCSD’s issuance of carry permits.<sup>9</sup>  
4 Specifically, on July 9, 2010, Combs submitted a Request under the California Public Records  
5 Act (the “Act”) to Ventura County Sheriff Bob Brooks at the following email address:  
6 Bob.Brooks@Ventura.org.<sup>10</sup> This request included a request for:

7 For the time period beginning January 1, 2005, and ending July 6, 2010, all applications  
8 of persons who applied to VCSD for a new, renewal or amended CCW license, arranged  
9 by calendar year.”<sup>11</sup>

10 On July 16, 2010, Combs sent a letter via fax to VCSD narrowing his Request and  
11 providing additional details as to the records sought under the Request.<sup>12</sup> This included a request  
12 for:

13 For all CCW applications from 1 January 2007 through 15 July 2010, please  
14 provide only the following pages of the DOJ standard application as well as any  
15 additional pages necessary for the applicants to complete these portions of Section  
16 7 of the Application:

- 17 1. DOJ standard application numbered page 11 (first page of “Section 7”).
- 18 2. DOJ standard application numbered page 13 (third page of “Section 7”).

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- 19 4. . . . all CCW licenses, license amendments and/or denial letters issued in  
20 response to applications for a CCW license for the period of 1 January 2007  
21 through 15 July 2010.

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22 As noted in my original request, in accordance with *CBS, Inc. v. Block*, Cal. Gov.  
23 Code and other applicable law I do not seek the disclosure of exempt private or  
24 confidential information.<sup>13</sup>

25 Also on July 16, 2010, Combs received a phone call from Mr. David H. Robertson,  
26 Senior Records Manager, who stated that the VCSD was not aware of the July 9, 2010, request  
27 referenced in Combs’ July 16, 2010, letter, as Sheriff Brooks had been on vacation when Combs’  
28 letter was received. As directed by Mr. Robertson, Combs emailed a copy of the July 9, 2010,

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<sup>8</sup> Ver. Compl., p. 1-2, ¶3.

<sup>9</sup> Ver. Compl., p. 2, ¶7, Answer p.2, ¶7.

<sup>10</sup> Ver. Compl., p. 2, ¶8, Answer p.2, ¶8.

<sup>11</sup> *Id.*

<sup>12</sup> Ver. Compl., p. 2, ¶9, Answer p.2-3, ¶9.

<sup>13</sup> *Id.*

1 letter.<sup>14</sup>

2 On July 19, 2010, Combs received an email from Mr. Robertson confirming receipt of all  
3 requested documents, and also stating that Mr. Robertson would be meeting with the VCSD  
4 CCW Permit Unit on July 20, 2010, to develop a response to Combs' request.<sup>15</sup>

5 On July 22, 2010, Combs emailed Mr. Robertson an acknowledgement to accommodate  
6 the County by extending the deadline for the County's response to August 2, 2010.<sup>16</sup>

7 On or about August 4, 2010, VCSD submitted a response to Combs' request, which  
8 included only a partial fulfillment of responsive documents. The VCSD's letter dated August 4,  
9 2010, included with the records denied Combs' request to access to CCW application pages 11  
10 and 13 and their outcome byproducts (denial letters, CCW licenses, etc.).<sup>17</sup>

11 On August 5, 2010, Combs emailed Mr. Robertson a reply to his denial letter and  
12 disputed the County's position, offering legal argument for release of records and advising  
13 defendants/respondents that they may redact specific information that is protected, but may not  
14 refuse to produce the applications wholesale.<sup>18</sup>

15 On August 27, 2010, Mr. Robertson sent Combs' a letter reaffirming the County's denial  
16 of his request for public records.<sup>19</sup>

17 On October 7, 2010, in an attempt to spare judicial resources, Calguns submitted a final  
18 request for access to the documents requested and included a draft copy of Petition for Writ of  
19 Mandate and Declaratory Relief – advising the Defendants/Respondents that a lawsuit would be  
20 filed should the records not be produced.<sup>20</sup> Despite having been timely forewarned,  
21 Defendants/Respondents did not produce or grant access to the records requested.<sup>21</sup> Calguns  
22 seeks this Court's help to obtain disclosure of all requested materials denied by Defendants as  
23 detailed in Exhibits 1 through 8 attached and incorporated into the Verified Complaint by  
24

25 <sup>14</sup> Ver. Compl., p. 2, ¶10, Answer p.3, ¶10.

26 <sup>15</sup> Ver. Compl., p. 2, ¶11, Answer p.3, ¶11.

27 <sup>16</sup> Ver. Compl., p. 3, ¶12, Answer p.3, ¶12.

28 <sup>17</sup> Ver. Compl., p. 3, ¶13, Answer p.3, ¶13.

<sup>18</sup> Ver. Compl., p. 3, ¶14, Answer p.3, ¶14.

<sup>19</sup> Ver. Compl., p. 3, ¶15, Answer p.3, ¶15.

<sup>20</sup> Ver. Compl., p. 3, ¶16, Answer p.3-4, ¶16.

1 reference.<sup>22</sup>

## 2 ANALYSIS

### 3 I. CALIFORNIA LAW REQUIRES THE RELEASE OF PUBLIC RECORDS

4 Access to information concerning the conduct of the people's business is a *fundamental*  
5 and *necessary right of every person* in this state.<sup>23</sup> The people have the right of access to  
6 information concerning the conduct of the people's business, and, therefore . . . agencies shall be  
7 open to public scrutiny.<sup>24</sup> Unless one of the exceptions stated in the Act applies, the public is  
8 entitled to access to “*any writing containing information relating to the conduct of the public's*  
9 *business prepared, owned, used, or retained by any state or local agency.*”<sup>25</sup> (Emphases added.)

10 Section 6253 of the CPRA provides, in part:

11 [. . .] (b) [e]xcept with respect to public records exempt from disclosure by  
12 express provisions of law, each state or local agency, upon a request for a copy of  
13 records that reasonably describes an identifiable record or records, *shall make the*  
14 *records promptly available* to any person upon payment of fees covering direct  
costs of duplication, or a statutory fee if applicable. Upon request, an exact copy  
shall be provided unless impracticable to do so. (Emphasis added.)

15 The Defendants/Respondents refuse to provide the above-requested public records  
16 despite the fact that the information requested has already been deemed public. In *CBS, Inc. v.*  
17 *Block* (1986) 42 Cal.3d 646, 655, the California Supreme Court rejected defendant Sheriff  
18 Block's claim of privilege under Cal. Gov. Code § 6255 and held that CCW licenses, and the  
19 applications related thereto, were not only subject to disclosure but were of substantial public  
20 interest:

21 The weighing process mandated by Evidence Code section 1040 requires review  
22 of the same elements that must be considered under section 6255 (Citation  
omitted). Therefore, it is consistent with the PRA. Under this privilege, the burden  
23 of demonstrating a need for nondisclosure is on the agency claiming the right to  
withhold the information. (Citation omitted) Thus, *this court's rejection of the*  
24 *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*

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26 <sup>21</sup> Ver. Compl., p. 3, ¶17, Answer p.4, ¶17.

27 <sup>22</sup> Ver. Compl., p. 3, ¶18, Answer p.4, ¶18.

28 <sup>23</sup> Cal. Gov. Code § 6250.

<sup>24</sup> Cal. Const., Art. I, § 3, subd. (b)(1).

<sup>25</sup> Cal. Gov. Code § 6252, subd. (e); see Cal. Gov. Code § 6253, subd. (a.)

1 exemption under section 6254, subdivision (k) and Evidence Code section 1040.<sup>26</sup>  
2 (Emphasis added.)

3 The Court mandated that CCW permit applications and related records, such as those requested  
4 from VCSD, were to be released to the public.

5 *The interest of society in ensuring accountability is particularly strong where the*  
6 *discretion invested in a government official is unfettered, and only a select few are*  
7 *granted the special privilege. Moreover, the degree of subjectivity involved in exercising*  
8 *the discretion cries out for public scrutiny.*<sup>27</sup>

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9 There is a clear and legislatively articulated justification for disclosure — the right of the  
10 public and the press to review the government's conduct of its business. *Public inspection*  
11 *of the names of license holders and the reasons the licenses were requested enables the*  
12 *press and the public to ensure that public officials are acting properly in issuing licenses*  
13 *for legitimate reasons.*<sup>28</sup> (Emphases added.)

14 The information sought in this matter is the same information sought by plaintiff CBS,  
15 which the Court instructed defendant Block to disclose. Disclosure is the only means available  
16 to ensure the Sheriff is granting CCW licenses equally and in accordance with applicable law.  
17 “Without the applications which accompany the licenses and which set forth the reasons why a  
18 license is necessary, the public cannot judge whether the sheriff has properly exercised his  
19 discretion in issuing the licenses.”<sup>29</sup>

20 **1. The Requested Records are not subject to the Govt. Code §6255 Exemption.**

21 Defendant's argue that the requested records are exempt from disclosure pursuant to  
22 Penal Code 6255, “because the public interest in protecting the privacy and personal security of  
23 such applicants, and the public interest is not deterring future interested applicants from  
24 applying, outweigh the public interest in disclosing such information.”<sup>30</sup> (See Exhibit A to  
25 Respondent's Answer.) This is directly contrary to the findings in *CBS v. Block*, in which the  
26 California Supreme Court expressly denied the same exact Govt. Code § 6255 exemption. (*CBS,*  
27 *Inc. v. Block* (1986) 42 Cal.3d 646, 655.)

28 Additionally, as cited above, the denial of the requested documents was anticipated by the

26 *Id* at 656.

27 *Id.* at 645-655.

28 *Id.* at 654.

29 *Id.* at 657.



1 DOJ when creating the forms, as evidenced by the notice contained in the Standard Application  
2 to each applicant that the information is subject to disclosure “upon request.” (**Exhibit A**, p.14.)  
3 Additionally, Respondents’ own Ventura Guide to the California Public Records Act – 2008 –  
4 Office of the County Counsel admits that “applications” must be disclosed. (**Exhibit B**, p.22.)

5 **2. The Requested Documents Cannot Be Denied Based Upon Burden**

6 The burden of showing that the request is too onerous is on the Defendants/Respondents.  
7 Despite County’s own policy affirming the disclosure of CCW applications, the Standard  
8 Application’s written notice that information contained within the application is public record,  
9 and the ruling in *CBS v. Block* mandating disclosure of CCW applications, Respondent’s claim  
10 that *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 454)  
11 permits them from having to disclose the requested documents on the basis that they would have  
12 to redact the records and that such redaction would be too burdensome.<sup>31</sup> Petitioner disagrees  
13 that redaction is permitted in this case – as the requested information does not include  
14 information relating to public officials such as Judges.

15 Regardless, *American Civil Liberties Union Foundation* was raised by the respondents in  
16 *CBS v. Block* on the topic of disclosure of CCW applications, in which the Court responded by  
17 ruling:

18 Any information on the applications and licenses that indicate  
19 times or places when the licensee is vulnerable to attack may be  
20 deleted. The fact that parts of a requested document fall within the  
21 terms of an exemption does not justify withholding the entire  
22 document. (*Northern Cal. Police Practices Project v. Craig* (1979)  
23 90 Cal.App.3d 116, 123-124 [153 Cal.Rptr. 173].)

24 A clearly framed request which requires an agency to search an enormous volume of data  
25 for a "needle in the haystack" or, conversely, a request which compels the production of a huge  
26 volume of material may be objectionable as unduly burdensome.<sup>32</sup> That is not the issue here, as  
27 the records have been specifically identified and located. Records requests, however, inevitably

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28 <sup>30</sup> See Respondent’s Answer - Exhibit A.

<sup>31</sup> See Respondent’s Answer - Exhibit A.

<sup>32</sup> *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal. 3d 440.

1 impose some burden on government agencies. An agency is obliged to comply so long as the  
2 record can be located with reasonable effort.<sup>33</sup> Such was the case in *Cal. First Amendment*  
3 *Coalition v. Superior Court*, where the Court mandated disclosure despite the government's  
4 overstating the burden of segregating the exempt from the nonexempt material:

5 Here, the public interest in disclosure is substantial, the manifest  
6 public interest in the avoidance of secret law and a correlative  
7 interest in the disclosure of an agency's working law. On the other  
8 side of the equation, the Board overstates the burden of segregating  
9 the exempt from the nonexempt 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.<sup>34</sup>

10 Thus, the requested documents cannot be withheld on the basis that the documents,  
11 having been identified with specificity, are too burdensome or onerous to produce.<sup>35</sup>

#### 12 CONCLUSION

13 Having tried unsuccessfully to convince the Defendants/Respondents to voluntarily  
14 comply with the PRA, The Calguns Foundation, Inc. now requests that this Court issue a writ of  
15 mandate compelling Defendants/Respondents to disclose the CCW applications and  
16 corresponding documents and award The Calguns Foundation, Inc. its attorney's fees<sup>36</sup> and costs  
17 incurred in prosecuting this action.

18 Date: March 30, 2011

Respectfully submitted,

19 By: 

20 Jason Davis

21 Davis & Associates

22 Attorneys for Plaintiff/Petitioner

23 <sup>33</sup> 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.

24 <sup>34</sup> *Id.*

25 <sup>35</sup> Costs and staff resource limitations are insufficient to justify withholding records: "To the extent the Board  
26 complains of staff inconvenience and expense, we are given no reason to reject the trial court's finding that the  
burden is sufficiently alleviated by retaining outside counsel with expertise in these matters to perform the task and  
by the fact that Associated will pay the attendant costs." *Id.*

27 <sup>36</sup> The PRA provides that "The Court *shall* award costs and reasonable attorneys fees to the plaintiff should the  
28 plaintiff prevail in litigation filed pursuant to" the PRA. Govt. Code § 6259(d) (emph. added), and the Court of  
Appeal has further noted, "[i]t is abundantly clear that . . . section 6259, subdivision (d), is *mandatory*." *Belth v.*  
*Garamendi*, 232 Cal.App.3d 896, 900 (1991) (emph. added). Accordingly, if The Calguns Foundation prevails in  
compelling disclosure of records previously requested, it must be awarded costs and reasonable attorneys' fees. *Id.*

1 **PROOF OF SERVICE**  
2 **(CCP Sec. 1013(a))**

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

4 STATE OF CALIFORNIA )  
5 )  
6 COUNTY OF VENTURA )

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

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

11 **MEMORANDUM IN SUPPORT OF THE CALGUNS FOUNDATION, INC.'S PETITION**  
12 **FOR WRIT OF MANDATE**

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

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

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

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

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

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

28 Executed on March 30, 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.

29 \_\_\_\_\_  
30 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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