Case No. A153440

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION ONE

NORTH COAST JOURNAL,

Petitioner,

v.

SUPERIOR COURT IN AND FOR THE COUNTY OF HUMBOLDT,

Respondent

CITY OF EUREKA, *et al.*

Real Party in Interest and Respondent

Appeal from the October 13, 2017, Order Denying Motion for Access to Public Records
Honorable Timothy P. Cissna, Humboldt County Superior Court
Case No. CV 170486

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; [PROPOSED] AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF REAL PARTY IN INTEREST CITY OF EUREKA

Curtis R. Wright, CBN 273323
Rene L. Farjeat, CBN 301188
Jessica Luarca, CBN 314164
SILVER & WRIGHT LLP
3 Corporate Park, Suite 100
Irvine, California 92606
Tel: 949-529-5922
Fax: 949-385-6428
Email: CWright@SilverWrightLaw.com

Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, rule 8.208, the undersigned certifies it knows of no other entity or person other than the parties to this proceeding who has a financial or other interest in its outcome.

Executed at Irvine, California.

Dated: April 2, 2018

SILVER & WRIGHT LLP

By: _____

CURTIS R. WRIGHT
RENE L. FARJEAT
JESSICA LUARCA
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA STATUTES

CASES

CALIFORNIA RULES

OTHER AUTHORITY

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND STATEMENT OF INTEREST

Pursuant to California Rules of Court ("CRC"), rule 8.487(e), the League of California Cities ("League") respectfully requests leave to file the accompanying amicus curiae brief ("Brief") in support of Real Party in Interest City of Eureka ("City"). This application is timely made within 14 days after Petitioner North Coast Journal has filed or could have filed its return to the petition. (CRC, rule 8.487(e)(3).)

The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

Each city represented by the League has a substantial interest in the current proceeding because the privacy of public agents, employees, and officials may be profoundly affected by the outcome of this appeal. Each city associated with the League seeks to promote open government, as well as the health, safety, and welfare of their residents.

Accordingly, the League respectfully requests this Court grant its application for leave to file the accompanying Brief given the League's (and the cities the League represents) substantial interest in this case.

Dated: April 2, 2018

SILVER & WRIGHT LLP

By: 

CURTIS R. WRIGHT
RENE L. FARJEAT
JESSICA LUARCA
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

AMICUS CURIAE BRIEF

I. INTRODUCTION

The League of California Cities ("League") respectfully submits this amicus curiae brief ("Brief") in support of Real Party in Interest City of Eureka ("City") as the outcome of this appeal will profoundly affect the privacy interests of public servants throughout the State, as well as the responsibilities of (and burdens on) public agencies when responding to California Public Records Act ("CPRA") requests. The League represents the interests of 474 California cities, all of which seek to promote open government and transparency while maintaining their duty to also protect the constitutional privacy rights of their employees and officials. Therefore, the League submits this Brief to aid the Court in achieving the delicate balance between the public's right to access public records and individual's right to privacy. The League wishes to assist the Court in understanding the significantly larger impacts and repercussions this case will have if not properly decided.

Two important issues are at the heart of this case. First, the right of the public to access public records versus individual privacy rights regarding private communications on private accounts or devices—this case is not just about accessing private communications on private devices of councilmembers, but hundreds of thousands of public employees and public officials serving local government statewide. Second, the benefit to the public of accessing public records versus the cost to the public of putting too great a burden on the public agencies that serve them.

In light of these important and competing public policy interests, the League wishes to assist the Court in its decision in this appeal by focusing on the following four points in this Brief:

First, this Brief will analyze the definition of public records under both the CPRA and *City of San Jose v. Superior Court* ["*San Jose*"] (2017) 2 Cal.5th 608, and will explain that a writing is only a public record if its contents relate to the public's business in a substantive (rather than incidental) way. (*Id.* at 618–19.) Contrary to Petitioner North Coast Journal's ("Petitioner") contention, not all communications by public employees or public officials are public records subject to disclosure under the CPRA, even while on the "public clock," as was definitively decided by the *San Jose* Court. (*Id.* at 618.)

Second, this Brief will analyze the unconstitutional invasion of personal privacy that would result if the Court were to require public officials to disclose personal communications that are not public records pursuant to a CPRA request for records on personal accounts or devices. (See Cal. Const., art. 1, §1 [privacy rights are protected by the California Constitution]; Gov. Code, § 6250 ["In enacting this chapter, the Legislature, mindful of the right of individuals to privacy . . . ."].)

Third, this Brief will describe the guidance provided by the *San Jose* Court for public agencies responding to CPRA requests for communications on personal accounts or devices and will explain how the City's actions in this case fit within the *San Jose* Court's guidance. This Court should not call into question the validity of actions expressly endorsed as lawful by the Court in *San Jose*.

Fourth, this Brief will explain that *in camera* review of communications on private accounts and devices is not justified when a CPRA requestor (like Petitioner) offers no evidence that a public employee, public official, or public agency has improperly withheld public records. (See Gov. Code, § 6259(a) [requiring evidence public records have been improperly withheld for *in camera* review].) Rather, *in camera* review of communications on a private device or account should only be done by a

judge when a CPRA requestor in a court action: 1) establishes by clear and convincing evidence that there is the probability the judge will find a public record subject to disclosure on the private device or account that has been improperly withheld; and 2) posts a bond for damages for erroneous invasion of privacy. Anything less invites harassment of hundreds of thousands of public employees and officials and would constitute an unconstitutional and unnecessary intrusion into those public officials' right to privacy.

Accordingly, the League respectfully requests the Court deny Petitioner's Verified Petition for Writ of Mandate to Enforce California Public Records Act Pursuant to Government Code § 6259(c) ("Petition") and uphold the trial court's ruling. The public policy issues at stake here are of enormous significance. Granting the Petition would have an extremely detrimental effect on the personal privacy rights of public employees and would create an undue burden on public agencies responding to CPRA requests. This is not what the CPRA was adopted to accomplish.

II. LEGAL ANALYSIS

A. Petitioner Misinterprets The Definition Of Public Record Under The CPRA And *San Jose*

Contrary to Petitioner's misplaced contention, both the CPRA and the California Supreme Court's *San Jose* ruling make clear that not all communications by public employees or public officials are public records subject to disclosure under the CPRA. A writing is only a public record if its contents relate to the public's business in a substantive (rather than incidental) way. (*San Jose* (2017) 2 Cal.5th 608, 618 ["[T]o qualify as a public record under CPRA, at a minimum, a writing must relate in some substantive way to the conduct of the public's business."].)

The plain statutory language of the CPRA provides that a writing is only a public record if it relates to the "public's business." (Gov. Code, §

6252(e).) In other words, the CPRA classifies a record as a public record based on its content (rather than the timing or location of its creation). A record is not categorically a "public record" under the CPRA simply because it was created by a public employee or public official during that person's working hours. Petitioner ignores the plain statutory language when it asserts otherwise. The content of the record is paramount.

San Jose expands upon the definition of public record under the CPRA and further contradicts Petitioner's interpretation. "The overall structure of CPRA, with its many exemptions, makes clear that not everything written by a public employee is subject to review and disclosure." (*San Jose* (2017) 2 Cal.5th 608, 618.) When, such as here, messages are sent on personal accounts or devices, concern substantively personal matters, and contain no more than incidental mentions of the City's business, they do not qualify as public records under the CPRA. (*Id.* at 618–19.)

Put simply, the definition of "public record" can be reduced to four elements: "(1) a writing, (2) with content relating to the conduct of the public's business, which is (3) prepared by, or (4) owned, used, or retained by any state or local agency." (*San Jose* (2017) 2 Cal.5th 608, 617.) Regarding the second of these elements, the factors to determine whether a writing contains information relating to the conduct of the public's business include "the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment." (*Id.* at 618.) "The analysis appropriately focuses on the *content* of specific records rather than their location or medium of communication." (*Id.* at 626 [emphasis in original].)

Here, Petitioner's definition of public records is contrary to law and impractical. Petitioner argues that any writing prepared while a public employee is working is a public record because it provides information

regarding the public employee's actions during work hours, regardless of the content of the message. Petitioner misses the point. While writings prepared by public employees during work hours can be public records in certain situations, they are not so by virtue of when or where they were written alone. They must relate to the public's business in a "substantive" way in order to constitute public records subject to disclosure under the CPRA. (Gov. Code, § 6252(e); *San Jose* (2017) 2 Cal.5th 608, 618.) Holding otherwise would require the disclosure of purely personal information, which is constitutionally protected and categorically not subject to disclosure under the CPRA. For example, under Petitioner's interpretation of the law, a public employee that sends a text message at any time during the workday, even with their family or friends regarding intimately private details, would be forced to produce those text messages. Although the content will likely be redacted, the public employee would still be forced to produce purely personal information (not related in any way to the public's business) for internal or court review, even if not ultimately disclosed to the CPRA requestor. That is too great of an invasion of privacy for a non-public record.

Accordingly, simply because a record was created by a public official during work hours does not automatically make it a public record subject to disclosure under the CPRA. Under the CPRA and *San Jose*, a public record requires the content of the record to be substantively related to the public's business. Petitioner's interpretation of the law is mistaken and (as discussed below) would have an extremely prejudicial effect on public employees' personal privacy rights and the ability of public agencies to comply with the CPRA.

B. Requiring Disclosure Of Personal Communications That Are Not Public Records Would Constitute An Unconstitutional And Unwarranted Invasion Of Personal Privacy

Expanding the definition of public records to include any record prepared during work hours (as Petitioner suggests) will not only infringe on the privacy interests of hundreds of thousands of public employees, but will completely eviscerate any reasonable expectation of privacy for public employees while on duty.

Privacy rights are protected by the California Constitution and are a fundamental interest recognized by the CPRA. (Cal. Const., art. 1, §1; see, e.g., Gov. Code, §§ 6250, 6254(c), 6254(k), 6255.) "The right of access to public records under the CPRA is not absolute . . . [t]he California Constitution contains an explicit right of privacy." (*Los Angeles Unified School District v. Superior Court* ["*LAUSD*"] (2014) 228 Cal.App.4th 222, 238 [internal citations omitted].) In enacting the CPRA, the Legislature was mindful of the right of individuals to privacy. (Gov. Code, § 6250; *LAUSD* (2014) 228 Cal.App.4th 222, 238; see also *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1271 [analyzing whether disclosure of records violated a public teacher's right to privacy]; *San Jose* (2017) 2 Cal.5th 608, 628 [providing guidance to achieve CPRA compliance without unnecessarily treading on the constitutional rights of public employees].)

Moreover, it is well-settled that a public employee has a constitutional right to privacy at work. (See, e.g., *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* ["*International Federation*"] (2007) 42 Cal.4th 319, 331.) Although the Supreme Court recently expanded the scope of disclosure under the CPRA to include information kept on private accounts and devices in *San Jose*, it expressly recognized that "public employees do not forfeit all rights to

privacy by working for the government." (*San Jose* (2017) 2 Cal.5th 608, 626.) The court explained that despite its ruling, privacy concerns were to be determined on a case-by-case basis in the CPRA context. (*Ibid*.)

The Legislature's intent when enacting the CPRA, and controlling case law from the California Supreme Court, contradict Petitioner's attempt to define "public records" as all records prepared by public employees while on duty. Under Petitioner's interpretation, there would be no case-by-case analysis taking into consideration the privacy rights of public employees; rather, all records prepared during work hours would be categorically subject to disclosure. This is exactly opposite of the intent of the Legislature, and the conclusion reached by the courts, which have consistently emphasized the importance of balancing privacy rights and disclosure requirements under the CPRA. (*San Jose* (2017) 2 Cal.5th 608, 626; see also *International Federation* (2007) 42 Cal.4th 319, 329 [In enacting the CPRA, "[t]he Legislature has been mindful of the right of individuals to privacy."]; *Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 951 ["The mere status of being employed by the government should not compel a citizen to forfeit his or her fundamental right of privacy."].)

As Petitioner's interpretation directly conflicts with the Legislature's intent, the statutory language of the CPRA, and controlling case law, the League requests that the Court reject it and deny the Petition. To preserve public employees' right to privacy and to avoid placing an unreasonable burden on public agencies, public employees should only be required to conduct their own review of their personal material and declare under penalty of perjury that they do not possess any public records.

C. The City Properly Followed The Guidance Set Forth By The *San Jose* Court

Public officials should not be required to disclose their personal communications that are not public records when responding to CPRA

requests involving personal accounts or devices. A declaration from the public employees or public officials that they do not have, or they have already provided, any public records on their personal accounts or devices should be sufficient. City Attorneys should be authorized to assist public employees with verifying whether certain communications may be deemed public records, but disclosure should not be required. Requiring individuals to disclose intimate private communications, even with the City Attorney, is an immense invasion into personal privacy.

Acknowledging the legitimate employee privacy concerns implicated by its holding, the *San Jose* Court provided guidance for cities on how to properly strike the balance between privacy and disclosure in responding to CPRA requests for communications on personal accounts or devices. (See *San Jose* (2017) 2 Cal.5th 608, 627–29.) The Court reiterated that agencies may develop their own internal policies for conducting searches, but also set forth some guiding "general principles." (*Id*. at 627.) For example, the Court suggested that "an agency's first step should be to communicate the request to the employees in question. The agency may then reasonably rely on these employees to search *their own* personal files, accounts, and devices for responsive material." (*Id.* at 628 [emphasis in original].) The Court further suggested the ultimate task of searching for public records on personal accounts and devices should be carried out by the public employees—not the public agency. (*Ibid*.)

The *San Jose* Court further noted that federal law lends support to the fact that a declaration from a public employee or official regarding compliance with CPRA requests for communications on personal accounts or devices is sufficient. (*San Jose* (2017) 2 Cal.5th 608, 628–29.) To comply with requests for records under the federal Freedom of Information Act ("FOIA"), federal courts have held that allowing employees to search their own personal records will suffice if: 1) the employees are properly trained

on how to distinguish between personal records and those subject to disclosure; and 2) the employees provide an affidavit with enough detail "so as to give the requesting party an opportunity to challenge the adequacy of the search." (*Ethyl Corp. v. U.S. E.P.A.* ["*Ethyl Corp.*"] (4th Cir. 1994) 25 F.3d 1241, 1247.) Federal law puts the onus on the public employees to search their own personal records because "[a]n agency cannot require an employee to produce and submit for review a purely personal document when responding to a FOIA request." (*Id*.) As the CPRA mirrors the FOIA, "federal legislative history and judicial construction of the FOIA may be used in construing [the CPRA]." (*Board of Trustees of California State University v. Superior Court* (2005) 132 Cal.App.4th 889, 896, fn. 5 [internal quotations omitted].)

Here, the City went above and beyond the necessary safeguards to comply with the CPRA pursuant to *San Jose* and federal law when responding to Petitioner's CPRA request. To appease Petitioner, Councilmembers disclosed their personal emails and text messages to the City Attorney. The City Attorney then reviewed their personal emails and text messages and declared under penalty of perjury that they were not public records. The Councilmembers also provided their own declarations under penalty of perjury that they did not possess public records. This exceeds the requirements of the CPRA and the guidance articulated by the Court in *San Jose*. Disclosure of personal communications that are not public records is <u>not</u> required, and holding otherwise will risk unnecessary invasions of privacy and would be inconsistent with both mandatory State law and persuasive federal law.

Public employees are not required to disclose their personal records to a city attorney or other public employee. As outlined in *San Jose* and federal law, it is sufficient for public employees to search their own personal records and then submit a declaration that is "reasonably detailed, setting

forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched." (*Ethyl Corp.* (4th Cir. 1994) 25 F.3d 1241, 1247 [internal quotations omitted].) It is important to note that this protocol does not require public employees to disclose the existence of any personal records, thus affording them an adequate amount of privacy while also providing the requesting party with enough detail to challenge the adequacy of the search. (*Ibid*. [recognizing that there is a "problem in requiring employees . . . to identify the existence of personal records"].) A variation of this procedure has been adopted by other jurisdictions with statutory frameworks comparable to the CPRA and FOIA. (See *Nissen v. Pierce County* ["*Nissen*"] (2015) 183 Wash.2d 863, 886 ["affidavits [must] give the requester and the trial court a sufficient factual basis to determine that withheld material is indeed nonresponsive"].)

D. *In Camera* Review Of Communications On Private Accounts Or Devices Should Only Be Done When There Is Clear Evidence Public Records Subject To Disclosure Have Been Improperly Withheld

Government Code section 6259(a) provides that a court can conduct *in camera* review of public records when there is clear evidence that such "public records are being improperly withheld from a member of the public . . . ." (Underscore added.)

Pursuant to this plain statutory language, *in camera* review of communications on a private device or account is not justified when a CPRA requestor (like Petitioner) offers no evidence that a public employee or public agency has improperly withheld public records. Rather, *in camera* review of communications on a private device or account should only be done by a judge when a CPRA requestor in a court action: 1) establishes by clear and convincing evidence that there is the probability the judge will find a public

record subject to disclosure on the private account or device that has been improperly withheld; and 2) posts a bond for damages for erroneous invasion of privacy. Anything less would constitute an unwarranted and unnecessary intrusion of a public employee's right to privacy. A trial court's ability to inspect documents *in camera* should not be a "substitute" for the CPRA requestor's burden of proof, and "should not be resorted to lightly." (*American Civil Liberties Union of Northern Cal. v. Superior Court* ["*ACLU*"] (2011) 202 Cal.App.4th 55, 87 [internal quotations omitted].)

Moreover, when the CPRA requestor has failed to demonstrate that the public official or public agency has "improperly withheld" public records, the court must exercise its discretion to deny a request for *in camera* review. (See *Coronado Police Officers Ass'n v. Carroll* (2003) 106 Cal.App.4th 1001, 1013 ["in camera review is not required as a matter of law, but is left to the sound discretion of the trial court."]; *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901 ["To determine a claim of exemption from the CPRA's disclosure provisions, the court may but is *not* required to examine the disputed records in camera."]; *Yarish v. Nelson* (1972) 27 Cal.App.3d 893, 904 [trial court has "discretion" to conduct an *in camera* review to determine whether disclosure should be compelled].)

Also, liberal use of *in camera* review is disfavored and needlessly strains limited public agency and judicial resources. (*ACLU* (2011) 202 Cal.App.4th 55, 87 [*in camera* review is "generally disfavored [and] . . . should be invoked only when the issue at hand could not be otherwise resolved."] [internal quotations omitted].) Allowing for *in camera* review in every CPRA action involving communications on personal accounts or devices (even when there is no evidence of impropriety) would not only lead to inefficiency in the conduct of public business, but it would also bring the judicial system to a halt. Courts would be inundated with voluminous

document review of personal communications (like emails or text messages). It would be an extreme and unnecessary waste of public agency and judicial resources to require courts to automatically review all personal messages created during public officials' work hours, without any substantive relation to the public's business.

Accordingly, the Court should reject Petitioner's argument that *in camera* review is necessary in situations such as here when Petitioner has failed to provide any evidence of impropriety on behalf of the City. The clear language of the statute provides that *in camera* review is only appropriate when there is convincing evidence that a public official or public agency has "improperly withheld" public records subject to disclosure under the CPRA. (Gov. Code, § 6259(a).) Requiring *in camera* review when a CPRA requestor has failed to make such a showing would constitute an unwarranted invasion of public officials' privacy rights and contravene public policy.

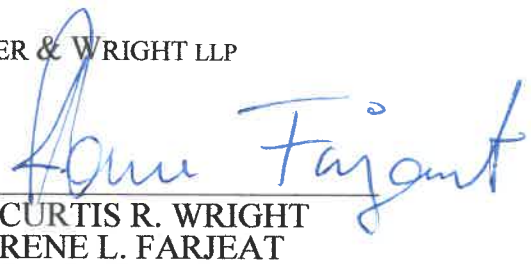
III. CONCLUSION

For all of the foregoing reasons, the League respectfully requests that the Court deny the Petition and uphold the trial court's ruling. Additionally, the League requests that the Court considers the following points when issuing its decision: 1) Petitioner's definition of public records is contrary to the CPRA and the California Supreme Court *San Jose* case; 2) requiring public employees to disclose personal communications that are not public records would constitute an unconstitutional invasion of privacy (especially when a declaration from a public employee can fully and adequately comply with the CPRA, as articulated by the Court in *San Jose*); and 3) *in camera* review should only be done in limited situations where the CPRA requestor demonstrates by clear and convincing evidence that the public agency has improperly withheld public records subject to disclosure.

Petitioner improperly asks the Court to adopt a grossly expansive definition of "public records" that not only contradicts clear statutory language and controlling case law, but will actually have extremely prejudicial effects on personal privacy rights of public employees and will place an undue burden on public agencies when responding to CPRA requests. The CPRA was adopted with the noble purpose of promoting governmental transparency, not to allow individuals to invade the privacy of hundreds of thousands of public employees by accessing their private communications on their personal accounts and devices.

Dated: April 2, 2018

SILVER & WRIGHT LLP

By: 

CURTIS R. WRIGHT
RENE L. FARJEAT
JESSICA LUARCA
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

CERTIFICATE OF WORD COUNT

The foregoing Amicus Curiae Brief contains 3,769 words (inclusive of footnotes, but exclusive of this Certificate). In preparing this certificate, the undersigned relied on the word count generated by the computer program used to prepare this document.

Dated: April 2, 2018

SILVER & WRIGHT LLP

By: _____
CURTIS R. WRIGHT
RENE L. FARJEAT
JESSICA LUARCA
Attorneys for Amicus Curiae
LEAGUE OF CALIFORNIA CITIES

PROOF OF SERVICE

At the time of this service I was over 18 years of age and I was not a party to this action. My business address is 3 Corporate Park, Suite 100, Irvine, California 92606. I served the following documents ("Documents"):

1. **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; [PROPOSED] AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF REAL PARTY IN INTEREST CITY OF EUREKA.**

The Documents were served on the following persons ("Persons"):

Ms. Cyndy Day-Wilson, Esq.
Attorney for Real Party in Interest
CITY OF EUREKA
531 K Street
Eureka, California 95501
707-445-7256
Cday-Wilson@ci.eureka.ca.gov

Honorable Timothy P. Cissna
HUMBOLDT COUNTY SUPERIOR COURT
825 Fifth Street
Eureka, California 95501

Mr. Paul Nicholas Boylan, Esq.
Attorney for Petitioner
NORTH COAST JOURNAL
Postal Office Box 719
Davis, California 95617
530-400-1653
PNBoylan@Gmail.com

The Documents were delivered by:

☐ **Personal Service.** I personally delivered the Documents to the addresses identified above. For service on a party, delivery was either made to the party, or by leaving the documents at the party's residence with a person not less than 18 years of age. For service on a party's agent, delivery was either made to the party's agent, or at the party's agent's office by

leaving the documents with a receptionist or an individual in charge of the office in an envelope clearly labeled to identify the agent being served.

☒ **United States Mail.** I served the Documents by enclosing a true copy in a sealed envelope to the addresses identified above and depositing the envelope in the United States mail with the postage fully prepaid in the county where I reside or am employed.

☐ **Certified Mail with Return Receipt Requested.** I served the Documents by enclosing a true copy in a sealed envelope addressed to the Persons at the addresses identified above and depositing the envelope with the United States Post Office with the postage fully prepaid as certified mail with return receipt requested in the county where I reside or am employed.

☐ **Next Day Delivery.** I served the Documents by enclosing a true copy in a sealed envelope addressed to the Persons at the addresses identified above and depositing the envelope for collection with a next business day delivery carrier.

☐ **Email.** Based on an agreement of the parties to accept service by email, I emailed the Documents to the Persons at the email addresses identified above. I did not receive any indication that the email transmission was unsuccessful.

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

Dated: April 2, 2012

Peter Gilmore