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6 DISTRICT NO. 40

**EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103**

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COUNTY WATERWORKS DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

15 ANTELOPE VALLEY GROUNDWATER  
16 CASES

Judicial Council Coordination Proceeding  
No. 4408

17 Included Actions:  
18 Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co., Superior Court of  
California, County of Los Angeles, Case No.  
19 BC 325201;

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar

20 Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co., Superior Court of  
21 California, County of Kern, Case No. S-1500-  
CV-254-348;

DISTRICT NO. 40'S REQUEST FOR  
JUDICIAL NOTICE RE TRIAL EXHIBITS

Trial Date: February 10, 2014 (Phase V)

22 Wm. Bolthouse Farms, Inc. v. City of  
23 Lancaster, Diamond Farming Co. v. City of  
Lancaster, Diamond Farming Co. v. Palmdale  
24 Water Dist., Superior Court of California,  
County of Riverside, Case Nos. RIC 353 840,  
25 RIC 344 436, RIC 344 668

26 RICHARD WOOD, on behalf of himself and  
all other similarly situated v. A.V. Materials,  
27 Inc., et al., Superior Court of California,  
County of Los Angeles, Case No. BC509546  
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1 Pursuant to Evidence Code Sections 452 and 453, Los Angeles County Waterworks  
2 District No. 40 (“District No. 40”) requests that the Court take judicial notice of the following  
3 documents (“Official Reports”) listed below. Under Section 453 of the Evidence Code, this  
4 Request for Judicial Notice is conditionally mandatory and must be granted if sufficient notice is  
5 given to the adverse party and if the court is furnished with sufficient information to enable it to  
6 take notice of the matter. (*People v. Maxwell* (1978) 78 Cal.App.3d 124, 130-31.) By this  
7 request, District No. 40 gives the Court and adverse parties sufficient notice and information to  
8 enable them to take judicial notice of the documents attached hereto and referred by their trial  
9 exhibit number.

Trial Exhibit No.	Description
5-D40-14	Water Supply Contract between the State of California Department of Water Resources (“DWR”) and Antelope Valley-East Kern Water Agency (“AVEK”), dated September 20, 1962 and Amendments numbered 1 through 24. The Contract and the Amendments thereto are available at <a href="http://www.water.ca.gov/swpao/docs/wsc/AVEKWA_O_C.pdf">http://www.water.ca.gov/swpao/docs/wsc/AVEKWA_O_C.pdf</a>
5-D40-31	This document is judicially noticeable under Evidence Code section 452(c) and 452(h), which authorize permissive judicial notice of “(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States,” and “(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”  Excerpt of Bulletin 132-10, dated June 2013. Bulletin 132-10 is available at <a href="http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-10.pdf">http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-10.pdf</a>  This document, Bulletin 132, Management of the California State Water Project, is from an annual series of official reports describing State Water Project status, operations, and water deliveries. It was prepared by the Water Delivery Analysis and Documentation Branch of the California Department of Water Resources, State Water Project Analysis Office. It is thus an official document of the State of California, and posted on its website.  This document is judicially noticeable under Evidence Code section 452(c) and 452(h), which authorize permissive judicial notice of “(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States,” and “(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

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5-D40-32

Excerpt of Bulletin 132-09, dated December 2012. Bulletin 132-09 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-09.pdf>

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5-D40-33

Excerpt of Bulletin 132-08, dated June 2012. Bulletin 132-08 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-08.pdf>

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5-D40-34

Excerpt of Bulletin 132-07, dated December 2008. Bulletin 132-07 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-07.pdf>

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Excerpt of Bulletin 132-06, dated December 2007. Bulletin 132-06 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-06.pdf>

5-D40-35

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Excerpt of Bulletin 132-05, dated December 2006. Bulletin 132-05 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-05.pdf>

5-D40-36

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5-D40-37

Excerpt of Bulletin 132-04, dated September 2005. Bulletin 132-04 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-04.pdf>

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Excerpt of Bulletin 132-03, dated December 2004. Bulletin 132-03 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-03.pdf>

5-D40-38

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Excerpt of Bulletin 132-01, dated December 2002. Bulletin 132-01 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-01.pdf>

5-D40-39

This document, Bulletin 132, Management of the California State Water Project, is from an annual series of official reports describing State Water Project status, operations, and water deliveries. It was prepared by the Water Delivery Analysis and Documentation Branch of the California Department of Water Resources, State Water Project Analysis Office. It is thus an official document of the State of California and posted on its website.

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Excerpt of Bulletin 132-00, dated December 2001. Bulletin 132-00 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-00.pdf>

5-D40-40

This document, Bulletin 132, Management of the California State Water Project, is from an annual series of official reports describing State Water Project status, operations, and water deliveries. It was prepared by the Water Delivery Analysis and Documentation Branch of the California Department of Water Resources, State Water Project Analysis Office. It is thus an official document of the State of California and posted on its website.

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Excerpt of Bulletin 132-99, dated March 2001. Bulletin 132-99 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-99.pdf>

5-D40-41

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Excerpt of Bulletin 132-96, dated August 1997. Bulletin 132-96 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-96.pdf>

5-D40-42

This document, Bulletin 132, Management of the California State Water Project, is from an annual series of official reports describing State Water Project status, operations, and water deliveries. It was prepared by the Water Delivery Analysis and Documentation Branch of the California Department of Water Resources, State Water Project

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Excerpt of Bulletin 132-90, dated September 1990. Bulletin 132-90 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-90.pdf>

5-D40-43

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Excerpt of Bulletin 132-88, dated September 1988. Bulletin 132-88 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-88.pdf>

5-D40-44

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5-D40-45

Excerpt of Bulletin 132-86, dated September 1986. Bulletin 132-86 is available at

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<http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-86.pdf>

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Excerpt of Bulletin 132-80, dated October 1980. Bulletin 132-80 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-80.pdf>

5-D40-46

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Excerpt of Bulletin 132-79, dated November 1979. Bulletin 132-79 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-79.pdf>

5-D40-47

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This document is judicially noticeable under Evidence Code section 452(c) and 452(h), which authorize permissive judicial notice of “(c)



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Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States,” and “(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Excerpt of Bulletin 132-75, dated June 1975. Bulletin 132-75 is available at <http://www.water.ca.gov/swpao/docs/bulletins/bulletin132/Bulletin132-75.pdf>

5-D40-48

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**THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE WATER SUPPLY CONTRACT BECAUSE IT IS A LEGALLY OPERATIVE, ANCIENT DOCUMENT**

In *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 746, the appellate court affirmed that when “judicial notice is requested of a legally operative document – like a contract – the court may take notice not only of the fact of the document and its recording or publication, but also facts that clearly derive from its legal effect.” Here, the Court may take judicial notice of the Water Supply Contract between the State of California Department of Water Resources (“DWR”) and AVEK (“Water Supply Contract”) because it a legally operative document. Moreover, the Court may take judicial notice of the facts contained therein and facts that derive from its legal effect.

The water supply contract is also an ancient document and may be admitted as an exception to the hearsay rule. Section 1331 provides that “[e]vidence of a statement is not made inadmissible by the hearsay rule if the statement is contained in a writing more than 30 years old and the statement has been since generally acted upon as true by persons having an interest in the

1 matter.” The Water Supply Contract, dated September 20, 1962, and Amendments numbered 1  
2 through 14 meet the age requirement of section 1331, and the contract has been since generally  
3 acted upon as true by the interested parties in this case. The contract should thus be admitted as  
4 an exception to the hearsay rule.

5 **THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE OFFICIAL REPORTS OF**  
6 **PUBLIC AGENCIES**

7 **A. The Official Reports Are Relevant To Phase V**

8 The Official Reports (Water Supply Contract and all Bulletins 132) listed above are highly  
9 relevant to the Phase V issue of who can legally claim rights to return flows from State Water  
10 Project (SWP) water imported to the Antelope Valley Groundwater Basin (“Basin”). Each of the  
11 Official Reports listed above provide valuable historical data regarding the amount of available  
12 SWP water and the amount of SWP water delivered to AVEK.

13 **B. The Official Reports Are Judicially Noticeable**

14 Pursuant to Evidence Code Section 452(c), a court may take judicial notice of “[o]fficial  
15 acts of the legislative, executive, and judicial departments of the United States and of any state of  
16 the United States.” It is well-established that “[o]fficial acts include records, reports and orders of  
17 administrative agencies.” (*Rodas v. Spiegel* (2000) 87 Cal.App.4th 513, 518.) Courts have taken  
18 judicial notice of a wide variety of administrative and executive records, reports, and acts under  
19 section 452(c). (See, e.g., *Masters v. San Bernardino County Employees Retirement Ass’n* (1995)  
20 32 Cal.App.4th 30, 37 [taking judicial notice of by-laws of county retirement association]; *City of*  
21 *Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960 [judicial notice  
22 taken of minutes of relevant Regional Water Quality Control Board meetings]; *Post v. Prati*  
23 (1979) 90 Cal.App.3d 626 [judicial notice taken of legislative committee reports and excerpts  
24 from testimony given at public hearings]; *Laurel Heights Improvement Ass’n v. The Regents of*  
25 *the University of California* (1993) 6 Cal.4th 1112, 1123 n. 5 [judicial notice taken of University  
26 publication entitled “Procedural Handbook and Model Approach for Implementing the California  
27 Environmental Quality Act].)

28 Courts have taken judicial notice of groundwater reports similar and identical to the

1 Official Reports listed above. For example, in *Planning and Conservation League v. Department*  
2 *of Water Resources* (2000) 83 Cal.App.4th 892 the court took judicial notice of Bulletin 132s  
3 published by the Department of Water Resources (“DWR”). (*Id.* at 898 n.2 [“We take judicial  
4 notice of the annual SWP management bulletins published by DWR[.]”].) Importantly, the court  
5 took judicial notice of Bulletin 132-90, which is one of the Bulletins listed above of which  
6 District No. 40 requests that this Court take judicial notice. (*Id.* at 912.)

7 After taking judicial notice of the Bulletin 132s, the Court went on to make numerous  
8 findings based on these documents. (See, e.g., *id.* at 899 [“The SWP was designed to become a  
9 complex system of reservoirs, dams, power plants, pumping plants canals, and aqueducts to  
10 deliver 4.23 million acre-feet (maf) of water annually.”], citing DWR Bull. No. 132-93; *id.* at 900  
11 [The Kern Water Bank is a subsurface reservoir designed to store surplus water from the  
12 Sacramento-San Joaquin Delta (the Delta) in the groundwater basin during wet years for  
13 extraction during dry years.”], citing DWR Bull. No. 132-93; *id.* at 902 [“After two months of  
14 negotiations, DWR and agricultural and urban contractors agreed to a statement of 14 principles,  
15 which came to be known as the Monterey Agreement.”], citing DWR Bull. No. 132-93.)

16 Similarly, in *Johnson Rancho County Water District v. State Water Rights Board* (1965)  
17 235 Cal.App.2d 863, 872-73, the court took judicial notice of DWR Bulletin No. 115 “and its  
18 contents.” The court cited extensively from the Bulletin and used the information contained  
19 therein in support of its decision to uphold the decision of the Water Rights Board. In *White v.*  
20 *State of California* (1971) 21 Cal.App.3d 738, 742-43 n.1, the court took judicial notice of  
21 information in a publication issued by the U.S. Army Corps of Engineers entitled “Water  
22 Resources Development in California.” The court used this report as the basis for its finding that  
23 the Petaluma River was “navigable in fact.” (*Ibid.*) In *Washington v. County of Contra Costa*  
24 (1995) 38 Cal.App.4th 890, 901 the court upheld the trial court’s decision to take judicial notice  
25 of certain documents submitted by the County of Contra Costa, including the County’s area plan,  
26 the County’s inspection report of a chemical facility; documents submitted by the chemical  
27 company to County, and other documents submitted by the County relating to its regulation of the  
28 chemical company. The trial court admitted these documents pursuant to Evidence Code section

1 452(c). (*Ibid.*)

2 Furthermore, the California Supreme Court has taken judicial notice of data contained in a  
3 publication issued by the State Department of Education on the ground that the publication was  
4 issued an agency of the state. (*Board of Education v. City of Los Angeles v. Watson* (1966) 63  
5 Cal.2d 829, 836 n.3.) After taking judicial notice of the publication, the court utilized the data  
6 contained therein to support its conclusion that individual school districts in Los Angeles County  
7 have larger numbers of students than do the districts in other counties. (*Id.* at 836.) In *Planned*  
8 *Parenthood Shasta-Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009, 1021, the California  
9 Supreme Court took judicial notice of official maps maintained by the Public Works Department  
10 of the City of Vallejo.

11 The Official Reports listed above are extremely similar (and even identical) to the DWR  
12 Bulletins, Army Corps of Engineers Report, County reports, and other agency records and reports  
13 described herein in that they are governmental entity reports on the historical facts. Thus, the  
14 Official Reports should be judicially noticed pursuant to Evidence Code Section 452(c). Once the  
15 Official Reports are judicially noticed, their existence and contents are established, and no further  
16 proof of their existence or contents is required.

17 **THE OFFICIAL REPORTS ARE EXCEPTIONS TO THE HEARSAY RULE**

18 Evidence Code Section 1280 “permits the court to admit an official record or report  
19 without necessarily requiring a witness to testify as to its identity and mode of preparation if the  
20 court takes judicial notice or if sufficient independent evidence shows that the record or report  
21 was prepared in such a manner as to assure its trustworthiness.” (Cal. Law Revision Com.  
22 comment, reprinted at 29B pt. 4 West’s Ann. Evid. Code (1995 ed.) following § 1280, p. 347.) In  
23 addition to taking judicial notice, a court may rely on the rebuttable presumption that official duty  
24 has been regularly performed as a basis for finding that the foundational requirements of  
25 Evidence Code section 1280 are met.” (*See* Cal. Evid. Code § 664; *People v. Dunlap* (1993) 18  
26 Cal.App.4th 1468, 1477.)

27 The trustworthiness requirement for the official records exception to the hearsay rule is  
28 established by a showing that “the written report is based upon the observations of public

1 employees who have a *duty* to observe the facts and report and record them correctly.” (*Fisk v.*  
2 *Department of Motor Vehicles* (1981) 127 Cal. App. 3d 72, 77.) A trial court has broad discretion  
3 in determining whether a party has established these foundational requirements. (*People v. Beeler*  
4 (1995) 9 Cal.4th 953, 978.)

5 The object of this hearsay exception “is to eliminate the calling of each witness involved  
6 in preparation of the record and substitute the record of the transaction instead.” (*County of*  
7 *Sonoma v. Grant W.* (1986) 187 Cal.App.3d 1439, 1451.) Accordingly, for the exception to  
8 apply, “[i]t is not necessary that the person making the entry have personal knowledge of the  
9 transaction.” (*Loper v. Morrison* (1944) 23 Cal.2d 600, 609.)

10 Moreover, “the inclusion of conclusions and opinions in a record does not render it  
11 inadmissible per se.” (*People v. Flaxman* (1977) 74 Cal.App.3d Supp. 16, 20 citing Jefferson,  
12 California Evidence Benchbook (Cont.Ed.Bar 1972) pages 91, 99.) “The overriding  
13 consideration is whether the record is trustworthy.” (*Id.*) “The trustworthiness requirement for  
14 this exception to the hearsay rule is established by a showing that the written report is based upon  
15 the observations of public employees who have a duty to observe the facts and report and record  
16 them correctly. Whether the trustworthiness requirement has been met is a matter within the trial  
17 court’s discretion.” (*People v. Parker* (1992) 8 Cal.App.4th 110, 116; see also *In re Jacqueline H*  
18 (1979) 94 Cal.App.3d 808, 815 [same].)

19 In *People v. Dunlop* (1993) 18 Cal.App.4th 1468, 1470, the Court of Appeal stated that  
20 the Evidence Code section 1280 foundational requirements are met with the presumption in  
21 Evidence Code section 664 that public entities are presumed to perform their official duties:

22 Although similar to the business records exception [Evidence Code  
23 section 1271], the official records exception differs in one  
24 important respect. Evidence Code section 1271 “requires a witness  
25 to testify as to the identity of the record and its mode of preparation  
26 in every instance. In contrast, [Evidence Code] [s]ection 1280 . . .  
27 permits the court to admit an official record or report without  
28 necessarily requiring a witness to testify as to its identity and mode  
of preparation *if the court takes judicial notice or if sufficient  
independent evidence shows that the record or report was prepared  
in such a manner as to assure its trustworthiness.*” (Cal.Law  
Revision Com. com., 29B West’s Ann. Evid. Code (1966 ed) §  
1280, p. 316, italics added; see *People v. Parker* (1992) 8  
Cal.App.4th 110, 116-117; *People v. Flaxman* (1977) 74

1 Cal.App.3d Supp. 16, 20-23.)

2 In addition to taking judicial notice, a court may rely on the  
3 rebuttable presumption that official duty has been regularly  
4 performed (Evid. Code sec. 664) as a basis for finding that the  
5 foundational requirements of Evidence Code section 1280 are met.  
6 (See *Davenport v. Department of Motor Vehicles* (1992) 6  
7 Cal.App.4th 133, 143; *Preis v. American Indemnity Co.* (1990) 220  
8 Cal.App.3d 752, 759.) 18 Cal.App.4th 1468, 1479. [Italics in  
9 original; some citations omitted.]

7 Here, the Bulletins 132 were created by public employees pursuant to legislative mandate,  
8 are based upon the observations of public employees who have a duty to observe the facts and  
9 report and record them correctly, and are made available to the general public on the State's  
10 official website. And the Water Supply Contract is a contract that the State of California entered  
11 into and has acted in reliance upon for over fifty years. It is further published on its website.  
12 These documents are thus inherently trustworthy.

13 **CONCLUSION**

14 For the foregoing reasons, District No. 40 respectfully requests that the Court take judicial  
15 notice of the Water Supply Contract between the State of California Department of Water  
16 Resources ("DWR") and AVEK, and the specified Bulletins 132 and that these documents be  
17 admitted into evidence.

19 Dated: February 3, 2014

BEST BEST & KRIEGER LLP

20  
21 By 

22 ERIC L. GARNER  
23 JEFFREY V. DUNN  
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26 LOS ANGELES COUNTY WATERWORKS  
27 DISTRICT NO. 40  
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**PROOF OF SERVICE**

I, Sandra K. Sandoval, declare:

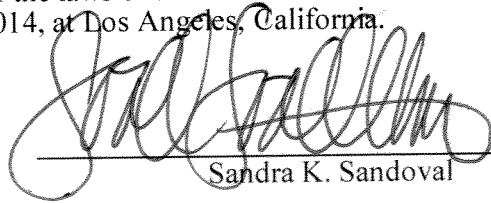
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On February 3, 2014, I served the within document(s):

DISTRICT NO. 40'S REQUEST FOR JUDICIAL NOTICE RE TRIAL EXHIBITS

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the 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 in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 3, 2014, at Los Angeles, California.

  
\_\_\_\_\_  
Sandra K. Sandoval