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11 *Attorneys for Petitioner/Plaintiff SHEILA*
12 *LINDERMAN, on behalf of herself and all*
13 *others similarly situated*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

16 SHEILA LINDERMAN, on behalf of herself,
and all others similarly situated,
17
18 Plaintiff,
19 v.
20 CITY OF LOS ANGELES, and DOES 1
through 100,
21 Defendants.

22
23 SHEILA LINDERMAN, on behalf of herself,
and all others similarly situated,
24
25 Petitioner,
26 v.
27 CITY OF LOS ANGELES, and DOES 1
through 100,
28 Respondents.

FILED
LOS ANGELES SUPERIOR COURT
NOV 16 2018

Sherri R. Carter, Executive Officer/Clerk
By Jorge Ramirez, Deputy
Tahya Herrera

Case No. BC650785 **SSC 17**
(Consolidated with Case No. BS168155)

**SECOND AMENDED CLASS ACTION
COMPLAINT AND PETITION FOR
WRIT OF MANDATE**

Judge: Hon. Maren E. Nelson
Dept.: 307
Complaint filed: February 15, 2017
Trial Date: None set

Case No. BS168155
[The Hon. Mary Strobel, Dept. 82]

BY FAX

1 seeks to refund such sums and to obtain voter approval for what is a tax.

2 PARTIES

3 5. Petitioner/Plaintiff are currently, and have been, residents of
4 Respondents/Defendants the City of Los Angeles. During the relevant time period, they paid the
5 City alarm permit fees at issue herein. More specifically, while Petitioner/Plaintiff Linderman is
6 unaware of the exact dates of her payments, based on her credit card records, her payments for alarm
7 permit renewals posted to her credit card account on approximately August 18, 2016 and February
8 11, 2017.

9 6. Petitioner/Plaintiff Mayrsohn, during the relevant time period, paid alarm permit
10 renewals on or about 10/23/2017, 10/29/2016, and 10/25/2015.

11 7. Respondents/Defendants City of Los Angeles ("City") is located in Los Angeles
12 County, State of California. At all times herein mentioned, the City required alarm permits for the
13 operation of an alarm within the City limits and charged for these permits.

14 8. Respondents/Defendants DOES 1 through 100 are persons or entities whose true
15 names and identities are currently unknown to Petitioner/Plaintiff. This Complaint will be amended
16 to allege the true names and capacities of these fictitiously named Respondents/Defendants when
17 they are ascertained. Each of the fictitiously named Respondents/Defendants are responsible for the
18 conduct alleged in this Complaint. Through their conduct, the fictitiously named
19 Respondents/Defendants caused damages to Petitioner/Plaintiff and the Class. At all times
20 mentioned herein, each Respondent/Defendant was acting as the agent and/or employee of each of
21 the remaining Respondents/Defendants and were at all times acting within the purpose and scope of
22 such agency and employment. In doing the acts alleged herein, each Respondent/Defendant, and its
23 officers, directors, members, owners, principals, or managing agents (where the a corporation,
24 limited liability company, or other form of business entity) authorized and/or ratified the conduct of
25 each other Respondent/Defendant and/or of his/her/its employees.

26 GOVERNMENT CLAIMS

27 9. On or about August 17, 2016, counsel for Ms. Linderman mailed to
28 Respondents/Defendants City a written Claim for Damages, on behalf of Petitioner/Plaintiff and all

1 others similarly situated, pursuant to California Government Code section 910, *et seq.*, and *City of*
2 *San Jose v. Superior Court*, 12 Cal. 3d 447 (1974).

3 10. On or about September 28, 2016, counsel for Ms. Linderman mailed to
4 Respondents/Defendants City a written amendment and supplement to that Claim for Damages.

5 11. On or about August 13, 2018, counsel for Petitioner/Plaintiff Mayrsohn submitted a
6 claim on his behalf to the City.

7 12. As of the filing of this Complaint, all claims made by Petitioner/Plaintiff have been
8 rejected by the City.

9 **GENERAL ALLEGATIONS**

10 13. The City has passed an alarm ordinance requiring that anyone with an alarm also
11 have a valid alarm permit to operate that alarm.

12 14. The City charges a permit fee to all individuals who have an alarm. The permits
13 expire annually and must be renewed. Often, the process of renewal can be accomplished online
14 through entering information on the Los Angeles Department of Finance's web-portal and making
15 a credit card payment. The current renewal fee for an alarm permit is \$30.

16 15. The fees are mandatory upon all alarm users, not discretionary. According to Los
17 Angeles Municipal Code section 103.206(b), "No person shall install, connect, activate, operate or
18 use an Alarm System without a valid Alarm System permit having been issued for that purpose."

19 16. Indeed, according to Los Angeles Municipal Code section 103.206(m), violation of
20 section 103.206 is a misdemeanor.

21 17. According to the City, monies collected from alarm permits and false alarm fees are
22 deposited in the City's general fund.

23 18. Alarm permits fall into the general category of "Police Permits," a category of
24 permits that includes numerous different permits that are issued by the Los Angeles Police
25 Department.

26 19. Every year the City Administrative Officer submits a report to the Mayor for
27 approval of all Police Permit fees.

28 20. This report includes a cost study associated with all permit applications and

1 applications for renewal.

2 21. For example, the report for fiscal year 2013-2014 is available online. This report
3 reflected that the City had costs associated with alarm permit renewals of \$12.79. It is questionable
4 that the City actually incurred such costs by simply accepting payments online, but even giving the
5 City the benefit of the doubt, this \$12.79 cost in no way resembles the report's recommended \$30
6 fee for alarm permit renewals. The report contains no cost justification for the \$30 renewal fee,
7 despite the fact that other categories of permit fees tallied only \$12.79 for the same Office of Finance
8 renewal costs.

9 22. In fiscal year 2013-2014, the City estimated that it would receive 121,104 alarm
10 permit renewals, which, at \$30 per renewal equals \$3,633,120.

11 23. This large sum of money is not the cost of providing an alarm renewal but is instead
12 a method through which the City raises revenue.

13 24. On April 14, 2014, the City Administrative Officer received the proposed
14 adjustments to police permit fees for fiscal year 2014-2015.

15 25. In creating the April 14, 2014 report, Police Commission staff interviewed the
16 personnel that process the permits to determine the amount of time devoted to each permit.

17 26. The amount of time, expressed in the percentage of one hour, was multiplied by the
18 position's average hourly salary rate.

19 27. The hourly rates used were from the Department's 2014-2015 Wages and Count for
20 Civilian and Sworn Employees calculation, using methodology approved by the City Administrative
21 Office for the 2014-2015 proposed budget.

22 28. To determine indirect costs such as fringe benefits, direct salary costs were
23 multiplied by the rates established in the then-current proposed 2013-2014 Cost Allocation Plan
24 (CAP 34) prepared by the Controller's Office.

25 29. The rates for indirect costs such as fringe benefits for civilians in the Department
26 were 68.73%.

27 30. The rates for indirect costs such as fringe benefits for sworn not assigned to the field
28 were 90.95%.

1 31. The rates for indirect costs such as fringe benefits for sworn assigned to the field
2 were 112.96%.

3 32. The cost for services provided by employees at the Los Angeles Office of Finance
4 (“Finance”) was also factored into the permit fee recalculations.

5 33. The classification of Customer Service Specialist accepts permit applications and
6 payments at the public counter of Finance.

7 34. The hourly rate of \$30.95 was used for the classification of Customer Service
8 Specialist.

9 35. According to the Report, a Principal Clerk at Finance reviews all the permit
10 applications and renewals received by the Customer Service Specialist.

11 36. The hourly rate for the Principal Clerk at Finance was \$32.92.

12 37. The indirect costs rates for the Finance employees were \$65.24.

13 38. With the exception of a few permits that are identified in the 2014-2015 Report, the
14 process to renew an existing permit is the same regardless of the permit type.

15 39. According to the 2014/2015 report, the Office of Finance staff spent 10 minutes
16 processing permit renewals for a cost of \$8.86.

17 40. This 10 minute calculation involves opening return envelopes, depositing checks,
18 updating the LATAX database, and review of all renewals by a supervisor.

19 41. The Report identified that the current rate to renew an alarm system permit was \$30.

20 42. The Report did not recommend any change to the \$30 fee.

21 43. The Report identified that the time for a Customer Service Specialist to review a
22 permit renewal was 0.12 hours, which it identifies as 7 minutes.

23 44. The Report identified that the time for a Principal Clerk to review a permit renewal
24 was 0.05 hours, which it identifies as 3 minutes.

25 45. Totaling the time spent by both the Customer Service Specialist and Principal Clerk,
26 multiplying those times by the applicable hourly rate and including indirect costs totaled \$8.86 for
27 permit renewals.

28 46. According to Attachment VI to the 2014-2015 Report, the “COST CALCULATION

1 FOR PERMIT RENEWALS – 2014-2015 FY” “COST per PERMIT” for an Alarm System
2 allocated \$30 to the Office of Finance and \$0.00 to CID Sworn Cost.

3 47. Based on this calculation, the Report showed a “Total Cost this Permit” of \$30.

4 48. The Report recommended a \$30 Renewal Fee for an Alarm System.

5 49. In calculating the cost for an initial alarm permit, the cost and time allocation was
6 0.16 hours of Principal Clerk time at \$32.92 per hour.

7 50. In calculating the cost for an initial alarm permit, the cost and time allocation was
8 0.16 hours of Customer Services S at \$30.95 per hour.

9 51. In calculating the cost for an initial alarm permit, the cost and time allocation was
10 0.33 for CID Alarms Section for the Clerk Typist at \$25.40 per hour.

11 52. The total cost based on the hourly rates and times spent from above is \$18.60.

12 53. The fee for an initial alarm permit recommended by the 2014-2015 Report was \$31.

13 54. Other than as set forth above, the 2014-2015 Report contains no other cost items that
14 can be allocated to alarm permit renewals.

15 55. Other than as set forth above, the 2014-2015 Report contains no other cost items that
16 can be allocated to initial alarm permits.

17 56. Based on the 2014-2015 Report, the Public Safety Committee issued a Report, File
18 No. 14-1299 that recommended that the City Attorney draft an ordinance to effectuate the
19 recommended fees contained in the 2014-2015 Report, as amended to incorporate the technical
20 amendments attached to the Council file, which did not change the fees for alarm permits.

21 57. The City Council adopted the actions recommended in File No. 14-1299.

22 58. The City adopted the charges for alarm permit fees pursuant to these
23 recommendations.

24 59. The process through which the City approved alarm permit fees for 2015, 2016, and
25 2017 was similar to the process described above.

26 60. At no time has the City of Los Angeles done a study in which the City has found that
27 the actual cost to the City for an alarm permit renewal is \$30.

28 61. Because most alarm permits are processed online, there is no cost to the City to

1 process and accept alarm renewal fees.

2 62. However, at all times relevant hereto, the City has collected at least \$30 for the
3 issuance of a renewal alarm permit.

4 63. This Action is based on violation of the State Constitution, Article XIIC, Section 1
5 (e)(1) which defines a tax as any levy, charge, or exaction of any kind imposed by a local
6 government other than a charge imposed for a specific benefit conferred or privilege granted directly
7 to the payor that is not provided to those not charged, and which does not exceed the reasonable cost
8 to the local government, or, alternatively Article XIIC, Section 1 (e)(3) which defines a tax as any
9 levy, charge, or exaction of any kind imposed by a local government other than a charge imposed
10 for the reasonable regulatory costs to a local government for issuing licenses and permits,
11 performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the
12 administrative enforcement and adjudication thereof.

13 64. Finally, Article XIIC, Section 1 states that "[t]he local government bears the burden
14 of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that
15 the amount is no more than necessary to cover the reasonable costs of the governmental activity,
16 and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship
17 to the payor's burdens on, or benefits received from, the governmental activity."

18 65. Research has revealed no attempts by the City to obtain voter approval of an
19 otherwise illegal tax charged to alarm system owners and operators in the City of Los Angeles.

20 66. In light of the foregoing, Petitioner/Plaintiff, on behalf of themselves and all others
21 similarly situated, seek relief from the illegal tax, return of all sums illegally collected and the other
22 relief set out herein.

23 **CLASS ACTION ALLEGATIONS**

24 67. Petitioner/Plaintiff brings this class action pursuant to California Code of Civil
25 Procedure section 382 on their own behalf and on behalf of:

26 All persons or entities within the City of Los Angeles who paid for an alarm permit
27 from August 17, 2015 through the present.

28 68. The following persons and entities shall be excluded from the Class: (a) all persons

1 who make a timely election to be excluded from the proposed Class, and (b) the judge(s) to whom
2 this case is assigned and any immediate family members thereof. Also excluded are claims for
3 personal injury alleged to have been suffered by any member of the Class.

4 69. Petitioner/Plaintiff reserves the right to redefine the Class prior to certification.

5 70. This action is properly maintainable as a class action.

6 71. The Class for whose benefit this action is brought is so numerous that joinder of all
7 Class members is impracticable. While Petitioner/Plaintiff does not presently know the exact
8 number of Class members, the City estimated there were approximately 121,000 alarm permit
9 renewals in years 2013-2014. There is no reason to believe that the number of permittees is any
10 lower than this number.

11 72. There are questions of law and fact which are common to Class members and which
12 predominate over any questions affecting only individual members of the Class. A class action will
13 generate common answers to the below questions, which are apt to drive the resolution of the
14 litigation:

- 15 a. What was the reasonable cost of the permits and permit renewals provided
16 to Petitioner/Plaintiff and the members of the Class;
- 17 b. How was the reasonable cost of the permits calculated;
- 18 c. Whether Respondents/Defendants' fees or charges for permits exceeded the
19 proportional cost thereof;
- 20 d. Whether the charges by Respondents/Defendants for permits exceed the
21 cost of service and, as a result, operate as a tax not voted on by the citizens;
- 22 e. Whether Respondents/Defendants' actions violate articles XIII C and XIII
23 D of the California Constitution;
- 24 f. Whether so as to impose the alarm permit fees upon its citizens the City
25 must hold an election;
- 26 g. Whether Petitioner/Plaintiff and other Class members have been damaged
27 by Respondents/Defendants' actions or conduct;
- 28 h. The proper measure of damages; and

1 i. Whether Petitioner/Plaintiff and other Class members are entitled to
2 injunctive relief.

3 73. Petitioner/Plaintiff is committed to prosecuting this action and has retained
4 competent counsel experienced in litigation of this nature. Petitioner/Plaintiff's claims are typical
5 of the claims of other Class members and Petitioner/Plaintiff has the same interests as other Class
6 members. Petitioner/Plaintiff has no interests that are antagonistic to, or in conflict with, the interests
7 of the other members of the Class. Petitioner/Plaintiff is an adequate representative of the Class and
8 will fairly and adequately protect the interests of the Class.

9 74. The prosecution of separate actions by individual Class members could create a risk
10 of inconsistent or varying adjudications with respect to individual members of the Class, which
11 could establish incompatible standards of conduct for Respondents/Defendants or adjudications
12 with respect to individual members of the Class which would, as a practical matter, be dispositive
13 of the interests of the members of the Class not parties to the adjudications.

14 75. Furthermore, as the damages suffered by some of the individual Class members may
15 be relatively small, the expense and burden of individual litigation make it impracticable for the
16 individual members of the Class to redress the wrongs done to them individually. If a class action
17 is not permitted, Class members will continue to suffer and Respondents/Defendants, misconduct
18 will continue without proper remedy.

19 76. Respondents/Defendants have acted and refused to act on grounds generally
20 applicable to the entire Class, thereby making appropriate relief with respect to the Class as a whole.

21 77. Petitioner/Plaintiff anticipates no unusual difficulties in the management of this
22 litigation as a class action.

23 78. For the above reasons, a class action is superior to other available methods for the
24 fair and efficient adjudication of this action.

25 **FIRST CAUSE OF ACTION**

26 **Petition for Writ of Mandate**
27 **Pursuant to Code of Civil Procedure section 1085**
(By Petitioner/Plaintiff Against All Respondents/Defendants)

28 79. Petitioner/Plaintiff hereby incorporates by reference each of the other paragraphs of

1 this Petition and Complaint as though fully set forth herein.

2 80. Respondents/Defendants charges for alarm permits and renewals were not cost based
3 and were not approved by the voters in spite of the restrictions imposed by Propositions 218 and 26
4 and Articles XIII C and D of the California Constitution.

5 81. All amounts collected by the City as alarm permit fees and renewals that exceeded
6 the costs (if there are in fact any costs at all) are illegal taxes.

7 82. The imposition and collection of the illegal taxes from Petitioner/Plaintiff and the
8 Class was, and is, improper because it is a violation of the State Constitution, Article XIII C and D
9 and the imposition of the illegal taxes has caused Petitioner/Plaintiff and the class to suffer monetary
10 damages in amounts according to proof at trial.

11 83. Accordingly, Petitioner/Plaintiff is entitled to a writ of mandate pursuant to Code of
12 Civil Procedure section 1085 so as to ensure compliance with the law by the City.

13 **SECOND CAUSE OF ACTION**

14 **Declaratory Relief**
15 **(By Petitioner/Plaintiff Against All Respondents/Defendants)**

16 84. Petitioner/Plaintiff hereby incorporates by reference each of the other paragraphs of
17 this Petition and Complaint as though fully set forth herein.

18 85. An actual, present, and substantial controversy exists between Petitioner/Plaintiff
19 and Respondents/Defendants. Petitioner/Plaintiff contends that Respondents/Defendants have
20 violated, and continues to violate, the California Constitution. Respondents/Defendants will no
21 doubt contend that it has complied with the law.

22 86. Petitioner/Plaintiff and other Class members have no adequate remedy at law.

23 87. By reason of the foregoing, there is a present and ongoing controversy between the
24 parties with respect to which this Court should enter a declaratory judgment determining the rights
25 and obligations of each. Petitioner/Plaintiff contends that such judgment should determine that the
26 conduct complained of herein is illegal.

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FILED
12/20/09

1 **THIRD CAUSE OF ACTION**

2 **Injunction Pursuant to C.C.P. § 526a**
3 **(Petitioner/Plaintiff Against All Respondents/Defendants)**

4 88. Petitioner/Plaintiff hereby incorporates by reference each of the other paragraphs of
5 this Petition and Complaint as though fully set forth herein.

6 89. Petitioner/Plaintiff is entitled to and seeks an injunction pursuant to Code of Civil
7 Procedure section 526a to enjoin Respondents/Defendants from illegal conduct, to wit, charging
8 more than cost for alarm permits and renewals without a vote of the People.

9 **FOURTH CAUSE OF ACTION**

10 **Refund of Illegal Tax**
11 **(Petitioner/Plaintiff Against All Respondents/Defendants)**

12 90. Petitioner/Plaintiff hereby incorporates by reference each of the other paragraphs of
13 this Petition and Complaint as though fully set forth herein.

14 91. Petitioner/Plaintiff has substantially complied with all requirements to exhaust their
15 administrative remedies pursuant to Government Code section 945.6.

16 92. Respondents/Defendants never submitted the charges for alarm permits that exceed
17 costs to the electorate for a vote.

18 93. Propositions 218 and 26 were designed to “protect[] taxpayers by limiting the
19 methods by which local governments exact revenue from taxpayers without their consent.” (Prop.
20 218 § 2)

21 94. Local governments must submit to the electorate for approval by vote laws that
22 “impose, extend, or increase” any tax. (Cal. Const., art. XIII C, § 2(b), (d).)

23 95. Respondents/Defendants’ collection of permit fees without voter approval that
24 exceed the costs of providing the permits violate Propositions 218 and 26.

25 96. Because the fees are in violation of Propositions 218 and 26, they are unconstitutional
26 under the California Constitution, are invalid and inapplicable.

27 97. For all of the foregoing reasons, Petitioner/Plaintiff and the Class have overpaid for
28 alarm permit fees and renewals and thus are entitled to recovery in the form of a refund.

FILED
1/21/2019

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner/Plaintiff, individually and on behalf of all others similarly
3 situated, hereby prays that the Court determine that this action may be maintained as a class action
4 and further prays that the Court enter judgment in their favor and against Respondents/Defendants,
5 as follows:

6 1. An order certifying the proposed Class, designating Petitioner/Plaintiff as the
7 named representatives of the Class, and designating the undersigned as Class Counsel;

8 2. A refund to Petitioner/Plaintiff and the Class for all monies illegally collected in an
9 amount to be proven at trial;

10 3. Injunctive relief;

11 4. An award of attorneys' fees and costs, as allowed by law, including, but not limited
12 to, pursuant to California Code of Civil Procedure section 1021.5;

13 5. An award of pre-judgment and post-judgment interest, as provided by law;

14 6. For the issuance of a writ of mandate directing Respondents/Defendants to stop
15 charging more than cost for alarm permits and renewals and to order that a vote for the tax
16 complained of herein be held by the people; and

17 7. For such other, further, and different relief as the Court deems proper under the
18 circumstances.

19
20 DATED: November 16, 2018

STONEBARGER LAW, APC

KEARNEY LITTLEFIELD, LLP

21
22
23 By: 

24 Prescott. W. Littlefield

25 Attorneys for Petitioner/Plaintiff
26 Sheila Linderman
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VERIFICATION

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I, Sheila Linderman, declare:

I am party to this Action, and I have read the foregoing Second Amended Class Action Complaint and Petition for Writ of Mandate and know its contents. With regard to myself, the matters stated are true based on my knowledge, and all other allegations are made based on information and belief, and as to those matters I believe them to be true.

I certify, upon penalty of perjury under the law of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Los Angeles, California.

Dated: November 15, 2018


Sheila Linderman

11/21/2018

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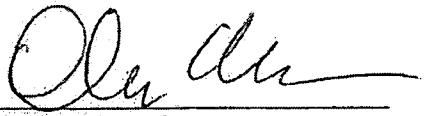
VERIFICATION

I, Charles Mayrsohn, declare:

I am party to this Action, and I have read the foregoing Second Amended Class Action Complaint and Petition for Writ of Mandate and know its contents. With regard to myself, the matters stated are true based on my knowledge, and all other allegations are made based on information and belief, and as to those matters I believe them to be true.

I certify, upon penalty of perjury under the law of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Los Angeles, California.

Dated: November 15, 2018



Charles Mayrsohn

FILED
11/21/2018

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in Sacramento County. I am over
3 the age of eighteen (18) years and not a party to this action; my business address is 75 Iron Point
4 Circle, Suite 145, Folsom, California 95630.

5 On November 16, 2018, I caused to be served the following document(s):

6 **SECOND AMENDED CLASS ACTION COMPLAINT AND PETITION FOR
7 WRIT OF MANDATE**

8 to each of the parties herein as follows:

9 Felix Lebron, Deputy City Attorney 10 Office of the Los Angeles City Attorney 11 Business & Complex Litigation 12 City Hall East 13 200 N. Main Street, Room 675 14 Los Angeles, CA 90012 15 Tel: (213) 978-7559 16 Fax: (213) 978-7011 17 Email: felix.lebron@lacity.org 18 <i>Counsel for Respondent and Defendants City 19 of Los Angeles</i>	20 Prescott Littlefield 21 Kearney Littlefield, LLP 22 3436 N. Verdugo Road 23 Suite 230 24 Glendale, CA 91208 25 Phone: (213) 473-1900 26 Fax: (213) 473-1919 27 Email: pwl@kearneylittlefield.com 28 <i>Co-Counsel for Plaintiff and Petitioner Sheila Linderman</i>
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14 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be
15 sent to the persons at the e-mail addresses listed above via CaseAnywhere. I did not
16 receive, within a reasonable time after the transmission, any electronic message or other
17 indication that the transmission was unsuccessful.

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

20 Executed at Folsom, California on November 16, 2018.

21 
22 _____
23 Stephanie Judd

11/21/2018