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State of California
DEPARTMENT OF JUSTICE



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February 6, 2015

SUPREME COURT
FILED

FEB 09 2015

Honorable Tani Gorre Cantil-Sakauye
Chief Justice
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

Frank A. McGuire Clerk

Deputy

Re: *The People of the State of California v. Miami Nation Enterprises*, Case No. S216878
Supplemental Brief (Cal. Rules of Court, rule 8.520(d)(1))

To the Chief Justice and the Associate Justices of the Supreme Court of California:

Pursuant to California Rules of Court, rule 8.520(d)(1), the People respectfully submit the Stipulated Order and Permanent Injunction and Judgment (Federal Judgment) entered by the United States District Court for the District of Nevada on January 23, 2015, in the case *Federal Trade Commission v. AMG Services, Inc.* (D. Nev., Case No. 2:12cv536). The parties' briefing on the merits in this case was completed on November 6, 2014, and the Federal Judgment had not been entered by that date.

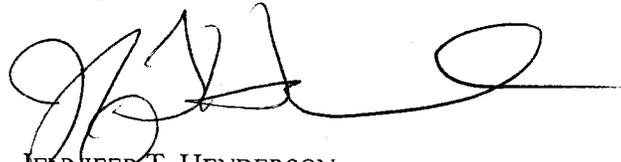
In the federal case, the FTC alleged violations of federal laws related to payday lending, including the Federal Trade Commission Act (15 U.S.C. §§ 41-58) (prohibiting deceptive trade practices) and the Truth in Lending Act (15 U.S.C. §§ 1601-1667j) (requiring specific disclosures in lending documents). The People's briefs on the merits noted that *Federal Trade Commission v. AMG Services, Inc.* was pending and cited certain evidence in the record for this case that had been obtained in the federal investigation.

The Federal Judgment resolves the federal case as to MNE Services, Inc. and several other defendants. MNE Services, Inc. has done business as Ameriloan, UnitedCashLoans, and USFastCash, three of the payday lenders that the People sued in this case. The People submit the Federal Judgment merely for the Court's information. The Federal Judgment does not address the People's state law claims in this case and has no bearing on the issues presented.

Honorable Tani Gorre Cantil-Sakauye
February 6, 2015
Page 2

Sincerely,

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
SARA J. DRAKE
Senior Assistant Attorney General
JANILL L. RICHARDS
Principal Solicitor General

A handwritten signature in black ink, appearing to read 'Jennifer T. Henderson', with a long horizontal flourish extending to the right.

JENNIFER T. HENDERSON
Deputy Attorney General
State Bar No. 206231
Attorneys for Appellant and Petitioner

Enclosure

cc: John Nyhan
Nicole E. Ducheneaux
Conly J. Schulte
Seth E. Mermin

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMG Services, Inc., et al.,

Defendants, and

Park 269 LLC, et al.,

Relief Defendants.

Case No. 2:12-cv-536

STIPULATED
ORDER FOR
PERMANENT
INJUNCTION AND
JUDGMENT

Plaintiff Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Injunction and other Equitable Relief, subsequently amended as the Amended Complaint for Injunction and other Equitable Relief, (“Complaint”), seeking a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b); the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1666j; and the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r. The Commission and AMG Services, Inc. and MNE Services, Inc. (collectively, “Defendants”), stipulate to the entry of this Stipulated Order for Permanent Injunction and Judgment to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants, in the offering and collection of high-fee, short-term payday loans, participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, misstated the terms of the loans in violation of the

1 Truth in Lending Act, 15 U.S.C. §§ 1631, 1638, and conditioned extension of credit to
2 consumers on consumers' prepayment by preauthorized electronic fund transfers in
3 violation of the Electronic Fund Transfer Act, 15 U.S.C. § 1693k(1).

4 3. Defendants neither admit nor deny any of the allegations in the Complaint, except
5 as specifically stated in this Order. Only for purposes of this action, Defendants admit
6 the facts necessary to establish jurisdiction.

7 4. Defendants waive any claim that they may have under the Equal Access to Justice
8 Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this
9 Order, and agree to bear their own costs and attorney fees.

10 5. Defendants waive all rights to appeal or otherwise challenge or contest the
11 validity of this Order.

12 DEFINITIONS

13 For the purpose of this Order, the following definitions apply:

14 1. "Collection of Debts" means any activity the principal purpose of which is
15 to collect or attempt to collect, directly or indirectly, Debts owed or due or asserted to be
16 owed or due.

17 2. "Debt" means any obligation or alleged obligation of a consumer to pay
18 money arising out of a transaction in which the money, property, or services that are the
19 subject of the transaction are primarily for personal, family, or household purposes,
20 whether or not such obligation has been reduced to judgment.

21 3. "Material" means likely to affect a person's choice of, or conduct
22 regarding, goods or services.

23 4. "Payment Schedule" means the number, amounts, and timing of payments
24 scheduled to repay a loan or credit obligation.
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II. REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering, or extension of credit, are hereby permanently restrained and enjoined from:

A. When extending a fixed amount of credit that a consumer is to repay in one or more installment(s), failing to disclose in writing (electronic or hard-copy) and in a form the consumer may keep, clearly and conspicuously, before the consumer signs the credit agreement, the following information in a manner reflecting the terms of the legal obligation between the parties:

1. The finance charge;
2. The annual percentage rate;
3. The payment schedule; and
4. The total of payments; or

B. Violating any provision of the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j.

III. PROHIBITION AGAINST DECEPTIVE COLLECTION PRACTICES

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the Collection of Debts, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- 1 A. That consumers can be arrested, prosecuted, or imprisoned for failing to
2 pay Defendants;
- 3 B. That Defendants will or can take formal legal action against consumers
4 who do not pay Defendants, including but not limited to, filing suit; and
- 5 C. Any other Material fact.

6 **IV. INJUNCTION CONCERNING ELECTRONIC FUND TRANSFER**
7 **PRACTICES**

8 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants,
9 employees, and attorneys, and all other persons in active concert or participation with any
10 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
11 hereby permanently restrained and enjoined from conditioning the extension of credit on
12 preauthorized electronic fund transfers.

13 **V. CERTAIN CONSUMER DEBTS EXTINGUISHED**

14 **IT IS FURTHER ORDERED** that all consumer Debt for loans issued by MNES d/b/a
15 Ameriloan, United Cash Loans, US Fast Cash, Advantage Cash Services, and Star Cash
16 Processing before the December 27, 2012 preliminary injunction issued in this case is
17 hereby extinguished to the extent that such claimed indebtedness exceeds the amount
18 financed plus one finance charge (the "Extinguished Debt"). Defendants shall forgive,
19 shall not collect upon or make any attempt to collect upon, shall not sell, assign, or
20 otherwise transfer, and shall not report to any consumer reporting agency, any
21 Extinguished Debt.

22 **VI. TRANSFERS OF DEBT**

23 **IT IS FURTHER ORDERED** that Defendants may sell, transfer, or assign any
24 consumer Debt that is not Extinguished Debt, and shall provide a copy of this Order to
25 any such purchaser, transferee, or assignee.
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VII. MONETARY JUDGMENT

~~IT IS FURTHER ORDERED~~ that:

- A. Judgment in the amount of \$21,000,000 (twenty-one million dollars) is entered in favor of the Commission against Defendants, jointly and severally, as equitable monetary relief.
- B. Defendants are ordered to pay to the Commission \$21,000,000 (twenty-one million dollars), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.
- C. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- D. The facts alleged in the Complaint will be deemed admitted by Defendants in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- E. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

1 F. Defendants must submit Taxpayer Identification Numbers to the
2 Commission, and acknowledge that their Taxpayer Identification Numbers
3 may be used for collecting and reporting on any delinquent amount arising
4 out of this Order, in accordance with 31 U.S.C. § 7701.

5 G. All money paid to the Commission pursuant to this Order may be
6 deposited into a fund administered by the Commission or its designee to
7 be used for equitable relief, including consumer redress and any attendant
8 expenses for the administration of any redress fund. If a representative of
9 the Commission decides that direct redress to consumers is wholly or
10 partially impracticable or money remains after redress is completed, the
11 Commission may apply any remaining money for such other equitable
12 relief (including consumer information remedies) as it determines to be
13 reasonably related to Defendants' practices alleged in the Complaint. Any
14 money not used for such equitable relief is to be deposited to the U.S.
15 Treasury as disgorgement. Defendants have no right to challenge any
16 actions the Commission or its representatives may take pursuant to this
17 Subsection.
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21 VIII. CUSTOMER INFORMATION

22 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants,
23 employees, and attorneys, and all other persons in active concert or participation with any
24 of them, who receive actual notice of this Order, are hereby permanently restrained and
25 enjoined from directly or indirectly:
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1 information, evidence, and testimony. Defendants must cause Defendants' officers,
2 employees, representatives, or agents to appear for interviews, discovery, hearings, trials,
3 and any other proceedings that a Commission representative may reasonably request
4 upon 10 days written notice, or other reasonable notice, at such places and times as a
5 Commission representative may designate, without the service of a subpoena.

6 **X. ORDER ACKNOWLEDGMENTS**

7 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of
8 this Order:

9 A. Each Defendant, within 7 days of entry of this Order, must submit to the
10 Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

11 B. For 20 years after entry of this Order, or as long as each Defendant exists
12 (whichever is shorter), each Defendant must deliver a copy of this Order to (1) all
13 principals, officers, directors, and LLC managers and members; (2) all employees,
14 agents, and representatives who participate in the offering of consumer credit or the
15 Collection of Debts; and (3) any business entity resulting from any change in structure as
16 set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days
17 of entry of this Order for current personnel. For all others, delivery must occur before
18 they assume their responsibilities.

19 C. From each individual or entity to which a Defendant delivered a copy of
20 this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment
21 of receipt of this Order.

22 **XI. COMPLIANCE REPORTING**

23 **IT IS FURTHER ORDERED** that Defendants make timely submissions to the
24 Commission:
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1 A. One year after entry of this Order, each Defendant must submit a compliance
2 report, sworn under penalty of perjury:

3 1. Each Defendant must: (a) identify the primary physical, postal, and email
4 address and telephone number, as designated points of contact, which representatives of
5 the Commission may use to communicate with such Defendant; (b) identify all of that
6 Defendant's businesses by all of their names, telephone numbers, and physical, postal,
7 email, and Internet addresses; (c) describe the activities of each business and the
8 involvement of any other Defendant; (d) describe in detail whether and how that
9 Defendant is in compliance with each Section of this Order; and (e) provide a copy of
10 each Order Acknowledgment obtained pursuant to this Order, unless previously
11 submitted to the Commission.

12 B. For 20 years after entry of this Order or as long as each Defendant exists
13 (whichever is shorter), each Defendant must submit a compliance notice, sworn under
14 penalty of perjury, within 14 days of any change in the following:

15 1. Each Defendant must report any change in: (a) any designated point of
16 contact; or (b) the structure of any Defendant or any entity that such Defendant has any
17 ownership interest in or controls directly or indirectly that may affect compliance
18 obligations arising under this Order, including: creation, merger, sale, or dissolution of
19 the entity or any subsidiary, parent, or affiliate that engages in any acts or practices
20 subject to this Order.

21 C. Each Defendant must submit to the Commission notice of the filing of any
22 bankruptcy petition, insolvency proceeding, or similar proceeding by or against such
23 Defendant within 14 days of its filing.

24 D. Any submission to the Commission required by this Order to be sworn under
25 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as
26 by concluding: "I declare under penalty of perjury under the laws of the United States of
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1 America that the foregoing is true and correct. Executed on: _____” and supplying the
2 date, signatory’s full name, title (if applicable), and signature.

3 E. Unless otherwise directed by a Commission representative in writing, all
4 submissions to the Commission pursuant to this Order must be emailed to
5 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate
6 Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,
7 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
8 FTC v. AMG Services, Inc., No. X120026.

9 **XII. RECORDKEEPING**

10 **IT IS FURTHER ORDERED** that Defendants must create certain records for 20 years
11 after entry of the Order or as long as each Defendant exists (whichever is shorter), and
12 retain each such record for 5 years. Specifically, each Defendant for any operations
13 involving the offering of consumer credit or the Collection of Debts must create and
14 retain the following records:

- 15 A. accounting records showing the revenues from all goods or services sold;
16 B. personnel records showing, for each person providing services, whether as an
17 employee or otherwise, that person’s: name; addresses; telephone numbers; job title or
18 position; dates of service; and (if applicable) the reason for termination;
19 C. records of all consumer complaints and refund requests, whether received directly
20 or indirectly, such as through a third party, and any response;
21 D. all records necessary to demonstrate full compliance with each provision of this
22 Order, including all submissions to the Commission; and
23 E. a copy of each unique advertisement or other marketing material.

24 **XIII. COMPLIANCE MONITORING**

25 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants’
26 compliance with this Order:
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1 A. Within 14 days of receipt of a written request from a representative of the
2 Commission, each Defendant must: submit additional compliance reports or other
3 requested information, which must be sworn under penalty of perjury; appear for
4 depositions; and produce documents for inspection and copying. The Commission is also
5 authorized to obtain discovery, without further leave of court, using any of the procedures
6 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
7 31, 33, 34, 36, 45, and 69, provided that Defendants, after attempting to resolve a dispute
8 without court action and for good cause shown, may file a motion with this Court seeking
9 an order for one or more of the protections set forth in Rule 26(c).

10 B. For matters concerning this Order, the Commission is authorized to communicate
11 directly with each Defendant. Each Defendant must permit representatives of the
12 Commission to interview any employee or other person affiliated with any Defendant
13 who has agreed to such an interview. The person interviewed may have counsel present.

14 C. The Commission may use all other lawful means, including posing, through its
15 representatives as consumers, suppliers, or other individuals or entities, to Defendants or
16 any individual or entity affiliated with Defendants, without the necessity of identification
17 or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory
18 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

19 **XIV. PRESERVATION OF RECORDS AND TANGIBLE THINGS**

20 **IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers,
21 agents, servants, employees, and attorneys, and those persons or entities in active concert
22 or participation with any of them who receive actual notice of this Order by personal
23 service, facsimile transmission, email, or otherwise, whether acting directly or through
24 any corporation, subsidiary, division, or other device, are hereby enjoined from:
25 destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing
26 of, in any manner, directly or indirectly, any documents or records that relate to the
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1 business practices, or business or personal finances, of the defendants in this proceeding
2 or any other entity directly or indirectly under the control of any defendant in this
3 proceeding. In the event of the dissolution of any Defendant, such Defendant shall
4 ensure continued preservation of all such documents and records through the conclusion
5 of the proceeding (and any appeals therefrom). *Provided that*, nothing in this Article
6 shall prohibit destruction of consumer information as may be directed by the Commission
7 pursuant to Article VIII.C.

8 **XV. DISSOLUTION OF STIPULATED ORDERS FOR PRELIMINARY AND**
9 **PERMANENT INJUNCTIONS AND JUDGMENT AS TO AMG**
10 **SERVICES, INC. AND MNE SERVICES, INC.**

11 **IT IS FURTHER ORDERED** that, upon entry of this Order, the Court's Order Entering
12 Stipulated Preliminary Injunction and Bifurcation dated December 27, 2012 (ECF 296) is
13 **VACATED** as to AMG Services, Inc. and MNE Services, Inc.; and

14 **IT IS FURTHER ORDERED** that, upon entry of this Order, the Court's Stipulated
15 Order for Permanent Injunction and Judgment dated October 8, 2013 (ECF 478) is
16 **VACATED** as to AMG Services, Inc. and MNE Services, Inc.

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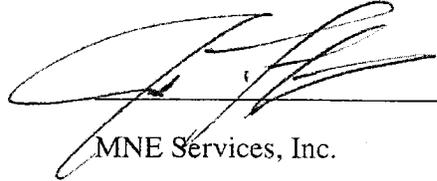
XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO STIPULATED


AMG Services, Inc.

By: *Joe Frazier*
Title: *CEO*


MNE Services, Inc.

By: *Joe Frazier*
Title: *CEO*

Nikhil Singhvi
Federal Trade Commission
600 Pennsylvania Ave., NW
Mailstop CC-10232
Washington, DC 20580
nsinghvi@ftc.gov
Tel. 202-326-3480
Fax. 202-326-3629

*Attorney for Plaintiff Federal Trade
Commission*

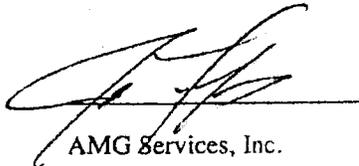
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*Attorney for Defendants AMG
Services, Inc. and MNE
Services, Inc.*

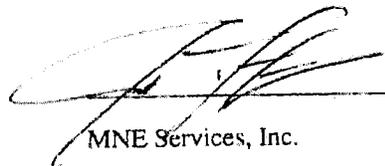
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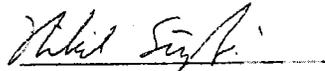
IT IS SO STIPULATED


AMG Services, Inc.

By: *Joe Frazier*
Title: *CEO*

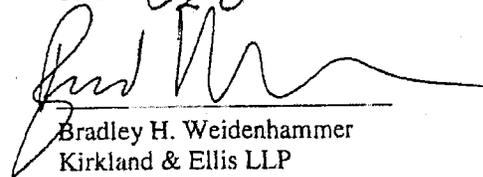

MNE Services, Inc.

By: *Joe Frazier*
Title: *CEO*



Nikhil Singhvi
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Attorney for Plaintiff Federal Trade Commission

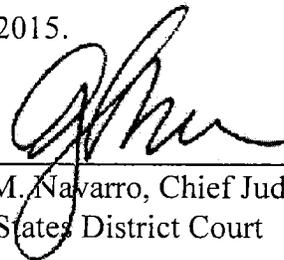


Bradley H. Weidenhammer
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bweidenhammer@kirkland.com
Tel. 312-862-3218
Fax. 312-862-2200

Attorney for Defendants AMG Services, Inc. and MNE Services, Inc.

ORDER

IT IS SO ORDERED this 23rd day of January, 2015.


Gloria M. Navarro, Chief Judge
United States District Court

DECLARATION OF SERVICE

Case Name: **People of the State of California v. Miami Nation Enterprises, et al.**

Case No.: **S216878**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On February 6, 2015, I served the attached **SUPPLEMENTAL BRIEF** by:

OVERNIGHT envelope and causing such envelope to be personally delivered by Golden State Overnight courier service to the office of the addressee listed below:

California Supreme Court Earl Warren Building 350 McAllister Street, Room 1295 San Francisco, CA 94102	Original + 8 copies Sent via Golden State Overnight
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MAIL envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

E-MAIL TRANSMISSION by transmitting a true copy via electronic mail, addressed as follows:

John Nyhan Fredericks Peebles & Morgan LLP 2020 L Street, Suite 250 Sacramento, CA 95811 jnyhan@ndnlaw.com	Attorney for Defendants and Respondents
---	--

Nicole E. Ducheneaux Fredericks Peebles & Morgan LLP 3610 North 163rd Plaza Omaha, NE 68116 NDucheneaux@ndnlaw.com	Attorney for Defendants and Respondents
Conly J. Schulte Fredericks Peebles & Morgan LLP 1900 Plaza Drive Louisville, CO 80027 CSchulte@ndnlaw.com	Attorney for Defendants and Respondents
Seth E. Mermin Public Good Law Center 3130 Shattuck Avenue Berkeley, CA 94705 TMermin@publicgoodlaw.org	Attorney for Amici Curiae

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 6, 2015, at Sacramento, California.

Linda Thorpe
Declarant



Signature