

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

MDL No. 1358 (SAS)

This Document Relates To:

*City of Merced Redevelopment Agency v. Exxon
Mobil Corp., et al., 08 Civ. 06306 (SAS)*

**SECOND DECLARATION OF WHITNEY JONES ROY IN SUPPORT OF
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE NUISANCE
AND TRESPASS**

DECLARATION OF WHITNEY JONES ROY

I, Whitney Jones Roy, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Sheppard, Mullin, Richter & Hampton LLP, attorneys of record for Defendant Exxon Mobil Corporation. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

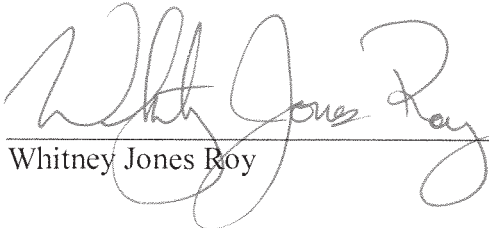
2. This declaration is submitted in support of Defendants' Reply in Support of Motion for Partial Summary Judgment re Nuisance and Trespass. Because the RDA's Opposition to Defendants' Motion cites to several pieces of evidence out of context, it is necessary to submit this declaration to provide the Court with the relevant context.

3. Attached hereto as **Exhibit 14** is a true and correct copy of the relevant portions from the deposition of Albert Liguori taken on October 12, 2000.

4. Attached hereto as **Exhibit 15** is a true and correct copy of the relevant portions of the deposition of J.P. Randhawa take on August 26, 2009.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed May 15, 2013, at Los Angeles, California.


Whitney Jones Roy

**Second Roy Declaration re MSJ re Nuisance & Trespass
Exhibit 14**

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3 --o0o--

4 SOUTH TAHOE PUBLIC UTILITY)
DISTRICT,)

5)
6 plaintiff,)

7)
8 vs)

9 ATLANTIC RICHFIELD COMPANY)
("ARCO"); et al.,)

10)
11 Defendants.)

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No. 999128

VOLUME I

THIS TRANSCRIPT
CONTAINS
CONFIDENTIAL
MATERIALS

No. 997013

--o0o--
THURSDAY, OCTOBER 12, 2000
10:18 A.M.

--o0o--
DEPOSITION OF
ALBERT E. LIGUORI
--o0o--

CATHLEEN SLOCUM, CSR
License No. 2822

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1 COUNSEL

2
3 For the Plaintiff:

4 MILLER, SHER & SAWYER
BY: VICTOR M. SHER, ESQ.
100 Howe Avenue, Suite S-120
Page 1

14 said he's not aware of one either. Are you aware of a
15 copy, a remaining copy somewhere of the draft of the
16 report?

17 A Not within my files.

18 Q Okay. In the middle of the first page of Exhibit
19 13 there's a reference to a correction on page 15 as
20 follows, "Remove the sentence 'Environmental presence
21 is defined as a station with a groundwater monitoring
22 program (approximately half'" --

23 A Excuse me, I'm not with you yet.

24 Q Okay. Do you see three paragraphs up from the
25 bottom of the page?

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1 A Page 15.

2 Q "Remove the sentence"?

3 A I'm, I'm with you now.

4 Q All right. Okay. It says, "Remove the sentence
5 'Environmental presence is defined as a station with a
6 groundwater monitoring program (approximately half of
7 the roughly 450 sites in'" New Jersey "'have
8 environmental presence).'" Do you see that?

9 A Yes, I do.

10 Q Do you know what that refers to?

11 A The presence of MTBE in groundwater samples that
12 were analyzed during regular quarterly monitoring.

13 Q When it says approximately half of the roughly
14 450 sites in New Jersey have environmental presence,
15 is that 450 retail sites, 450 sites with groundwater
16 monitoring programs or something else?

17 A It's my understanding that it's 450 retail sites.

18 Q Oh, I know what I wanted to ask you. Go back to
19 Exhibit 9, please. If you look at the page near the
20 beginning that's Bates stamped 7259 --

21 A I see it.

22 Q -- it's a diagram that is titled, "Impact of
23 Small Releases." Are you there?

24 A Yes, I am.

25 Q Can you explain what this diagram shows?

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1 A This is what we call a cartoon of a hypothetical
2 situation that was to help those that we were doing
3 the study for to gain an appreciation of the amount of
4 gasoline containing MTBE that might be introduced into
5 the subsurface and what the corresponding
6 concentrations would be for volumes of water that are
7 shown here of 1,000, 10,000, 100,000, and one million
8 liters. And it's a way of giving quick appreciation
9 to the fact that what we were searching for in terms
10 of potential sources would have to be on the level of
11 teaspoonfuls of gasoline somewhere within the system
12 from where product is delivered to a retail station,
13 moved through the lines and into the on-site

14 underground storage tanks.

15 And I should emphasize that this is purely
16 hypothetical. It's what would be called a bathtub
17 model. It would, it precludes, it assumes perfect
18 mixing injecting directly into the water. It doesn't
19 replicate the situation you would have at any
20 particular site at a retail station. It's assuming
21 perfect conditions that would never exist in reality.
22 But it gives an upper bound or a lower bound,
23 depending on how you want to look at it, as to the
24 magnitude of the problem. In reality it would be the
25 concentrations that we show for various volumes of

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1 water would be a lot lower, but nevertheless it still
2 gives you an intuitive feel for how small of a volume
3 could result in giving you the concentrations that
4 might trigger monitoring and/or remediation.

5 Q So let me, let me make sure that I understand the
6 cartoon and then ask you some questions about what you
7 just said. If you had a teaspoon of gasoline that
8 contained 11 and a half percent by volume MTBE and it
9 were perfectly dissolved in 1,000 gallons of water --

10 A Liters of water.

11 Q I'm sorry, 1,000 liters of water --

12 A Right.

13 Q -- which is something a little less than 250
14 gallons of water?

15 A I believe that's correct.

16 Q Okay. Then you would have MTBE at 413 parts per
17 billion?

18 A A concentration -- now that, that's a teaspoonful
19 of gasoline being approximately five
20 milliliters --

21 Q Right.

22 A -- and gasoline containing benzene at one and a
23 half percent and MTBE at 11 and a half percent.

24 Q Okay. Now, what if -- on the left-hand side of
25 this cartoon there's a scale that refers to the volume

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1 of groundwater in liters going from zero to 100 --

2 A To a million.

3 Q -- to a million. And then the first dark circle
4 that's labeled 1,000, is there any, is there any
5 correlation between the 1,000 and the volume on the
6 scale to the left?

7 A It's -- no, there isn't. It's too small to
8 blot --

9 Q Okay.

10 A -- in relation to the other volumes. The million
11 liter of course is accurate in this cartoon. The
12 100,000 is accurate. But given the scale here, we
13 would have had to have a much larger page to show the

14 actual proportional relationship between the 10,000
15 liter and the 1,000 liter.

16 Q Okay. And at the same teaspoon of gas if
17 thoroughly mixed and dissolved --

18 A Right.

19 Q -- in 100,000 liters of water would be four parts
20 per billion?

21 A That's correct.

22 Q And at a million liters of water it's 0.4 parts
23 per billion?

24 A That's correct.

25 Q Now, you said that you thought that the actual
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1 concentrations in the real world would be
2 substantially lower?

3 A In a well at an actual site collecting water,
4 groundwater from an aquifer, it would be much lower.

5 Q And why is that?

6 A Because you have to account for the volume of
7 water that could exist in the pore space of a
8 particular soil stratigraphy, various layers. Silt
9 soils would have a much less available space in
10 between the soil particles for any liquid to permeate
11 into. Correspondingly soils and gravels would have
12 more void space available in which product could seep
13 into, that liquid could seep into whether it was
14 product or groundwater or combinations thereof.

15 The -- it's hard to be able to be descriptive
16 enough for all the conditions that you can encounter
17 because you'll have varying combinations of soil,
18 depth to groundwater, whether or not the site is paved
19 and prevents any liquids from the surface even
20 penetrating into the subsurface and eventually into
21 any groundwater tables that exist under the site or
22 near the surface of a particular site.

23 Q Assuming that the teaspoon of gasoline which was
24 released at a site actually all made it into the
25 groundwater, then these concentrations would be

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1 accurate, wouldn't they?

2 A Still not would be accurate.

3 Q Why not?

4 A Because it would take time for it to, for the
5 gasoline to dissolve into the groundwater. At these
6 low levels it would be hard to say whether it would be
7 instantaneous, whether it would take a long period of
8 time. It would depend on the soil conditions. It
9 would depend on how much of the gasoline was absorbed
10 by soil particles, how much residual product would be
11 remaining within the pore space of the soil layers.

12 This is something that was intended to be
13 very simplistic and just to give order of magnitude

14 appreciation for the management of Exxon USA as to
15 what levels we were talking about.

16 Q I don't have the conversion factors at the tip of
17 my tongue here, but roughly how many teaspoons are
18 there in a gallon?

19 A I don't know.

20 MR. SHER: Let's go off the record for a
21 minute.

22 THE VIDEOGRAPHER: Going off record. Time
23 now is 4:49.

24 (Thereupon a brief recess was taken.)

25 THE VIDEOGRAPHER: Going back on record.

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1 Time now is 4:50.

2 MR. SHER: Q We've been talking about your
3 study, that is, Exxon Research and Engineering Company
4 study for Exxon USA concerning release source
5 identification at retail sites. In the documents that
6 I reviewed that counsel gave me this morning there
7 were some references to a PERF project that at least
8 on its face seemed to have some overlap with your
9 project. Does that ring a bell for you?

10 A In general PERF rings a bell. I'm aware of the
11 organization and some of the projects that they have
12 undertaken in site remediation.

13 Q What does PERF stand for to your understanding?

14 A The Petroleum Environmental Research Forum.

15 (Thereupon a document was marked by the
16 reporter as Exhibit 14 for identification.)

17 MR. SHER: Q Okay. I'm handing you what
18 we've marked as Exhibit 14 to your deposition. This
19 is a document titled, "PERF Project Status Report
20 12/98," and the Bates range on this set of documents
21 as it was produced to us is 6604 through 6608.

22 Do you need a moment to review this?

23 A Please.

24 MR. SHER: Let's go off the record.

25 THE VIDEOGRAPHER: Going off record. Time

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1 now is 4:51.

2 (Thereupon a brief recess was taken.)

3 THE VIDEOGRAPHER: Go back on record. Time

4 now is 4:53.

5 MR. SHER: Q Do you recognize what we've
6 marked as Exhibit 14?

7 A Yes, I do.

8 Q And what is this?

9 A It's a package containing on the first page a
10 quarterly status report that was prepared for December
11 1998 on a hoped for PERF project related to or titled,
12 "Key Environmental Issues Concerning MTBE" with the
13 objective of developing a full project proposal

14 forward with.

15 MR. SHER: And I'm also willing to continue
16 tomorrow morning, but I understand that won't work for
17 the witness.

18 MR. ESSMYER: That's my understanding.

19 MR. SHER: Okay.

20 THE VIDEOGRAPHER: In the deposition of
21 Albert Liguori, this marks the end of videotape
22 three.

23 Going off record. The time now is 5:27.

24 ///

25 ///

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1 (Thereupon the Deposition of ALBERT E.
2 LIGUORI was adjourned at 5:27 p.m.)
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4

5 ALBERT E. LIGUORI
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DATED:

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
2

3 I, CATHLEEN S. SLOCUM, a Certified Shorthand
4 Reporter, in and for the State of California, duly
5 appointed and commissioned to administer oaths, do
6 hereby certify:

7 That I am a disinterested person herein; that
8 the witness, ALBERT E. LIGUORI, named in the foregoing
9 deposition, was by me duly sworn to testify the truth,
10 the whole truth, and nothing but the truth; that the
11 deposition was reported in shorthand by me, Cathleen
12 S. Slocum, a Certified Shorthand Reporter of the State

13 Liguori Albert 10-12-00 (VOL I).txt
14 of California, and thereafter transcribed into
15 typewriting.
16 IN WITNESS WHEREOF, I have hereunto set my
17 hand as Certified Shorthand Reporter on this of
18 October, 2000.
19
20
21

Cathleen Slocum
Certified Shorthand Reporter
License Number 2822

--oOo--

□

E X H I B I T S		
	Plaintiff's	Page
3	10 Draft EE Proposal to EUSA, Source Identification and Prevention of MTBE in the Environment Confidential	118
6	11 EUSA MTBE Source Identification Project Preliminary Kick-Off Meeting July 28, 1998 Confidential	123
8	12 EUSA Proposal for MTBE Contamination Management Issues, Prevention and Source Identificatio of MTBE in the Environment Confidential	129
11	13 MTBE Release Source Identification at Marketing Sites Draft Report Comments Confidential	131
14	14 PERF Project Status Report - 12/98, 9/98; PERF Agenda Decelmber 1-3, 1998; Handwritten Notes	139
16	15 Minutes - American Petroleum Institute, Gasoline Source Identification Task Force, January 19, 1999	143
18	16 Letter to S.D. Curran from A.E. Liguori, dtd March 13, 1987 with Attachments; Confidential	146
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21	1 chemical Fate and Impact of Oxygenates in Groundwater: Solubility of BTEX from Gasoline Oxygenate Mixtures, August 1991; Transport and Fate of Dissolved Methanol, Page 82	59

**Second Roy Declaration re MSJ re Nuisance & Trespass
Exhibit 15**

1 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF MERCED

3 -ooo-

4 CITY OF MERCED,

5 Plaintiff,

6 vs.

Case No. 148451

7 CHEVRON U.S.A., INC.; SHELL OIL
8 COMPANY; EXXONMOBIL CORPORATION;
9 EXXON CORPORATION; KINDER MORGAN
10 ENERGY PARTNERS L.P.; EQUILON
11 ENTERPRISES LLC; SFPP, L.P. and
12 DOES 1 THROUGH 200, inclusive,

13 Defendants.
14 _____/

15 DEPOSITION OF J.P. RANDHAWA

16 August 26, 2009 at 9:00 a.m.

17 Before: ERIC L. JOHNSON
18 RPR, CSR #9771

19 Taken at:
20 Merced, California
21
22
23
24
25

1 contractor for the upgrades or give you a list of people
2 that were qualified to do that?

3 A. No.

4 Q. Did Dickey Oil do that?

5 A. No, I don't think so.

6 Q. Did you find this contractor on your own?

7 A. Somebody recommended me, because I have a
8 cousin who also owns a gas station so I think he used
9 Westar a few times.

10 Q. And he was happy with their services?

11 A. He was, but I wasn't, after.

12 Q. Okay. Did anyone else assist you with the
13 upgrades, that you haven't mentioned at some time this
14 morning?

15 A. Anybody else? No.

16 Q. From the time you acquired the station until
17 you shut it down to do the upgrades, were any of the
18 dispensers replaced or repaired, to your knowledge?

19 MR. TEMKO: I am sorry. Can you reread the
20 question, please?

21 MR. MILLER: From the time you first acquired
22 the station in 1994, until you shut the station down to
23 do the upgrades --

24 A. Okay.

25 Q. -- were any of the dispensers repaired or

1 site. A large quantity of soil was generated from the
2 UST removal activities. The soil stock pile remains on
3 site. The soil stock pile shall be covered with plastic
4 immediately to prevent any further volatilization and
5 characterized analytically in order to determine proper
6 off-site disposal." And then after the word
7 "analytically" in parenthesis it has the names of
8 several gasoline constituents, including MTBE.

9 Do you see that entry?

10 A. Yeah.

11 Q. During the time the soil was piled up on the
12 property, did somebody cover it?

13 A. Yeah.

14 Q. Do you know if samples were taken to find out
15 how much gasoline might be present in it, so you could
16 dispose of it properly?

17 A. I don't know.

18 Q. Did you have anybody testing the soil on your
19 behalf, as opposed to letting the county do it?

20 A. No.

21 Q. When the tank upgrades were done, was it your
22 understanding that you were installing double walled
23 tanks?

24 A. Yes.

25 Q. And that they were made of fiberglass?

1 A. Yes.

2 Q. Did that differ from the old tanks?

3 A. Yes.

4 Q. Was one of the differences that the old tanks
5 didn't have double walled tanks or pipes?

6 A. Yes.

7 Q. But the new system did.

8 A. Yeah.

9 Q. Was it your understanding that was an
10 improvement in terms of reducing the chance that
11 gasoline would get out in the environment, that is,
12 having double walled pipes and tanks?

13 A. I don't know.

14 Q. Before you replaced your underground storage
15 tanks, do you know if there was any sump under the
16 dispensers to hold any liquid that escaped the pipes or
17 the dispenser?

18 A. I don't remember.

19 Q. Do you know what a bravo box is?

20 A. No.

21 Q. Do you know if there was any type of
22 containment, sometimes they put plastic pans under
23 dispensers, sometimes they put concrete sumps, they have
24 a number of devices, one of them is called a bravo box.

25 Are you aware of any type of containment that

1 is under your dispensers now?

2 A. Yeah. Right now, I mean, there's like a --
3 like big -- I think it is probably about four feet under
4 the dispensers. It is like metal.

5 Q. Okay. Is it -- strike that.

6 Is it your understanding that that's an area
7 you can check to make sure that no liquid is coming out
8 of the dispensers?

9 A. Yes. It has sensors so if there is any liquid,
10 I will get a notice inside.

11 Q. Electronically and automatically?

12 A. Electronically and automatically, yes.

13 Q. Did you first have that type of electronic
14 automatic notice that there was a leak near the
15 dispensers after you upgraded the station?

16 A. No.

17 Q. What I am trying to find out is did you -- when
18 did you first get this system that gave you an automatic
19 electronic notice if there was any leak noted under your
20 dispenser?

21 A. '99. June '99.

22 Q. With the new system?

23 A. With the new system.

24 Q. Before June '99, was there any automatic leak
25 detector for any aspect of the gasoline storage systems

1 or pipes?

2 A. I don't think so.

3 Q. And before the upgrades in June of 1999, do you
4 remember any pan being underneath the dispensers to
5 catch liquid?

6 A. I don't know.

7 Q. You can't say one way or the other whether or
8 not there was one?

9 A. I don't know.

10 Q. You don't remember spending money to install
11 containment under the dispensers, before the work was
12 started, that led to the upgrades in June of '99,
13 correct?

14 A. Yeah.

15 MR. MILLER: Okay. Exhibit 11 is another
16 letter to you. This one is dated April 21, 1999.

17 (Deposition Exhibit 11 marked
18 for identification)

19 MR. MILLER: Q. Would you have received this
20 letter?

21 MS. JONES-ROY: Calls for speculation.

22 THE WITNESS: I don't remember.

23 MR. MILLER: Q. It is addressed to you in
24 Livingston, California.

25 A. Yeah.

1 MR. TEMKO: Object; asked and answered;
2 mischaracterizes the prior testimony.

3 THE WITNESS: I was there, but I don't know
4 when and how long I was there.

5 MR. MILLER: Q. When you were there, was the
6 stockpiled soil covered with plastic?

7 MR. TEMKO: Object; vague and ambiguous.

8 THE WITNESS: Yes.

9 MR. MILLER: Q. At some point, did you learn
10 that the case had been taken over by the Regional Board
11 and was no longer being handled by the county, as far as
12 the cleanup was concerned?

13 A. Yeah.

14 Q. Do you remember when you learned that?

15 A. I don't remember that.

16 Q. Were you ever told why the Regional Board took
17 over the cleanup from the county?

18 A. No.

19 Q. When you installed your new double walled
20 underground storage tank and piping, the new system, did
21 you have any information there was ever a release of
22 gasoline from that new system?

23 A. New system, no.

24 Q. And has anyone ever claimed there was a release
25 from the new system? Ever told you they thought the new

1 one leaked?

2 A. No.

3 Q. Did you ever hear reports that people with the
4 Regional Board thought there was a leak at the Cardgas
5 site after you upgraded your tanks?

6 A. No.

7 Q. Did you ever do anything to inspect the Cardgas
8 facility, or watch when somebody else was inspecting the
9 facility, to see if there was an indication of a
10 release?

11 A. No.

12 Q. Did you ever walk around on the Cardgas site
13 with any governmental inspector?

14 A. I don't remember.

15 Q. Were you ever told that they found more than
16 four feet of gas floating on top of the groundwater in a
17 monitoring well near the underground storage tanks for
18 the cardlock station?

19 MS. VANDERLAAN-SMITH: Objection; assumes facts
20 not in evidence.

21 THE WITNESS: I don't remember that either.

22 MR. MILLER: Q. Did you meet one or more of
23 the owners of the cardlock station in some of these
24 meetings? The ones with the city.

25 A. Yeah, Brian Pazin.

1 Q. You mentioned that when you closed the station,
2 you switched from using Courtesy Oil to using Dickey
3 Petroleum.

4 Do you recall that testimony?

5 A. Yes.

6 Q. Was the reason that you switched because Dickey
7 was offering to help you do the cleanup; is that right?

8 A. Not the cleanup, but the -- they were offering
9 me \$79,000.

10 Q. For the upgrade?

11 A. For the upgrade, yeah.

12 Q. Sorry. Did you ask Courtesy Oil whether they
13 would be willing to give you money to do that?

14 A. No.

15 Q. Did you -- did courtesy ask that they continue
16 to be a distributor for you?

17 A. I don't remember that.

18 Q. I want to clarify, Mr. Miller asked you about
19 something called an MSDS.

20 Do you recall that?

21 A. Mm-hmm. Yeah, he asked me something about
22 that.

23 Q. And I think you said that you don't know what
24 that is.

25 A. I don't know.

PROOF OF SERVICE VIA FILE AND SERVE XPRESS

City of Merced Redevelopment Agency v. Exxon Mobil Corp., et al.

I, Laverna A. Henry, the undersigned, hereby declare:

1. I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action. I am employed by Sheppard, Mullin, Richter & Hampton LLP in the City of Los Angeles, State of California. My business address is 333 South Hope Street, 48th Floor, Los Angeles, California 90071.

2. On **May 15, 2013**, I served a copy of the attached document titled ***SECOND***
DECLARATION OF WHITNEY JONES ROY IN SUPPORT OF DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT RE NUISANCE AND TRESPASS
on all parties hereto by:

- a. X Posting it directly to the File & Serve Xpress website,

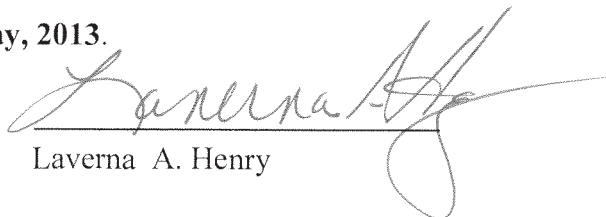
 www.lexisnexis.com/fileandserve
- b. Sending it via facsimile transmission to LexisNexis File & Serve at approximately

 . Pacific Time
- c. Placing it in an addressed, sealed envelope clearly labeled to LexisNexis File &

 Serve and causing it to be deposited with an overnight mail or courier service for

 delivery the next business day.

I declare under penalty under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of **May, 2013**.


Laverna A. Henry