

# CURRAN & CURRAN LAW

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MICHAEL D. CURRAN, ESQ., ATP  
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October 6, 2014

U. S. Department of Transportation  
Docket Management System  
1200 New Jersey Ave., SE  
Washington, DC 20590

Re: Exemption Request; Section 333 of the FAA Modernization & Reform Act and Part 11 of the Federal Aviation Regulations from 14 C.F.R. 45.23(b); 14 CFR Part 21; 14 CFR 61.113 (a) & (b); 91.7 (a); 91.9 (b) (2); 91.103(b); 91.109; 91.119; 91.121; 91.151 (a); 91.203(a) & (b); 91.405 (a); 91.407(a) (1); 91.409 (a) (2); 91.417 (a) & (b).

Dear Sir or Madam:

Petitioner Skyview Media Productions, LLC hereby petitions the Secretary of Transportation and Federal Aviation Administration ("FAA") for exemption to the above referenced and below more fully described Federal Aviation Regulations, ("FARs") that currently may or may not apply to the recreational/ business operations of model aircraft including small unmanned aerial vehicles/systems ("SUAVS").

## 1. Prefatory Statement to Petition

In June, 1981, the FAA published an advisory circular, AC 91-57, (an advisory publication giving non-regulatory information/guidance. Advisory circulars do not create or change regulations and are not binding on the public.) AC 91-57 was entitled "Model Aircraft Operating Standards" and gave non-regulatory suggestions to model aircraft operators on suggested procedures for operating their models. This was the sole publication by the FAA which addressed model aircraft, SUAV for the next nearly 25 years.

In September 2005, the FAA appeared to turn its' attention toward unprecedented attempts at regulating model aircraft specifically the more modern SUAVS. The FAA, for the first time in history now termed these devices as Unmanned Aerial Systems ("UAS") seemingly to align with their attempts at enforcement. The FAA published "AFS-400 UAS POLICY 05-01 - Unmanned Aircraft Systems Operations in the U. S. National Airspace System - Interim Operational Approval Guidance." This interim internal FAA memo expressly confirms that "[t]his policy is not meant as a substitute for any regulatory process." Still, it purported to "require" a Certificate of Authorization ("COA") or Waiver to use SUAVS. The new FAA policy relied for legal/regulatory "authority" on the non-regulatory, AC 91-57.

In February, 2007 the FAA, published a 2007 "policy statement" in the Federal Register. The 2007 Policy Statement starts by defining "unmanned aircraft" as "a device that is used or intended to be used, for flight in the air with no onboard pilot" and it purported to include "a remotely controlled model airplane used for recreational purposes." The FAA termed these devices UAS and then purported to articulate the new FAA "policy" for "UAS" operations was that "no person may operate a "UAS" in the National Airspace System without specific authority." For the first time ever, the 2007 Notice purported to articulate two new alleged "rules": (1) Model aircraft can no longer be operated for a "business" purpose; and (2) a Model aircraft operated for a business purpose requires a COA, or special Certificate of Operating Authority and therefore is subject to the FAR's.

Thereafter beginning in 2007 and continuing to present apparently based on these two new FAA internal "policies" and without citing to any actual federal law, or FARs, the FAA then sent various cease and desist notices to model aircraft SUAVS operators describing the COA process and threatening to impose a \$10,000 fine if they did not comply with the new FAA policies which the FAA indicated created a "ban" on using SUAVS for an "business purpose."

In 2012, following the FAA's attempts to regulate using internal policy memos, Congress enacted the Federal Aviation Administration Reform and Modernization Act, ["FRMA"]. The FRMA allows the Secretary of Transportation to "exempt" SUAVS from existing Federal Law, FARs to the extent any federal law or FAR actually currently applies to SUAVS.

As the Secretary/FAA are no doubt aware these issues are presently pending before the NTSB full panel of Judges in *Pirker v. FAA*, Docket No. CP-217. Pending the NTSB president setting decision in the Pirker case, Petitioner respectfully makes this request as suggested by the FMRA and the FAA. See [http://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=16294](http://www.faa.gov/news/press_releases/news_story.cfm?newsId=16294). In the only other case in history where the FAA's attempts to regulate Model Aircraft/UAVs has been tested, in *Texas Equisearch v. Federal Aviation Administration*, the U.S. Court of Appeals for the District of Columbia Circuit, Case No. 14-1061, the Court ruled that FAA informal email/mail orders attempting to enforce its Model Aircraft/UAVs internal policies are not legally binding.

Most recently, Petitioner is aware the FAA has granted similar exemptions for aerial photography in Alaska and is on the verge of granting similar exemptions for the Motion Picture Association of America ("MPAA") on behalf of seven UAV camera operators.

Petitioner at all times has and operates his SUAVS following the safety guidelines of AC 91-57.

## **2. Petition for Exemption**

With that preface, pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 ("FMRA") and 14 C.F.R. Part 11, Skyview Media Productions, LLC, developer and operator of Small Unmanned Aerial Vehicles ("SUAVS") equipped to conduct aerial photography/Inspection/ included but not limited to the following; Business Operations: Marketing of residential and commercial real estate Inspection, Survey of Agricultural land for

Farmers, Shoreline protection for Ecological concerns, Assist local law enforcement in emergency matters, over land, water-ways, and oceans; operation over/in non restricted National Parks, National Forests, flight in non-navigable airspace, using non-intrusive recording devices, operation in otherwise unrestricted US States/Territories; hereby applies for an exemption from the listed Federal Aviation Regulations ("FARs") to allow commercial operation of its UAVs, so long as such operations are conducted within and under the conditions outlined herein or as may be established by the FAA as required by Section 333.

As described more fully below, the requested exemption would permit the operation of SUAVS under controlled conditions in airspace that is 1) limited 2) predetermined; and 3) controlled as to access. The exemption would also provide safety enhancements to the already safe operations within the aerial photography industry presently using conventional aircraft and small, unmanned and relatively inexpensive SUAVS.

Approval of this exemption would thereby enhance safety and fulfill the Secretary of Transportation's (the FAA Administrator's) responsibilities to "...establish requirements for the safe operation of such aircraft systems in the national airspace system." Section 333(c) of the FMRA.

### 3. Name and Address of the Petitioner

Skyview Media Productions, LLC  
 Attn: Charles Rothwell  
 Ph: 239-898-0468  
 11100 Shirley Lane  
 North Fort Myers, FL 33917  
 Email: crothwell76@hotmail.com

### 4. Regulations Petitioner Petitions for Exemption, If Such Regulations Apply to SUAVS

14 CFR Part 21 14 C.F.R. 45.23(b) 14 CFR 61.113 (a) & (b) 14 C.F.R. 91.7 (a) 14 CFR 91.9 (b) (2) 14 C.F.R. 91.103	14 C.F.R. 91.109 14 C.F. R. 91.119 14 C.F.R. 91.121 14 CFR 91.151 (a) 14 CFR 91.203 (a) & (b)	14 CFR 91.405 (a) 14 CFR 407 (a) (1) 14 CFR 409 (a) (2) 14 CFR 417 (a) & (b)
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This exemption application is expressly submitted to fulfill Congress' goal in passing Section 333 (a) through (c) of the Reform Act. This law directs the Secretary of Transportation to consider whether certain unmanned aircraft systems may operate safely in the national airspace system ("NAS") before completion of the rulemaking required under Section 332 of the FMRA. In making this determination, the Secretary is required to determine which types of SUAVS/UAS do not create a hazard to users of the NAS, or the public, or pose a threat to national security in light of the following:

- A. The SUAVS size, weight, speed, and operational capability;
- B. Operation of the SUAVS in close proximity to airports and populated areas; and
- C. Operation of the SUAVS within visual line of sight of the operator. FMRA § 333 (a).

Lastly, if the Secretary determines that such vehicles “may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft in the national airspace system.” *Id.* §333(c) (emphasis added). The Petitioner interprets this provision to place the duty on the Secretary/FAA Administrator to not only process applications for exemptions under section 333, but for the Secretary/Administrator to affirmatively craft conditions for the safe operation of the SUAVS, if it should be determined that the conditions set forth herein do not fulfill the statutory requirements for approval.

The Federal Aviation Act expressly grants the Secretary/FAA Administrator the authority to issue exemptions. This statutory authority, by its terms, includes exempting civil aircraft, as the term is defined under §40101 of the Act, which currently may or hereafter may include SUAVs, from the requirement that all civil aircraft must have a current airworthiness certificate.

The Secretary/FAA Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or any sections 44702-44716 of this title if the Secretary/FAA Administrator finds the exemption in the public interest. 49 U.S.C. §44701(f) *See also* 49 USC §44711(a); 49 USC §44704; 14 CFR §91.203 (a) (1).

The Skyview Media Productions, LLC SUAVS are multi-rotorcraft equipped with an on board NAZA computer stabilization controller and GPS, weighting 55 lbs or less and most typically less than 10 lbs., including camera/payload. They operate, under normal conditions, at speeds of 5-40 KIAS and at speed of no more than 50 KIAS and have the capability to hover and move in the vertical and horizontal plane independently/simultaneously. They will operate in line of sight and will operate only within the areas described herein. Such operations will insure that the SUAVS will “not create a hazard to users of the NAS or the “public” as described in the FMRA §333(b).

Given the small size of the SUAVS involved, and the limited environment within which they will operate, the Petitioner falls squarely within that zone of safety (an equivalent level of safety) in which Congress envisioned that the FAA must, by exemption, allow commercial operations of SUAVS to commence immediately. Also, due to the size of the SUAVS and the restricted areas in which the relevant SUAVS will operate, approval of the application presents no national security issue.

Given the clear direction in FMRA §333, the authority contained in the Federal Aviation Act, as amended, the strong equivalent level of safety surrounding the proposed operations, and the significant public benefit, including enhanced safety, reduction in environmental impacts (including reduced emissions associated with allowing SUASV for filming operations rather than full-sized aircraft, the grant of the requested exemptions is in the public interest. Accordingly, the Petitioner respectfully requests that the FAA grant the requested exemption without delay.

## 5. Limitations and Conditions

The Petitioner proposes that the exemption requested herein be issued pursuant the limitations and conditions listed herein. These conditions/limitations provide for an even higher level of safety to operations under the current regulatory structure which apply to actual certificated aircraft because the proposed operations represent a safety enhancement to the already very safe SUA VS filming operations conducted by recreational SUA VS and conventional aircraft.

Petitioner's primary Missions include but are not limited to Marketing of residential and commercial real estate, Inspection/survey of Agricultural land for Farmers, Shoreline protection for Ecological concerns, Assist local law enforcement in emergency matters.

Petitioner's primary locations shall be primarily in Florida/Southeastern US.

These limitations and conditions to which Skyview Media Productions, LLC agrees to be bound when conducting business/commercial operations under this FAA issued exemption are consistent with the Administrators grant of Exemption to the MPAA, include:

1. The SUA V must weigh less than 55 pounds (25 Kg), including energy source(s) and equipment. Operations authorized by this grant of exemption are limited to the following aircraft: DJI Phantom, DJI s800/1000. Proposed operations of any other aircraft will require a new petition or a petition to amend this grant.
2. The SUA V may not be flown at a speed exceeding a ground speed of 50 knots.
3. Flights must be operated at an altitude of no more than 400 feet above ground level (AGL), as indicated by the procedures specified in the operator's manual. All altitudes reported to ATC must be in feet AGL.
4. The SUA V must be operated within visual line of sight (VLOS) of the Operator at all times. This requires the Operator to be able to use human vision unaided by any device other than corrective lenses, as specified on the PIC's FAA-issued medical certificate.
5. All operations must utilize a visual observer (VO). The VO may be used to satisfy the VLOS requirement, as long as the PIC always maintains VLOS capability. The VO and PIC must be able to communicate verbally at all times.
6. The operator's checklist is considered acceptable to the FAA, provided the additional requirements identified in these conditions and limitations are added or amended. The operator's checklist and this grant of exemption must be maintained and made available to the Administrator upon request. If a discrepancy exists between the conditions and limitations in this exemption and the procedures outlined in the checklists the conditions and limitations herein take precedence and must be followed. Otherwise, the operator must follow the procedures as outlined in its checklists.

The operator may update or revise its operator's checklists. It is the operator's responsibility to track such revisions and present updated and revised documents to the Administrator upon request. The operator must also present updated and revised documents if it petitions for extension or amendment. If the operator determines that any update or revision would affect the basis for which the FAA granted this exemption, then the operator must petition for amendment to their exemption. The FAA's UAS Integration Office (AFS-80) may be contacted if questions arise regarding updates or revisions to the operator's manual.

7. Prior to each flight the PIC must inspect the SUAV to ensure it is in a condition for safe flight. If the inspection reveals a condition that affects the safe operation of the SUAV, the aircraft is prohibited from operating until the necessary maintenance has been performed and the SUAV is found to be in a condition for safe flight. The Ground Control Station, if utilized, must be included in the preflight inspection. All maintenance and alterations must be properly documented in the aircraft records.
8. Any SUAV that has undergone maintenance or alterations that affect the UAS operation or flight characteristics, e.g. replacement of a flight critical component, must undergo a functional test flight in accordance with the operator's manual. The PIC who conducts the functional test flight must make an entry in the UAS aircraft records of the flight. The requirements and procedures for a functional test flight and aircraft record entry must be added to the operator's manual.
9. The operator must follow the manufacturer's SUAV aircraft/component, maintenance, overhaul, replacement, inspection, and life limit requirements. When unavailable, aircraft maintenance/ component/overhaul, replacement, and inspection/maintenance requirements must be established and identified in the operator's manual. At a minimum, the following must be included in the operator's manual:
  - a. Actuators / Servos
  - b. Transmission (single rotor)
  - c. Powerplant (motors)
  - d. Propellers
  - e. Electronic speed controller
  - f. Batteries
  - g. Mechanical dynamic components (single rotor)
  - h. Remote command and control
  - i. Ground control station (if used)
  - j. Any other components as determined by the operator
10. The Operator In Command (OIC) must possess a certificate of graduation from a pilot training course conducted by an FAA-approved pilot school, or a statement of accomplishment from the school certifying the satisfactory completion of the ground-school portion and at least a current third-class medical certificate.

11. Prior to operations conducted for the purpose of motion picture filming (or similar operations), the OIC must have accumulated and logged, in a manner consistent with 14 CFR § 61.51 (b), a minimum of 25 hours of total time as a SUAV rotorcraft pilot and at least ten hours logged as a SUAV pilot with a similar SUAV type (single blade or multirotor). Prior documented flight experience that was obtained in compliance with applicable regulations may satisfy this requirement. Training, proficiency, and experience-building flights can also be conducted under this grant of exemption to accomplish the required flight cycles and flight time. During training, proficiency, and experience-building flights, all persons not essential for flight operations are considered non-participants, and the PIC must operate the SUAV with appropriate distance from non-participants in accordance with 14 CFR § 91.119. Prior to operations conducted for the purpose of motion picture filming (or similar operations), the OIC must have accumulated and logged, in a manner consistent with 14 CFR § 61.51 (b), a minimum of five hours as SUAV pilot operating the make and model of SUAV to be utilized for operations under the exemption and three take-offs and three landings in the preceding 90 days. Training, proficiency, experience-building, and take-off and landing currency flights can be conducted under this grant of exemption to accomplish the required flight time and 90 day currency. During training, proficiency, experience-building, and take-off and landing currency flights all persons not essential for flight operations are considered non-participants, and the PIC must operate the UA with appropriate distance from non-participants in accordance with 14 CFR § 91.119.
12. Prior to operations conducted for the purpose of motion picture filming (or similar operations), a flight demonstration, administered by an operator-approved and -qualified pilot must be successfully completed and documented. This documentation must be available for review upon request by the Administrator. Because the knowledge and airmanship test qualifications have been developed by the operator, and there are no established practical test standards that support a jurisdictional FAA FSDO evaluation and approval of company designated examiners, the petitioner will conduct these tests in accordance with the operator's manual.
13. The SUAV may not be operated directly over any person, except authorized and consenting production personnel, below an altitude that is hazardous to persons or property on the surface in the event of a UAS failure or emergency.
14. Regarding the distance from participating persons, the operator's manual has safety mitigations for authorized and consenting production personnel. At all times, those persons must be essential to the closed-set film operations. Because these procedures are specific to participating persons, no further FSDO or Aviation Safety Inspector (ASI) approval is necessary for reductions to the distances specified in the petitioner's manuals. This is consistent with the manned aircraft procedures described in FAA Order 8900.1, V3, C8, S1 *Issue a Certificate of Waiver for Motion Picture and Television Filming*.

15. The SUAV may not be operated directly over any person, except authorized and consenting production personnel, below an altitude that is hazardous to persons or property on the surface in the event of a UAS failure or emergency.
16. Regarding distance from non-participating persons, the operator must ensure that no persons are allowed within 500 feet of the area except those consenting to be involved and necessary for the filming production. This provision may be reduced to no less than 200 feet if it would not adversely affect safety and the Administrator has approved it. For example, an equivalent level of safety may be determined by an aviation safety inspector's evaluation of the filming production area to note terrain features, obstructions, buildings, safety barriers, etc. Such barriers may protect non-participating persons (observers, the public, news media, etc.) from debris in the event of an accident. This is also consistent with the same FAA Order 8900.1, V3, C8, S1.
17. If the SUAV loses communications or loses its GPS signal, the SUAV must return to a pre-determined location within the security perimeter and land or be recovered.
18. The SUAV OIC must abort the flight in the event of unpredicted obstacles or emergencies. The Operator shall carry/use appropriate LIPO battery protective bags and fire extinguishing equipment.
19. Each SUAV operation must be completed within 30 minutes flight time or with 25% battery power remaining, whichever occurs first.
20. In addition to the conditions and limitations proposed by the operator, the FAA has determined that any operations conducted under this grant of exemption must be done pursuant to the following conditions and limitations:
21. The operator must obtain an Air Traffic Organization (ATO) issued Certificate of Waiver or Authorization (COA) prior to conducting any operations under this grant of exemption. This COA will also require the operator to request a Notice to Airman (NOTAM) not more than 72 hours in advance, but not less than 48 hours prior to the operation.
22. All aircraft operated in accordance with this exemption must be identified by serial number, registered in accordance with 14 CFR part 47, and have identification (N-Number) markings in accordance with 14 CFR part 45, Subpart C. Markings must be as large as practicable.
23. The OIC must develop procedures to document and maintain a record of the SUAV maintenance, preventative maintenance, alterations, status of replacement/overhaul component parts, and the total time in service of the SUAV. These procedures must be added to the operator's manual/checklists.
24. Each SUAV operated under this exemption must comply with all manufacturer Safety Bulletins.



25. The OIC must develop SUAV technician qualification criteria. These criteria must be added to the operator's manual/Checklists.
26. The preflight inspection section in the operator's checklists manual must be amended to include the following requirement: The preflight inspection must account for all discrepancies, i.e. inoperable components, items, or equipment, not covered in the relevant preflight inspection sections of the operator's manual.
27. Before conducting operations, the radio frequency spectrum used for operation and control of the SUAV must comply with the Federal Communications Commission (FCC) or other appropriate government oversight agency requirements.
28. At least three days before scheduled filming, the OIC of the SUAV affected by this exemption must submit a written Plan of Activities to the local FSDO with jurisdiction over the area of proposed filming. The 3-day notification may be waived with the concurrence of the FSDO. The plan of activities must include at least the following:
  - a. Dates and times for all flights
  - b. Name and phone number of the operator for the SUAV filming production conducted under this grant of exemption
  - c. Name and phone number of the person responsible for the on-scene operation of the SUAV
  - d. Make, model, and serial or N-number of SUAV to be used
  - e. Name and certificate number of SUAV PICs involved in the filming production event
  - f. A statement that the operator has obtained permission from property owners and/or local officials to conduct the filming production event; the list of those who gave permission must be made available to the inspector upon request.
  - g. Signature of exemption-holder or representative
  - h. A description of the flight activity, including maps or diagrams of any area, city, town, county, and/or state over which filming will be conducted and the altitudes essential to accomplish the operation
29. The documents required under 14 CFR § 91.9 and § 91.203 must be available to the OIC at the ground control station of the UAS any time the aircraft is operating. These documents must be made available to the Administrator or any law enforcement official upon request.
30. The SAUV must remain clear and yield the right of way to all other manned operations and activities at all times (including, but not limited to, ultralight vehicles, parachute activities, parasailing activities, hang gliders, etc.).
31. SUAV operations may not be conducted during night, as defined in 14 CFR § 1.1. All operations must be conducted under visual meteorological conditions (VMC). Flights under special visual flight rules (SVFR) are not authorized.
32. The SUAV cannot be operated by the OIC from any moving device or vehicle.

people and property owners or official representatives who have signed waivers will be allowed, with less than 30 minutes of flight operation time, does not give rise to the type of risks that Section 91.151(a) was intended to alleviate particularly given the size and speed of the SUA VS. Additionally, limiting SUA VS flights to 20 minutes would greatly reduce the utility for which the exemption will be granted.

Petitioner believes that an equivalent level of safety can be achieved by limiting flights to 60 minutes or no less than 10% of battery power, whichever happens first. This restriction would be more than adequate to return the SUA VS to its planned landing zone from anywhere within its limited operating area.

Similar exemptions have been granted to other operations, including Exemptions 2689F, 5745, 10673, and 10808.

#### **14 C.F.R. §91.203 (a) and (b): Carrying Civil Aircraft Certification and Registration**

The regulation provides in pertinent part:

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. . . .

(b) No person may operate a civil aircraft unless the airworthiness certificate required by paragraph (a) of this section or a special flight authorization issued under §91.715 is displayed at the cabin or cockpit entrance so that it is legible to passengers or crew.

The SUA VS fully loaded weighs no more than 55 lbs and typically less than 20 lbs. And is operated without an onboard pilot. As such, there is no ability or place to carry certification and registration documents or to display them on the SUA VS.

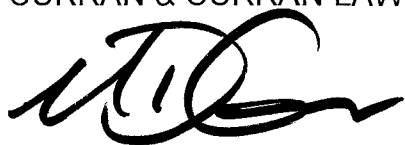
An equivalent level of safety will be achieved by keeping these documents at the ground control point where the pilot flying the SUA VS will have immediate access to them, to the extent they are applicable to the SUA VS. The FAA has issued numerous exemptions to this regulation. A representative sample of other exceptions includes Exemption Nos. 9565, 9665, 9789, 9789A, 9797, 9797A, 9816A, and 10700.

#### **14 C.F.R. §91.405 (a); 407 (a) (1); 409 (a) (2); 417(a) & (b): Maintenance Inspections**

These regulations require that an aircraft operator or owner “shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter...” and others shall inspect or maintain the aircraft in compliance with Part 43.

If this firm can be of any further assistance in processing this request, or you have any other questions or concerns, please do not hesitate to contact me directly, in writing.

CURRAN & CURRAN LAW

A handwritten signature in black ink, appearing to read 'MDC', with a stylized, flowing script.

Michael D. Curran, Esq./ATP/CFII/MEI

cc: James Williams, FAA  
Les Dorr, FAA, Allison Duquette, FAA

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**DECLARATION OF SERVICE**

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 90 N. Coast Hwy. 101, Suite 103, Encinitas, CA 92024. On October 8, 2014, I served the foregoing documents, described as:

1. Letter to the U.S. Department of Transportation dated October 6, 2014  
on the parties of interest as follows:

U.S. Department of Transportation  
Docket Management System  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

**(X) BY U.S. MAIL**

I placed a true and correct copy of said document(s) in sealed a envelope(s) addressed according to the above listed parties and deposited such envelope(s) in the mail at Encinitas, California. The envelope(s) was/were mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day 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.

**( ) STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**(X) FEDERAL** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 8, 2014 at Encinitas, California.

  
Shelli Steele