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15 Attorneys for Plaintiffs

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18 PICO NEIGHBORHOOD ASSOCIATION and
19 MARIA LOYA,

20 Plaintiffs,

21 v.

22 CITY OF SANTA MONICA, and DOES 1
through 100, inclusive,

23 Defendants.

CASE NO. BC616804

**DECLARATION OF KEVIN SHENKMAN
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT'S
"MOTION FOR ORDER (A) REJECTING
PLAINTIFFS' UNTIMELY SERVICE
ARGUMENT BASED ON ABSENCE OF
ANY PREJUDICE; AND/OR (B)
GRANTING RELIEF UNDER CODE OF
CIVIL PROCEDURE SECTION 473(b)"**

Hearing Date: June 19, 2018

Time: 8:30 a.m.

Dept.: 28

Trial Date: July 30, 2018

[Assigned to the Honorable Yvette Palazuelos]

1 I, Kevin I. Shenkman, declare as follows:

2 1. I am an attorney duly licensed to practice law before all courts of the State
3 of California and I am a partner with Shenkman & Hughes PC, attorneys of record for
4 Plaintiffs in the above-captioned case. The facts set forth in this declaration are within
5 my personal knowledge and, if called as a witness, I could and would competently testify
6 as follows:

7 2. A true and correct copy of a page from the United States Postal Service
8 website is attached hereto as **Exhibit A**. A true and correct copy of a page from the
9 ShippingEasy website is attached hereto as **Exhibit B**. As explained in Exhibit B,
10 "Priority Mail Express" was "[f]ormerly known as Express Mail." As explained in
11 Exhibit A, only "Priority Mail Express" includes an "overnight guarantee." In contrast,
12 non-express "Priority Mail" ships in the same time as "First-Class Mail" – 1-3 business
13 days.

14 3. At the conclusion of the hearing on March 31, 2018, Defendant's counsel
15 (Tiaunia Henry) requested (on the record) that Plaintiffs serve their opposition to
16 Defendant's summary judgment motion by email. In response, I initially noted that the
17 opposition papers were voluminous and that I would be immediately returning to my
18 office that morning to complete the opposition papers to be filed that afternoon, and
19 therefore would not have time to scan and email all of the opposition papers that same
20 day. I was also ill that day so everything was more difficult. The Court suggested that
21 Plaintiffs could at least email the opposition brief, and I agreed. Later that day, all of
22 Plaintiffs' opposition papers were sent to Defendant's counsel by mail. Further, upon
23 returning to my office, I scanned and emailed the conformed copy of Plaintiffs'
24 opposition brief to Defendant's counsel. The next day I also scanned conformed copies
25 of all of the other opposition papers and emailed those to Defendant's counsel. In each
26 instance, Defendant's counsel politely acknowledged receipt of the documents, which
27 had to be sent in several emails due to their size. True and correct copies of emails from
28

1 Defendant's counsel acknowledging receipt of the documents Ms. Henry had requested
2 be sent by email are collectively attached as **Exhibit C**.

3 4. Contrary to Defendant's suggestion, Plaintiffs have been prejudiced by
4 Defendant's failure to provide sufficient notice for its summary judgment motion. As
5 demonstrated by Plaintiffs' opposition brief, Plaintiffs used every bit of the twenty pages
6 afforded to them under Cal. R. Ct. 3.1113(d). Indeed, the initial draft of that opposition
7 was well in excess of twenty pages, and I spent significant time revising that opposition
8 to reduce its size, and even had to eliminate substantive arguments in that process. Part
9 of those twenty pages of argument was Plaintiffs' argument that the summary judgment
10 motion had insufficient notice in violation of Section 437c(a)(2) of the Code of Civil
11 Procedure. If that section had not been necessary, Plaintiffs would have made additional
12 arguments in their opposition brief in the space that was otherwise taken up addressing
13 the motion's procedural defect.

14
15 Executed this 18th day of June, 2018, in Malibu, California.

16 

17 _____
18 Kevin Shenkman
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EXHIBIT A

ALERT: AS OF APRIL 30, USPS.COM NO LONGER SUPPORTS OUTDATED BROWSE...

Mail & Shipping Services

[Service Details](#)

[Quick Compare](#)



Priority Mail Express

Overnight Guarantee¹

Delivering 7 days a week, Priority Mail Express® is our fastest domestic service for time-sensitive letters, documents, or merchandise. Guaranteed overnight scheduled delivery to most locations², including PO Boxes™, or your money back¹. From \$24.70 at Post Office™ locations and online.

[Ship Online](#)

[Learn More](#)



Priority Mail

Shipping in 1–3 Business Days

Get more for your money with Priority Mail® shipping in 1, 2, or 3 business days³ based on where your package starts and where it's being sent. A variety of Priority Mail Flat Rate® options eliminate the need to weigh items up to 70 lbs. From \$6.70 at Post Office locations and online.

[Ship Online](#)

[Learn More](#)



First-Class Mail

Mail in 1–3 Business Days

First-Class Mail® is an affordable mail service for standard-sized, single-piece envelopes weighing up to 3.5 oz, and large envelopes and small packages weighing up to 13 oz with delivery in 3 business days or less. From \$0.50 at a Post Office.

[Buy Stamps](#)

[Learn More](#)

USPS Retail Ground

2–8 Business Days⁴

Retail Ground® is a reliable and economical way to ship⁵ less-than-urgent deliveries and oversized packages. From \$6.70 at a Post Office.

Using Retail Ground

Good for packages too large for Priority Mail Express and Priority Mail delivery.

Includes USPS Tracking®.

Only available at USPS Post Offices.

NOTE: Department of Defense employees overseas may send packages to the U.S. using Retail Ground through Click-N-Ship®.

Sending Military & Diplomatic Mail

Rules & Restrictions

Available for shipments up to 70 lbs and up to 130 inches in combined length and girth.

Large, lightweight packaging is subject to **oversize pricing**.

Download USPS Pricing Files

Prepare Mail & Shipments

Media Mail

2–8 Business Days⁴

Media Mail® is a cost-effective way to send media and educational materials. This service has restrictions on the type of media that can be sent. From \$2.66 at a Post Office.

Using Media Mail

What can you send using Media Mail?

- Books (at least eight pages)
- Printed music and test materials
- Video and sound recordings
- Printed educational charts
- Medical loose-leaf pages and binders
- Computer-readable media

NOTE: Video games, computer drives, and digital drives do not qualify for Media Mail prices.

Rules & Restrictions

Maximum weight is 70 lbs.

Media Mail Eligibility Standards (DMM 173.4.0)

Media Mail Prices – Retail

Media Mail Prices – Commercial

Disclaimers

1. Exceptions apply. For details, visit the Domestic Mail Manual. **Back**
2. Scheduled delivery date depends on origin, destination, and drop-off time. Some restrictions apply. For additional information, visit the Price Calculator. **Back**
3. In most cases, the expected delivery date printed on your receipt or provided at checkout will reflect a delivery time of 1, 2, or 3 business days and is based on origin, destination, and drop-off time. The expected delivery date does not come with a money-back guarantee. **Back**
4. The timeliness of service to or from destinations outside the contiguous U.S. may be affected by the limited availability of transportation. **Back**
5. Available for Zones 5-9, up to 70 lbs. Prices in Zones 1-4, up to 70 lbs, are only for the mailing of hazardous materials, live animals, or other items required to be shipped by ground/surface transportation. Oversized USPS Retail Ground available for Zones 1-9, up to 70 lbs, when measuring over 108 inches but not more than 130 inches in combined length and girth. **Back**

EXHIBIT B

ShippingEasy Knowledge Base > Carriers > USPS: Services & Packaging

USPS Priority Mail vs Priority Express Mail: Differences Between Each Service

Follow

Created: March 31, 2018 10:47 | Updated: January 23, 2019 15:17

Priority Mail and Priority Mail Express represent the best in USPS shipping. There's truth in the old adage "you get what you pay for". That's definitely the case with Priority Mail Express! It delivers on its promise to get there fast. All the same, Priority Mail is a tremendous value and fair trade-off of cost vs speed.

Summary of USPS Priority Mail and Priority Mail Express

Priority Mail:

Priority Mail is the United States Postal Service's standard air service. Packages usually arrive to their domestic destination within 1-3 business days. Transit times vary depending on how far the package has to be delivered from its origin. However, it's important to keep in mind that this is not a guaranteed service. So there's no recourse if packages are delayed.

Priority Mail is the less costly option of the two. There are also greater options, including: several Flat Rate box and envelope sizes, Regional Rate, weight- and dimensional-based rates.

[Learn more about Priority Mail.](#)

Priority Mail Express:

Formerly known as Express Mail, Priority Mail Express is USPS's fastest shipping service. Depending on the distance a shipment must travel, USPS will make a service commitment of 1 to 3 business days for domestic shipments. [Learn more.](#)

Overnight scheduled delivery by 10:30 am is also available to most U.S. addresses, including PO Boxes. As of 2017, the fee for this service is \$5.00 per parcel. *TIP: access this option in ShippingEasy from the Delivery Confirmation menu.*

Most importantly, this is a guaranteed service. If the package is delivered after the guaranteed delivery date, you can apply for a refund of postage paid. Refunds claims must be filed at the Post Office where you dropped off the package. [Learn more.](#)

Priority Mail Express is limited to a few Flat Rate envelope options and weight-based rates.

[Learn more about Priority Mail Express.](#)

Detailed comparison of USPS Priority Mail vs Priority Mail Express

	Priority Mail	Priority Mail Express
Destinations Served	Domestic and International	
Delivery Timeline	Domestic: 1-3 business days International: 6-10 business days (depending on destination)	Domestic: 1-3 business days, Overnight by 10:30am (\$5.00 per parcel) International: 3-5 business days
Guaranteed on-time delivery	No	Yes
Included carrier insurance*	Domestic: up to \$100 International: up to \$200	Domestic: up to \$100 International: up to \$200

EXHIBIT C

Re: - 'att.net Mail'

Re:

From: "Henry Tiaunia" <THenry@gibsondunn.com>
To: "Kevin Shenkman" <shenkman@sbcglobal.net>

Thank you.

Sent from my iPhone

> On May 31, 2018, at 9:35 PM, Kevin Shenkman <shenkman@sbcglobal.net> wrote:
>
> <pna - opposition msj.pdf>

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

RE: Re:

Friday, June 1, 2018 11:04 AM

From: "Henry, Tiaunia" <THenry@gibsondunn.com>
To: "Kevin Shenkman" <shenkman@sbcglobal.net>
Cc: "Milton Grimes" <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>
 "Marci Cussimonio" <mcussimonio@parrislawyers.com>; "Rex Parris" <rrparris@parrislawyers.com>

Thank you.

Tiaunia N. Henry

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
 333 South Grand Avenue, Los Angeles, CA 90071-3197
 Tel +1 213.229.7705 • Fax +1 213.229.6705
THenry@gibsondunn.com • www.gibsondunn.com

From: Kevin Shenkman <shenkman@sbcglobal.net>
Sent: Friday, June 1, 2018 4:03 PM
To: Henry, Tiaunia <THenry@gibsondunn.com>
Cc: Milton Grimes <miltgrim@aol.com>; robertrubinsf@gmail.com; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>
Subject: Re:

Here you go (part 1) ...

From: "Henry, Tiaunia" <THenry@gibsondunn.com>
To: Kevin Shenkman <shenkman@sbcglobal.net>
Cc: Milton Grimes <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>; "Scolnick, Kahn A." <KScolnick@gibsondunn.com>
Sent: Friday, June 1, 2018 10:23 AM
Subject: RE:

Thanks again for sending the courtesy copy of Plaintiffs' opposition to the City's motion for summary judgment. Can you please also email us a courtesy copy of the supporting materials this morning? We would greatly appreciate it and, of course, we would do the same when our reply is due next week.

Thanks in advance for considering it.

Tiaunia N. Henry

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
 333 South Grand Avenue, Los Angeles, CA 90071-3197
 Tel +1 213.229.7705 • Fax +1 213.229.6705
THenry@gibsondunn.com • www.gibsondunn.com

From: Kevin Shenkman <shenkman@sbcglobal.net>
Sent: Thursday, May 31, 2018 9:35 PM
To: Henry, Tiaunia <THenry@gibsondunn.com>
Cc: Milton Grimes <miltgrim@aol.com>; robertrubinsf@gmail.com; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>
Subject:

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

Re:

11:02 AM EDT (2018 01:02 PM)

From: "Kevin Shenkman" <shenkman@sbcglobal.net>
To: "Henry Tiaunia" <THenry@gibsondunn.com>
Cc: "Milton Grimes" <miltgrim@aol.com> "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>
 "Marci Cussimonio" <mcussimonio@parrislawyers.com> "Rex Parris" <rrparris@parrislawyers.com>

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Save		Save		Save		Save		Save		Save	

part 2

From: Kevin Shenkman <shenkman@sbcglobal.net>
To: "Henry, Tiaunia" <THenry@gibsondunn.com>
Cc: Milton Grimes <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>
Sent: Friday, June 1, 2018 4:02 PM
Subject: Re:

Here you go (part 1) ...

From: "Henry, Tiaunia" <THenry@gibsondunn.com>
To: Kevin Shenkman <shenkman@sbcglobal.net>
Cc: Milton Grimes <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>; "Scolnick, Kahn A." <KScolnick@gibsondunn.com>
Sent: Friday, June 1, 2018 10:23 AM
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Tiaunia N. Henry

GIBSON DUNN

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Subject:

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Re:

Friday, June 1, 2018 10:53 AM

From: "Kevin Shenkman" <shenkman@sbcglobal.net>
To: "Henry Tiaunia" <THenry@gibsondunn.com>
Cc: "Milton Grimes" <miltgrim@aol.com> "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>
 "Marci Cussimonio" <mcussimonio@parrislawyers.com> "Rex Parris" <rrparris@parrislawyers.com>
 "Ellery Gordon" <egordon@parrislawyers.com>

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ely decl part 3.pdf	levitt decl.pdf	pos.pdf	separate statement.pdf	shenkman decl.pdf
Save	Save	Save	Save	Save

and part 3

From: Kevin Shenkman <shenkman@sbcglobal.net>
To: "Henry, Tiaunia" <THenry@gibsondunn.com>
Cc: Milton Grimes <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>
Sent: Friday, June 1, 2018 4:14 PM
Subject: Re:

part 2

From: Kevin Shenkman <shenkman@sbcglobal.net>
To: "Henry, Tiaunia" <THenry@gibsondunn.com>
Cc: Milton Grimes <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>
Sent: Friday, June 1, 2018 4:02 PM
Subject: Re:

Here you go (part 1) ...

From: "Henry, Tiaunia" <THenry@gibsondunn.com>
To: Kevin Shenkman <shenkman@sbcglobal.net>
Cc: Milton Grimes <miltgrim@aol.com>; "robertrubinsf@gmail.com" <robertrubinsf@gmail.com>; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>; "Scolnick, Kahn A." <KScolnick@gibsondunn.com>
Sent: Friday, June 1, 2018 10:23 AM
Subject: RE:

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Thanks in advance for considering it.

Tiaunia N. Henry

GIBSON DUNN

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333 South Grand Avenue, Los Angeles, CA 90071-3197

Tel +1 213.229.7705 • Fax +1 213.229.6705

THenry@gibsondunn.com • www.gibsondunn.com

From: Kevin Shenkman <shenkman@sbcglobal.net>

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Cc: Milton Grimes <miltgrim@aol.com>; robertrubinsf@gmail.com; Marci Cussimonio <mcussimonio@parrislawyers.com>; Rex Parris <rrparris@parrislawyers.com>

Subject:

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PROOF OF SERVICE

1
2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Los Angeles, State of California. My business address is 28905 Wight Rd.,
5 Malibu, California 90265.

6 On June 18, 2018, I served true copies of the following document(s) described as
7 SHENKMAN DECLARATION

8 on the interested parties in this action as follows:

9 Marcellus McRae, William Thomson, Kahn Scolnick, Tiuania
10 Henry, Helen Galloway, Daniel Adler
11 Gibson Dunn & Crutcher LLP
12 333 S. Grand Ave.
13 52nd Floor
14 Los Angeles, CA 90071

15 **BY E-MAIL:** Pursuant to the agreement of the parties and the direction of the Court, I emailed the
16 above-described document(s) in pdf format.

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

19 Executed on June 18, 2018 at Malibu, California.

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Kevin Shenkman