

**FILED**

SEP 03 2004

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DAVID K. MEHL; LOK T. LAU;  
FRANK FLORES,

Plaintiffs,

v.

NO. CIV. S 03-2682 MCE KJM

MEMORANDUM AND ORDER

*clmce*

LOU BLANAS, individually and  
in his official capacity as  
SHERIFF OF COUNTY OF  
SACRAMENTO; COUNTY OF  
SACRAMENTO, SHERIFF'S  
DEPARTMENT; COUNTY OF  
SACRAMENTO; BILL LOCKYER,  
Attorney General, State of  
California; RANDI ROSSI, State  
Firearms Director and  
Custodian of Records,

Defendants.

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Defendants Bill Lockyer ("Lockyer") and Randi Rossi  
("Rossi") (collectively "Defendants") filed this motion to  
dismiss Plaintiffs' first amended complaint. Defendants contend  
first that they are not proper defendants because they do not

1 have the authority to issue Carry Concealed Weapons ("CCW")  
2 permits, and therefore no controversy exists between Plaintiffs  
3 and Defendants as needed for subject matter jurisdiction. Fed.  
4 R. Civ. P. 12(b)(1).<sup>1</sup> Alternatively, Defendants claim that  
5 Plaintiffs' complaint fails to state a claim upon which relief  
6 may be granted pursuant to Rule 12(b)(6). For the reasons  
7 explained below, Defendants motion to dismiss is GRANTED.

8  
9 **BACKGROUND**

10  
11 In California, it is against the law to carry a concealed  
12 firearm. Cal. Penal Code § 12025. Carrying a concealed weapon  
13 in violation of this statute can be either a misdemeanor or  
14 felony. If a California resident wishes to carry a concealed  
15 firearm, he or she must apply for a permit allowing him or her to  
16 do so. Permits to carry concealed weapons are issued by the  
17 chief of police or the county sheriff, and require the applicant  
18 to complete the application form, complete a course of training  
19 on firearm safety, and demonstrate that good cause exists for  
20 issuance. Cal. Penal Code § 12050.

21 An exception to the statute governing the carrying of  
22 concealed firearms exists such that certain law enforcement  
23 officers and honorably retired law enforcement officers need not  
24 demonstrate good cause to receive a permit. Cal. Penal Code §  
25 12027.

26 Plaintiffs are California residents who have applied for  
27

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28 <sup>1</sup> Unless otherwise stated, all further references to a  
"Rule" or "Rules" are to the Federal Rules of Civil Procedure.

1 permits to carry concealed weapons and had their applications  
2 denied. On December 30, 2003, Plaintiffs filed their complaint  
3 in this matter, alleging several 42 U.S.C. § 1983 claims based on  
4 various constitutional violations. Defendants filed a motion to  
5 dismiss the complaint that is virtually identical to the present  
6 motion. Plaintiffs did not oppose that motion, but requested  
7 leave to amend to correct the deficiencies. By order dated March  
8 25, 2004, this Court granted Defendants' first motion to dismiss,  
9 and granted leave to amend. On April 23, 2004, Plaintiffs filed  
10 their first amended complaint. Defendants again moved to  
11 dismiss, claiming the first amended complaint, like the original  
12 complaint, fails to state a claim upon which relief may be  
13 granted, and claiming that there is no present case or  
14 controversy between Plaintiffs and Defendants. Oral argument on  
15 this second motion to dismiss was held on June 28, 2004.<sup>2</sup>

16  
17 **STANDARD**  
18

19 On a motion to dismiss for failure to state a claim under  
20 Rule 12(b)(6), all allegations of material fact must be accepted  
21 as true and construed in the light most favorable to the  
22 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,  
23 337-38 (9th Cir. 1996). A complaint will not be dismissed for  
24 failure to state a claim "unless it appears beyond doubt that  
25 plaintiff can prove no set of facts in support of her claim that  
26 would entitle her to relief." Yamauchi v. Dep't of the Air

27  
28 <sup>2</sup> Defendants' counsel was not present at oral argument  
due to unforeseen military commitments.

1 Force, 109 F.3d 1475, 1480 (9th Cir. 1997) (quoting Lewis v. Tel.  
2 Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996).

3 "Generally, a district court may not consider any material  
4 beyond the pleadings in ruling on a Rule 12(b)(6) motion." Hal  
5 Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555  
6 n.19 (9th Cir.1990); see also Arpin v. Santa Clara Valley Transp.  
7 Agency, 261 F.3d 912, 925 (9th Cir. 2001). However, the court  
8 may "consider material which has been properly submitted as part  
9 of the complaint" when deciding a Rule 12(b)(6) motion. Hal  
10 Roach Studios, 896 F.2d at 1555 n.19.

11 If the court grants a motion to dismiss a complaint, it must  
12 then decide whether to grant leave to amend. The Court should  
13 "freely give[]" leave to amend when there is no "undue delay, bad  
14 faith[,] dilatory motive on the part of the movant, . . . undue  
15 prejudice to the opposing party by virtue of . . . the amendment,  
16 [or] futility of the amendment. . . ." Fed. R. Civ. P. 15(a);  
17 Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to  
18 amend is denied when it is clear that the deficiencies of the  
19 complaint cannot be cured by amendment. DeSoto v. Yellow Freight  
20 Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

21  
22 **ANALYSIS**

23  
24 **1. Proper Defendants - Case or Controversy Requirement**

25  
26 Defendants first contend that there is no case or  
27 controversy between themselves and Plaintiffs because Defendants  
28 have no authority to issue, or to influence the issuance of, a

1 CCW. CCWs may only be issued by a sheriff or police chief, not  
2 the attorney general or state firearms director. Cal. Penal Code  
3 § 12050. As such, Defendants contend that they could not have  
4 violated Plaintiffs' constitutional rights as alleged in the  
5 complaint.

6 Plaintiffs contend that both Lockyer and Rossi are proper  
7 defendants. Plaintiffs rely on the fact that under the  
8 California Constitution, Lockyer, as the Attorney General, is the  
9 "chief law officer of the State." Cal. Const. Art. 5 ¶ 13.  
10 Additionally, the "Attorney General shall have direct supervision  
11 over every district attorney and sheriff . . . in all matters  
12 pertaining to the duties of their respective offices. . . ." *Id.*  
13 Thus, Plaintiffs contend that Lockyer is responsible for the acts  
14 of the Sheriff.

15 Neither party presented the Court with any authority  
16 regarding this issue, however. On its own, the Court has found  
17 conflicting authority regarding the ability to pass liability  
18 from the sheriff to the Attorney General based upon the provision  
19 of California's Constitution Plaintiffs rely upon. The Ninth  
20 Circuit has twice held that the sheriff acts for the county  
21 rather than the state when performing law enforcement duties, and  
22 therefore liability does not pass to the state. Bishop Paiute  
23 Tribe v. County of Inyo, 291 F.3d 549 (9th Cir. 2002), vacated on  
24 other grounds and remanded, Inyo County v. Bishop-Shoshone  
25 Indians of the Bishop Cmty. of the Bishop Colony, 538 U.S. 701  
26 (2003); Brewster v. Shasta County, 275 F.3d 803 (9th Cir. 2001).  
27 "That the Attorney General has authority to supervise state law  
28 enforcement officers does not transform sheriffs into state

1 actors because, taken to its logical extreme, this provision  
2 would immunize all law enforcement agencies in the State and  
3 'thereby render[] meaningless the decision in Monell [ v. N.Y.  
4 Dep't of Soc. Servs., 436 U.S. 658, 690-91 (1978)], which  
5 preserves § 1983 actions against local governments.'" Cortez v.  
6 County of Los Angeles, 294 F.3d 1186, 1191-92 (9th Cir. 2002)  
7 (quoting Bishop Paiute Tribe, 275 F.3d at 908). The California  
8 Supreme Court, however, has held that a California Sheriff acts  
9 for the state when performing law enforcement duties, and  
10 therefore liability does pass from the sheriff to the Attorney  
11 General. Venegas v. County of Los Angeles, 32 Cal. 4th 820  
12 (2004).<sup>3</sup>

13 Neither party has addressed the question of whether the  
14 issuance of CCWs constitutes law enforcement activities, or  
15 whether a sheriff acts as an agent of the state or the county  
16 when issuing a CCW. It is established that in order to "hold a  
17 local government liable for an official's conduct, a plaintiff  
18 must first establish that the official (1) had final policymaking  
19 authority 'concerning the action alleged to have caused the  
20 particular constitutional or statutory violation at issue' and  
21 (2) was the policymaker for the local governing body for the  
22 purposes of the particular act." Weiner v. San Diego County, 210  
23 F.3d 1025, 1028 (9th Cir. 2000) (quoting McMillian v. Monroe

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24  
25 <sup>3</sup> Each of these cases concerned claims brought against a  
26 sheriff, and the sheriff's subsequent attempt to escape liability  
27 by claiming that the sheriff acts as an agent of the state.  
28 Therefore, the argument followed, the sheriff would be immune  
from liability under the Eleventh Amendment. The Court was  
unable to find, and the parties did not provide, a case in which  
the plaintiff filed suit against the Attorney General. These  
cases are, however, instructive.

1 County, 520 U.S. 781, 785 (1997)). In this case, the Court  
2 elects to follow the holdings of the Ninth Circuit and determine  
3 that the sheriff acts as the final policymaker for the county  
4 when issuing CCWs. Accordingly, Plaintiffs have failed to  
5 establish any connection between the Attorney General and a  
6 county sheriff insofar as the issuance of CCWs is concerned.  
7 Defendants' motion to dismiss as to Defendant Lockyer is GRANTED.

8 Plaintiffs do not, however, offer any basis for their claim  
9 against Defendant Rossi, the State Firearms Director and  
10 Custodian of Records. There is no constitutional or statutory  
11 basis cited for imposition of liability upon him for the acts of  
12 the sheriff. Because Rossi lacks the power to issue CCWs on his  
13 own, and cannot be held responsible for those that have the  
14 power, either the sheriff or chief of police, Plaintiffs have not  
15 pled any valid claims against Rossi. Accordingly, Defendants'  
16 motion to dismiss as to Defendant Rossi is GRANTED.

17  
18 **2. Fourteenth Amendment Equal Protection Clause**

19  
20 The Court realizes that finding that Lockyer and Rossi are  
21 not proper defendants effectively ends the inquiry. However,  
22 even if Lockyer could be considered a proper defendant,  
23 Plaintiffs' complaint would still fail to state a claim.  
24 Furthermore, the Court chooses to address, briefly, several of  
25 the arguments Plaintiffs make in support of their claim.

26 Plaintiffs claim two separate violations of their rights  
27 under the Fourteenth Amendment's Equal Protection Clause. First,  
28 they claim that the application of the laws requiring CCW permits

1 discriminates based on race and nationality. Second, Plaintiffs  
2 claim that retired police officers are given unfair preferential  
3 treatment.

4  
5 **A. Race and National Origin Discrimination**

6  
7 Plaintiffs begin their argument that Lockyer is liable for  
8 discrimination with the observation that there is no place for  
9 the applicant to indicate his/her race on the application for a  
10 CCW. Plaintiffs next cite People v. Rappard, 28 Cal. App. 3d  
11 302, a 32 year old California Court of Appeal decision, for the  
12 proposition that "California courts have already determined that  
13 a racially biased purpose existed in establishing" the law that  
14 created the CCW system. Opp'n, at 5; Compl., ¶ 77. Due to this  
15 racially biased purpose, Plaintiffs contend that Lockyer has a  
16 duty to monitor the state laws concerning CCW issuance to ensure  
17 that they are applied fairly.

18 Contrary to Plaintiffs' position, however, Rappard had  
19 nothing to do with racial discrimination; the decision does not  
20 even mention racial discrimination. Rather, the decision held  
21 invalid California Penal Code section 12021, a statute that  
22 prohibited possession of a firearm capable of being concealed by  
23 "any person who is not a citizen of the United States. . . ."  
24 Thus, this statute discriminated against aliens, not races.  
25 Furthermore, the language "is not a citizen of the United  
26 States", which was held discriminatory by Rappard, was deleted in  
27 the 1974 Amendment to the statute, thereby correcting the  
28 unconstitutionality. Therefore, contrary to Plaintiffs'



1 argument, Rappard does not establish any affirmative duty on the  
2 Attorney General to monitor state law to guard against the  
3 possibility of discriminatory application.

4 The only direct act on Lockyer's part that Plaintiffs claim  
5 support their discrimination claim was drafting an application  
6 for CCW permits that omits any mention of race or national  
7 origin.<sup>4</sup> Compl. ¶¶ 82-91. Plaintiffs claim that in doing so,  
8 Lockyer tacitly allows the other defendants to discriminate based  
9 on race and national origin. Compl. ¶ 83. Any argument that the  
10 failure to provide a means for the use of race as a factor in  
11 considering the application amounts to racial discrimination must  
12 fail as a matter of law. Racial discrimination occurs when an  
13 action is taken because of a person's race. Therefore, taking an  
14 action without considering, or even knowing, the person's race  
15 cannot be racial discrimination.<sup>5</sup>

16 The Court finds this argument to be ridiculous and totally  
17 without merit, and declines to give it any legitimacy by further  
18 discussion. Defendants' motion to dismiss is GRANTED with  
19 prejudice.

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21  
22 <sup>4</sup> Plaintiffs contend that race must be used as a factor  
23 in considering the application because "a young black male in  
24 California under the age of 25 has a exceedingly [sic] far  
25 greater chance of being murdered than all law enforcement  
officers combined throughout the entire United States." Compl. ¶  
97; Opp'n at 13. Not surprisingly, Plaintiffs offer no support  
for this baseless contention.

26 <sup>5</sup> The Court emphasizes that the only action Lockyer is  
27 alleged to have taken is drafting an application that does not  
28 contain a place for the applicant to mark his or her race. The  
Court does not hold that there is no discrimination in the actual  
issuance of CCWs, but rather holds that merely drafting the  
application was not discriminatory.

1           **B. Preferential Treatment - Retired Peace Officers**

2  
3           Plaintiffs next contend that the challenged statutes are  
4 unconstitutional because they grant retired law enforcement  
5 officers special treatment in allowing them to carry concealed  
6 weapons without having to show good cause for a permit.  
7 Specifically, California Penal Code sections 12027 and 12031(b)  
8 state that the statutes prohibiting the carrying of concealed  
9 weapons, section 12025, and loaded weapons, section 12031(a), do  
10 not apply to peace officers or to honorably retired peace  
11 officers.

12           Plaintiffs contend that Silveira v. Lockyer compels judgment  
13 on the pleadings in their favor. 312 F.3d 1062 (9th Cir. 2002)  
14 reh'g en banc denied, 328 F.3d 567, cert. denied, 124 S. Ct. 803  
15 (2003). It does not. Silveira concerned California's ban on  
16 assault rifles, and the court upheld the statute in every respect  
17 save one. The court found no rational basis for allowing retired  
18 peace officers to possess assault weapons without any restriction  
19 on use when active peace officers were permitted to possess and  
20 use such weapons when off-duty only for law enforcement purposes.  
21 Id. at 1090-92. The basis for allowing active off-duty officers  
22 to possess and use assault weapons was that a peace officer is on  
23 call 24 hours a day, and may be called upon at any time to  
24 respond to a call for help. The same is not true of retired  
25 officers. Because they are not on call at all after retirement,  
26 there was no rational basis in allowing retired officers to keep  
27 assault weapons. Id.

28           The justification and rationale for exempting retired peace

1 officers from the CCW is not the same as for the exception to the  
2 assault weapon ban in Silveira. The justification for a CCW is  
3 personal protection, not public protection. Peace officers were  
4 entitled to carry assault weapons so that they would not be  
5 inadequately armed to confront criminals while protecting the  
6 public. On the other hand, they are entitled to carry concealed  
7 weapons to protect themselves from the enemies they have made in  
8 performing their duties. While an officer's duty to respond to  
9 the public's calls for help stops when he retires, the threat of  
10 danger from enemies he might have made during his service does  
11 not. Therefore, there is a rational basis for allowing a retired  
12 officer to continue to carry a concealed weapon, even though  
13 there was no rational basis for allowing the same officer to keep  
14 an assault weapon. Because "[P]laintiffs have no constitutional  
15 right to own or possess weapons, heightened scrutiny does not  
16 apply" and the statute need meet only rational basis review.  
17 Silveira, 312 F.3d at 1088. Therefore, Plaintiffs are not  
18 entitled to judgment on the pleadings on their second claim, and  
19 their motion is DENIED.

20 Having concluded that the statutory exception allowing  
21 retired officers to carry concealed weapons is rationally related  
22 to a legitimate governmental interest, protecting retired law  
23 enforcement officers, it follows that the second claim fails to  
24 state a claim upon which relief may be granted. Plaintiffs'  
25 arguments to the contrary are without merit.

26 Plaintiffs contend that all one must do is "join the club",  
27 that is, become a law enforcement officer and quit the following  
28 day, to secure the right to carry a concealed weapon. Becoming a

1 law enforcement officer is not a club one joins, however.  
2 Furthermore, the statute gives preference only to those officers  
3 "who have qualified for, and accepted a service or disability  
4 retirement." Cal. Penal Code § 12027(a)(1)(A). Thus, one who  
5 works for one day as a law enforcement officer and quits would  
6 not become exempt from the requirement to apply for a permit to  
7 carry a concealed weapon.

8 Plaintiffs also contend that there is no rational basis for  
9 the statutory scheme requiring CCW permits because it allows  
10 officers that are forced to retire due to a mental breakdown or  
11 alcoholism to carry a concealed weapon, even though the agencies  
12 they retire from no longer trust them to carry weapons.  
13 Plaintiffs quote at length from California Penal Code section  
14 12027.1, specifically subsections (b), (c), and (d). They  
15 neglect to quote section 12027.1(e), however, which states that  
16 "[n]o peace officer who is retired after January 1, 1989, because  
17 of a psychological disability shall be issued an endorsement to  
18 carry a concealed and loaded firearm pursuant to this section."  
19 Thus, Plaintiffs' concerns about mentally unstable retired  
20 officers swarming the streets with concealed weapons is without  
21 merit.

22 In sum, it is clear that the statutory scheme allowing  
23 retired officers to carry concealed weapons passes a rational  
24 basis review. Therefore, Defendants' motion to dismiss the  
25 second claim is GRANTED.

26 //

27 //

28 //

1 **3. Fourteenth Amendment Privileges and Immunities Clause**

2  
3 Plaintiffs, in their fifth claim, allege that the denial of  
4 their CCW applications violates their rights under the Fourteenth  
5 Amendment's Privileges and Immunities Clause. In their  
6 opposition, Plaintiffs assert that their claim represents a  
7 "cutting edge position justifying careful judicial scrutiny".  
8 Opp'n at 2. Plaintiffs then spend 21 pages taking the Court on a  
9 rambling history lesson starting at the Slaughter House Cases and  
10 the Freedmen's Bureau Act, and ending at Saenz v. Roe, 526 U.S.  
11 489 (1999). Along the way, Plaintiffs offer a full page  
12 bibliography which represents the "manageable number of cases,  
13 books, articles, and other authorities [that] outline this  
14 important debate", seemingly expecting the Court to study each  
15 and discern the relevant material from each on its own. Opp'n at  
16 22-23. All this is in an apparent attempt to convince the Court  
17 that the Fourteenth Amendment's Privileges and Immunities Clause  
18 is not dead, and therefore can be the basis of a claim for  
19 relief. What Plaintiffs do not do anywhere in these 21 pages,  
20 however, is explain how the denial of their CCW applications  
21 would lead to a violation of that clause.

22 At the end of this long trail, Plaintiffs proclaim that  
23 "[f]or the first time, this Court, and the Ninth Circuit, will be  
24 asked to define whether the [Fourteenth Amendment's Privileges  
25 and Immunities] Clause includes the fundamental right to keep and  
26 bear arms . . . ." Opp'n at 35. Thus, it is finally clear to  
27 the Court that Plaintiffs' errors are two-fold. First,  
28 Plaintiffs equate the right to keep and bear arms with the right

1 to carry firearms concealed, without ever analyzing, or even  
2 acknowledging, a possible difference between the two. In their  
3 opposition, Plaintiffs do not even address the particular subject  
4 of their lawsuit, which is the denial of a permit to carry  
5 concealed weapons. Even if the Court were to assume that if  
6 Plaintiffs were prevented from possessing firearms a Privileges  
7 and Immunities violation would be found, it does not follow that  
8 merely being denied a permit to carry those firearms concealed  
9 amounts to such a violation. Plaintiffs have done nothing to  
10 persuade, indeed, they have not attempted to persuade, the Court  
11 that possession of a firearm equates to carrying that firearm  
12 concealed.

13 Second, Plaintiffs label the right to keep and bear arms as  
14 a fundamental right. In doing so, Plaintiffs claim support from  
15 some 35 Supreme Court cases, while only citing "strong dictum"  
16 from one case, that being Scott v. Sanford, 60 U.S. 393 (1856).  
17 Opp'n at 35. Furthermore, Plaintiffs completely ignore the clear  
18 holding of Silveira v. Lockyer, 312 F.3d 1052, a 2002 Ninth  
19 Circuit case, which represents binding authority on this Court.  
20 In Silveira the court analyzed rights guaranteed under the Second  
21 Amendment and held that the Second Amendment right to keep and  
22 bear arms is a collective right that "guarantees the right of the  
23 people to maintain effective state militias, but does not provide  
24 any type of individual right to own or possess weapons." Id. at  
25 1060-61. The court went on to say that "the federal and state  
26 governments have the full authority to enact prohibitions and  
27 restrictions on the use and possession of firearms, subject only  
28 to generally applicable constitutional constraints, such as due

1 process, equal protection, and the like." Id. at 1060.

2 Plaintiffs' failure to confront Silveira is even more egregious  
3 when the Court considers that Mehl was a plaintiff in Silveira,  
4 and Gary Gorski, Plaintiffs' current counsel, represented the  
5 plaintiffs in Silveira.

6 Denying Plaintiffs the right to carry a concealed firearm  
7 does not constitute a violation of the Privileges and Immunities  
8 Clause. Accordingly, Defendants' motion to dismiss the fifth  
9 claim is GRANTED with prejudice.

10  
11 **4. Second and Ninth Amendments**

12  
13 In their opposition, Plaintiffs admit that the Ninth Circuit  
14 does not recognize Plaintiffs' claims brought under the Second or  
15 Ninth Amendments. Plaintiffs state they brought these claims to  
16 preserve an appeal. As Plaintiffs do not oppose the motion to  
17 dismiss as to the fourth and sixth claims, the motion is GRANTED  
18 with prejudice as to those claims.

19  
20 **5. 7th Claim - Preliminary Injunction and Declaratory Relief**

21  
22 Plaintiffs' first amended complaint contains a seventh claim  
23 seeking a preliminary injunction. This claim contains two  
24 paragraphs. The first incorporates by reference all 138 prior  
25 paragraphs. The second states, in its entirety, "Plaintiff seeks  
26 a declaration from the court regarding the constitutionality of  
27 the CCW statutes and policies enforced and promulgated by  
28 Defendants." Compl. ¶ 140. This is not a separate claim for

1 relief upon which relief may be based, but rather consists of  
2 nothing more than a request for a remedy based upon a favorable  
3 finding on the first six claims. Therefore, this seventh claim  
4 for relief is DISMISSED.

5  
6 **CONCLUSION**

7  
8 For the reasons explained above, Plaintiffs' First Amended  
9 Complaint against Defendants Lockyer and Rossi is DISMISSED.

10  
11 IT IS SO ORDERED.

12  
13 DATED: 9/2/04

  
14  
15 MORRISON C. ENGLAND, Jr.  
16 UNITED STATES DISTRICT JUDGE  
17  
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28



United States District Court  
for the  
Eastern District of California  
September 3, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:03-cv-02682

Mehl

v.

Blanas

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on September 3, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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**Jack L. Wagner, Clerk**

  
**by: Deputy Clerk**