2006 WL 3544580 (Cal.Superior) (Trial Order)
Superior Court of California.
Alameda County

CAPITOL PEOPLE FIRST, et al, Plaintiffs,
v.
DEPARTMENT OF DEVELOPMENTAL SERVICES, et al, Defendants.

No. 2002 - 038715.
March 6, 2006.

Order (1) Granting and Denying Motions of Plaintiffs for Judgment on the Pleadings Regarding Affirmative Defenses; (2) Granting in Part Defendants' Discovery Motions; (3) Denying the Motion of Plaintiffs to Compel Further Deposition Testimony; and (4) Staying Action.

Judge Ronald M. Sabraw.

Date: February 8, 2006

Time: 9:00 am.

Dept.: 22

Various motions came on for hearing on February 8, 2006, in Department 22 of this Court, the Honorable Ronald M. Sabraw presiding. Counsel appeared on behalf of Plaintiffs and on behalf of Defendants. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED:

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - GENERAL COMMENTS.

Plaintiffs bring these motions 4 years after Defendants served their answers and notified Plaintiffs of the affirmative defenses. At this point in the case, the parties have had significant time to conduct discovery regarding the factual basis for the affirmative defenses. For example, in May 2003 the State Defendants served responses to form interrogatories that set forth the facts, if any, that supported the affirmative defenses. In this context the Court would ordinarily take a dim view of arguments that the affirmative defenses are not clear or are not supported by factual allegations.

These motions are also brought after Court has denied Plaintiffs' motion for class certification. Therefore, the affirmative defenses now relate to the named plaintiffs and not to a putative class of plaintiffs. It is unclear whether the writ relief requested concerns just the named plaintiffs or all the persons who receive services from defendants. In light of the change in the posture of this case, further clarification of the affirmative defenses through the pleadings or I discovery is appropriate.

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - STATE DEFENDANTS.

Affirmative Defense #1 (Failure to state a claim). GRANTED. This is a denial, not an affirmative defense.

Affirmative Defense #2 (Waiver/estoppel). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #3 (Res judicata/collateral estoppel). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #4 (Uncertainty). GRANTED. This has no merit at this late stage of the proceedings.

Affirmative Defense #5 (Claims subject to other pending actions). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #6 (Failure to exhaust administrative remedies). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #7 (No equitable relief/adequate remedy at law). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #8 (Statute of limitations). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #9 (Fundamental alternation). DENIED. This is an affirmative defense. 28 C.F.R. 35.130(b)(7) states, "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." This has been, or can be, developed in discovery.

Affirmative Defense #10 (Conduct of other persons). DENIED. This concerns the allocation of responsibilities among the State and Regional Center defendants. This has been, or can be, developed in discovery.

Affirmative Defense #11 (No ministerial duties). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #12 (Relief sought is inconsistent with Medicaid state plan). GRANTED. This is not an affirmative defense to the claims asserted. This is an argument concerning the scope of relief.

Affirmative Defense #13 (Failure to demonstrate entitlement to services). GRANTED. This is a denial, not an affirmative defense.

Affirmative Defense #14 (All placements appropriate). GRANTED. This is a denial, not an affirmative defense.

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - SAN DIEGO.

Affirmative Defense #1 (Failure to state a claim). GRANTED.

Affirmative Defense #2 (Waiver/estoppel). DENIED.

Affirmative Defense #3 (Uncertainty). GRANTED.

Affirmative Defense #4 (Res judicata/collateral estoppel). DENIED.

Affirmative Defense #5 & 6 (Standing). DENIED.

Affirmative Defense #7 (Practices not unlawful/compliance with professional standards). GRANTED. This is a denial, not an affirmative defense.

Affirmative Defense #8 (Claims subject to other pending actions). DENIED.

Affirmative Defense #9, 10, 11, 13, 14, 15, and 20 (Class action defenses). GRANTED. This is a denial, not an affirmative defense. Plaintiffs have the burden of proof on class certification.

Affirmative Defense #12 (Defendant acted in good faith). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #16 (Failure to exhaust administrative remedies). DENIED.

Affirmative Defense #17 (No equitable relief/adequate remedy at law). DENIED.

Affirmative Defense #18 (Interference with existing contracts). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #19 (Statute of limitations). DENIED.

Affirmative Defense #21 (Lack of Jurisdiction). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #22 (Ripeness). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #23 (Fundamental alternation). DENIED.

Affirmative Defense #24 (State action doctrine). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #25 (No deprivation of statutory or constitutional rights). GRANTED. This is a denial, not an affirmative defense.

Affirmative Defense #26 (Satisfaction and release). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #27 (conduct by others). DENIED.

Affirmative Defense #28 (No ministerial duties). DENIED.

Affirmative Defense #29 (Relief sought is inconsistent with Medicaid state plan). GRANTED.

Affirmative Defense #30 (Failure to demonstrate entitlement to services). GRANTED.

Affirmative Defense #31 (compliance with prevailing practice). GRANTED.

Affirmative Defense #32 and 33 (UCL is unconstitutional). GRANTED. This is a denial, not an affirmative defense.

Affirmative Defense #34 (Unknown affirmative defenses). GRANTED. This is uncertain. Defendant can seek leave to amend if it discovers new affirmative defenses.

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - FAR NORTHERN REGIONAL CENTER, ET AL.

Where the affirmative defenses are the same, the motion is decided similarly to the above motions. Different affirmative defenses are as follows:

Affirmative Defense #6 (Constitutional Law). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #7 (Separation of powers/jurisdiction). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #11 (Public policy). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #15 (substantial hardship). GRANTED. This is not an affirmative defense to the claims asserted. This is an argument concerning the scope of relief.

Affirmative Defense #15 (legal obligation to operate within budget). DENIED. This is a restatement of the fundamental alternation defense.

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - CENTRAL VALLEY REGIONAL CENTER, ET AL.

Where the affirmative defenses are the same, the motion is decided similarly to the above motions. Different affirmative defenses are as follows:

Affirmative Defense #3 (Mootness). DENIED. This has been, or can be, developed in discovery.

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - GOLDEN GATE REGIONAL CENTER, ET AL.

Where the affirmative defenses are the same, the motion is decided similarly to the above motions. Different affirmative defenses are as follows:

Affirmative Defense #4 (11th Amendment - no claims in federal courts by non-residents against states). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #10 (10th Amendment - powers not delegated to the United States are reserved to the states). DENIED. This has been, or can be, developed in discovery.

Affirmative Defense #12 (Not an entity/Comprehensive Plan or System). GRANTED. This is a denial, not an affirmative defense. Plaintiffs have the burden of proof in demonstrating that the defendant is an entity with in the meaning of the ADA. Plaintiffs have the burden of proof in demonstrating that the defendant does not make appropriate placements.

EMOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES - ORANGE COUNTY REGIONAL CENTER, ET AL.

Where the affirmative defense are the same, the motion is decided similarly to the above motions. Different affirmative defenses are as follows:

Affirmative Defense #4 (Regional Center not subject to writ of mandate). DENIED. This has been, or can be, developed in

discovery.

MOTIONS OF THE PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS CONCERNING AFFIRMATIVE DEFENSES -COASTAL DEVELOPMENT AL SERVICES dba WESTSIDE REGIONAL CENTER, ET AL.

Where the affirmative defense are the same, the motion is decided similarly to the above motions.

MOTION OF STATE DEFENDANTS TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET #7.

Motion of State Defendants to compel further responses to special interrogatories, set #7 is GRANTED IN PART. This discovery motion concerns the original 11 plaintiffs and must be viewed in the context of the current procedural posture of this case. The Court has denied the motion of Plaintiffs for class certification. Defendants are entitled to discovery responses that clarify the claims of each of the 11 originally named plaintiffs.

The Court appreciates Plaintiffs' efforts to use tables in their discovery responses. Where, as here, the parties are collecting and sharing significant amounts of information it is often useful to be creative in organizing and presenting information to make it useful and accessible to the parties, the Court, and the trier of fact.

Plaintiffs must provide supplemental responses that clarify the claims of each plaintiff. There should be a separate response for each named plaintiff that contains information about his or her background (as in Appendix A) together with information about his or her specific claims (an in the "for example" sections of Appendix B). For direct service providers, the responses should state the facts related to each plaintiff (e.g. "The Regional Center did not inform NAME of XYZ in the 2003 IPP meeting in violation of CITE"). Information concerning the named plaintiffs is not equally available to Defendants because the interrogatories are in the nature of contention interrogatories. Even though all parties may have the underlying medical records, only Plaintiffs know what actions and inactions are the subject of the lawsuit.

For claims that are common among all the plaintiffs, there can be a common response. For direct and indirect service providers where the claims of the 11 originally named plaintiffs concern policies and practices, there can be a single, more general, response that relates to all plaintiffs (e.g. "The Regional Centers did not provide adequate information to customers in violation of CITE;" "The Department of Finance failed to monitor whether the Regional Centers were providing adequate information to customers as required by CITE").

Plaintiffs must provide information concerning the policies and practices for providing services and supports to persons with developmental disabilities that may include data compilations or summaries that will ultimately be presented by experts. The anticipated use of experts at trial to prove a fact does not preclude all discovery on that fact. Plaintiffs must provide information that is known currently, but are not required to retain experts to provide responses to interrogatories. If Plaintiffs expect to obtain expert information before trial, Plaintiffs' discovery responses may state that certain information will be the subject of expert testimony and summarize briefly what Plaintiffs expect the experts to state.

Plaintiffs must provide data obtained and compiled by counsel. *Smith v. Superior Court of San Joaquin County* (1961) 189 Cal. App. 2d 6, 11-12. Plaintiffs must provide responses to contention interrogatories, but are not required to explain the legal reasoning behind the contentions.

In an effort to limit the administrative burden, Plaintiffs might prepare a draft tentative response for a single plaintiff and share it with the State Defendants before preparing responses for all plaintiffs.

Plaintiffs are not required to update their discovery responses as additional information becomes available. C.C.P. 2030.310(a). Defendants may request supplemental responses. C.C.P. 2030.070.

MOTION OF STATE DEFENDANTS TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET #8.

Motion of State Defendants to compel further responses to special interrogatories, set #8 is GRANTED IN PART. This discovery motion concerns the 5 additional plaintiffs who were added as parties in the Fifth Amended Complaint as permitted by the Court order dated June 24, 2005. Defendants are entitled to discovery responses that clarify the claims of each of the 5 additional plaintiffs. Plaintiffs must provide further responses to Set #8 Special Interrogatories # 3, 4, 10, 11, 17, 18, 19, and 23. The general guidance regarding Set #7 is applicable to Set #8.

MOTION OF PLAINTIFFS TO COMPEL FURTHER RESPONSES TO DEPOSITION QUESTIONS.

Motion of Plaintiffs to compel further responses to deposition questions is DENIED. This motion concerns the relevance of the information and whether it is protected as "official information" under Evidence Code 1040.

Relevance. Plaintiffs argue that the decision making process of Defendants is at issue in this case, so information concerning that process is material to the trial. The State Defendants argue that the intent, motive, and attitudes are irrelevant to the case because either the Defendants are complying with the legal requirements or they are not.

The issue of relevance concerns the nature of the claims asserted as well as the parameters of a writ of mandate. Therefore, the Court has reviewed the Fifth Amended Complaint, the Court of Appeal decision dated April 30, 2004, this Court's order dated October 5, 2005, and the Court of Appeal decision dated March 23, 2005. Plaintiffs are seeking a traditional writ of mandate under C.C.P. 1085. Plaintiffs assert that Defendants have (1) failed to perform clear, present, and ministerial duties and (2) have adopted formal or de facto policies or practices that are in violation of the Lanterman Act. The Plaintiffs claims in this case are based primarily on an alleged violations of various statutes and regulations resulting in violation of the Lanterman Act. See Fifth Amended Complaint, Paragraph 230(a)-(t). In addition, plaintiffs assert claims under the Americans With Disabilities Act and various federal Medicaid provisions. Plaintiffs do not allege state Defendants have improperly exercised quasi-legislative powers. See Fifth Amended Complaint, Paragraph 231.

Curiously, Plaintiffs rely on, *inter alia,* *Ass'n for Retarded Citizens v. Dep't of Developmental Services,* (1985) 38 Cal. 3d 384, 390-393; *and* *Bright Dev. v. City of Tracy* (1993) 20 Cal. App. 4th 783, 795. Unlike the claims in *Ass'n for Retarded Citizens,* the claims in this case are not based upon the exercise by Defendants of quasi-legislative administrative powers. (See Paragraph 231 of Fifth Amended Complaint.) The holding in *Assoc. for Retarded Citizens* is that to be valid, quasi-legislative administrative action must be within the scope of authority conferred by the enabling statute. And while the interpretation of the administrative agency is to be given great weight regarding its statutory authority, the final responsibility for the interpretation of the law rests with the courts. See *Assoc. of Retarded Citizens, supra,* at page 390 and 391. The Supreme Court goes on to note "Thus, if the court concludes that the administrative action transgresses the agency's statutory authority, it need not proceed to review the action for abuse of discretion; in such a case, there is simply no discretion to abuse." *Association of Retarded Citizens v. Dept. of Developmental Services,* (1985) 38 Cal. 3d 384, at 391. Thus, in the quasi-legislative area, the final statutory interpretation rests with the courts and the intent, motive or rationale of the agency would not be relevant. It is simply whether the agency's action is in or out of compliance with the statute.

As noted above, the Plaintiffs claims in this case are based primarily on an alleged violation of the Lanterman Act. See Fifth Amended Complaint, Paragraph 230(a)-(t). Plaintiffs challenge state defendants conduct or failure to act. The only relevant inquiry is whether the agency's conduct or failure to act violates the law. Thus, it would appear that the state Defendant's intent, motive, or rationale for its action or inaction are irrelevant to the Court's inquiry.

There is a distinction between the alleged adoption of improper policies and practices (a quasi-legislative administrative action) and the application of those policies and practices to individual Plaintiffs (a quasi-adjudicative administrative action). *Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal. App. 4th 531, 554. The Plaintiffs in this action are not seeking the review of specific administrative decisions under C.C.P. 1094.5(a) and are not seeking traditional writ review of adjudicatory decisions, *Stone v. Regents of University of California* 20 (1999) 77 Cal. App. 4th 736, 745.

Based on the nature of Plaintiffs claims, Defendants' decision-making process and the rationale for their ultimate decisions are not relevant to the duty to perform clear, present, and ministerial duties. Either the Defendants are required to perform the ministerial duties or they are not required to perform those duties.

Similarly, Defendants' decision-making process is not relevant to whether Defendants have adopted formal or de facto policies or practices that are contrary to the relevant statutes and regulations. If the policies or practices are lawful, then it does not matter whether they were arrived as through random chance or careful deliberation. It follows then, if the policies or practices are not lawful, then they will not become lawful because the Defendants had a lengthy and thorough deliberative process before reaching an unlawful result.

Defendants' contemporaneous rationale for a particular decision would be relevant if Plaintiffs were seeking a writ of mandamus asking that the Court review whether a quasi-adjudicative decision was consistent with the agency's statutory authority and the agency's policies and practices. For example, whether the administrative record supports the agency's decision in its development and implementation of an IPP for a particular individual plaintiff. In such an instance the Court would be reviewing the agency's adjudicative decision in order to determine whether the decision "was arbitrary, capricious, or entirely lacking in evidentiary support." (*Sequoia Union High School Dist. v. Aurora Chart High School* (2003) 112 Cal. App. 4th 185, 195. In the context of reviewing adjudicative decisions, *McBail & Co. v. Solano County Local Agency Formation Com.* (1998) 62 Cal. App. 4th 1223, 1230, and *Ridgecrest Charter School v. Sierra Sands Unified School* (2005) 130 Cal. App. 4th 986, 1006-1007, suggest that although agencies are not required to prepare formal written statements concerning each decision, the record of the administrative hearing must adequately reflect the reason and basis for the decision. To the extent that the claims concern matters such as the development and implementation of IPPs for specific individuals, then Plaintiffs could arguably inquire into the rationale for those decisions because they are adjudicative in nature. But the claims in this case do not implicate any of state Defendants quasi-adjudicative decisions.

"Official Information" privilege under Evidence Code 1040.

There may be instances where tension exists in writ of mandamus proceedings on the one hand where the Court is required to review the evidence relied on by administrative agencies in making quasi-legislative or quasi-adjudicative decisions, and Evidence Code 1040(b)(2) on the other, which protects the deliberative process of government entities. See *Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325, 1126; *Marylander v. Superior Court* (2000) 81 Cal. App. 4th 1119 1126. However, there appears to be no such tension in the case before the Court. The Plaintiffs claims against the state Defendants in the Fifth Amended Complaint are directed at the state's alleged violation of various statutes and regulations leading to a violation of the Lanterman Act. The state Defendant's plans, policies, practices and procedures are either in violation of the Lanterman or they are not. The state Defendants intentions, motives, rationale or desires are simply not relevant to the inquiry before the Court.

In light of the above analysis, the Court offers the following guidelines for the future. Information that concerns the intent, motive, rationale, discussions and the deliberative process of state Defendants is not relevant to the Court's review and is presumptively protected under Evidence Code 1040 to ensure the honest exchange of information within government entities. In contrast, information that concerns the *ultimate rationale* of Defendants for the decisions at issue is directly relevant to the Court's review and would not be protected under Evidence Code 1040 because government entities can be legitimately expected to explain the ultimate rationale and bases for their decisions. The final reasons, rationales and determinations of the state Defendants are discoverable. State witnesses may be expected to testify about what the agency's policies, practices and procedures are, and why such policies are what they are. This would not include, however, the internal discussions, debates, and alternatives that did not find their way into the final practices and polices of the agency. Such internal, discussions and

debates are covered by Evidence Code Section 1040.

As applied in this case, a deponent can, therefore, be asked why an agency decided to take a certain course of conduct or adopted a particular policy. A Defendant may, however, object and elect not to explain how that decision was reached, what alternatives were considered, whether there was internal dissent, or refuse to provide other information that concerns the internal decision-making process. To the extent that Defendants assert the "official information" privilege regarding their decision-making processes, the options they considered, their intent, motives, and attitudes, the Court will preclude the Defendants from presenting such evidence at trial in defense of Defendants ultimate policies, procedures and practices and the decision-making processes leading to the same.

Counsel are directed to apply these general principles to the identified deposition questions. If Counsel cannot do so, then the Court will reconsider this matter when the stay is lifted.

MOTIONS TO SEAL

The motions to seal are GRANTED. The Court will sign the proposed orders on the motions to seal.

MOTION TO STAY.

On February 6, 2006, Plaintiffs filed an appeal from the order of the Court denying the motion for class certification. Therefore, to the extent the case concerns class claims the case is stayed automatically by C.C.P. 916.

The Court GRANTS the motion of Plaintiffs to stay the case in its entirety. The scope of discovery in this case might vary depending on how the appeal is resolved, so discovery will be impeded until the class certification issue is resolved. The case has been pending for four years and Plaintiffs are justifiably concerned about stopping the running of the five year statute while the appeal is pending. C.C.P. 583.340.

While the stay is in effect Defendants are not required to file the amended answers required by this order and the parties are not required to provide the further discovery responses required by this order. Any motion to lift the stay should propose due dates for these outstanding matters. While the stay is in effect, the Court will remain available to assist in voluntary settlement conferences.

FURTHER PROCEEDINGS.

The Court sets the next CMC for December 18, 2006, at 10:00 a.m. in Department 22. If the appeal is not resolved at that time, the Court will entertain an informal request to continue the CMC date for 6-9 months. If the appeal is resolved significantly before that time, the Court will entertain an informal request to set a CMC date promptly after the decision of the Court of Appeal.

Dated: March 6, 2006 <<signature>>

Judge Ronald M. Sabraw

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that I caused a true copy of the foregoing ORDER (1) GRANTING AND DENYING MOTIONS OF PLAINTIFFS FOR JUDGMENT ON THE PLEADINGS REGARDING AFFIRMATIVE DEFENSES; (2) GRANTING IN PART DEFENDANTS' DISCOVERY MOTIONS; (3) DENYING THE MOTION OF PLAINTIFFS TO COMPEL FURTHER DEPOSITION TESTIMONY; AND (4) STAYING ACTION to be mailed, first-class, postage pre-paid, in a sealed envelope, addressed as shown below. Executed, deposited and mailed in Oakland, California on March 6, 2006.

<<signature>>

Wosen Mengiste, Deputy Clerk

Alameda County Superior Court, Department 22

Stuart D. Tochner, Esq.

Peter T. Haven, Esq.

Musick, Peeler & Garrett, LLP

One Wilshire Blvd.

Los Angeles, CA 90017-3321

M. Lois Bobak, Esq.

Woodruff, Spradlin & Smart

701 South Parker Street, Suite 8000

Orange, CA 92868

Bette B. Epstein, Esq.

Reed Smith Crosby Heafey LLP

P.O. Box 2084

Oakland, CA 94604-2084

Bruce MacKenzie, Esq.

Law Offices of Bruce MacKenzie

15 West Carrillo Street, Room 217

Santa Barbara, CA 93101

Mark D. Petersen, Esq.

Anthony Giles, Esq.

Farella, Braun & Martel, LLP

Russ Building, 30th Floor

235 Montgomery Street

San Francisco, CA 94104

Henry S. Hewitt, Esq.

Todd A. Boley, Esq.

Erickson, Beasley, Hewitt & Wilson

483 Ninth Street, Suite 200

Oakland, CA 94607

BINGHAM McCUTCHEN LLP

MICHAEL T. PYLE

CHRISTINA M. WHEELER

CUPCAKE L. BROWN

CHRISTOPHER M. O'CONNOR

1900 University Avenue

East Palo Alto, California 94303-2223

Ellen Goldblatt, Esq.

Protection & Advocacy, Inc.

433 Hegenberger Road, Suite 220

Oakland, CA 94612

Eric Gelber, Esq.

Protection & Advocacy, Inc.

100 Howe Avenue, Suite 235N

Sacramento, CA 95825-8202

Kerry L. Wallis, Esq.

Morrison & Foerster, LLP

555 West Fifth Street, Suite 3500

Los Angeles, CA 90013-1024

Duane C. Musfelt, Esq.

Pamela M. Ferugson, Esq.

Lewis, Brisbois, Bisgaard & Smith LLP

One Sansome Street, Suite 1400

San Francisco, CA 94104

Rufus L. Cole, Esq.

Law Office of Cole & Fasano

720 Market Street

Penthouse Suite

San Francisco, CA 94102-2500

Susan Carson

Office of the Attorney General

455 Golden Gate Avenue

Suite 1100

San Francisco, CA 94102

Michael Tracy

Amy E. Wallace

DLA Piper Rudnick Gray Cary US LLP

2000 University Avenue

East Palo Alto, CA 94303