No. C066633

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

TIM CREWS,

Plaintiff and Appellant,

vs.

WILLOWS UNIFIED SCHOOL DISTRICT et al.,

Defendants and Respondents.

On Appeal from the Judgment of the Superior Court of the
State of California, County of Glenn
THE HONORABLE PETER TWEDE
(Superior Court Case No. 09CV00697)

CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT/RESPONDENT WILLOWS UNIFIED SCHOOL DISTRICT ET AL.

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COMES NOW Amicus Curiae, the California School Boards Association's Education Legal Alliance to offer the following Points and Authorities in regard to the above captioned matter.

I.

INTERESTS OF THE AMICUS CURIAE

The California School Boards Association's Education Legal Alliance ("ELA") submits this amicus curiae brief in support of Defendant/Respondent Willows Unified School District ("District"), pursuant to California Rules of Court Rule 8.200.

California School Boards Association ("CSBA") is a California nonprofit corporation duly formed and validly existing under the laws of the State of California. CSBA is a member-driven association composed of the governing boards of approximately 1,000 K-12 school districts and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf school districts and county offices of education.

CSBA's Education Legal Alliance ("Alliance") is composed of nearly 800 CSBA members dedicated to addressing public education legal issues of statewide concern to school districts and county offices of education. The purpose of the Alliance, among other things, is to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy decisions

for their local educational agencies. The Alliance's activities have included, as in this appeal, joining in litigation where the interests of public education are at stake.

ELA has an interest in ensuring that school districts are not plagued with the costs of unnecessary, harassing, and meritless lawsuits. Presently, it is estimated that CSBA's members receive thousands of Public Records Act requests per year at great expense to those districts due to the loss of personnel time in dealing with them. CSBA recognizes and adheres to the California Pubic Records Act's ("CRPA's") underlying policy of supporting transparency in government activities and decision making. While CSBA's members understand that they are expected to comply with the disclosure requirements of the Act and incur much of the expense for that compliance, they should not be subjected to the added expense of frivolous lawsuits that are becoming more and more frequent in this litigious society.

In the instant case, ELA represents the interests of its school district members. If Appellant were to prevail on this appeal, each member of the CSBA would be dramatically and negatively impacted by an effective neutering of the frivolous lawsuit sanction.

Based upon Government Code Section 6259(d), the law is well settled that, if a court finds that a plaintiff's CPRA petition is clearly

frivolous, it shall award reasonable attorney fees to the public agency. Appellant asks this Court to make an end run around this rule of law by claiming that he actually was the prevailing party, and that even if he was not the prevailing party, somehow this award was unprecedented. Not only is there no legal basis for such a claim, but Appellant seeks to ignore a clear and unambiguous statute through which the Legislature has seen fit to protect the interests of the public entity.

ELA believes the following arguments will assist the Court in reaching a disposition in accordance with the applicable state law as well as sound policy: (1) the Legislature provided guidelines for the public entities to follow that provide public entities with reasonable timelines for identifying, analyzing, redacting, and producing voluminous documents; (2) plaintiff submitted a general unfocused request which required an enormous amount of time, effort, and expense on the part of the District; and (3) plaintiff's failure to allow the District an opportunity to comply with the Public Records Act before serving his lawsuit and then prosecuting it at great expense to the District was frivolous and warrants the awarding of attorney fees to the District.

ELA files this Amicus Brief in order to ensure that local school districts and their governing boards focus on the issues that are really important - primarily the needs of their students. Frivolous lawsuits not

only impact districts financially but they adversely impact the ability of districts to serve the needs of their students. Districts should not be held hostage, while people such as Appellant make unreasonable Public Records Act demands.

II.

SUMMARY OF FACTS

The Respondent, Willows Unified School District, is a small school district of approximately 1,700 students, four schools and five administrators (at the time in question). On March 5, 2009, Appellant made a CPRA request for all of Superintendent Steve Olmos' emails for the preceding year. [Respondent's Brief ("RB"), p. 5, Sec. II. A.]

On March 15, 2009, the District timely notified Appellant, in its initial 10-day response, that the potentially responsive documents he had requested were voluminous, encompassing approximately 60,000 emails - or about 14 boxes of documents, but also informed him that it would begin producing documents on approximately April 28, 2009. [RB, p. 5, Sec. II B.] Since Appellant's request was so broad, the District requested Appellant to clarify or narrow the request so that it could more easily and promptly handle production, but Appellant refused. [RB, p. 6, Sec. II B.]

After reviewing Appellant's request, the District began the arduous task of identifying responsive documents and reviewing them for

exemptions and privileges, such as confidential student information. [RB, p. 6, Sec. II D.] This placed quite a strain on the District's resources. [RB, p. 6, Sec. II D.] The task of reviewing the many emails fell primarily to Superintendent Steve Olmos, who had to accomplish this document review while serving as Superintendent and fulfilling his other duties. [RB, p. 6, Sec. II D.]

Due to budget cuts and staff reductions, Superintendent Olmos was not only handling the duties of Superintendent but many other duties including: (1) human resources; (2) chief labor negotiator; (3) student expulsions and discipline; (4) Principal for the continuation school; (5) staff development; (6) attendance at District athletic events and extra-curricular activities; (7) preparation of board agendas; and (9) overseeing facilities management. [RB, p. 6-7, Sec. II D.] Given this broad range of responsibility, Superintendent Olmos' emails contained a great deal of privileged and confidential information. [RB, p. 7, Sec. II D.]

However, despite the District's reasonable estimate for production and its exhaustive efforts to timely prepare the documents for production, Appellant hastily filed his CPRA petition at 12:00 noon on April 28, 2009, the very day that the District estimated it would start producing documents. [RB, p. 6, Sec. II C.]

The District then began producing documents on April 29, 2009, but

Appellant proceeded to serve the District with his petition on May 5, 2009 anyway, thereby setting off the expensive process of a litigation that included numerous unnecessary motions, briefs and depositions. [RB, p. 6-8, Sec. II D, E.]

The District meanwhile continued its production on May 7, May 21, June 5, June 26, July 13, July 16, July 23, August 10, August 14, September 28, October 16, October 23, and December 3, 2009. [RB, p. 6-8, Sec. II D, E.] In all the District expended approximately 61 hours of attorney time and 198 hours of administrator time (including 107 hours by Superintendent Olmos and 91 hours by the District's Director of Technology Services, Robert Lillie) in responding to Appellant's request. [RB, p. 7-8, Sec. II D.]

Other than the 3,200 pages of documents that were properly withheld for legal exemptions, and the 91 pages of attachments (none of which Appellant cites as significant) that the trial court indicated were inadvertently left out of the District's production, Appellant was given virtually everything he asked for out of the 60,000 emails. [RB, p. 13-15, Sec. II F. 2.] The trial court held that Appellant's actions in serving the lawsuit and pursuing the lawsuit were frivolous and warranted $53,926 in attorney fees. [RB, p. 13-17, Sec. II F. 2 to G.]

III.

ARGUMENT

A. School Districts Have Certain Protections Provided to Them Under California's Public Records Act.

1. Districts Must Be Given a Reasonable Opportunity to Produce Documents in Response to CPRA Requests.

Based upon California's Public Records Act, public entities are given a reasonable time to produce documents based upon the particular nature of each request and the circumstances surrounding it. Government Code Section 6253(c) states:

> Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

Implicit in Section 6253 is the understanding that public entities are

permitted to have a reasonable amount of time to produce the records in response to a Public Records Act Request. "[I]f the records are not readily accessible or if portions of the records must be redacted in order to protect exempt material, the agency must be given a reasonable period of time to perform these functions." [California Attorney General's Office, *Summary of the California Public Records Act 2004*, p.5.) (Emphasis supplied.]

With respect to requests for copies of public records, the CPRA does not contain any time schedule whatsoever for production of copies; the only time schedule provided pertains to the public agency's determination of the disclosability of the public records that have been requested, which must ordinarily be made within ten (10) days of the agency's receipt of the request, subject to a fourteen (14) day extension at the agency's discretion under unusual circumstances. [Government Code §6253(c); *Motorola Communication & Electronics, Inc. v. Dep't of Gen. Services* (1997) 55 Cal.App.4th 1340, 1350.] Once the disclosability determination has been made, any records not exempt from disclosure must be produced in a reasonable period of time. [See *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 483; see also *Motorola*, supra at 1349-1351.] In *Rogers*, the City of Burbank disclosed all requested nonexempt documents in reasonably timely manner, for purposes of the California Public Records Act, where records that had not been in the city's possession or could not be

found were promptly disclosed when they became available. [*Rogers*, supra at 483.]

Furthermore, a person's role as a member of the media does not provide him with any sort of priority right or enhanced access to public records. [*Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 900; *Estate of Hearst* (1977) 67 Cal.App.3d 777, 785-786.] It is also irrelevant that a requesting party is a newspaper or other form of media, because it is well established that the media has no greater right of access to public records than the general public. [*California State University, Fresno Association, Inc. v. Superior Ct.* (2001) 90 Cal.App.4th 810, 831.] As such, the media's rights under the CPRA are coextensive with those of every other person and entity seeking access to District records.

CSBA's districts receive thousands of CPRA requests every year, and it constitutes a huge challenge for districts to process each and every CPRA request that they receive in a timely manner. They cannot prioritize the fulfillment of one over another based on their comparative status, therefore districts must be given a reasonable time period in which to produce records responsive to a request.

2. The Length of Time It Takes for a School District to Produce Records Is Directly Related to Whether a CPRA Request is Reasonably Focused.

A person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies. [*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088, citing *Rogers*, supra at 481.] It makes no sense to permit an individual to make a general, unfocused request for records to a public agency which will then be compelled to deny it, thereby ensuring litigation. [*Id.*] A requestor of public records needs to make a specific and focused request to a public entity, which would then give the public entity an opportunity to comply. [*Rogers*, supra at 481.]

In *Rogers*, the plaintiff argued that he offered to disclose to the trial court the focus of his request so that the judge could intelligently review telephone records *in camera*. However, the judge properly refused to accept such an ex parte disclosure, as the plaintiff's suggested procedure would have necessitated court review of all similar requests for public records and defeat the purpose of the Act, which is to foster prompt disclosure by the affected agency. [*Rosenthal*, supra at 480-481.]

Unquestionably, public records must be described clearly enough to permit the agency to determine whether writings of the type described in the request are under its control. [*California First Amendment Coalition v. Superior Ct.* (1998) 67 Cal.App.4th 159, 165.] Section 6253 compels an agency to provide a copy of nonexempt records upon a request "that reasonably describes an identifiable record...." [*Id.* at 165, analyzing predecessor statute Section 6257.] The agency must then determine whether it has such writings under its control and the applicability of any exemption. [*Id.*] An agency is thus obliged to search for records based on criteria set forth in the search request. [Id.]

3. School Districts Have Many Interests They Must Protect Before They Can Release Records.

The legislative history indicates that the California Public Records Act was intended to provide access to governmental records while also protecting individuals' rights to privacy. [*Rosenthal*, supra at 761.] This is especially true for school districts, which have the specific interests protected by exemption according to the Public Records Act, state and federal statutes, and case law, including:

1. Individually identifiable information contained in education records maintained by the District, which is confidential under both California [Education Code §§49073 et seq.] and federal [20 U.S.C. §1232g] law, and disclosure of which to unauthorized persons without prior written parental consent is prohibited.

2. Records containing confidential information pertaining to individually identifiable students maintained in, or obtained from, education records, which are not subject to disclosure pursuant to 20 U.S.C. §1232g and Education Code §49076. [*Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4th 1496, 1506.]

3. Material that is exempt from disclosure on the basis of the attorney-client privilege under Evidence Code §954, which is incorporated into the Public Records Act through Government Code §6254(k).

4. Material that constitutes confidential personnel information under the Public Records Act. [Government Code §6254(c); *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805 (right of privacy in personnel records).]

5. Records that contain information the release of which would expose the District's decision-making process, thereby discouraging candid discussion within the District and undermining the District's ability to perform its functions, e.g., the "deliberative process privilege," pursuant to Government Code §§ 6254, subdivisions (a) and (k); and 6255.

6. Records containing information protected by the fundamental right to informational privacy guaranteed by Article I, §1 of the California Constitution, which is not subject to disclosure under the balancing test provided by Government Code §6255. [See *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 346-347.]

7. "[C]orrespondence, bills, ledgers, statements, and time records which also reveal the motive of the client in

> seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of the law, fall within the [attorney-client] privilege." [*Clarke v. American Commerce National Bank*, 974 F.2d 127, 129 (9th Cir. 1992).) (Emphasis supplied.)]

8. Records for which the public interest served by non-disclosure clearly outweighs the public interest served by disclosure, pursuant to Government Code Section 6255.

To the extent that any of the requested records are covered, in whole or in part, by one or more of the foregoing exemptions or privileges, districts are required and/or permitted to withhold or redact those records by invoking such authority. With so many interests at stake, this filtering, redaction, and withholding process could take a significant amount of time depending on the volume of the documents requested.

4. Where the Burden to a School District is High, the District May Impose Reasonable Restrictions.

Properly interpreted, the Public Records Act permits plaintiff and others similarly situated to have reasonable access to the desired documents and to secure copies of specific documents, but this is subject to the imposition of reasonable restrictions on general requests for voluminous classes of material. [*Rosenthal*, supra at 754.] Pursuant to Section 6255(a), a public entity is entitled to withhold any part of the records "by demonstrating that the record in question is exempt under express

provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. A request that compels the production of a huge volume of material may be objectionable as unduly burdensome. [*California First Amendment*, supra at 166.] In interpreting Section 6255, the Supreme Court in *American Civil Liberties Foundation of Northern California, Inc. v. Deukmejian* (1982) 32 Cal.3d 440, 452-453, held: "We reject the suggestion that in undertaking this task the courts should ignore any expense and inconvenience involved in segregating nonexempt from exempt information. Section 6255 speaks broadly of the 'public interest,' a phrase which encompasses public concern with the cost and efficiency of government. To refuse to place such items on the section 6255 scales would make it possible for any person requesting information, for any reason or for no particular reason, to impose upon a governmental agency a limitless obligation. Such a result would not be in the public interest."

In some cases, a public entity's burden in segregating non-exempt material from exempt material that is not subject to disclosure may be so onerous that the public interest is served by the public entity's non-disclosure, because the burden outweighs the public's comparatively slight interest in disclosure of the exempt material pursuant to Government Code

§6255. [*Id.* at 453.] Likewise, a clearly framed request which requires an agency to search an enormous volume of data for a "needle in the haystack" or, conversely, a request which compels the production of a huge volume of material may be objectionable as unduly burdensome. [*California First Amendment*, supra at 166.]

Records requests, however, inevitably impose some burden on government agencies. [*Id.*] An agency is obliged to comply so long as the record can be located with reasonable effort. [*Id.*, citing *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177, 1186]

Based on the foregoing, public entities may withhold any records in its possession that are subject to one or more applicable exemptions or privileges. [*American Civil Liberties Foundation*, supra at *452.*] Furthermore, to the extent that any of those records contain some information that is exempt from disclosure and other information that is not exempt, public entities may redact the exempt information and produce copies of the non-exempt portions to the extent that such records are "reasonably segregable" within the meaning of Government Code §6253, subdivision (a). [See *Id.* at 453.] However, this process of analyzing the voluminous amounts of documents for exemptions, redacting the exemptions for the documents, and being able to produce the documents involves a very time consuming process. Therefore, public entities have to

be given flexibility in their production of voluminous amounts of public records.

B. School Districts Must Be Provided Reimbursement of Their Reasonable Attorney Fees and Costs for Frivolous Public Records Act Cases Pursuant to Section 6259(d).

The judicial remedy set forth in the California Public Records Act (CPRA) is available *only* to a person or entity who is seeking disclosure of public records and *only* where the public entity is allegedly improperly withholding those records. [*County of Santa Clara v. Superior Ct.* (2009) 171 Cal.App.4th 119, 126.] A person seeking to "enforce his or her right to inspect or to receive a copy of any public record or class of public records" (Govt. Code § 6258) may file a petition under Section 6259(a), which states that a court shall issue an order to a public entity to disclose or show cause why "certain public records are being improperly withheld from a member of the public."

Upon its analysis of the plaintiff's petition, the court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to Section 6259(d). However, if the court finds that plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency. [Govt. Code § 6259(d).]

An action is frivolous if it is utterly without merit, such that any reasonable attorney would agree that the action is meritless. [*Carpenter v.*

Jack in the Box Corp. (2007) 151 Cal.App.4th 454, 469.] For purposes of bad faith actions, "frivolous" means "totally and completely without merit or…for the sole purpose of harassing an opposing party." [Code of Civ. Proc § 128.5(b)(2)(A), (B).]

The standard test for determining if a plaintiff has prevailed under the Public Records Act, and thus is entitled to costs and reasonable attorney fees, is whether or not the litigation caused a previously withheld document to be released. [*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088.] A plaintiff is considered "prevailing party" if his suit motivated defendants to provide primary relief sought or activated them to modify their behavior, or if litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result. [*Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901-902.] An action results in the release of previously withheld documents "if the lawsuit motivated the defendants to produce the documents." [*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482.]

Cases denying attorney fees to a plaintiff under the Act have done so because substantial evidence supported a finding that the "litigation did *not* cause the [agency] to disclose any of the documents ultimately made available ...." [*Motorola Communication & Electronics, Inc. v. Department of General Services, supra,* at 1351, italics added; *Rogers v. Superior Court,*

supra, at 483 (substantial evidence that documents were found as a result of search instituted prior to filing of complaint and were not disclosed in response to suit).]

The lesson learned from *Motorola* is that a public agency's good faith is a proper consideration in determining whether a CPRA petition caused disclosure of records. The Third District in *Motorola* stated: "The fact that a delay in production was slight and was due in part to unavailability of critical personnel is relevant to show the delay was due to administrative problems rather than agency intransigence. This in turn suggests production would ultimately have occurred whether or not suit was filed." [*Id.* at 1346.]

On the other hand, the bad faith exhibited by Thomas Butt in *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925, was found by the First District to be frivolous conduct warranting an award of attorney fees and costs to the City. In *Butt*, the plaintiff made a CPRA request to the City of Richmond and then filed a petition with the superior court, before the City even had a chance to initially respond to the request within the 10 day statutory time period called for in Section 6256 (now 6253). [*Id.* at 927-929.] Subsequent to the lawsuit, the City provided all records deemed disclosable under the CPRA and made extraordinary efforts to accommodate his specific requests. [*Id.* at 929.] Appellant's petition was

denied because of his failure to allow respondent the requisite 10 days to respond to his request. The court found his request for documents frivolous and awarded the City attorney fees and costs. [*Id*.]

At a time when Californians are increasingly concerned about the quality of education in their schools, the ability to defend against extortionate lawsuits is of paramount concern. CSBA's districts are already having trouble affording what is required by CPRA, they cannot be expected to continue to foot the bill for frivolous lawsuits, at taxpayer expense. If Section 6259 is to have any significance at all, we must protect school districts from the added expense of frivolous shakedown lawsuits that take away educational resources from our State's children.

C. The Appellant Has Exhibited Bad Faith Conduct By Prematurely and Needlessly Pursuing His Lawsuit Against the District, and He Should Be Assessed Fees and Costs for His Frivolous Action.

Appellant's conduct in serving the lawsuit, after the District has begun producing the requested documents and continuing to pursue it until long after the District had produced all responsive records, demonstrates the kind of bad faith conduct the plaintiff exhibited in *Butt*. The foregoing undisputed facts demonstrate that Appellant's lawsuit was completely unnecessary, harassing, expensive, and, indeed frivolous.

On March 5, 2009, Appellant made a CPRA request for all of

Superintendent Steve Olmos' emails for the preceding year. [Respondent's Brief ("RB"), p. 5, Sec. II. A.] This kind of request was the same kind of general, unfocused request that the Court frowned upon in *Rogers v. Superior Court.* [*Rogers*, supra at 481.]

On March 15, 2009, the District timely notified Appellant in its initial 10-day response that the responsive documents he had requested were voluminous, encompassing approximately 60,000 emails, and further informed him that it would begin producing documents on approximately April 28, 2009. [RB, p. 5, Sec. II B.] Thus, the District fully complied with the requirements of Section 6253(c) by both responding within 10 days and giving Appellant an estimate of time for its production. Since Appellant's request was so broad, the District attempted to narrow the focus, so that it could more easily and promptly handle production, but Plaintiff refused. [RB, p. 6, Sec. II B.]

Despite the District's reasonable estimate for production, Plaintiff hastily filed his CPRA petition at 12:00 noon on April 28, 2009, the very day that the District estimated it would start producing documents. [RB, p. 6, Sec. II C.] The District then began producing documents on April 29, 2009, but Appellant proceeded to serve the District with his petition on May 5, 2009 anyway, thereby setting off the expensive process of a litigation that included numerous unnecessary motions, briefs and depositions. [RB, p. 6-

8, Sec. II D, E.] The District meanwhile continued its production on May 7, May 21, June 5, June 26, July 13, July 16, July 23, August 10, August 14, September 28, October 16, October 23, and December 3, 2009. [RB, p. 6-8, Sec. II D, E.]

Other than the 3,200 pages of documents that were properly withheld for legal exemptions, and the 91 pages of attachments (none of which Appellant cites as significant) that the trial court indicated were inadvertently left out of the District's production, Appellant was given virtually everything he asked for out of the 60,000 emails. [RB, p. 13-15, Sec. II F. 2.] The trial court found that Appellant's actions in serving the lawsuit and pursuing the lawsuit were frivolous and warranted $53,000 in attorney fees. [RB, p. 13-17, Sec. II F. 2 to G.]

The District's actions clearly exhibited the good faith conduct that was demonstrated in *Motorola*. However, despite the District's good faith conduct, Plaintiff continued to recklessly pursue his bad faith action, excessively running up the costs of the litigation.

Since there is no question that Appellant pursued an action that was completely unnecessary, harassing, and without merit, this Court should not hesitate to affirm the judgment of the Trial Court in awarding sanctions for his frivolous lawsuit.

IV.

CONCLUSION

Based upon the reasons stated herein, ELA supports Respondent's defense of the Appeal and submits that Appellant's actions in pursuing this lawsuit were properly declared frivolous.

As an interested party who will be greatly affected by the Court's determination in this action, ELA requests that the Court affirm the well reasoned judgment of the Trial Court, awarding attorney fees and costs to the Respondent in the amount stated.

Dated: October ___, 2012

Respectfully submitted,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 14(c)(1))

The text of this brief consists of 4,742 words as counted by the Microsoft® Word 2002 word-processing program used to generate the brief.

Dated: October ___, 2012

Paul M. Loya

TABLE OF CONTENTS

Page