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FILED BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

VENTURA COUNTY COMMUNITY COLLEGE RETIREES ASSOCIATION; RENE G. RODRIGUEZ; GARY JOHNSON, ROBERT LONG; ROBERT LOPEZ; BARBARA HOFFMAN; DAVID THOMAS; VIVIAN LOCKARD; EURSELL JETT; CHARLENE BLALOCK-CARLSON; DONALD MEDLEY; HARRY KORN; individually and for and on behalf of a class of persons similarly situated,

Petitioners and Plaintiffs,

v.

VENTURA COUNTY COMMUNITY COLLEGE DISTRICT; BOARD OF TRUSTEES OF THE VENTURA COUNTY COMMUNITY COLLEGE DISTRICT; DOES 1 through 50, inclusive,

Respondents and Defendants.

/

CASE: 56-2007-00303058-CU-WM-VTA

PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER

Date: November 15, 2007
Time: 8:30 a.m.
Location: Dept. 43

(Class Action)
Petition Filed: August 31, 2007

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INTRODUCTION

In this action Petitioners and Plaintiffs (hereinafter "Petitioners"), all of whom are retired former employees of Respondent Ventura County Community College District, allege that starting in 1977 Respondent District entered into contractual promises, in the form of collective bargaining agreements and a district policy, to provide retirees paid health benefits after retirement maintaining for each retiree the health plan in effect on the retirement date or "equivalent benefits." Petitioners further allege that Petitioners have rights in the retiree health plans based on estoppel. Petitioners allege that although Respondents abided by such promises until 2005, starting in that year Respondents no longer provided a plan with equivalent benefits, and specifically, that the health plan provided after 2005 for retirees included higher co-payments, deductibles and annual out-of-pocket maximums.

Respondents demurrer, generally, to the Petition and Complaint in its entirety, on the theory that the Court should adopt Respondents' interpretation of the collective agreements and district policy, as opposed to the interpretation of those documents set out in the Petition. Simply stated, at the pleading stage this Court cannot resolve conflicting interpretations of contract provisions.

ALLEGATIONS

As pertinent to the general demurrer, the Petition sets forth the following. Petitioners are retirees of the Ventura County Community College District ("District") (Pet ¶ ¶ 1, 2, 3) Petitioners allege that Respondent District promised to provide retirees the "Blue Cross" plan in effect on their retirement date or equivalent benefits. (Pet ¶ 1) Petitioners belonged to one of four groups: (a) faculty (academic) employees; (b) classified employees; (c) classified supervisors; and (d) managers. (Pet ¶ 3) Petitioners refer to, and incorporate various collective bargaining agreements, starting in 1977, pertaining to the "academic" and "classified"

employees. (Pet ¶¶ 21-26) Petitioners also allege that from 1977 through 1993 the Classified Supervisors were covered by collective bargaining agreements, and incorporate those agreements. (Pet ¶¶ 27-29) Petitioners then allege that starting in 1993 the Managers Policy and Operations Manual (hereinafter "Managers Manual") dated December 10, 1991, applied to the Classified Supervisors. (Pet ¶ 30) Petitioners allege that Managers were provided the same medical, dental and vision benefits upon retirement as their labor organization co-workers, as codified in the Managers Manual, and incorporate said Managers Manual. (Pet ¶31)

Petitioners allege that until 2005 Respondents fulfilled the promises described in the Petition (Pet. ¶ 32.), but that some time before July 1, 2005, Respondents implemented a plan with higher co-payments, deductibles and annual out-of-pocket maximums, and that Petitioners received no commensurate benefits in exchange for these increases. (Pet. ¶ 33.)

In their First Cause of Action (Impairment and Breach of Contract) Petitioners allege that in 1977 Respondent entered into collective bargaining agreement promising to continue providing retirees then existing health and dental coverage, or if a change was warranted, another plan with "at least equivalent benefits." (Pet ¶ 50) The retiree health and dental benefits were extended to managers. (Pet ¶ 51) Petitioners further allege, as part of the First COA, that all Petitioners met the service and age criteria at retirement. (Pet ¶¶ 53-56) It is alleged that Petitioners are beneficially interested because they were promised paid health benefits under Blue Cross or another plan providing equivalent benefits, and that Petitioners have incurred and continue to incur significant out-of-pocket expenses due to higher deductibles, co-payments and out-of-pocket maximums which are not equivalent to the former plan. (Pet ¶ 61)

In their Second Cause of Action (Breach of Contract) Petitioners allege a contractual relationship based on the collective bargaining agreements and other relevant documentation

(Pet ¶ 66), that Respondent District was contractually obligated to provide retirees with paid health benefits of an equivalent nature as set forth in the contracts (Pet ¶ 67), and that in or around July 1, 2005, Respondent implemented a new health and prescription plan, which cost the District less than the former plan, but charged significantly higher deductibles, co-payments and out-of-pocket maximums (Pet ¶ 68), in violation of Respondents' contractual obligation. (Pet ¶ 69)

The Third Cause of Action (Promissory Estoppel) includes allegations that Respondent District represented to eligible employees that upon retirement they would receive District-paid health, dental and vision benefits for life under the existing health insurance plan or another plan with equivalent benefits, which representations were codified in collective bargaining agreements and other District documents. (Pet ¶ 72) It is alleged that the District intended its employees would rely on these representations and to induce acceptance of employment as well as long and loyal service, and that Petitioners acted on such promises with the expectation that they would not have to worry about health and welfare benefits after retirement. (Pet ¶ 73) It is further alleged that many Petitioners accepted early retirement, in part, because they expected their health benefits to remain the same or largely similar, and that they accepted early retirement and lower pensions. (Pet ¶ 74) It is then alleged that Respondents violated its promises (Pet ¶ 75), resulting in injustice to retirees, who reasonably and foreseeably relied on the promise. (Pet ¶ 76)

The Fourth Cause of Action (Equitable Estoppel) starts with the allegation that the District represented to employees that upon retirement they would receive, not just paid benefits, but benefits equivalent to those provided before, which were recorded in labor contracts and other documentation. (Pet ¶ 79) It is then alleged that the representations were intended to induce acceptance of employment as well as long service and, in some cases, early

retirement (Pet ¶ 80), and that Petitioners relied on the promises (Pet ¶ 81), and in some cases retired early, accepting a smaller pension because of their expectation. (Pet ¶ 82) Finally, it is alleged that Respondents negotiated a plan with higher costs for retirees (Pet ¶ 83), and by this action abrogated the promise to retirees to provide equivalent health benefits. (Pet ¶ 84)

ARGUMENT

I.
STANDARD OF REVIEW ON DEMURRER

A demurrer tests the pleading alone. (5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, 895, p. 334.)

> "The function of a demurrer is to test the sufficiency of the complaint by raising questions of law. [Citation.] The complaint must be given a reasonable interpretation and read as a whole with its parts considered in their context. [Citation.] A general demurrer admits the truth of all material factual allegations of the complaint; plaintiff's ability to prove the allegations, or the possible difficulty in making such proof, does not concern the reviewing court. [Citation.]"

Aragon-Haas v. Family Security Ins. Services, Inc. (1991) 231 Cal. App. 3d 232, 238-239, 282 Cal. Rptr. 233. If, upon consideration of all the facts stated, it appears that the plaintiff is entitled to any relief at the hands of the court, the complaint will be held good. The plaintiff need only plead facts showing that he may be entitled to some relief. Gruenberg v. Aetna Ins. Co. (1973) 9 Cal.3d 566, 573.

Where a complaint is based on a written contract which it sets out in full, a general demurrer to the complaint admits not only the contents of the instrument but also any pleaded meaning to which the instrument is reasonably susceptible. Aragon-Haas v. Family Security Ins. Services, Inc., supra, 231 Cal. App. 3d, at 240, citing Martinez v. Socoma Companies, Inc. (1974) 11 Cal.3d 394, 400 [113 Cal.Rptr. 585, 521 P.2d 841]. "In ruling on a demurrer, the likelihood that the pleader will be able to prove his allegations is not the question." Shaw v. Metro-Goldwyn-Mayer, Inc. (1974) 37 Cal.App.3d 587, 599 [113 Cal.Rptr. 617]. "So long as

the pleading does not place a clearly erroneous construction upon the provisions of the contract, in passing upon the sufficiency of the complaint, we must accept as correct plaintiff's allegations as to the meaning of the agreement." (Aragon-Haas v. Family Security Ins. Services, Inc., supra, 231 Cal. App. 3d, at 238. See also Security Officers Service, Inc. v. State Compensation Ins. Fund (1993) 17 Cal.App.4th 887, 894, 899 ["facially permissible construction" of insurance policy survives general demurrer].) In light of the principles set out above, it is clear that Respondents' reliance on City of El Cajon v. El Cajon Police Officers' Assn. (1996) 49 Cal.App.4th 64, is misplaced, and demonstrates a misunderstanding of the standard of review on demurrer. El Cajon was decided after trial, and not at the pleading stage.

After trail, and after the parties have had an opportunity, not only to conduct discovery, but to introduce extrinsic evidence pertaining to the interpretation of the contract, it is clearly appropriate for the court to apply the principles of contract construction in order to give effect to the mutual intention of the parties. Thus, "a contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable . . . ." (Civ. Code, § 1636.) "The fact that the terms of an instrument appear clear to a judge does not preclude the possibility that the parties chose the language of the instrument to express different terms." Pacific Gas & E. Co. v. G.W. Thomas Drayage Etc. Co. (1968) 69 Cal.2d 33, 39, 69 Cal. Rptr. 561. "Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." Dore v. Arnold Worldwide, Inc. (2006) 39 Cal.4th 384, 391. With respect to the consideration of extrinsic evidence, it has been observed that when a reasonable alternative interpretation is suggested, "even though it may be alien to the judge's linguistic experience, objective evidence in support

of that interpretation should be considered. See Corbin, Contracts §542." Alexander v. Primerica Holdings, Inc., 967 F.2d 90, 95 and n. 1 (3rd Cir. 1992).

This process, however, cannot be accomplished at the pleading stage.

II.
RELIEF BY WAY OF WRIT OF MANDATE IS APPROPRIATE

There can be no dispute that claims for compensation promised by a governmental entity, including vested retirement benefits, are properly enforced by way of a writ of mandate. For instance, in Thorning v. Hollister School District (1992) 11 Cal.App.4th 1598, the court observed that "[t]he act which appellants sought to compel District to perform was to approve payment of continued health benefits. If District had an official duty to pay the claim for continued benefits, the act authorizing payment is merely a ministerial act, and mandamus is an appropriate remedy. (Citation omitted.)" Id, at 1603. See also, A.B.C. Federation of Teachers v. A.B.C. Unified S.D. (1977) 75 Cal.App.3d 332, 341, (mandate available to obtain promised compensation from public employer), and Kern v. City of Long Beach (1947) 29 Cal.2d 848, 850 ("mandamus is the proper proceeding to compel public body to pay a pension.")

Respondents have alleged facts giving rise to an official duty on the part of Respondents with respect to the retiree health benefits in question. Relief by way of mandate is appropriate.

III.
PETITIONERS HAVE ALLEGED FACTS GIVING RISE TO THE RETIREE HEALTH BENEFITS IN DISPUTE

Respondents argue that "Petitioners have not and cannot establish that the retirees have any entitlement under any written contract to the retirement health benefits claimed by Petitioners." MPA in Support of Demurrer, pg. 2, lines 14-15. Even with respect to the First and Second Causes of Action, which will turn on the existence of the contractual promise, the question at this stage of the proceedings is not whether Petitioners "can establish" an

entitlement under such contracts, but instead whether the contract interpretation, as alleged in the pleadings, is "clearly erroneous." It must be remembered that Petitioners will notice the hearing on its request for a writ of mandate following discovery. Respondent confuses the standard at the pleading stage by suggesting that the Court is free to resolve conflicting interpretations of the language in question if it finds such language to be susceptible to two interpretations. MPA in Support of Demurrer, pg 7, lines 1-5. In making this argument Respondents misunderstand the analysis when a challenge is raised to the pleadings by general demurrer. As discussed at length above, the Court's task at this stage is to determine whether the interpretation incorporated into the pleadings is clearly erroneous. As discussed below, the "contract" in question is, at the very least, susceptible to the interpretation set out in the pleadings.

Respondents have organized the discussion of the written contracts into three sections and presented the discussion in the following order: (a.) Management Employees; (b.) Academic and Classified Employees; and, (c.) Classified Supervisors. While Petitioners will organize its discussion around the same organizational groupings, it will vary the order of the discussion for reasons that should become apparent.

A.
ACADEMIC AND CLASSIFIED EMPLOYEES

The claims for two of the groups identified in the Petition ("academic" and "classified" employees) are based on negotiated provisions in collective bargaining agreements. The essential allegations relevant to the "academic" employees are set out in paragraphs 21 through 23, while the allegations pertaining to "classified" employees are found at paragraphs 24 through 26. As Respondents note, the provisions pertaining to these two groups are parallel in many respects. Article 4.9 of the various collective agreements covering the "academic" employees, and Article 3.8 of the "classified" employee agreements both provide that "faculty members who are employed by the District at the time of retirement shall be retained on the District's **existing** group medical policy, with premiums paid by the District in accordance with

the provisions of this Article." (Exh 3, "academic;" Exh 6 "classified," emphasis added.) Starting in 1990, and continuing thereafter, however, Article 4.5 in the "academic" contract provided "current coverage for retirees shall continue for faculty employed on or before June 30, 1990." See Exh. 5.)

The provision in the "academic" employees' collective agreement that such employees "who are employed by the District at the time of retirement shall be retained on the District's existing group medical policy" is, at the least, susceptible of an interpretation that the academic employees would receive, upon retirement, the policy in effect at the time of the employee's retirement, including such aspects of said policy as co-pays, deductibles, and annual out-of-pocket maximums. Similarly, the provision in the "classified" employees' collective agreement that classified employees "who are employed by the District at the time of retirement shall be retained on the District's existing group medical policy" is also susceptible of the reading urged in the Petition by Petitioners, i.e., that such employees would receive, upon retirement, the policy in effect at the time of the employee's retirement, including such aspects of said policy as co-pays, deductibles, and annual out-of-pocket maximums.

When the provisions in Articles 4.1 and 3.1, respectively, are included in the analysis, Petitioners' position is even stronger. Those Articles provide, in identical language: "The District will, during the term of this Agreement, and subject to the remaining provisions of this Article, continue to provide Blue Cross and CDS coverage for eligible faculty members and their dependants under the existing plans or under such plans providing at least equivalent benefits as the District may designate." The obligation set out in Articles 4.1 and 3.1, that the District is to maintain "at least equivalent benefits" are clearly "susceptible" of the reading that Respondents were not free to change the plans for retirees to include higher co-payments, deductibles and out-of-pocket maximums.

Respondents focus on portions of Articles 4.1 and 3.1. According to Respondents the language in Articles 4.1 and 3.1 should be read as limiting retiree health benefits to the term of the agreement and to allow Respondents to change the level of benefits provided to retirees "as the District may designate."

As an initial point, it should be noted that Respondents incorrectly argue that because the various contracts including the language set out immediately above were in effect for a limited number of years, the benefits conferred upon retirees would also expire with the various collective agreements. In support of this position Respondents rely on San Bernardino Public Employees Assn v. City of Fontana, 67 Cal. App. 4th 1215, 1223 (1998). Fontana is distinguishable. It does **not** address the rights of those who have retired, and does not hold that the rights of retired employees do not extend beyond the expiration date of a collective agreement. Although the court in Fontana did find that rights to vacation leave and longevity pay, which benefits are earned on a year-for-year basis, did not survive the term of an expired collective agreement, the court did not extend this reasoning to the matter of retiree health benefits, commenting that this issue was not ripe for review. Id., at 1226. It is noteworthy, however, that throughout its analysis, the Fontana court consistently distinguished "rights of employment," which are subject to modification or reduction, from "rights of retirement," which are entitled to contract clause protection. Id., at 1225. In fact, a significant portion of the court's discussion is under the heading "The Contractual Protection for Pension Rights Does Not Extend to Vacation Leave and Longevity Pay Benefits Negotiated Under an MOU." Given that retiree health benefits are not earned on a year-for-year basis, there would be no basis for the Fontana court, or any other California court, to find that such benefits were not vested.

Nowhere in any of the provisions relied upon by Petitioner is there any language that

limits the duration of the retiree health benefit provisions. It is also significant that the Academic collective agreement (Exh. 5) includes a reference to a Medicare offset for employees hired after June 30, 1990. Medicare offset language has been considered evidence that such promised retirement health benefits were intended to survive contract expiration. Mauer v. Joy Technologies, Inc., 212 F.3d 907, 918; Policy v. Powell Pressed Steel Co., 770 F.2d 609, 612-616 (6th Cir. 1985); Mauer v. Joy Technologies, Inc., 212 F.3d 907, 915 (6th Cir. 2000); Bidlack v. Wheelabrator Corp., 993 F.2d 603 (7th Cir. 1992).

Respondents also misunderstand the legal significance of the allegations, set out in the pleadings, that "until July 1, 2005, the District fulfilled its promise to the retirees described herein to provide paid medical, dental and vision benefits from year to year of an equivalent nature, i.e., co-payments, deductibles and annual out-of-pocket maximums remained approximately the same as did the scope of benefits." (Pet ¶ 32.) Citing Sappington v. Orange Unified School District (2004) 119 Cal. App. 4th 949, Respondents note that an employer has no obligation to provide post-retirement benefits more generous than those specified in an applicable contract. The allegation regarding Respondents' conduct prior to July 1, 2005, however, was not set out to create a legal obligation, but instead to provide a factual background which will shed light on the meaning of the language now in dispute. Courts have often found that vested rights to employer-paid retiree health benefits were promised after reviewing extrinsic evidence. Respondents' conduct over a sustained period with respect to the benefits now in question (co-payments, deductibles and annual out-of-pocket maximums) is relevant, and affirms the obligation alleged in the pleadings, and specifically the continuing nature of the retiree health benefit obligation. Also relevant will be contemporaneous interpretations by administrative officials and the general understanding of the employees.

With respect to the argument that the retiree health benefits may be changed "as the

District may designate," Respondents ignore the qualifying language found in both Article 4.1 and 3.1, which provides that the District may change plans as long as "equivalent benefits" are provided.

The final point raised by Respondents with respect to the "Academic" and "Classified" employees is the claim that since the contracts provide specifically for the payment of premiums for retirees but does not also include a specific statement requiring the District to make payment for other cost related-items such as co-pays or deductibles, it must be concluded that the District was not obligated, under the doctrine of *expressio unius est exclusio alterius,* to absorb those costs in addition to the costs of the premiums. In making this argument Respondents ignore the provisions in the contracts defining benefits for retirees in terms of "the then-existing plan, " and the reference to "at least equivalent benefits," both of which can reasonably be read as creating a vested right to the benefits now in question.

B.
MANAGERS

With respect to the "Managers," Petitioners allege that "Managers" were provided the same paid medical, dental and vision benefits upon retirement as their labor organizations co-workers as codified in the Managers Policy and Operations Manual (hereinafter "Managers Manual") dated December 10, 1991. (Pet. ¶ 31) In support of this allegation, Petitioner attached as Exhibit 12 and quoted in part in paragraph 31, said Managers Manual. (Pet. Exh. 12.) In pertinent part, the Managers Manual provides that "Managers retiring from the District shall be maintained on the District's **existing** group medical, dental, and vision policies with premiums paid by the District" providing that said retired Managers have met certain service and age requirements.

Respondents contend that because the Managers Manual provides that "premiums [be] paid by the District" but does not also include a specific statement requiring the District to make payment for other cost related-items such as co-pays or deductibles, it must be concluded

that the District was not obligated, pursuant to the Managers Manual to absorb those costs in addition to the costs of the premiums. As discussed above, at this stage of the litigation the question is simply whether an instrument incorporated into the pleadings is reasonably susceptible to the pleaded interpretation. Thus, as also discussed above, the court is not free to make a determination between one of two interpretations to which the document might be susceptible.

Here, the reference to the "District's existing" policies certainly can reasonably be read as giving the Managers the same medical, dental and vision benefits as the labor organizations. The reference is also susceptible of an interpretation, on its face, that the employees subject to the Managers Manual would receive, upon retirement, the policy in effect at the time of an employee's retirement, including such aspects of said policy as co-pays, deductibles, and annual out-of-pocket maximums. The same extrinsic considerations discussed above (contemporaneous interpretations by administrative officials, the general understanding of the employees, subsequent treatment by the District) all pertain equally to the Managers Policy. With particular respect to the Managers Manual, two additional rules of interpretation will be relevant to the final determination of Petitioners' rights under the Managers Manual. First, although such polices are regarded as part of an employee's contract, it has been noted that ambiguities in such policies are also regarded "in essence a contract of adhesion" and, as such, ambiguities in such policies are construed against the drafter. Goddard v. South Bay Union H.S.D. 91978) 79 Cal.App.3d 98, 105. Additionally, the California rule favors liberal construction of retirement benefits to protect the reasonable expectations of those whose reliance is induced. Bellus v. City of Eureka (1968) 69 Cal.2d 336, 348-350.

C.
CLASSIFIED SUPERVISORS

Allegations applicable to Classified Supervisors are found at ¶27-30, and include the allegation that contracts, including the contract starting in 1990, included language to provide eligible classified supervisors hired **on or before August 7, 1990** with paid medical, dental and

vision benefits after retirement. *See* Exhibit 11, which sets out essentially the identical provisions for retiree health benefits as provided for Classified employees. The Petition further provides that staring in 1993 the Manager's Policy and Procedure Manual applied wholly to all managers. In essence, Respondents' argument is that prior to 1993 the retiree health benefit rights for these employees did not include specific language granting the health benefits as alleged. This is essentially the same argument Respondents urged with respect to both the Academic and Classified employees, and should be rejected for the same reasons. Since Petitioners have alleged that after 1993 the Managers Manual, applies, this must be accepted as true for the purposes of the general demurrer.

IV.
THIRD AND FOURTH CAUSES OF ACTION ARE NOT BASED ON THE SAME PRIMARY RIGHT AS THE CONTRACT CAUSES

The Petition sets out five (5) Causes of Action: Impairment and Breach of Contract; Breach of Contract; Promissory Estoppel; Equitable Estoppel; and Declaratory and Injunctive Relief. Respondents ask the Court to sustain the general demurrer to the entire Petition on the theory that all of the causes of action are premised on the "same primary right, i.e., that the District has breached a written contract." (MPA in Support of Demurrer, pg. 3, line 24.) Contrary to Respondents' characterizations, the Third and Fourth Causes of Action are not based solely on an alleged breach of a written contract, but instead depend on representations made by the District codified in "collective bargaining agreements and other District documents" (Third COA, ¶ 61), and "representations recorded in Labor organizations-District contracts and other documentation." (Fourth COA, ¶ 79.)

The estoppel counts are brought in the alternative to the contract based mandate actions (First and Second Causes of Action). In the event that Respondents were successful in defeating the mandate action by establishing, for example, that they had reserved the right to

change the level of benefits after retirement, Petitioners would then be entitled to show that they nevertheless are entitled to such benefits under estoppel theories.

Thus, even if the Court were eventually to find that the collective agreements in question did not give rise to the vested retiree health benefits as alleged in the Petition, the issue of whether Respondents promised such benefits to Petitioners with the intent that Petitioners rely on such representations, raised by way of the Third Cause of Action, would still have to be resolved, as would the allegations in the Fourth Cause of Action that Respondents represented, with an intent to induce reliance, that Petitioners would receive, not just District paid benefits, but benefits equivalent to those provided before.

Since these Causes of Action do not turn on solely on the interpretation of the written contracts discussed by Respondent in support of their general demurrer, the demurrer cannot be sustained with respect to these cause of actions.

CONCLUSION

The general demurrer should be overruled.

Dated: November 1, 2007

Respectfully submitted,

LAW OFFICES OF
BENNETT & SHARPE, INC.

By _____
THOMAS M. SHARPE, ESQ.
Attorneys for Petitioners and Plaintiffs

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Bennett & Sharpe, Inc., 2444 Main Street, Suite 110, Fresno, California 93721. On November 1, 2007, I served the within document(s):

PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER

✓ by facsimile transmission on November 1, 2007. On that date this document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3). The transmission was reported as completed and without error. The names and facsimile numbers of the person(s) served are as set forth below.

✓ by placing the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Fresno, California addressed as set forth below.

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Joshua E. Morrison
ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
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Facsimile No. (562) 653-3333

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on November 1, 2007, at Fresno, California.

Marci Nabors

MARCI NABORS

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