

COMMISSION ON STATE MANDATES

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March 9, 2016

Ms. Elizabeth Pianca
Deputy County Counsel
Office of the County Counsel, County of Santa Clara
70 West Hedding Street, East Wing, Ninth Floor
San Jose, CA 95110-1770

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Proposed Decision

Child Abduction and Recovery, 08-4237-I-02 and 12-4237-I-03
Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;
Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5
Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2003-2004, 2004-2005, 2005-2006,
and 2006-2007
County of Santa Clara, Claimant

Dear Ms. Pianca and Ms. Kanemasu:

The proposed decision for the above-named matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, March 25, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 7
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;
Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5
Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988

Child Abduction and Recovery

Fiscal Years 1999-2000, 2000-2001, 2001-2002,
2003-2004, 2004-2005, 2005-2006, and 2006-2007

08-4237-I-02 and 12-4237-I-03

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

Overview

Incorrect Reduction Claim (IRC) 08-4237-I-02 (fiscal years 1999-2000, 2000-2001, and 2001-2002) and IRC 12-4237-I-03 (fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007)¹ have been consolidated for hearing. These consolidated IRCs challenge reductions made by the State Controller's Office (Controller) to reimbursement claims of the County of Santa Clara (claimant) for the *Child Abduction and Recovery* program.

The only issue remaining in contention for this matter is whether the Controller's reductions totaling \$1,183,619 for salaries, benefits, and related indirect costs claimed for fiscal years 1999-2000 through 2001-2002, and 2003-2004 are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The reductions are based on the Controller's findings that the costs claimed were not supported by documentation or a documented time study that adequately represented the costs claimed for these years as required by the parameters and guidelines.

As explained herein, staff recommends that the Commission on State Mandates (Commission) deny this IRC.

The *Child Abduction and Recovery* Program

On September 19, 1979, the Board of Control, predecessor to the Commission, approved the test claim, finding that the test claim statutes imposed a reimbursable state-mandated program on counties by requiring district attorney offices to actively assist in the resolution of child custody problems, including visitation disputes and the enforcement of custody and other orders of the court in a child custody proceeding. These activities include actions necessary to locate and

¹ Note that there was no audit for 2002-2003 and that year is not in issue in this IRC.

return a child; the enforcement of child custody orders, orders to appear; or any other court order defraying expenses related to the return of an illegally detained, abducted, or concealed child; proceeding with civil court actions; and guaranteeing the appearance of offenders and minor in court actions. Reimbursement was found not to be required for the costs associated with criminal prosecutions under the Penal Code.²

On January 21, 1981, the Board of Control adopted the parameters and guidelines for this program for costs incurred beginning January 1, 1977. The parameters and guidelines have been amended several times. The parameters and guidelines that govern the reimbursement claims at issue in this case were amended by the Commission on August 26, 1999, and require that claimed costs “shall be supported” by cost element information, as specified. With respect to claims for salaries and benefits, claimants are required by Section VII. of the parameters and guidelines to:

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study. Benefits are reimbursable; however, benefit rates must be itemized. If no itemization is submitted, 21 percent must be used for computation of claimed cost.

Section VIII. further requires that “all costs claimed must be traceable to source documents and/or worksheets that show evidence of and the validity of such costs,” and that these “documents must be kept on file by the agency submitting the claim for [the audit] period specified in Government Code section 17558.5.”

Procedural History

On March 17, 2006, the Controller issued the final audit report for IRC 08-4237-I-02. On January 28, 2009, claimant filed IRC 08-4237-I-02. On December 4, 2009, the Controller issued the final audit report for IRC 12-4237-I-03. On November 29, 2012, claimant filed IRC 12-4237-I-03. On December 22, 2014, the Controller filed late comments on IRC 08-4237-I-02. On December 22, 2014, the Controller filed late comments on IRC 12-4237-I-03. On December 31, 2014, the Controller revised their late comments on IRC 12-4237-I-03. On January 6, 2015, claimant requested an extension of time to April 3, 2015 to rebut the Controller’s comments on these IRCs which was granted for good cause shown. On April 2, 2015, the claimant filed rebuttals to the Controller’s late comments on IRC 08-4237-I-02 and IRC 12-4237-I-03.

On January 13, 2016, Commission staff issued the draft proposed decision. On January 15, 2016, the Controller filed comments on the draft proposed decision supporting the staff conclusion and recommendation. No other comments were filed on the draft proposed decision.

² Exhibit A, Incorrect Reduction Claim, 08-4237-I-02, pages 43-50 (parameters and guidelines, as amended July 22, 1993), 53-60 (parameters and guidelines, as amended August 26, 1999).

Commission Responsibilities

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."⁴

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁵

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant.⁶ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.⁷

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁴ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁵ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁷ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

| Issue | Description | Staff Recommendation |
|---|---|---|
| Reduction Costs for Employee Salaries, Benefits, and Related Indirect Costs for fiscal years 1999-2000, 2000-2001, 2001-2002 and 2003-2004. | <p>The Controller found that \$1,183,619 claimed during the fiscal years audited was not supported by documentation or time study conducted that adequately represented the costs claimed as required by the parameters and guidelines. The Controller rejected the four week time study conducted by the claimant in November and December 2004 that was subsequently provided to support the costs claimed.</p> <p>Thus, for fiscal years 1999-2000 through 2001-2002, the Controller allowed the costs claimed that were supported by time logs provided by the claimant. Since the claimant did not provide time logs or other documentation supporting the time spent on the mandate in fiscal year 2003-2004, however, the Controller extrapolated employee hours identified on timesheets for January 2005 through June 2005 to approximate the actual hours spent on the program for the 2003-2004 fiscal year.</p> | <p><i>Correct-</i> Staff finds that the claimant did not comply with the documentation requirements in the parameters and guidelines to support the costs claimed for fiscal years 1999-2000, through 2001-2002 and 2003-2004 and, thus, the Controller’s reductions are correct as a matter of law. Staff further finds that there is no evidence in the record that the Controller’s rejection of the claimant’s time study provided to support all costs claimed during the audit period, or that the Controller’s extrapolation of allowable costs for fiscal year 2003-2004, is arbitrary, capricious, or entirely lacking in evidentiary support.</p> |

Staff Analysis

The Controller’s Reduction of Costs for Employee Salaries, Benefits, and Related Indirect Costs Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

To claim costs for employee salaries and benefits, the parameters and guidelines applicable to the fiscal years at issue in these IRCs require that the claimant either specify the actual number of hours devoted to each mandated function and provide source documents or worksheets that show evidence of the validity of the costs, or claim costs based on the average number of hours devoted to each mandated function if supported by a documented time study. Average time accountings to support employee time claimed “can be deemed akin to worksheets.”⁸ However, the time study is still required to “show evidence of and the validity of [the] costs [claimed]” for the mandated program.⁹

Staff finds that the Controller’s reduction of costs claimed for fiscal year 1999-2000 through 2001-2002 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The payroll documentation originally provided by the claimant to the

⁸ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804.

⁹ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 53-60.

Controller, which does not verify the time spent on the mandated program, does not comply with the documentation requirements of the parameters and guidelines. Moreover, based on the evidence in the record, the Controller's decision to reject the time study that claimant later prepared based on data from later fiscal years as inadequate documentation to support the costs claimed for all the employees is not arbitrary, capricious, or entirely lacking in evidentiary support. The record shows that the Controller considered the claimant's arguments and all relevant factors, and has demonstrated a rational connection between those factors and the decision made to reject the time study. The Commission cannot substitute its judgment for that of the Controller on audit decisions.¹⁰

Staff also finds that the Controller's reduction of salary and benefit costs for fiscal year 2003-2004 is not arbitrary, capricious, or entirely lacking in evidentiary support. For this reimbursement claim, the claimant resubmitted the same four week time study conducted from November 15, 2004, through December 10, 2004 to support fiscal year 2003-2004 claimed costs, with a summary of the time study results and a projection of the results to a full fiscal year. The Controller determined, however, that the claimant's time study did not adequately support the time claimed for fiscal year 2003-2004 because the time study included three employee classifications that the county did not include in their claim for reimbursement; the time study period included a holiday week when employees worked fewer hours; and actual timesheets kept for January 2005 through June 2005 showed varying changes in staffing levels and workload. Since the claimant did not provide time logs or other documentation supporting the time spent on the mandate in fiscal year 2003-2004, the Controller extrapolated employee hours identified on timesheets for January 2005 through June 2005 to approximate the actual hours spent on the program for the 2003-2004 fiscal year, instead of reducing costs to \$0. Staff finds that there is no evidence in the record that the Controller's rejection of the claimant's time study or the Controller's calculation of employee costs for fiscal year 2003-2004, is arbitrary, capricious, or entirely lacking in evidentiary support.

Conclusion

Pursuant to Government Code section 17551(d), staff finds that the Controller's reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to deny the IRCs, and authorize staff to make any technical, non-substantive changes following the hearing.

¹⁰ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
 ON:**

Family Code Sections 3060-3064,
 3130-3134.5, 3408, 3411, and 3421;
 Penal Code Sections 277, 278, and 278.5;
 Welfare and Institutions Code Section 11478.5

Statutes 1976, Chapter 1399; Statutes 1992,
 Chapter 162; Statutes 1996, Chapter 988

Fiscal Years 1999-2000, 2000-2001,
 2001-2002, 2003-2004, 2004-2005,
 2005-2006, and 2006-2007

County of Santa Clara, Claimant

Case Nos.: 08-4237-I-02 and 12-4237-I-03

Child Abduction and Recovery

DECISION PURSUANT TO
 GOVERNMENT CODE SECTION 17500
 ET SEQ.; CALIFORNIA CODE OF
 REGULATIONS, TITLE 2, DIVISION 2,
 CHAPTER 2.5. ARTICLE 7

(Adopted March 25, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this consolidated incorrect reduction claim (IRC) during a regularly scheduled hearing on March 25, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] this IRC by a vote of [vote count will be included in the adopted decision] as follows:

| Member | Vote |
|---|-------------|
| Ken Alex, Director of the Office of Planning and Research | |
| Richard Chivaro, Representative of the State Controller | |
| Mark Hariri, Representative of the State Treasurer, Vice Chairperson | |
| Sarah Olsen, Public Member | |
| Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson | |
| Carmen Ramirez, City Council Member | |
| Don Saylor, County Supervisor | |

Summary of the Findings

Incorrect Reduction Claim (IRC) 08-4237-I-02 (fiscal years 1999-2000, 2000-2001, and 2001-2002) and IRC 12-4237-I-03 (fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007)¹¹ have been consolidated for hearing. These consolidated IRCs challenge the State Controller's Office (Controller's) reductions to reimbursement claims of the County of Santa Clara (claimant) for the *Child Abduction and Recovery* program.

The only issue remaining in contention for this matter is whether the Controller's reductions totaling \$1,183,619 for unsupported salaries, benefits, and related indirect costs claimed for fiscal years 1999-2000 through 2001-2002 and 2003-2004 are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

To claim costs for employee salaries and benefits, the parameters and guidelines require that the claimant either specify the actual number of hours devoted to each mandated function and provide source documents or worksheets that show evidence of the validity of the costs, or claim costs based on the average number of hours devoted to each mandated function if supported by a documented time study. Average time accountings to support employee time claimed "can be deemed akin to worksheets."¹² However, the time study is still required to "show evidence of and the validity of [the] costs [claimed]" for the mandated program.¹³

The Commission finds that the Controller's reduction of costs claimed for fiscal year 1999-2000 through 2001-2002 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The payroll documentation originally provided by the claimant to the Controller, which does not verify the time spent on the program, does not comply with the documentation requirements of the parameters and guidelines. Moreover, based on the evidence in the record, the Controller's decision to reject the time study that claimant later prepared using data from later fiscal years as inadequate documentation to support the costs claimed for all the employees is not arbitrary, capricious, or entirely lacking in evidentiary support. The record shows that the Controller considered the claimant's arguments and all relevant factors, and has demonstrated a rational connection between those factors and the decision made to reject the time study. The Commission cannot substitute its judgment for that of the Controller on audit decisions.

The Commission also finds that the Controller's reduction of salary and benefit costs for fiscal year 2003-2004 is not arbitrary, capricious, or entirely lacking in evidentiary support. For this reimbursement claim, the claimant resubmitted the same four week time study conducted from November 15, 2004, through December 10, 2004 to support fiscal year 2003-2004 claimed costs, with a summary of the time study results and a projection of the results to a full fiscal year. The Controller determined, however, that the claimant's time study did not adequately support the time claimed for fiscal year 2003-2004 because the time study included three employee classifications that the county did not include in their claim for reimbursement; the time study period included a holiday week when employees worked fewer hours; and actual timesheets kept for January 2005 through June 2005 showed varying changes in staffing levels and workload.

¹¹ Note that there was no audit for 2002-2003 and that year is not in issue in this IRC.

¹² *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804.

¹³ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 53-60.

Since the claimant did not provide time logs or other adequate documentation supporting the time spent on the mandate in fiscal year 2003-2004, the Controller extrapolated employee hours identified on timesheets for January 2005 through June 2005 to approximate the actual hours spent on the program for the 2003-2004 fiscal year, instead of reducing costs to \$0. The Commission finds that there is no evidence in the record that the Controller's rejection of the claimant's time study or the Controller's calculation of employee costs for fiscal year 2003-2004, is arbitrary, capricious, or entirely lacking in evidentiary support.

Therefore, the Commission denies these IRCs.

I. Chronology

- 03/17/2006 Controller issued the final audit report for fiscal years 1999-2000 through 2001-2002.¹⁴
- 01/28/2009 Claimant filed IRC 08-4237-I-02.¹⁵
- 12/04/2009 Controller issued the final audit report for fiscal years 2003-2004 through 2006-2007.¹⁶
- 11/29/2012 Claimant filed IRC 12-4237-I-03.¹⁷
- 12/22/2014 Controller filed Late Comments on IRC 08-4237-I-02.¹⁸
- 12/22/2014 Controller filed Late Comments on IRC 12-4237-I-03.
- 12/31/2014 Controller filed Revised Late Comments on IRC 12-4237-I-03.¹⁹
- 04/02/2015 Claimant filed Rebuttal to Controller's Late Comments on IRC 08-4237-I-02.²⁰
- 04/02/2015 Claimant filed Rebuttal to Controller's Late Comments on IRC 12-4237-I-03.²¹
- 1/13/2016 Commission staff issued the Draft Proposed Decision.²²
- 1/15/2015 Controller filed Comments on the Draft Proposed Decision.²³

¹⁴ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 19.

¹⁵ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 1.

¹⁶ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 16.

¹⁷ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 1.

¹⁸ Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, page 1.

¹⁹ Exhibit D, Controller's Revised Late Comments on IRC 12-4237-I-03, page 1. Note that these revised comments simply replaced illegible pages with legible ones and these revised comments filed December 31, 2014 replace the late comments filed December 22, 2014.

²⁰ Exhibit E, Claimant's Rebuttal to Controller's Late Comments on IRC 08-4237-I-02, page 1.

²¹ Exhibit F, Claimant's Rebuttal to Controller's Late Comments on IRC 12-4237-I-03, page 1.

²² Exhibit G, Draft Proposed Decision.

²³ Exhibit H, Controller's Comments on the Draft Proposed Decision.

II. Background

A. *Child Abduction and Recovery Program*

On September 19, 1979, the Board of Control approved a test claim filed by the County of San Bernardino, finding that the test claim statutes imposed a reimbursable state-mandated program on counties by requiring district attorney offices to actively assist in the resolution of child custody problems, including visitation disputes and the enforcement of custody and other orders of the court in a child custody proceeding. These activities include actions necessary to locate and return a child; the enforcement of child custody orders, orders to appear; or any other court order defraying expenses related to the return of an illegally detained, abducted, or concealed child; proceeding with civil court actions; and guaranteeing the appearance of offenders and minor in court actions. Reimbursement was found not to be required for the costs associated with criminal prosecutions under the Penal Code.²⁴

On January 21, 1981, the Board of Control adopted the parameters and guidelines for this program for costs incurred beginning January 1, 1977. Since the adoption of the original parameters and guidelines, the test claim statutes have been renumbered and some have been amended.²⁵ In addition, the parameters and guidelines have been amended several times. The parameters and guidelines that govern the reimbursement claims at issue in this case were amended on August 26, 1999, and provide that counties may claim reimbursement for the following activities:

1. Obtaining compliance with court orders relating to child custody or visitation proceedings and the enforcement of child custody or visitation orders, including:
 - a. Contact with child(ren) and other involved persons.
 - (1) Receipt of reports and requests for assistance.
 - (2) Mediating with or advising involved individuals. Mediating services may be provided by other departments. If this is the case, indicate the department.

²⁴ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 43-50 (parameters and guidelines, as amended July 22, 1993), 53-60 (parameters and guidelines, as amended August 26, 1999).

²⁵ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 53-54 (parameters and guidelines, as amended August 26, 1999), which explain under the Summary of Mandate section of the parameters and guidelines, the statutory changes as follows:

Chapter 990, Statutes of 1983, amended Section 4604 of the Civil Code to clarify that the enforcement requirements of this section applied to visitation decrees as well as custody decrees.

Chapter 162, Statutes of 1992, repealed Sections 4600.1, 4604, 5157, 5160, and 5169 of the Civil Code and without substantial change enacted Sections 3060 to 3064, 3130 to 3134.5, 3408, 3411, and 3421 of the Family Code.

Chapter 988, Statutes of 1996, the Parental Kidnapping Prevention Act, repealed Sections 277, 278 and 278.5 of the Penal Code and enacted in a new statutory scheme in Sections 277, 278 and 278.5 which eliminated the distinction between cases with and cases without a preexisting child custody order.

- (3) Locating missing or concealed offender and child(ren).
 - b. Utilizing any appropriate civil or criminal court action to secure compliance.
 - (1) Preparation and investigation of reports and requests for assistance.
 - (2) Seeking physical restraint of offenders and/or the child(ren) to assure compliance with court orders.
 - (3) Process services and attendant court fees and costs.
 - (4) Depositions.
 - c. Physically recovering the child(ren).
 - (1) Travel expenses, food, lodging, and transportation for the escort and child(ren).
 - (2) Other personal necessities for the child. All such items purchased must be itemized.
2. Court actions and costs in cases involving child custody or visitation orders from another jurisdiction, which may include, but are not limited to, utilization of the Uniform Child Custody Jurisdiction Act (Family Code Sections 3400 through 3425) and actions relating to the Federal Parental Kidnapping Prevention Act (42 USC 1738A) and The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Senate Treaty Document 99-11, 99th Congress, 1st Session).
- a. Cost of providing foster care or other short-term care for any child pending return to the out-of-jurisdiction custodian. The reimbursable period of foster home care or other short-term care may not exceed three days unless special circumstances exist.

Please explain the special circumstances. A maximum of ten days per child is allowable. Costs must be identified per child, per day. This cost must be reduced by the amount of state reimbursement for foster home care which is received by the county for the child(ren) so placed.
 - b. Cost of transporting the child(ren) to the out-of-jurisdiction custodian.
 - (1) Travel expenses, food, lodging, and transportation for the escort and child(ren).
 - (2) Other personal necessities for the child(ren). All such items purchased must be itemized. Cost recovered from any party, individual or agency, must be shown and used as an offset against costs reported in this section.
 - (3) Securing appearance of offender and/or child(ren) when an arrest warrant has been issued or other order of the court to produce the offender or child(ren).
 - (a) Cost of serving arrest warrant or order and detaining the individual in custody, if necessary, to assure appearance in accordance with the arrest warrant or order.
 - (b) Cost of providing foster home care or other short-term care for any child requiring such because of the detention of the individual having custody. The number of days for the foster home care or short-term care shall not exceed the number of days of the detention period of the individual having physical custody of the minor.

- (4) Return of an illegally obtained or concealed child(ren) to the legal custodian or agency.
 - (a) Costs of food, lodging, transportation and other personal necessities for the child(ren) from the time he/she is located until he/she is delivered to the legal custodian or agency. All personal necessities purchased must be itemized.
 - (b) Cost of an escort for the child(ren), including costs of food, lodging, transportation and other expenses where such costs are a proper charge against the county. The type of escort utilized must be specified.²⁶

Section VI. of these parameters and guidelines describe the non-reimbursable costs as follows: “Costs associated with criminal prosecution, commencing with the defendant’s first appearance in a California court, for offenses defined in Sections 278 or 278.5 of the Penal Code, wherein the missing, abducted, or concealed child(ren) has been returned to the lawful person or agency.”

Section VII. of these parameters and guidelines further require that claimed costs “shall be supported” by cost element information, as specified. With respect to claims for salaries and benefits, claimants are required to:

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study. Benefits are reimbursable; however, benefit rates must be itemized. If no itemization is submitted, 21 percent must be used for computation of claimed cost.

Section VIII. further requires that “all costs claimed must be traceable to source documents and/or worksheets that show evidence of and the validity of such costs,” and that these “documents must be kept on file by the agency submitting the claim for [the audit] period specified in Government Code section 17558.5.” However, contemporaneous source documentation was not required by these parameters and guidelines.

B. The Audit Findings of the Controller

The audit report for fiscal years 1999-2000 through 2001-2002 reduced costs by \$1,278,468 because claimant overstated productive hourly rates when calculating employee salaries and benefits (Finding 1) and claimed unsupported salaries, benefits, and related indirect costs (Finding 2).²⁷ The audit report for fiscal years 2003-2004 through 2006-2007 reduced costs by \$296,732 on similar grounds: the claimant overstated productive hourly wage rates in all audit

²⁶ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 53-60 (parameters and guidelines, as amended August 26, 1999).

²⁷ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 18-38. The audit report also reduced costs in Finding 3 for overstated indirect costs, which are not challenged by the claimant.

years (Finding 1) and claimed unsupported salaries, benefits, and related indirect costs in fiscal year 2003-2004 (Finding 2).²⁸

The claimant originally challenged both findings made by the Controller. After the IRCs were filed, however, the claimant withdrew the challenge to audit Finding 1 in both audit reports relating to the reduction of costs based on overstated productive hourly rates.²⁹ Thus, the claimant now only challenges the reductions in Finding 2 of the audit reports for unsupported salaries and benefits and related indirect costs claimed for fiscal years 1999-2000 through 2001-2002 and 2003-2004, totaling \$1,183,619, described as follows:³⁰

- The Controller reduced costs for salaries and benefits claimed for fiscal years 1999-2000 through 2001-2002 for two full-time employees in the claimant's Child Abduction and Recovery Unit because the county did not provide any documentation to support mandate-related hours claimed. In addition, one of the full-time employees stated that she spent part of her time assisting with criminal trial preparation after the defendant's first court appearance, which is not eligible for reimbursement. Moreover, the time study later submitted by the claimant shows that the two full-time employees worked between 42.50 and 69.27 percent and 60 and 92.94 percent, respectively, on the mandated program during the four week time study,³¹ which contradicts the claimant's assertion that the full-time employees performed only mandate-related activities during the audit period.

The Controller also partially reduced costs claimed for the remaining employees working part-time on the program in these fiscal years because the county provided time logs that did not support all of the mandate-related hours claimed. The time logs identified mandate-related time, non-mandate related time, and non-productive time, but did not reconcile and support the hours claimed. Subsequently, the claimant submitted a four-week time study conducted in fiscal year 2004-2005 in lieu of the employee time logs, which the Controller rejected because the time study is not competent evidence to replace time logs provided to support the costs claimed for earlier fiscal years. In addition, the Controller found that the county did not identify how the time period studied (four weeks in fiscal year 2004-2005) was representative of the costs incurred in fiscal years 1999-2000 through 2001-2002, and did not show how the results could be projected to approximate actual costs for the audit period. The Controller concluded that a time study

²⁸ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, pages 15-43. Finding 3 of this audit report also finds understated salaries, benefits, and related indirect costs for one employee, which occurred as result of an input error in the claimant's payroll system. The adjustment in Finding 3 is not disputed.

²⁹ Exhibit E, Claimant's Rebuttal to Controller's Late Comments on IRC 08-4237-I-02, page 4; Exhibit F, Claimants Rebuttal to Controller's Late Comments on IRC 12-4237-I-03, page 4.

³⁰ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 28; Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 31.

³¹ Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, pages 16 and 43 (Tab 8, Controller's Analysis of Paralegal and Legal Clerk Time Study Hours).

is not appropriate since the entire program requires varying levels of effort and includes activities that are not mandated by the state.

The Controller, therefore, allowed reimbursement for salaries and benefits for fiscal years 1999-2000 through 2001-2002 based on mandate-related hours supported by employee time logs.

- The Controller reduced costs for salaries and benefits claimed for fiscal year 2003-2004 because the claimant did not provide documentation to support the mandate-related hours claimed. Instead, the claimant resubmitted the four week time study from fiscal year 2004-2005 with a summary of the results and a projection of the results to estimate costs for 2003-2004. However, the Controller found that the time study was still not representative of the 2003-2004 costs because the time study included three employee classifications that the county did not include in their claim for reimbursement; the time study period included a holiday week when employees worked fewer hours; and actual timesheets kept from January 2005 through June 2005 showed varying changes in staffing levels and workload.

The Controller, therefore, rejected the claimant's time study and, instead, extrapolated the employee hours identified on the timesheets for January 2005 through June 2005 to approximate the actual hours spent on the program for the 2003-2004 fiscal year.

III. Positions of the Parties

A. County of Santa Clara

The claimant contends that the Controller's reductions for salary, benefits, and related indirect costs are incorrect and should be reinstated. For fiscal years 1999-2000 through 2001-2002, the claimant asserts that the employees working full-time on the mandated program should not be required to provide time logs, and that payroll documentation for these employees is sufficient, alone, to substantiate the hours claimed for full-time employees. The claimant argues in its rebuttal to the Controller's comments that while the "SCO response devalues the time study because it does not show that the County employees worked on mandate-related activities on a full-time basis...it does show that a percentage of these employees time was spent on mandate-related activities and the County should be reimbursed for this time."³²

The claimant also asserts that it provided time logs to substantiate the hours spent in mandate activities for those employees who did not perform mandate-activities full time.³³ The claimant asserts that "to the extent that the SCO believed that the time logs were insufficient, a time study was performed from November 15, 2004 through December 10, 2004."³⁴ The claimant argues that "[t]he county did perform a time study in FY 2004-2005 to support costs claimed for FY 1999-2000, FY 2000-2001, and FY 2001-2002 because the source document requirement was not in the Commission's parameters and guidelines at the time the mandate claim was filed."³⁵ The claimant further argues that to the extent the Controller felt the time logs provided

³² Exhibit E, Claimant's Rebuttal to Controller's Late Comments on IRC 08-4237-I-02, page 5.

³³ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 15.

³⁴ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 15.

³⁵ Exhibit E, Claimant's Rebuttal to Controller's Late Comments on IRC 08-4237-I-02, page 5.

were insufficient, the time study performed provides a reliable measure of the time needed to perform mandated activities and that the Controller should rely on a current time study to support the hours claimed.³⁶ The claimant argues that the time study relied on contemporaneous documentation of mandated and non-mandated activities to fully account for the time; that it covered four weeks that corresponded with pay periods to assure that the time study documentation could be checked against payroll information; and that all employees performing mandated activities participated in order to eliminate errors due to small sample size or extrapolation. Further, the claimant argues that the time study is representative of a full fiscal year because the activities related to the program are not seasonal and have not changed appreciably over time.³⁷

For fiscal year 2003-2004, the claimant makes similar arguments regarding the appropriateness of the fiscal year 2004-2005 time study to support the costs claimed. The claimant also argues that the time study was done “in close proximity to the claim period and for a reasonable length of time to merit acceptance as representative of the fiscal year.” The claimant asserts that the Controller failed to recognize that the time study substantiated the County’s claims and wrongfully applied its own standard.³⁸

Claimant did not file comments on the draft proposed decision.

B. State Controller’s Office

It is the Controller’s position that the audit adjustments are correct and that these IRCs should be denied. The Controller states that unallowable salary, benefits, and indirect costs were claimed because the claimant did not provide any documentation to support the hours claimed for two full-time employees, and that for other employees the county provided time logs that did not support the hours claimed and included time for non-mandate-related activities. The Controller argues that claimant has not complied with the documentation requirements of the parameters and guidelines by merely providing payroll documentation in support of the costs claimed for full-time employees for fiscal years 1999-2000 through 2001-2002. The Controller further found that for fiscal years 1999-2000, 2000-2001, and 2001-2002, a time study conducted during fiscal year 2004-2005 and provided in lieu of time logs was not competent evidence to replace time logs in support of the costs claimed. For fiscal year 2003-2004, the Controller found that the county did not support costs claimed with source documents showing the evidence of and the validity of such costs and that the 18-day time study in fiscal year 2004-2005, was not representative of the audit period.

On January 15, 2016, the Controller filed comments on the draft proposed decision, supporting the Commission’s conclusion and recommendation.

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

³⁶ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 15.

³⁷ *Id.*

³⁸ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 12.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to a local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³⁹ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."⁴⁰

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁴¹ Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'"... "In general...the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support..." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "⁴²

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with claimant.⁴³ In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission's regulations requires that any assertions of fact

³⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁴⁰ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁴¹ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁴² *American Bd. of Cosmetic Surgery, Inc., v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁴³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.⁴⁴

The Controller's Reduction of Costs for Employee Salaries, Benefits, and Related Indirect Costs Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

08-4237-I-02 (fiscal years 1999-2000, 2000-2001, and 2001-2002) and 12-4237-I-03 (fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007)⁴⁵ have been consolidated for hearing. These consolidated IRCs challenge the Controller's reductions to reimbursement claims filed by claimant for the *Child Abduction and Recovery* program.

The only issue remaining in contention for this matter is whether the Controller's reductions totaling \$1,183,619 for unsupported salaries, benefits, and related indirect costs claimed for fiscal years 1999-2000 through 2001-2002 and 2003-2004 are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Reimbursement claims filed with the Controller are required as a matter of law to be filed in accordance with the parameters and guidelines adopted by the Commission.⁴⁶ Parameters and guidelines provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program, and also identify the supporting documentation required to be retained.⁴⁷

As indicated in the Background, the parameters and guidelines amended by the Commission on August 26, 1999, apply to these reimbursement claims.⁴⁸ Section VII.A.1. of the parameters and guidelines provide instructions on how to claim costs for employee salaries and benefits as follows:

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related

⁴⁴ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

⁴⁵ Note that there was no audit for 2002-2003 and it is unclear whether or not a reimbursement claim was filed in that year but that year is not in issue in this IRC.

⁴⁶ Government Code sections 17561(d)(1); 17564(b); and 17571; *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 801, where the court ruled that parameters and guidelines adopted by the Commission are regulatory in nature and are "APA valid"; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201, where the court found that the Commission's quasi-judicial decisions are final and binding, just as judicial decisions.

⁴⁷ Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

⁴⁸ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 7; Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 4, Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, page 8; Exhibit D, Controller's Revised Late Comments on IRC 12-4237-I-03, page 9.

benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study. Benefits are reimbursable; however, benefits rates must be itemized. If no itemization is submitted, 21 percent must be used for computation of claimed costs.

Section VIII. of the parameters and guidelines also requires that costs claimed “be traceable to source documents and/or worksheets that show evidence of and the validity of such costs.”⁴⁹

Therefore the parameters and guidelines require that the claimant either specify the actual number of hours devoted to each mandated function and provide source documents or worksheets that show evidence of the validity of the costs, or claim costs based on the average number of hours devoted to each mandated function if supported by a documented time study. Average time accountings to support employee time claimed “can be deemed akin to worksheets.”⁵⁰ However, the time study is still required to “show evidence of and the validity of [the] costs [claimed]” for the mandated program.⁵¹

For the reasons discussed below, the Commission finds that the reduction costs claimed for employee salaries, benefits, and related indirect costs is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

A. The Controller’s Reduction of Costs for Fiscal Years 1999-2000 Through 2001-2002 Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

1. Reduction of costs for full-time employees

The Controller reduced salary and benefit costs claimed for fiscal years 1999-2000 through 2001-2002 for two full-time employees because the county did not provide adequate documentation to support mandate-related *hours* claimed. The claimant originally provided payroll documents to support the costs claimed for these employees, and asserts that the provision of payroll documentation for full-time employees should be sufficient to substantiate the hours claimed.⁵² However, payroll documentation does not show the actual number of hours the employees worked on mandated activities, as required by the parameters and guidelines. In addition, the reimbursement claims for fiscal years 1999-2000, 2000-2001, and 2001-2002, list the employee names, job classifications, and a brief description of the activities performed, but do not identify the actual number of hours devoted to each reimbursable function.⁵³ Further, the Controller noted that one of the full-time employees stated during the audit that she did not work full-time on mandate-related activities, and that she assisted in trial preparation after the

⁴⁹ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 58, 60; Exhibit B, Incorrect Reduction Claim 12-4237-I-03, pages 50, 52.

⁵⁰ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804.

⁵¹ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 60 (parameters and guidelines, amended August 26, 1999).

⁵² Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 37.

⁵³ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 82, 117-118, 155.

defendant's first court appearance, which is not eligible for reimbursement.⁵⁴ There is no evidence in the record contradicting this statement.

Therefore, for full-time employees, the payroll documentation provided by the claimant does not comply with the requirements of the parameters and guidelines to support the actual number of hours devoted to each reimbursable function.

The claimant then tried to support the salary and benefit costs claimed for fiscal years 1999-2000, 2000-2001, and 2001-2002 by providing to the Controller a four-week time study of the program, conducted from November 15, 2004, through December 10, 2004. The claimant states that the time study relied on contemporaneous documentation of mandated and non-mandated activities to fully account for the time; that it covered four weeks that corresponded with pay periods to assure that the time study documentation could be checked against payroll information; and that all employees performing mandated activities participated in order to eliminate errors due to small sample size or extrapolation. Further, the claimant argues that the time study is representative of a full fiscal year because the activities related to the program are not seasonal and the time spent on the program has not changed appreciably over time.⁵⁵

The Controller, however, rejected the time study because it does not adequately support the costs claimed for these employees. The Controller found that the time study specifically contradicted the claimant's assertion that the full-time employees worked on mandate activities full-time. The two full-time employees, a paralegal and legal clerk, reported the following percentages of time spent on mandate activities for the time study period:

| | <u>Week 1</u> | <u>Week 2</u> | <u>Week 3</u> | <u>Week 4</u> |
|-------------|---------------|---------------|---------------|----------------------|
| Paralegal | 91.50% | 0.00% | 60.00% | 92.94% |
| Legal Clerk | 47.44% | 42.50% | 67.78% | 69.27% ⁵⁶ |

The claimant admits that the time study shows less than full-time hours for these employees, but argues that it should be reimbursed for the time identified in the study.⁵⁷ The claimant states that while the "SCO response devalues the time study because it does not show that the County employees worked on mandate-related activities on a full-time basis...it does show that *a percentage of these employees time* was spent on mandate-related activities and the County should be reimbursed for this time."⁵⁸

However, the Controller found that the time study itself, was not representative of the costs claimed for fiscal years 1999-2000, 2000-2001, and 2001-2002. The mandate-related hours

⁵⁴ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 30; Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, page 16.

⁵⁵ *Id.*

⁵⁶ Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, pages 16, 43 (Tab 8, Controller's Analysis of Paralegal and Legal Clerk's Time Study Hours).

⁵⁷ Exhibit E, Claimant's Rebuttal to Controller's Late Comments on IRC 08-4237-I-02, page 5.

⁵⁸ Exhibit E, Claimant's Rebuttal to Controller's Late Comments on IRC 08-4237-I-02, page 5 (emphasis added).

reported during the time study, 606.5 hours,⁵⁹ extrapolates to approximately 7,885 mandate-related hours annually.⁶⁰ However, for the fiscal year in which the time study was done (2004-2005), the county only claimed 3,335 mandate-related hours.⁶¹ In addition, and as more fully explained in the next section below, the Controller found that the time spent on this state-mandated program varied from year to year and was not constant and, thus, the time study does not adequately support the time spent on the program during these earlier fiscal years.⁶²

The Commission finds that the Controller's full reduction of costs for these employees is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. As indicated above, the payroll documentation originally provided by the claimant, which does not verify the time spent on the program, does not comply with the documentation requirements of the parameters and guidelines. Moreover, based on the evidence in the record, the Controller's decision to reject the time study as inadequate documentation to support the costs claimed is not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission cannot substitute its judgment for that of the Controller on audit decisions to reject the time study. With respect to audit decisions of the Controller, the Commission need only determine if the Controller "has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."⁶³ The Commission finds that the Controller has met this burden. Based on the evidence in the record, the Controller's finding that the time study does not support or "show evidence of and the validity of [the] costs [claimed]" for the full-time employees is not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the claimant did not comply with the documentation requirements of the parameters and guidelines and, thus, the Controller's reduction of all costs claimed for the full-time employees is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. Reduction of costs for the remaining employees

The Controller also partially reduced the costs claimed for the remaining employees that worked on this program part-time in these fiscal years because the county provided time logs, but the time logs did not support all of the mandate-related hours claimed. The time logs identified mandate-related time, non-mandate related time, and non-productive time, but did not reconcile

⁵⁹ Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, page 45 (Tab 9, Analysis of Time Study).

⁶⁰ The time study occurred over a 4 week period, including Thanksgiving Break: 606.5 hour/4 weeks equals: 151.625 mandated-hours per week. Multiplied by 52 weeks is 7884.5 hours. See also, Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, page 16.

⁶¹ Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, pages 16, 56 (Tab 10, Santa Clara County's Total Mandate-Related Hours Claimed).

⁶² Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, pages 16, 51-56 (Tab 10, Santa Clara County's Total Mandate-Related Hours Claimed).

⁶³ *American Bd. of Cosmetic Surgery, Inc.*, *supra*, 162 Cal.App.4th 534, 547-548.

and support the hours claimed. The Controller allowed the time supported by documentation as required by the parameters and guidelines, and reduced the unsupported costs claimed.⁶⁴

Subsequently, the claimant submitted the four-week time study conducted in November and December 2004 *in lieu* of the employee time logs to support the costs claimed for these employees, which the Controller rejected. The Controller found that the time-study (conducted in 2004) was not competent evidence to replace actual time records provided for costs claimed for fiscal years 1999-2000 through 2001-2002, and that the time study results did not represent the time spent on the program in the fiscal years claimed.⁶⁵ Further, in the time study plan overview, the claimant also asserts that “the activities in this mandate do not vary by the time of year.”⁶⁶ However, the Controller found that neither the time study, nor the claimant’s annual reimbursement claims, support the claimant’s assertion that the workload is constant as follows:

[T]he Child Recovery Unit Lieutenant Investigator testified that the unit routinely loaned investigators to other units because of shortages or not enough work in the Child Recovery Unit. Furthermore, the county’s claims show significant workload variance from year to year based on total mandate-related hours that the county reported...

| <u>Fiscal Year</u> | <u>Total Mandated-Related Hours Reported</u> |
|--------------------|--|
| 1999-2000 | 10,694 |
| 2000-01 | 14,150 |
| 2001-02 | 13,531 |
| 2002-03 | 12,814 |
| 2003-04 | 7,783 |
| 2004-05 | 3,334 ⁶⁷ |

The Commission finds that the Controller’s audit decision to reject the time study as inadequate documentation to support the costs claimed is not arbitrary, capricious, or entirely lacking in evidentiary support. The record shows that the Controller considered the claimant’s arguments and all relevant factors, and has demonstrated a rational connection between those factors and the decision made.⁶⁸ The claimant has not filed any evidence rebutting the Controller’s findings on the variability of time spent on mandated activities in the fiscal years reported. Therefore, the Commission is required to defer to the Controller’s audit decision.⁶⁹

Accordingly, based on the evidence in this record, the Commission finds that the claimant did not comply with the documentation requirements of the parameters and guidelines and, thus, the Controller’s partial reduction of costs claimed for employees working on the program on a part-

⁶⁴ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 28, 58, 60.

⁶⁵ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, pages 30-31.

⁶⁶ Exhibit A, Incorrect Reduction Claim 08-4237-I-02, page 190.

⁶⁷ *Id.*, page 31.

⁶⁸ *American Bd. of Cosmetic Surgery, Inc.*, *supra*, 162 Cal.App.4th 534, 547-548.

⁶⁹ *Ibid.*

time basis in fiscal years 1999-2000, 2000-2001, and 2001-2002 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

B. The Controller's Reduction of Costs for Fiscal Year 2003-2004 Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

For fiscal year 2003-2004, the claimant did not provide time logs or payroll documentation to support the costs claimed, but resubmitted the four week time study conducted from November 15, 2004, through December 10, 2004 to support fiscal year 2003-2004 claimed costs, with a summary of the time study results and a projection of the results to a full fiscal year.⁷⁰ However, the Controller found that the time study was still not representative of the 2003-2004 costs because the time study included three employee classifications that the county did not include in their claim for reimbursement; the time study period included a holiday week when employees worked fewer hours; and actual timesheets kept from January 2005 through June 2005 showed varying changes in staffing levels and workload.⁷¹ The Controller, therefore, rejected the claimant's time study and, instead, extrapolated the employee hours identified on the timesheets for January 2005 through June 2005 to approximate the actual hours spent on the program for the 2003-2004 fiscal year.⁷² The Controller's audit resulted in a partial reduction of salary, benefit, and related indirect costs totaling \$169,848.⁷³

The claimant argues that the Controller wrongfully applied its own standard and failed to recognize the time study the claimant provided, which substantiates the claim.⁷⁴ The claimant argues that the time study provided is a reliable measure of the time needed to perform the mandated activities as follows:

The time study relied on contemporaneous documentation of the mandated and non-mandated activities to provide a full accounting of time; it covered four weeks that corresponded with pay periods to assure that the time study documentation could be checked back against payroll information; it was done in close proximity to the claim period and for a reasonable length of time to merit acceptance as representative of the fiscal year; and all employees performing mandated activities participated to eliminate any errors that could have occurred due to small sample size or extrapolation. Moreover, because the activities related to the program are not seasonal and have not changed appreciably over time, the November-December 2004 time study is a reliable indicator of the time spent on the same activities during the claiming period in question.⁷⁵

⁷⁰ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 31.

⁷¹ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 13, 31.

⁷² Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 32.

⁷³ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 31.

⁷⁴ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 12.

⁷⁵ *Id.*

In their response to the draft audit report, the claimant also argues that the time study was conducted close in proximity to the claim period and for a reasonable length of time to be representative of the claim period.⁷⁶

The Controller found the time study does not adequately represent the costs claimed for fiscal year 2003-2004.⁷⁷ The evidence in the record supports the Controller's decision. For example, the four week time study period included the Thanksgiving holiday, in which three employees did not work at all, and the remaining time-studied employees worked fewer hours.⁷⁸ The subsequent timesheets submitted for January 2005 through June 2005 also contradict the claimant's assertion that there were no substantial staffing level or workload changes within the program. County employees maintained actual timesheets for the period of January 2005 through June 2005. During that time, employees documented monthly mandate-related time between 440.5 hours and 662.5 hours, a variance of 50 percent.⁷⁹ The Controller concluded that this variance of 50 percent shows that the time study of 18 work days is not representative of the fiscal year 2003-2004 costs.⁸⁰ Further, the time study results for the seven employees the county claimed do not support the mandate-related hours claimed for fiscal year 2003-2004. For fiscal year 2003-2004 the county claimed 7,783 mandate-related hours attributable to seven employees.⁸¹ However an extrapolation of the time study hours for these same seven employees total only 6,646.25 mandate-related hours.⁸²

The Commission finds that the Controller considered the claimant's arguments and all relevant factors, and has demonstrated a rational connection between those factors and the decision made.⁸³ And the claimant has not filed any evidence rebutting the Controller's findings. Therefore the Controller's conclusion that the time study does not adequately support the actual hours claimed is not arbitrary, capricious, or lacking in evidentiary support.

The Commission further finds that the Controller's decision to estimate fiscal year 2003-2004 salary and benefit costs based on an extrapolation of hours actually spent on the mandate and documented on timesheets from January 2005 through June 2005 is not arbitrary, capricious, or entirely lacking in evidentiary support. As indicated above, the claimant did not provide time logs or other adequate documentation supporting the time spent on the mandate in fiscal year 2003-2004 as required by the parameters and guidelines and, instead of reducing the costs to \$0, the Controller used actual time spent on the program the following year. There is no evidence in

⁷⁶ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 40.

⁷⁷ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 31.

⁷⁸ Exhibit D, Controller's Revised Late Comments on IRC 12-4237-I-03, page 17.

⁷⁹ Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 34.

⁸⁰ Exhibit D, Controller's Revised Late Comments on IRC 12-4237-I-03, page 17.

⁸¹ Exhibit D, Controller's Revised Late Comments on IRC 12-4237-I-03, page 18; Exhibit B, Incorrect Reduction Claim 12-4237-I-03, page 81; Exhibit C, Controller's Late Comments on IRC 08-4237-I-02, page 55 (Tab 10, Santa Clara County's Total Mandate-Related Hours Claimed).

⁸² Exhibit D, Controller's Revised Late Comments on IRC 12-4237-I-03, page 18.

⁸³ *American Bd. of Cosmetic Surgery, Inc.*, *supra*, 162 Cal.App.4th 534, 547-548.

the record that the time spent on the mandate in 2005 is not representative of the fiscal year 2003-2004 costs.

The Commission therefore finds that the Controller's reduction of costs for employees' salaries, benefits, and related indirect costs for fiscal year 2003-2004 is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

The Commission finds that the Controller's reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Based on the foregoing, the Commission denies this IRC.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 9, 2016, I served the:

Proposed Decision

Child Abduction and Recovery, 08-4237-I-02 and 12-4237-I-03

Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;

Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5

Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988

Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2003-2004, 2004-2005, 2005-2006,
and 2006-2007

County of Santa Clara, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 9, 2016 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/8/16

Claim Number: 08-4237-I-02 Consolidated with 12-4237-I-03

Matter: Child Abduction and Recovery

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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