

STATE *of* CALIFORNIA  
**COMMISSION ON STATE  
MANDATES**



**REPORT TO THE LEGISLATURE:  
INCORRECT REDUCTION CLAIMS**

**January 1, 2020 – December 31, 2020**

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## **INTRODUCTION**

Government Code section 17602 requires the Commission on State Mandates (Commission) to report to the Legislature “the number of individual and consolidated incorrect reduction claims decided during the preceding calendar year and whether and why the reduction was upheld or overturned.” This report fulfills that requirement.

Government Code section 17561(d) authorizes the State Controller’s Office (Controller) to audit 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 (incorrect reduction claims or IRCs). 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.

This report includes a summary of the three IRCs completed by the Commission between January 1, 2020 and December 31, 2020.

With ten IRCs now remaining pending and all tentatively scheduled for hearing, there is no longer a backlog of IRC matters.

## SUMMARY OF COMPLETED CLAIMS

### A. Decided Incorrect Reduction Claims

*Graduation Requirements*, 16-4435-I-56

Education Code Section 51225.3; Statutes 1983, Chapter 498

Fiscal Years 2008-2009 and 2009-2010

Claimant: Grossmont Union High School District

Incorrect Reduction Claim Filed: June 8, 2017

Decision Adopted: January 24, 2020

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This Incorrect Reduction Claim (IRC) challenged the State Controller's (Controller's) reduction of amended reimbursement claims filed by the Grossmont Union High School District (claimant) for the *Graduation Requirements* program for fiscal years 2008-2009 and 2009-2010 (audit period). The *Graduation Requirements* program increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences, beginning in the 1986-1987 school year. Only the *second* science course is mandated by the state; prior law required one science course for high school graduation and preserved the right of a school district to specify and offer courses it required for high school graduation.<sup>1</sup>

The Controller found that of the \$21,221,594 of costs incurred during the audit period, only \$5,635,762 is allowable (minus a \$10,000 late-filing penalty).<sup>2</sup> The claimant challenges the reduction of costs claimed for acquisition of additional space for new science classrooms and laboratories (Finding 1), and for materials and supplies relating to the additional science course (Finding 2). The claimant also disputed the Controller's finding that local school-construction bond funds should have been identified and deducted from the claims as offsetting revenues (Finding 4).

The Commission found that the IRC was timely filed pursuant to the Commission's regulations, and that the Controller timely initiated the audit for the fiscal year 2009-2010 *amended* claim and timely completed the audit for all fiscal years pursuant to Government Code section 17558.5.

The Commission also found that the Controller's reduction of all costs for construction and renovation of science classrooms and laboratories in Finding 1 (totaling \$29,633,952 plus related indirect costs) was correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. Section V. of the Parameters and Guidelines states that a reimbursable "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."<sup>3</sup> Section V.A. of the Parameters and Guidelines authorizes reimbursement for acquisition of additional space *only to the extent* that the claimant can show that the space would not have otherwise been acquired due to increases in

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<sup>1</sup> Exhibit A, IRC, page 86 (Parameters and Guidelines).

<sup>2</sup> Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). Although only \$14,816,975 was claimed in the reimbursement claims, the Controller, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, first identified total costs for science and laboratory construction costs. The Controller found that gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, for a net of \$21,221,594 costs incurred. See Exhibit A, page 48.

<sup>3</sup> Exhibit A, IRC, page 87 (Parameters and Guidelines).

the number of students enrolling in high school and that it was not feasible, or would be more expensive to acquire space by remodeling existing facilities.<sup>4</sup> Section VIII. of the Parameters and Guidelines further requires the claimant to support the costs claimed with documentation showing the increased units of science course enrollments due to the mandate. The documentation must include a certification of the Board finding that “no facilities existed to reasonably accommodate the increased enrollment for the additional science course required” by the test claim statute, and documents to show that “additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.”<sup>5</sup> The Parameters and Guidelines do *not* authorize reimbursement for construction costs simply because the mandate exists and science classrooms are now old, as asserted by the claimant. Nor do the Parameters and Guidelines allow reimbursement based on an assumption that the number of science courses doubled as a result of the mandate.<sup>6</sup> The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.<sup>7</sup>

Although the record in this case shows that the claimant lacked appropriately configured and equipped space for the science courses offered by the claimant because the science facilities were old and deteriorated, the claimant did not provide documentation required by the Parameters and Guidelines showing that the costs claimed for construction was limited to the mandated *second* science course; that the units of *science course enrollment increased* because of the test claim statute; or that space for new science classrooms and laboratories would not have otherwise been acquired due to an increase in high school enrollment. Therefore, the Controller’s reduction was correct as a matter of law.

With respect to Finding 2, the Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable. The Commission finds that this reduction is correct as a matter of law. The claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines for these purchases.

The Controller also reduced \$56,208 of costs incurred for materials and supplies for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure as required by the Parameters and Guidelines. The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate without evidence to support that number. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller’s reduction was correct as a matter of law.

The Commission further found that the Controller’s recalculation of costs for materials and supplies was not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support the 50 percent incremental increase in enrollment, the

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<sup>4</sup> Exhibit A, IRC, page 88 (Parameters and Guidelines). Emphasis added.

<sup>5</sup> Exhibit A, IRC, page 92 (Parameters and Guidelines).

<sup>6</sup> Exhibit A, IRC, pages 21, 27; Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 10.

<sup>7</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction, which resulted in an incremental increase of 40.14 percent for 2008-2009 and 47 percent for 2009-2010.<sup>8</sup> The claimant provided no evidence or documentation to show that the Controller's recalculation of increased costs was incorrect or arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, in Finding 4, the Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H, which funded 50 percent of the total cost of construction and related materials and supplies discussed in Findings 1 and 2. The other 50 percent was funded by state matching funds. The Commission finds that the claimant's local bond funds are offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's finding is correct as a matter of law. Article XIII B, section 6 of the California Constitution requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.<sup>9</sup> Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes" as alleged by the claimant, and repayment of those bonds is not an "appropriation subject to limitation." School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>10</sup>

Therefore, the Commission denied this IRC.

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<sup>8</sup> Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

<sup>9</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

<sup>10</sup> *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

*Animal Adoption*, 17-9811-I-04

Civil Code Sections 1834 and 1846;

Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;

As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Fiscal Years 2007-2008, 2008-2009

Claimant: Town of Apple Valley

Incorrect Reduction Claim Filed: August 1, 2017

Decision Adopted: July 24, 2020

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This IRC was filed in response to the following alleged reductions by the State Controller's Office (Controller) of the Town of Apple Valley's (claimant's) annual reimbursement claims under the *Animal Adoption*, 98-TC-11 program for fiscal years 2007-2008 and 2008-2009: disallowance of construction of new facilities costs (Finding 1); reduction of care and maintenance costs resulting from the Controller's recalculation of total annual salaries and benefits incurred for all pertinent care and maintenance activities as an element of the formula for calculating the care and maintenance costs related to the mandate (Finding 2); and disallowance of the rate proposed by the claimant for indirect costs (Finding 7). In addition, the claimant alleged that the necessary and prompt veterinary care costs were claimed in the composite cost per animal per day under the care and maintenance component and that these costs should have been allowed by the Controller.

The Commission found that this IRC was timely filed.

The Commission further found that the Controller's reduction of all costs claimed for acquiring additional shelter space by purchasing land and constructing a new shelter facility was correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines showing that the costs were incurred as a direct result of the mandate. The record instead shows that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.

The Commission found that the Controller's disallowance of care and maintenance costs as claimed, was correct as a matter of law because the claimant did not comply with the specific formula required by the Parameters and Guidelines. The claimant calculated the total annual care and maintenance costs by lumping together all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines formula that directly relate to the care and maintenance of animals.<sup>11</sup> However the first part of the formula requires a claimant to calculate the total annual costs incurred to provide care and maintenance for all animals housed in its shelter(s) by adding up pertinent labor, materials, supplies, indirect costs, and contract services

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<sup>11</sup> Exhibit A, IRC, pages 303-304 (Final Audit Report,).

costs and then that number is divided by the annual census of all animals housed in the shelter to determine the cost per animal per day, which is multiplied by the number of impounded animals that die during the increased holding period or are ultimately euthanized (i.e., those animals for which there is no fee authority) and by each reimbursable day.<sup>12</sup> The costs for care and maintenance cannot be interpreted beyond the reasonable scope of the approved activity, to include labor, materials, supplies, indirect costs, and contract services costs incurred for other activities conducted by the shelter beyond *care and maintenance*. Thus, the disallowance of care and maintenance costs as claimed was correct as a matter of law.

However, the Commission found that the Controller's recalculation of annual labor costs, which is a part of the first step in the calculation of care and maintenance, is arbitrary, capricious, and entirely lacking in evidentiary support. To recalculate annual labor costs, the Controller requested the duty statements of the employee classifications that provide care and maintenance to assist in determining the percentage of the daily workload for each classification devoted to care and maintenance.<sup>13</sup> The Controller then reduced the percentages provided by the claimant for the following classifications, so that the sum of all percentages equals 100 percent: Animal Shelter Attendant/Assistant, Animal Control/Customer Service Technician, Animal Control Officer, Registered Veterinary Technician, and Animal Shelter Supervisor.<sup>14</sup> On the one hand, the Controller asserts that the percentages were reduced based on its review of the duty statements.<sup>15</sup> On the other hand, it appears from the record that the Controller's allocation of percentages, including those for the animal shelter attendant and the animal shelter supervisor, were reduced in order for the allocation of percentages to simply add up to 100 percent.<sup>16</sup> If the methodology used by the Controller estimates percentages of *time* spent by the claimant's employees on care and maintenance, then adding these percentages across all employee classifications to a limit of 100 percent does not make sense and is arbitrary, capricious, and entirely lacking in evidentiary support. For example, five employees could spend 60 percent of their time on care and maintenance, which clearly exceeds 100 percent. If the Controller used a factor or methodology *other than time* to calculate annual labor costs, then the record provides no explanation of that methodology. Accordingly, the Commission found that to the extent that the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs, that reduction is arbitrary, capricious, and entirely lacking in evidentiary support.

The Commission further found that the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to consider the indirect cost rate proposal (ICRP) submitted in 2016 in support of indirect costs for fiscal year 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate are correct as a matter of law. The claimant did not claim indirect costs as a separate item, but incorporated overhead costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director.<sup>17</sup> This does not comply with the

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<sup>12</sup> Exhibit A, IRC, pages 266-267 (2006 Parameters and Guidelines Amendment).

<sup>13</sup> Exhibit A, IRC, page 305 (Final Audit Report).

<sup>14</sup> Exhibit A, IRC, pages 305-306 (Final Audit Report).

<sup>15</sup> Exhibit A, IRC, page 314 (Final Audit Report).

<sup>16</sup> Exhibit A, IRC, pages 305 (Final Audit Report), 363-366 (Claimant's Response to Draft Audit Report).

<sup>17</sup> Exhibit A, IRC, page 328 (Final Audit Report).



Parameters and Guidelines. The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or (2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller.<sup>18</sup> The Controller's allowance of indirect costs at the ten percent default rate is correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.

Finally, the reimbursement claims filed by the claimant do not identify any costs for necessary and prompt veterinary care. The line item for "veterinary care" was left blank in both reimbursement claims.<sup>19</sup> Since these costs were not claimed on the reimbursement claim form, there was no "reduction" of these costs and the Commission does not have jurisdiction over this alleged issue. The Commission's jurisdiction is limited to alleged incorrect *reductions* of costs claimed.<sup>20</sup>

Accordingly, the Commission partially approved this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate the following costs which were incorrectly reduced:

- To the extent the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs.

All other reductions made by the Controller are correct as a matter of law.

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<sup>18</sup> Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment).

<sup>19</sup> Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

<sup>20</sup> Government Code section 17551(d).

*Local Government Employee Relations, 17-0130-I-01*

Government Code Sections 3502.5 and 3508.5; Statutes 2000, Chapter 901 (SB 739)

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070, Register 2001, Number 49

Fiscal Years 2010-2011

Claimant: City of Monrovia

Incorrect Reduction Claim Filed: August 15, 2017

Decision Adopted: September 25, 2020

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This IRC alleged that the Controller’s incorrectly reduced costs claimed for fiscal year 2010-2011, but incurred in fiscal year 2009-2010, by the City of Monrovia (claimant) for the *Local Government Employee Relations* program. In January 2012, the claimant filed a reimbursement claim requesting reimbursement for contracted legal services related to the *Local Government Employee Relations* program, totaling \$229,627. The cover sheet and each page of the claim form (FAM-27) indicate that the claim was filed for fiscal year 2010-2011. However, attached to the reimbursement claim are invoices for legal services incurred in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling \$229,627. The Controller reduced the costs incurred in fiscal years 2009-2010 and 2011-2012 from the 2010-2011 claim, and notified the claimant of the reduction on September 29, 2014, after the statutory deadline to submit a reimbursement claim for fiscal year 2009-2010 had passed.

This IRC challenges only the reduction of \$50,459 (less an undisputed late penalty) incurred in fiscal year 2009-2010.<sup>21</sup> Although the claimant never filed a 2009-2010 reimbursement claim, the claimant asserted that the Controller incorrectly denied its request to accept the 2010-2011 reimbursement claim, which contained documentation supporting costs actually incurred in fiscal year 2009-2010, as a late 2009-2010 reimbursement claim under Government Code section 17568, because of an alleged “clerical error” by filing a multi-year claim.

The Commission found that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further found that the Controller’s reduction to the fiscal year 2010-2011 claim (for costs incurred in 2009-2010) was correct as a matter of law. The Government Code does not allow filing multi-year annual reimbursement claims, and has always placed the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year.<sup>22</sup> In addition, the Parameters and Guidelines for the *Local Government*

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<sup>21</sup> Exhibit A, IRC, pages 4, 45 (September 8, 2016 letter from the claimant to the Controller acknowledging that the late penalty would apply to the claimed costs for fiscal year 2009-2010).

<sup>22</sup> Government Code sections 17560 and 17568 (that were originally added by Stats. 1986, ch. 879). Government Code section 17560(a) states that “[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. Government Code section 17568 allows a valid reimbursement claim to be submitted after that deadline, and in such cases, the Controller is required to reduce the claim by ten percent. Section 17568 further states, however, that “*in no case shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560.*” Emphasis added.

*Employee Relations* mandate state that “[a]ctual costs for *one fiscal year* shall be included in each claim,” and that “[a]ctual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”<sup>23</sup> Parameters and guidelines are regulatory in nature and are binding on the claimant.<sup>24</sup> Here, the claimant’s 2010-2011 reimbursement claim includes costs totaling \$50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>25</sup> The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>26</sup> Thus, the \$50,459 are not “actual costs” for the 2010-2011 claim year.

In addition, the Commission found that the Controller’s decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Although 2009-2010 invoices were attached to the 2010-2011 reimbursement claim, there is no evidence that the Controller had notice or was aware of the 2009-2010 costs until the desk review of the 2010-2011 claim in September 2014.<sup>27</sup> The evidence shows that the Controller’s actions complied with the law and the Controller’s usual procedures for accepting annual reimbursement claims.

Moreover, neither the Commission nor the Controller have the authority allow the filing of a 2009-2010 reimbursement claim after the deadline in Government Code sections 17560 and 17568 has lapsed. Government Code section 17561(d)(3) plainly states that “*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller’s claiming instructions on funded mandates.”<sup>28</sup> Similarly, Government Code section 17568 states that “*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560.” The deadline in this case to file a 2009-2010 reimbursement claim under sections 17560 and 17568, certified and signed under penalty of perjury, expired on February 15, 2012, one month after the 2010-2011 reimbursement claim was filed.

Therefore, the Commission denied this IRC and found that the Controller’s reduction of costs from the fiscal year 2010-2011 reimbursement claim for costs incurred in 2009-2010 and the Controller’s decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim, were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>23</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).

<sup>24</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>25</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

<sup>26</sup> Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to the Controller); Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller). See also Exhibit D, Claimant’s Comments on the Draft Proposed Decision, pages 1-2.

<sup>27</sup> Exhibit B, Controller’s Comments on the IRC, page 7.

<sup>28</sup> Emphasis added.