STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
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November 19, 2007

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Postponement of Test Claim

Academic Performance Index (01-TC-22)
San Juan Unified School District, Claimant
Education Code Sections 44650-44654, 52050-52055.51, 52056-52057, 52058
California Code of Regulations, Title 5, Sections 1031-1039
Statutes 1999-2000x1, Chapter 3; Statutes 1999, Chapter 52;
Statutes 2000, Chapters 71, 190 and 695; Statutes 2001, Chapters 159, 745, 749, and 887

Dear Mr. Petersen:

The above-named test claim filed by the San Juan Unified School District is being postponed and will not be heard on December 6, 2007, as previously noticed.

The Department of Finance, in test claim comments submitted November 15, 2007, raised an issue involving Government Code section 17556, subdivision (f), which was held to be unconstitutional in the Sacramento County Superior Court's March 13, 2007 decision in *California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al. [No. 06CS01335]*. The court's judgment enjoins the Commission from taking any action to implement the AB 138 amendment to Government Code section 17556, subdivision (f). Since this case is on appeal to the Third District Court of Appeal, Case Number C055700, the Commission is unable to determine this test claim until there is a final court decision in the *California School Boards Association, et al. v. Commission on State Mandates, et al.* Therefore, this test claim will be re-scheduled for hearing at that time.

If you have questions on the above, please contact Eric Feller at (916) 323-8221.

Sincerely,

PAULA HIGASHI
Executive Director

cc: Mailing list (enclosed)
enc.: Judgment by the Court, Case No. 06CS01335, *California School Boards Association v. Commission on State Mandates.*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME	: MARCH 13, 2007	DEPT. NO	: 11
JUDGE	: GAIL D. OHANESIAN	CLERK	: M. JEREMIAH
REPORTER	: NONE	BAILIFF	: NONE

CALIFORNIA SCHOOL BOARDS ASSOCIATION, et al.,
Petitioners/Plaintiffs,

VS. Case No.: 06CS01335

STATE OF CALIFORNIA, et al.,
Respondents/Defendants.

Nature of Proceedings: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF – RULING ON SUBMITTED MATTER

Ruling on Submitted Matter

1. Background

California Constitution, article XIII B, section 6, with certain exceptions not applicable here, requires the State to reimburse local governments for the cost of implementing a new program or a higher level of service mandated by the Legislature. This law was made a part of the constitution by the electorate when then Proposition 4 was passed in 1979. Thereafter, the Legislature created the Commission on State Mandates, as the successor agency to the Board of Control, to determine, at the administrative level, whether a new state program or higher level of services required reimbursement to local governments under the constitution and, if so, what costs were reimbursable. (See Government Code section 17550 et seq.) The decisions of the Respondent Commission are then subject to judicial review under Code of Civil Procedure, section 1094.5. (Government Code section 17559(b).) Once a decision of the Commission ordering reimbursement to a local entity becomes final, the claim is submitted to the Legislature and Governor to allocate funds for reimbursement in the annual budget. If funds are not made available in the state budget for the payment of those claims, the obligation is rolled over to the next year with interest. If the State specifically declines to fund the mandated program or service for which reimbursement was ordered, the local government is then relieved of the obligation to provide the program or service. (See Government Code sections 17560-17612.)

Over time, the State's failure to fund its obligations to reimburse local governments for state mandated programs or services led to the accumulation of over $2 billion owed to local governments by the state. This was money spent by local governments on state mandated programs or services in reliance on promises for reimbursement. In 2004, the electorate passed Proposition 1A, which provided that, starting with the 2005-2006 fiscal year, the State's obligation to reimburse local governments for state-mandated programs or services for which there was no Budget Act appropriation, with certain exceptions not applicable here, would

be suspended for that budget year. Proposition 1A then provided terms for the payment of any such obligations incurred by the state prior to 2004-2005.

In 2005, the Legislature enacted AB 138, which led to this litigation. This bill amended Government Code section 17556(f) as follows. Prior to AB 138, Government Code section 17556 provided that the Commission on State Mandates shall not find costs mandated by the state if the commission finds

> "(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide or local election."

AB 138 amended this subdivision to read that the Commission shall not find costs mandated by the state if it finds

> "(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters."

In 1985, Petitioner County of Fresno filed a test claim (CSM 4204) with the Commission concerning the Mandate Reimbursement Process. The Commission found in this claim that certain costs were reimbursable as state mandates. This was a final decision before AB 138 was enacted. AB 138 directed the Commission to set aside its previous decision in this claim and decide it again in light of Government Code section 17556(f) as amended.

Petitioner City of Los Angeles filed a test claim with the commission concerning the Open Meetings Act (CSM 4257) following a statute enacted in 1986. Petitioner City of Newport Beach, successor claimant in the claim originally filed by Santa Clara County, pursued a test claim with the Commission concerning the Brown Act Reform (CSM 4469) following a statute enacted in 1993. In each of these test claims, the Commission found that certain costs were reimbursable as state mandates. These were final decisions before AB 138 was enacted. AB 138 repealed the statutes relative to the Open Meetings Act and the Brown Act Reform and then reenacted them word for word. This bill then directed the Commission to set aside its previous decisions in these claims and decide them again in light of the intervening adoption of Proposition 59 passed by the voters as a ballot measure in 2004 and in light of Government Code section 17556(f) as amended. The bill also added findings by the Legislature that the reenacted statutes were necessary to implement and reasonably within the scope of provisions of Proposition 59 and that, therefore, the activities listed in these claims were no longer reimbursable.

In 1987, Petitioner Sweetwater Union High School District filed a test claim with the commission relating to School Accountability Report Cards (97-TC-21). In this claim, the Commission found certain costs were reimbursable as state mandates. This was a final decision until AB 2885 and SB 512 were enacted in 2004 and 2005. These laws amended Government Code section 17556(c) which stated that the commission shall not find costs mandated by the state if they result from federal law or regulation. As amended, "[t]his

subdivision [now] applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued."

In 2005, Petitioner City of Newport Beach filed a test claim related to the Mandate Reimbursement Process (05-TC-05). The Commission denied this claim based on the amended language of Government Code section 17556(f).

2. Government Code section 17556

(a) Petitioners mount a two-fold attack on Government Code section 17556. At issue is whether the term "the Legislature" in article XIII B, section 6, of the California Constitution should be construed to include the voters of the State of California. When Government Code section 17556(f) was first enacted in 1984, it specifically excluded from reimbursement as a state mandate the costs of any duties imposed on local governments which were expressly included in a ballot measure approved by the voters in a statewide election. This is a clearly expressed distinction in the statute between duties imposed by the Legislature and duties imposed by voters in a ballot measure in a statewide election.

There is no indication that the interpretation of "the Legislature" as used in this context in article XIII B, section 6, has ever been challenged or construed in any appellate court decision. Respondents contend that the term "the Legislature" is not ambiguous, and that the plain meaning of "the Legislature" is the legislative body. Thus, respondents contend that the distinction in section 17556(f) as enacted in 1984 is consistent with this plain meaning. Petitioners, on the other hand, contend that the term "the Legislature" is ambiguous. They contend that this distinction is inconsistent with the intent of Proposition 4 as expressed in selected language from the Arguments in Favor of Proposition 4 in the 1979 Ballot Pamphlet, as well as in the ballot summary and language of the Legislative Analyst's Summary. Petitioners also rely on appellate decisions which construe the term "the Legislature" in other contexts and which have held, in those other contexts, that the term "legislature" is synonymous with the state's lawmaking power, whether exercised by the Legislature as the elected body of representatives or by the voters themselves in the form of a ballot measure. These cases have held that the electorate's lawmaking powers are identical to those of the Legislature. (See, e.g., *Independent Energy Producers. v. McPherson* (2006) 38 Cal.4th 1010, and *Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245.)

The court finds petitioners' arguments are not persuasive. The plain meaning of the phrase does not support the construction of the term "the Legislature" which petitioners urge. A reading of the Constitution as a whole does not support such a construction. The ballot pamphlet provides little support for that construction. The court opinions relied on by petitioners, such as *Independent Energy Producers. v. McPherson, supra,* and *Kennedy Wholesale, Inc. v. State Board of Equalization, supra,* do not support petitioners' claim. In those cases, the court addressed constitutional provisions which granted the Legislature broad authority but was silent as to whether the same broad authority was granted to the power reserved to the people to enact law by initiative. In contrast, article XIII B, section 6 imposes a condition on legislative authority and is silent as to whether the same condition applies to the power reserved to the people.

The court finds that the distinction in 17556(f) between duties imposed on local governments by the Legislature versus those imposed by the voters in a ballot measure is not inconsistent with the meaning and intent of the Constitution.

(b) The court finds, however, that the amendment of section 17556(f) by AB 138 is in conflict with article XIII B, section 6. AB 138, section 7, expanded the exception to exclude reimbursement for duties "that are necessary to implement or reasonably within the scope of" a ballot measure, "regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters." The California Supreme Court has indicated that an enactment results in a "new program or higher level of service" if (i) the requirements are new in comparison with the preexisting scheme in view of the circumstance that they did not exist prior to the enactment and (ii) the requirements were intended to provide for enhanced service to the public. (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.) Any enactments that are in excess of the express requirements of a ballot measure would be "new in comparison with the preexisting scheme" and thus would be within the scope of article XIII B, section 6. The court is not persuaded by the argument that the expansion of section 17556(f) can be reconciled with the constitutional provision by a narrow construction of it by the Commission. There is no way to narrowly construe subdivision (f) while giving meaning to its provisions. (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 31.) The amendment is facially unconstitutional. The amendment creates an exception which, by definition, is outside of those provisions "expressly included in a ballot measure." The only other source of legislative power outside a ballot measure is the Legislature. Therefore it is the only place where a statute which is "necessary to implement" or "reasonably within the scope" of a ballot measure could originate. Even under strict interpretation, duties imposed on local governments by legislation which is enacted by the Legislature are subject to section 6.

3. Reconsideration of Previously Final Decisions of the Commission

Petitioners contend that the legislation which requires the Commission to reconsider certain of its prior decisions violates the separation of powers doctrine found in article III, section 3, of the California Constitution. Government Code section 17550 *et seq.* created the Commission on State Mandates, vested it with quasi-judicial power and established procedures for the Commission to hear and decide mandate claims. Petitioners contend that these statutory provisions protect the decisions of the Commission by allowing for review only through the judicial branch under the substantial evidence rule pursuant to Government Code section 17559.

Under *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61 and *Carmel Valley Fire Protection District v. California* (1987) 190 Cal.App.3d 521, a final determination of the Commission is binding, akin to a final court ruling. In *Mandel v. Myers* (1981) 29 Cal.3d 531, the court held that the Legislature may not readjudicate on a case-by-case basis the merits of a final court judgment and held that the Legislature's exclusion of a particular attorney fee award from an operating expense appropriation was invalid.

Section 17, subdivision (a) of AB 138 required the Commission to reconsider its test claim statement of decision on the Mandate Reimbursement Process (CSM 4204). Section 17, subdivision (b) required the Commission to set aside all decisions, reconsiderations, parameters and guidelines on the Open Meetings Act (CSM 4257) and Brown Act Reform (CSM 4469) test claims, and to amend the appropriate parameters, as necessary, to be consistent with any other provision of AB 138. Sections 12, 14, and 16 of AB 138 contain

findings by the Legislature that Government Code sections 54954.2 and 54957.1 were "necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of section 3 of Article I of the California Constitution."

The statutory scheme at Government Code section 17550 *et seq.* contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 819.) Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists. (*Id.*)

The court concludes that insofar as section 17, subdivision (a) of AB 138 requires the Commission to reconsider its decision in the Mandate Reimbursement Process (CSM 4204) test claim in light of statutory changes and court decisions, it is procedural only; it operates, or can be construed to operate prospectively only; it does not dictate the result; and, therefore, it does not violate the separation of powers doctrine.

Section 17, subdivision (b) is different. It requires the Commission to set aside its decisions, reconsiderations, parameters and guidelines, not merely "reconsider" them. The court concludes that subdivision (b) violates the separation of powers doctrine.

Further, the provisions in AB 138 that the legislation was "necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of section 3 of Article I of the California Constitution" are an attempt to dictate to the Commission that it find there is no state mandate, under the Legislature's new definition. In this regard, AB 138 violates the separation of powers doctrine.

AB 2855 and SB 512 require the Commission to reconsider its decision regarding the School Accountability Report Card (97-TC-21) mandate in light of federal statutes enacted and state court decisions rendered since the School Accountability Report Card statutes were enacted. These statutes are procedural only; they operate or can be construed to operate prospectively only; and they do not dictate the result. The court concludes that these statutes do not violate the separation of powers doctrine.

4. Contract Rights

Petitioners contend that AB 138, AB 2855 and SB 512 impair vested contractual rights of local governments to reimbursement in violation of article I, section 9, of the California constitution. It is presumed that a statutory scheme is not intended to create private contractual rights, and a person who asserts the creation of a contract with the state has the burden of overcoming that presumption. (*Walsh v. Board of Administration* (1992) 4 Cal.App.4th 682, 697, citing *Dodge v. Board of Education* (1937) 302 U.S. 74, 79.) Petitioners contend that the statements of decision, parameters, guidelines and claiming instructions issued for each test claim constitute an offer to the local governments, which they accepted by performance. Petitioners contend that consideration was exchanged in that they devoted staffing time and expenses related to the claims process. The court finds this argument unpersuasive. The Legislature established a comprehensive statutory scheme with explicit "sole and exclusive" remedies for subvention claims. (Government Code sections 17552 and 17559; *Kinlaw v. State of California* (1991) 54 Cal.3d 326.) Local governments or school boards could have challenged any decision which was unfavorable to them in an action pursuant to Code of Civil Procedure section 1094.5. If the state government refuses to pay the amounts determined by the Commission, the local

governments may be relieved of the obligation to perform the services. They may also seek relief by ordinary mandate pursuant to Code of Civil Procedure section 1085. (See *Carmel Valley Fire Protection District, supra*, 190 Cal.App.3d 521.) Petitioners rely on cases in which the courts found an implied contract, including *Board of Administration of the Public Employees' Retirement System v. Wilson* (1997) 52 Cal.App.4th 1109, *California Teachers Association v. Cory* (1984) 155 Cal.App.3d 494 and *California Medical Association v. Lackner* (1981) 117 Cal.App.3d 552. However, there was no analogous statutory scheme in those cases, and they are otherwise factually distinguishable.

5. Estoppel

Petitioners properly set out the legal requirements of a claim based on the doctrine of equitable estoppel. First, the party to be estopped must have been aware of the facts. Second, that party must either intend that its act or omission be acted upon, or must so act that the party asserting estoppel has a right to believe it was intended. Third, the party asserting estoppel must be unaware of the true facts. Fourth, the party asserting estoppel must rely on the other party's conduct, to its detriment. (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 995.)

In this case, at the time that AB 138 was enacted, respondent state knew that local governments had relied on final decisions of the Commission regarding the nature and extent of the reimbursements they would eventually receive for state mandated programs and services covered by test claims CSM 4204, CSM 4257, CSM 4469 and 97-TC-21. The state did not decline to fund the mandated program or service for which reimbursement was ordered under those test claims. Rather, the state intended for local governments to continue to provide the programs and services, with the understanding that the local governments would eventually be reimbursed in accordance with the decisions of the Commission. Petitioners did not know that the state would change the law to allow the state to deny reimbursement for programs and services already provided by the local governments. The court finds that the elements of equitable estoppel have been met with regard to obligations actually incurred by the state before the enactment of AB 138.

However, petitioners also contend that respondent is estopped from enacting any new legislation that would deny reimbursement prospectively for the same programs and services that were previously deemed reimbursable as state mandates. This argument goes too far and is without merit. Petitioners have established that the local governments, at the time of the original mandate decisions, were not aware that the state would later eliminate application of section 6 by legislation such as AB 138. However, petitioners have not demonstrated that the state knew, at any time in advance of doing so, that it would make those legislative changes. Petitioners have shown that they relied on the original Commission determinations in making long term plans to provide the programs and services in question. It is unclear to the court why those long term plans cannot be altered at this time. But, in any event, petitioners have not met all of the other elements necessary to establish that the state should be equitably estopped from enacting any new legislation that is otherwise constitutional if that new legislation results in the denial of reimbursement for the same programs and services that were previously deemed reimbursable as state mandates.

6. Statute of Limitations

Respondents contend that this action is barred by Code of Civil Procedure section 341.5, which provides a 90 day statute of limitations for an action by a local government or agency against the state challenging the constitutionality of "any statute relating to state funding for counties, cities, cities and counties, school districts, special districts, or other local agencies." The court finds that section 341.5 does not apply to the types of claims made in this case. The causes of action are not "relate[d] to funding," but instead relate to decisions of the Commission. Second, the causes of action challenging determinations of the Commission pursuant to section 1094.5 are governed by the more specific procedures set forth in Government Code section 17559. Finally, section 341.5 does not apply to petitioner California School Boards Association or petitioner Education Legal Alliance, which are not agencies included in that provision.

7. Standing

Respondents also contend that two of the petitioners, California School Boards Association (CSBA) and Education Legal Alliance (ELA), lack standing to challenge the constitutionality of the statutes named in the First Amended Petition and Complaint. Respondents do not make such a contention concerning petitioners County of Fresno, City of Newport Beach, and Sweetwater Union High School District, each of which also has pleaded a cause of action pursuant to Code of Civil Procedure section 1094.5. And respondents do not make such a contention concerning petitioner County of Los Angeles.

CSBA is an association composed of the governing boards of nearly 1,000 K-12 school districts and county boards of education throughout California, and that the ELA is composed of over 800 CSBA members dedicated to addressing legal issues of statewide concern to school districts. They further allege that members of CSBA have filed claims for reimbursement from the State of California pursuant to the determinations of the Commission in proceedings CSM 4202, CSM 4257, CSM 4469 and 97 TC 21, and that CSBA brings this proceeding on behalf of its members who have filed such claims and are directly affected by the actions of the State and the Commission pursuant to AB 138. (First Amended Verified Petition, par. 4; Declaration of Richard L. Hamilton.)

Respondents argue that CSBA and ELA lack standing because their members are time-barred from bringing an individual action by the provisions of Code of Civil Procedure section 341.5. The court finds that section 341.5 is not the applicable statute of limitations and does not bar the challenges to the constitutionality of the statutes in this litigation.

Respondents further argue that CSBA and ELA lack standing to bring an action under 1094.5 to pursue the remedies under Government Code section 17559 because only local agencies and school districts directly affected by a state mandate have authority to file a test claim. However, the causes of action which directly challenge the Commission decisions under section 1094.5 are limited to the parties in those proceedings. (See First Amended Verified Petition and Complaint, Eighth, Ninth, Tenth and Eleventh Causes of Action.)

The court finds that CSBA and ELA meet the requirements for associational standing as to the causes of action challenging the constitutionality of the statutes and seeking relief other than administrative mandamus. (See *Property Owners of Whispering Palms v. Newport Pacific, Inc.* (2005) 132 Cal.App.4th 666, 673.) The court also finds that they may bring these causes of action on their own accord under the theory of "organizational standing" because the case involves issues covering the public duties of the Commission.

(See *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1233; *Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, 29.)

8. Conclusion

The requests for judicial notice are granted, there being no opposition.

Based on the foregoing, it is ordered, adjudged and decreed as follows:

A declaratory judgment shall issue consistent with the foregoing.

Writs of mandate shall issue pursuant to Code of Civil Procedure section 1094.5, as requested in the eighth through eleventh causes of action. These decisions of the Commission were based on statutory provisions which the court finds to be unconstitutional.

An injunction shall issue, enjoining respondents/defendants and intervenor, and those public officers and employees acting by and through their authority, from taking any action to implement the provisions of the statutes which the court herein declares to be unconstitutional, and enjoining them to administer those duties required by law in accordance with the declarations of this court.

The relief sought in the seventh cause of action for writ of mandate pursuant to Code of Civil Procedure section 1085 is duplicative and unnecessary in light of the other relief which the court finds to be warranted, particularly the relief pursuant to Code of Civil Procedure section 1094.5. Accordingly, petitioners' request for a writ of mandate pursuant to CCP section 1085 is denied.

Petitioners shall recover their costs pursuant to a memorandum of costs.

Petitioners shall prepare a judgment consistent with this ruling for the court's signature and separate forms of writ of mandate for issuance by the clerk, in accordance with California Rules of Court, rule 3.1312 and Local Rule 9.16.

Respondent Commission on State Mandates shall file a return to the writs within 60 days of service.

Dated: 03-13-07

GAIL D. OHANESIAN

Honorable GAIL D. OHANESIAN,
Judge of the Superior Court of California, County of Sacramento

Certificate of Service by Mailing attached.

BOOK : 11
PAGE :
DATE : MARCH 13, 2007
CASE NO. : 06CS01335
CASE TITLE : CA SCHOOL BOARDS ASSOC. V STATE OF CA et al.

Superior Court of California, County of Sacramento

BY: M. JEREMIAH,
Deputy Clerk

CASE NUMBER: 06CS01335 **DEPARTMENT: 11**
CASE TITLE: CA SCHOOL BOARDS ASSOC. V. STATE OF CALIFORNIA, et al.
PROCEEDINGS: PETITION FOR WRIT OF MANDATE – RULING ON SUBMITTED MATTER

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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Dated:03-15-07

Superior Court of California,
County of Sacramento

By: M. JEREMIAH,
Deputy Clerk

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Superior Court of California, County of Sacramento

BY: M. JEREMIAH,
Deputy Clerk

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Original List Date: 7/3/2002
Last Updated: 4/26/2007
List Print Date: 11/19/2007
Claim Number: 01-TC-22
Issue: Academic Performance Index

Mailing Information: Final Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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