



THE CITY OF SAN DIEGO

June 12, 2020

RECEIVED
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**Commission on
State Mandates**

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Reference: Comments on Draft Expedited Parameters and Guidelines, Test Claim 18-TC-02, Racial and Identity Profiling Act of 2015 (RIPA).

Dear Ms. Halsey,

Please accept the City of San Diego's comments and recommended changes to the Commission's Draft Proposed Decision and Parameters and Guidelines.

First, as claimant, the City of San Diego concurs with most of the Draft Expedited Parameters and Guidelines, particularly the Reimbursement Activities described in section IV. Those activities are generally described as follows:

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number.
2. Collection and reporting data on all stops, as defined, conducted by that agency's peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.
3. Electronic submission of data to DOJ and retention of stop data collected.
4. Audits and validation of data collected.
5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or unique identifying of the peace officer involved, is not transmitted to the Attorney General in an open text field.

It is clear, the Commission took a substantial amount of time, and described in great detail the data elements that are not reportable, and explained those "data elements," "data values," and "narrative explanatory fields" that are legislatively mandated activities for peace officers to collect and report. In fact, nearly three pages of the Draft Expedited Parameters and Guidelines, specifically pages 4 through 6, are dedicated to explaining reimbursable costs are limited to activities that the claimant is required to incur "as a result of the mandate."



However, while the Commission fulfilled its duty to explain in detail the reimbursable activities in its Draft Expedited Parameters and Guidelines for this state-mandated legislation, it did not address the reasonable necessary activities for local agencies to provide this same level of explanation to its peace officers that must perform these functions. Specifically, the City of San Diego is requesting the Commission to consider the costs of training, updating policies and procedures, and supervisory oversight required for local agencies to inform and hold its peace officers accountable to collect and report the stop data at the heart of this state-mandated program. The City of San Diego also believes updating information technology, specifically adopting and testing software, which allows local agencies to comply with state-mandated activities is reasonable and necessary.

Claimant suggest the following be added to the Draft Expedited Parameters and Guidelines for Reimbursement Activities described in section IV.

6. One-time activities:
 - a. Update policies and procedures to incorporate the requirements of the Test Claim Statute.
 - b. Train staff (peace officers) assigned to perform the reimbursable activities listed in section IV of these Parameters and Guidelines (one-time for each employee).
 - c. Installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

7. Ongoing activities:
 - a. As modifications are made to the Test Claim Statute provide for updated training to meet any new requirements made by the legislature or the Racial and Identity Profiling Act Board.
 - b. Update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

Based upon the attached declaration, the City of San Diego believes sufficient evidence exists within the history of this legislation, and the documents filed in the Test Claim to justify these activities as being reasonable and necessary.

Respectfully submitted,



Jeffrey Jordon

Captain – San Diego Police Department
City of San Diego

Declaration of Captain Jeffrey Jordon, San Diego Police Department (SDPD)

I, Jeffrey Jordon, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief.

I am a police captain for the City of San Diego (SDPD). I have been employed by the City in this capacity since August, 2019, and have been a sworn law enforcement officer since 1995. As part of my duties in the Chief's Office, I am responsible for implementation of "special projects" as determined by the Chief of Police – David Nisleit. In June of 2018, I was assigned by him as the Program Manager overseeing the Department's implementation of AB 953, which enacted the Racial and Identity Profiling Act of 2015, and added Government Code section 12525.5. I am also responsible for assisting with the recovery of costs mandated by the State. I am familiar with the reasonable and necessary activities required by local agencies to comply with this state-mandated program documented in Test Claim 18-TC-02, Racial and Identity Profiling Act of 2015.

Based on my knowledge and experience with this legislative mandate, the City of San Diego is requesting the Commission to consider the costs of training, updating policies and procedures, and supervisory oversight so local agencies can inform and hold its peace officers accountable to collect and report the stop data at the heart of this state-mandated program. Claimant also believes updating technology, specifically adopting and testing software, which enables compliance to state-mandated activities is reasonably necessary.

The City of San Diego believes sufficient evidence exists within the history of this legislation, and the documents filed in this Test Claim to justify these activities as being reasonably necessary for the performance of the state-mandated program.

Claimant is highlighting these activities again and proposing them for inclusion in the Parameters and Guidelines, in accordance with Government Code section 17557(a), and the California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

On May 22, 2020, the Commission on State Mandates (Commission) made a decision on this Test Claim, Racial and Identity Profiling, 18-TC-02. On page 18 of this decision, the Commission cited the Senate Floor Analysis and noted an "expectation that the statute may result in reimbursable state-mandated costs as follows:"

Data collection, reporting, retention, and training: Major future one-time and ongoing costs, potentially in the millions to tens of millions of dollars annually, once fully phased in, to local law enforcement agencies for data collection, reporting, and retention requirements specified in the bill. Additional costs for training on the process would likely be required.

Also within its May 22nd decision, on pages 19 through 20, the Commission noted the City of San Diego's assertion and Test Claim that "Government Code section 12525.5 (Stats. 2015, ch. 466; Stats. 2017, ch. 328) and Title 11, Sections 999.224-999.229 (Register 2017, No. 46) constitute a reimbursable state-mandated program for the following new activities:"

1. Training, and Updating Policies and Procedures. The claimant alleges that, in order to comply with the test claim statutes, it is necessary for local agencies that employ peace officers to update their policies and procedures, and provide training related to data collection and reporting. The claimant states that all sworn members of the San Diego Police Department were required to receive at least 15 minutes of training via an online PowerPoint presentation related to new stop data items to be collected and submitted, while supervisors were required to receive an additional hour of training to ensure officers

assigned to them were accurately collecting and submitting the data pursuant to the alleged mandate.

2. *Data Collection.* Law enforcement personnel are now required to document and submit information on every stop they make.

3. *Information Technology.* Costs were incurred to obtain, test, process, and validate the collected data through hardware and software applications. Different contingency methods, such as paper data collection, also have to be in place in case of computer system failures. The claimant states that information technology costs were relatively minor for the San Diego Police Department, because the San Diego Sheriff's Department provided it with substantial technical support and assistance. Specifically, the Sheriff's Department provided its custom data collection application and submission tools free of charge, as well as to other law enforcement agencies required to collect data under the statutory mandate. The data collection application was loaded by Data Systems members onto the San Diego Police Department's desktop and mobile computers so officers could use it to submit the data they collected. Additional testing was done to make sure the software worked properly.

4. *Reporting to DOJ.* Reporting to DOJ is required by Government Code section 12525.5. However, before data can be reported, it must be reviewed and validated. Also, that data has to be accurate and free of personal identifying information (PII). It took the claimant's personnel approximately 240 hours to ensure collected stop data was reported correctly to DOJ.

5. *Data Storage and Release.* The claimant alleges that the data collected under the test claim statutes and regulations is constantly being requested through the California Public Records Act. The claimant is not requesting reimbursement for the costs related to storing stop data locally or releasing it publicly, but the claimant alleges that these activities will undoubtedly be performed by local agencies and costs will be incurred as a result of Government Code section 12525.5. Claimant states that data storage can possibly be mitigated by the type of application used to collect and submit data; for instance if data is submitted directly to DOJ, instead of being stored at a local law enforcement agency first to allow for validation and review.

Additionally, within its May 22nd decision, on pages 20 through 21, the Commission took note of the following:

The claimant alleges that it first incurred costs on June 15, 2018, when it began providing training to its peace officers on stop data collection requirements. The claimant began collecting data on June 27, 2018 "to test the functionality of its data collection application, as well as to ensure it would be in compliance with the alleged statutory mandate GC 12525.5(a)(1) by July 1, 2018."

The total increased costs alleged by the claimant in a declaration filed under penalty of perjury by Jeffrey Jordon, Lieutenant for the City of San Diego Police Department, for the 2017-2018 fiscal year amounted to \$97,367.95, including the costs for training, software update and testing, and collection of stop data. Lieutenant Jordon's declaration further states that total costs for the 2018-2019 fiscal year amounted to \$871,675.56, including the costs for training, compliance, reporting, management, and collection of stop data. The majority of the fiscal year 2018-2019 costs (\$744,005.98) were for officers collecting stop data. The claimant notes that there could be some potential grants and funding sources to partially offset the cost of complying with the mandate; for example, for purchasing equipment to facilitate data collection. However, the claimant "is not aware of

any current State, Federal, or other non-local agency funds to pay for its substantial cost already incurred and those anticipated going forward from the alleged statutory mandate in Government Code 12525.5(a)(1), which was enacted by AB 953."

These increased costs cited into the record by the Commission on State Mandates, which are being submitted here again as reasonably necessary activities for inclusion in the Parameters and Guidelines, were first described in detail under claimant's original Test Claim and accompanying Declaration (page 20) and supported by the following exhibits (11 through 15) as evidence in the Test Claim:

- 11) RIPA Stop Data Report-Dates 06-27-2018 through 06-30-19-SDPDpages 122-134
- 12) Command Training Schedule and Attendance Rosterpages 135-159
- 13) Department Training Roster-Online pages 160-273
- 14) Department Orders, Training Bulletin and Memorandumpages 274-290
- 15) Work Log for Private Contractor on AB 953pages 291-292

These exhibits were the foundation for which the costs for the reasonably necessary activities described in this declaration were determined.

Furthermore, On September 25, 2019, I attended the California Department of Justice (DOJ) regional meeting with law enforcement agencies in San Diego entitled, "Lessons Learned Session." There were many items on the meeting agenda, but particularly relevant to determining whether **costs of training, updating policies and procedures, supervisory oversight, adopting applicable technology are reasonably necessary activities**, was the discussion agenda and it included, "Initial Implementation - **Training**, Outreach, **Technology**, and Timeline."

The inclusion of training by the DOJ in this meeting for peace officers in attendance from throughout California impacted by RIPA and Government Code section 12525.5, along with the discussion topics like technology that followed, is significant because it highlighted the absolute necessity for agencies to train peace officers and adopt technology in their respective local agencies to comply with this very complex piece of mandated legislation.

Again, on September 26, 2019, I attended the Racial and Identity Profiling Advisory Board in San Diego, and there was an agenda item and report from a subcommittee on **POST Training** to discuss the status of providing needed training to officers mandated to collect and report stop data under the state-mandated program.

The agendas from both these meeting were submitted into the record in this Test Claim, as part of the Claimant's Rebuttal Comments filed on October 16, 2019, and are offered as further evidence in support of training and adopting applicable technology as a reasonably necessary activity.

Finally, I, along with City of San Diego and the San Diego Police Department (SDPD), believe training members of SDPD on the 22 pages of regulations developed by the DOJ to implement this state-mandated program, along with updating its orders, procedures and training materials to reflect them, is a standard and expected practice for law enforcement agencies that should also be considered as reasonably necessary for the performance of this state-mandated program.

These regulations adopted through the Test Claim Statute were marked as exhibit 7 in the Test Claim as follows:

7) CA Code of Regulations, Title 11, Sections 999.224 through 999.229, established per Government Code Section 12525.5 (e)pages 62-86

The City of San Diego, along with the San Diego Police Department, assert they have satisfied the requirements for inclusion of the items referenced in this declaration in the Parameters and Guidelines, and supported their addition by evidence in the record showing they are reasonably necessary for the performance of the state-mandated program.

Except as otherwise indicated herein, I have personal knowledge of the foregoing facts and information presented in this Test Claim, and if so required, I could and would testify to the statements made herein.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct of my personal knowledge and belief.

Executed the 12th day of June, 2020 in San Diego, California



Jeffrey Jordon
Captain
City of San Diego – San Diego Police Department

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 June 12, 2020, I served the:

- **Claimant's Comments on the Draft Expedited Parameters and Guidelines filed June 12, 2020**

Racial and Identity Profiling, 18-TC-02

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46¹

City of San Diego, 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 June 12, 2020 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

¹ Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/26/20

Claim Number: 18-TC-02

Matter: Racial and Identity Profiling

Claimant: City of San Diego

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John Ades, Captain, *San Bernardino County Sheriff's Department*

Information / Technical Services Division, 655 East Third Street, San Bernardino, CA 92415

Phone: (909) 884-0156

jades@sbcasd.org

Manny Alvarez Jr., Executive Director, *Commission on Peace Officer Standards and Training*

860 Stillwater Road, Suite 100, West Sacramento, CA 95605

Phone: (916) 227-3909

Manny.Alvarez@post.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Matthew Aveling, Chief Deputy, *Riverside County Sheriff's Department*

Sheriff's Administration, 4905 Lemon Street, Riverside, CA 92501

Phone: (951) 955-2416

maveling@riversidesheriff.org

Christopher Becker, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

Christopher.Becker@csm.ca.gov

Cindy Black, City Clerk, *City of St. Helena*

1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742

ctzafopoulos@cityofstheleena.org

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Michele Cervone, Legislative Assistant, *Aaron Read & Associates*
1415 L Street, Suite 1100, Sacramento, CA 95814
Phone: (916) 448-3444
mcervone@aaronread.com

Rolando Charvel, Chief Financial Officer, *City of San Diego*
Claimant Contact
202 C Street, 9th Floor, San Diego, CA 92101
Phone: (619) 236-5941
RCharvel@sandiego.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@munil.com

Phill Dupper, Lieutenant, *San Bernardino County Sheriff's Department*
Information / Technical Services Division, 655 East Third Street, San Bernardino, CA 92415
Phone: (909) 884-0156
pdupper@sbcisd.org

Patrick Dyer, Director, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-3411
pdyer@mgtconsulting.com

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Jim Grottkau, Bureau Chief, *Commission on Peace Officer Standards and Training*
Basic Training, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605
Phone: (916) 227-3909
Jim.Grottkau@post.ca.gov

Zachary Hall, Sheriff's Captain, *Riverside County Sheriff's Department*
4905 Lemon Street, Riverside, CA 92501
Phone: (951) 955-2400
zhall@riversidesheriff.org

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jeffrey Jordon, Captain, *San Diego Police Department*
Claimant Representative
1401 Broadway, San Diego, CA 92101
Phone: (619) 756-5264
jjordon@pd.sandiego.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446

Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Alison Leary, Deputy General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
aleary@cacities.org

Erika Li, Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Corrie Manning, Assistant General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200
cmanning@cacities.org

Brian Marvel, President, *Peace Officers Research Association of California (PORAC)*
4010 Truxel Road, Sacramento, CA 95834
Phone: (916) 928-3777
president@porac.org

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Aaron Read, Legislative Advocate, *Aaron Read & Associates*
1415 L Street, Suite 1100, Sacramento, CA 95814
Phone: (916) 448-3444
aread@aaronread.com

Theresa Schweitzer, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3140
tschweitzer@newportbeachca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Brittany Thompson, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Robert Trostle, Lieutenant, *San Bernardino County Sheriff's Department*
Information / Technical Services Division, 655 East Third Street, San Bernardino, CA 92415
Phone: (909) 884-0156
rtrostle@sbcasd.org

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Dennis Vrooman, Assistant Sheriff, *Riverside County Sheriff's Department*
Sheriff's Administration, 4905 Lemon Street, Riverside, CA 92501
Phone: (951) 955-8792
dvrooman@riversidesheriff.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov