

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Department of Finance,
Redwood Room, 915 L Street, Sacramento, California
May 25, 2018

- Present: Member Jacqueline Wong-Hernandez, Chairperson
Representative of the Director of the Department of Finance
Member Mark Hariri, Vice Chairperson
Representative of the State Treasurer
Member Lee Adams
County Supervisor
Member Ken Alex
Director of the Office of Planning and Research
Member Richard Chivaro
Representative of the State Controller
- Absent: Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Wong-Hernandez called the meeting to order at 10:00 a.m. Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Member Adams made a motion to adopt the minutes. With a second by Member Alex, the March 23, 2018 hearing minutes were adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

The Chairperson asked if there was any public comment. There was no response.

Chairperson Wong-Hernandez invited the Commission's court reporter, Mr. Daniel Feldhaus, and his wife, Cathy, to come forward and congratulated him on his new position as court reporter for the South Dakota Third Judicial Circuit Court.

Assistant Executive Director Palchik presented him with a resolution commemorating his service as the court reporter for the Commission.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 2 Appeal of Executive Director Decisions

Executive Director Halsey stated that there were no appeals to consider for this hearing.

TEST CLAIM

Item 3 *Local Agency Employee Organizations: Impasse Procedures II*, 16-TC-04
Government Code Sections 3505.4, 3505.5, and 3505.7; Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

Commission Counsel Matt Jones presented this item and recommended that the Commission partially approve this Test Claim.

Parties were represented as follows: Patrick Dyer, representing the claimant; Chris Hill, representing the Department of Finance; and Andy Nichols, Interested Person.

Mr. Dyer thanked the Commission and Commission staff for their work and stated that the Claimant agrees with the staff recommendation. Mr. Nichols stated that he agrees with the staff's conclusion and recommendation. Mr. Hill stated that the Department of Finance disagrees with the staff's recommendation and that the Department of Finance does not believe this creates a new program and a higher level of service to the public.

Without further discussion among the Commission members, staff, and parties, Member Alex made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to partially approve this Test Claim was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

PARAMETERS AND GUIDELINES

Item 4 *Cal Grant: Opt-Out Notice and Grade Point Average Submission*, 16-TC-02
Education Code Section 69432.9(d), Statutes 2014, Chapter 679 (AB 2160); and Education Code Section 69432.9(c)(2) and (d)(1), Statutes 2016, Chapter 82 (AB 2908)
Fairfield-Suisun Unified School District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission adopt this Decision and Parameters and Guidelines.

Parties were represented as follows: Patrick Dyer, representing the claimant; and Donna Ferebee, representing the Department of Finance.

Mr. Dyer stated that staff from the District agree with the staff recommendation and the Parameters and Guidelines. Ms. Ferebee stated that the Department of Finance has no objections to the Parameters and Guidelines.

Without further discussion among the Commission members, staff, and parties, Member Adams made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to adopt this Decision and Parameters and Guidelines was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

INCORRECT REDUCTION CLAIM

Item 5 *Integrated Waste Management, 14-0007-I-10*

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

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

Redwoods Community College District, Claimant

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$2,431 to the claimant.

Lisa Kurokawa, appeared on behalf of the State Controller's Office. The claimant notified Commission staff that they would not be attending the hearing and would stand on the written record.

Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Hariri made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

INCORRECT REDUCTION CLAIM

Item 6 *Integrated Waste Management, 14-0007-I-11*

Public Resources Code Sections 40148, 40196.3, 42920-42928; Public Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model Integrated Waste Management Plan (February 2000)

Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2010-2011

San Bernardino Community College District, Claimant

Executive Director Heather Halsey stated that Commission staff were notified that the District would not be sending representation to the hearing.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$22,884 to the claimant.

Parties were represented as follows: Lisa Kurokawa, representing the State Controller's Office.

Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Adams made a motion to adopt the staff recommendation. With a second by Member Hariri, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 4-0 with Members Chivaro, Olsen, and Ramirez absent.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

Item 7 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

STAFF REPORTS

Item 8 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

Item 9 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

Item 10 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the July and September 2018 Meetings (info)

Executive Director Heather Halsey introduced the newest staff attorney, Ms. Elena Wilson, and described her previous legal experience.

Member Chivaro joined the meeting.

Executive Director Halsey also explained that another attorney had accepted a position with the Commission and then, right before he was to start work at the Commission after providing 30-days' notice to his prior employer, notified Commission staff that he had taken a more lucrative position outside of state service therefore Commission staff will be recruiting again for that position.

Executive Director Heather Halsey presented this item.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126(e)(1):

Trial Courts:

1. *On Remand from California Supreme Court, Case No. S214855, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and*

County of Los Angeles, et al (petition and cross-petition)

Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

2. ***On Remand from the Third District Court of Appeal, Case No. C070357***
State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al. (petition and cross-petition)
Sacramento County Superior Court Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166734
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
4. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166735
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
5. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS167447
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
6. *Fresno Unified School Dist. v. Commission on State Mandates*
Sacramento County Superior Court, Case No. 34-2017-80002768
[*Certificated School Employees – Parental Leave*, 16-TC-01]

Courts of Appeal:

1. *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022,

51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
2. *California School Board Association (CSBA) v. State of California et al.*
California Supreme Court, Case No S247266
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a).

The Commission adjourned into closed executive session at 10:26 a.m., pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION
REPORT FROM CLOSED EXECUTIVE SESSION**

At 10:35 a.m., the Commission reconvened in open session, and Chairperson Wong-Hernandez reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Hearing no further business, Chairperson Wong-Hernandez adjourned the meeting at 10:35 a.m.


Heather Halsey
Executive Director



ORIGINAL

**MEETING OF THE
STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES**



TIME: 10:00 a.m.

DATE: Friday, May 25, 2018

PLACE: Department of Finance
Redwood Room
915 L Street
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
Telephone 916.682.9482
Email FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

JACQUELINE WONG-HERNANDEZ
Representative for MICHAEL COHEN, Director
Department of Finance
(Chair of the Commission)

MARK HARIRI
Representative for JOHN CHIANG
State Treasurer
(Vice Chair of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for BETTY T. YEE
State Controller



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Item 10)

HEIDI PALCHIK
Assistant Executive Director

ERIC FELLER
Senior Legal Counsel
(Items 4, 5, and 6)

MATTHEW B. JONES
Commission Counsel
(Item 3)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

(continued)

KERRY ORTMAN
Program Analyst
(Item 8)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 9)

ELENA WILSON
Commission Staff



PUBLIC TESTIMONY

Appearing Re Item 3:

For Claimant City of Oxnard:

PATRICK J. DYER
Vice President
MGT Consulting Group
2251 Harvard Street, Suite 134
Sacramento, California 95815

For Department of Finance:

CHRIS HILL
Department of Finance
915 L Street
Sacramento, California 95814

Interested Party:

ANDY NICHOLS
President
Nichols Consulting
1857 44th Street
Sacramento, California 95819

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant Fairfield-Suisun Unified School District:

PATRICK J. DYER
Vice President
MGT Consulting Group

For Department of Finance:

DONNA FEREBEE
Legal Office
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 5 and Item 6:

For the State Controller's Office:

LISA KUROKAWA
Bureau Chief, Compliance Audits Bureau
Division of Audits
State Controller's Office
3301 C Street, Suite 725
Sacramento, California 95816

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ERRATA SHEET

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1 BE IT REMEMBERED that on Friday, May 25, 2018,
2 commencing at the hour of 10:00 a.m., thereof, at the
3 Department of Finance, Redwood Room, 915 L Street,
4 Sacramento, California, before me, DANIEL P. FELDHAUS,
5 CSR #6949, RDR and CRR, the following proceedings were
6 held:

7 --oOo--

8 CHAIR WONG-HERNANDEZ: Okay, it's ten o'clock; and
9 the meeting of the Commission on State Mandates will come
10 to order.

11 Heather, can you please call the roll?

12 MS. HALSEY: Mr. Adams.

13 MEMBER ADAMS: Here.

14 MS. HALSEY: Mr. Alex.

15 MEMBER ALEX: Here.

16 MS. HALSEY: Mr. Chivaro.

17 *(No response)*

18 MS. HALSEY: Mr. Hariri.

19 MEMBER HARIRI: Here.

20 MS. HALSEY: Ms. Wong-Hernandez.

21 CHAIR WONG-HERNANDEZ: Here.

22 Great. We have a quorum.

23 Are there any objections to -- I'm sorry, Item 1 is
24 the minutes.

25 Are there any objections to or corrections to the

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1 March 23rd, 2018, minutes? Or any questions from board
2 members?

3 MEMBER ADAMS: I would move to approve.

4 CHAIR WONG-HERNANDEZ: Okay, we have a motion.

5 MEMBER ALEX: Second.

6 CHAIR WONG-HERNANDEZ: And a second.

7 And any public comment before we vote?

8 *(No response)*

9 CHAIR WONG-HERNANDEZ: Okay, we have a motion and a
10 second.

11 All those in favor of adopting the minutes, signify
12 by saying "aye."

13 *(A chorus of "ayes" was heard.)*

14 CHAIR WONG-HERNANDEZ: All those opposed?

15 *(No response)*

16 CHAIR WONG-HERNANDEZ: And any abstentions?

17 *(No response)*

18 CHAIR WONG-HERNANDEZ: Okay, the minutes are
19 adopted.

20 MS. HALSEY: And now we will take up public comment
21 for matters not on the agenda.

22 Please note that the Commission cannot take action
23 on items not on the agenda. However, it can schedule
24 issues raised by the public for consideration at future
25 meetings.

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1 CHAIR WONG-HERNANDEZ: Great.

2 Any public comment?

3 *(No response)*

4 CHAIR WONG-HERNANDEZ: Okay, seeing none, before we
5 continue with Commission business, I'd like to ask our
6 court reporter, Mr. Daniel Feldhaus, and his wife, Cathy,
7 to come forward, as the Commission would like to
8 congratulate him on his new position as court reporter
9 for the South Dakota Third Judicial Circuit Court.

10 MS. SHELTON: You can't report.

11 CHAIR WONG-HERNANDEZ: You can't report during this
12 time.

13 *(Ms. Palchik read the Commission resolution, and
14 presented the resolution to Daniel Feldhaus.)*

15 CHAIR WONG-HERNANDEZ: Thank you again for your
16 service.

17 I guess we have to do business now, Heather.

18 MS. HALSEY: Since there are no items on consent
19 today, let's move to the Article 7 portion of the
20 hearing.

21 Will the parties and witnesses for Items 3, 4, 5,
22 and 6 please rise?

23 *(Parties/witnesses stood to be sworn or affirmed.)*

24 MS. HALSEY: Do you solemnly swear or affirm that
25 the testimony which you are about to give is true and

1 correct, based on your personal knowledge, information,
2 or belief?

3 *(A chorus of affirmative responses was heard.)*

4 MS. HALSEY: Thank you.

5 Item 2 is reserved for appeals of Executive Director
6 decisions; and there are no appeals to consider for this
7 hearing.

8 Commission Counsel Matt Jones will present Item 3,
9 a test claim on *Local Agency Employee Organizations:*
10 *Impasse Procedures II.*

11 MR. JONES: Good morning.

12 This test claim alleges reimbursable state-mandated
13 activities arising from amendments to the
14 Meyers-Milias-Brown Act by statutes enacted in 2011 and
15 2012, which added a fact-finding procedure after a local
16 agency and an employee organization reached an impasse
17 in their collective bargaining negotiations.

18 The Commission does not have jurisdiction to
19 reconsider the 2011 statute since that statute was the
20 subject of a prior final decision of the Commission in
21 *Local Agency Employee Organizations: Impasse Procedures,*
22 *15-TC-01,* which denied that claim.

23 Staff finds, however, that the 2012 test-claim
24 statute, construed in the context of the overall
25 statutory scheme, imposes state-mandated activities and

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1 costs when the employee organization requests
2 fact-finding as specified in the proposed decision.

3 Accordingly, staff recommends the Commission adopt
4 the proposed decision partially approving the test
5 claim, and authorize staff to make any technical,
6 non-substantive changes following the hearing.

7 Will the parties and witnesses please state your
8 names for the record?

9 MR. DYER: Patrick Dyer with MGT Consulting,
10 representing the test claimant, City of Oxnard.

11 MR. NICHOLS: Andy Nichols, state-mandated cost
12 consultant, as an interested party.

13 MR. HILL: Chris Hill, California Department of
14 Finance.

15 CHAIR WONG-HERNANDEZ: Great.

16 Who wants to start?

17 MR. DYER: Oh, I can start.

18 I just wanted to thank the Commission, Madam Chair,
19 and Members, for having a quorum on a Friday before a
20 three-day weekend. I was a little worried for a minute.

21 I'd also like to thank the Chief Counsel of the
22 Commission and all the Commission staff that worked on
23 this.

24 We filed a doozy. This was not straightforward. It
25 involved complicated issues with timeliness, a prior

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1 decision by this Commission, as well as a very complex
2 program. So thank you, all, for your work on this; and
3 the Claimant agrees with the staff recommendation and
4 would like the Commission to adopt the proposed decision.

5 CHAIR WONG-HERNANDEZ: Okay. Mr. Hill and
6 Mr. Nichols, anything to add?

7 MR. NICHOLS: I just wanted to actually make two
8 points of emphasis and just an observation.

9 Regarding -- I think it's on page 10, if I'm not
10 mistaken, towards the bottom third -- I just wanted to
11 support the Commission in the fact that staff, in its
12 analysis, noted the *City of Richmond* example that
13 Finance gave. That particular case in 1998, which was
14 the Fourth Appellate Court, that decision was based and
15 dealt with workers' compensation and also a death-benefit
16 situation. This test claim does not address that issue
17 at all. It's nowhere near involved. This is strictly
18 an employee-employer relationship.

19 And the Commission also noted the fact that not only
20 was that the case, that they have repeatedly -- this
21 Commission has approved, and I believe before, the Board
22 of Control, in the early eighties -- whether it was the
23 school and college district test claim that was
24 approved -- *Collective Bargaining*, which is still in
25 existence as a reimbursable mandate, *Peace Officer*

1 *Procedural Bill of Rights, Local Government Employee*
2 *Relations*, and I would even add to it, *Binding*
3 *Arbitration*, all deal with employee-employer relations
4 and are not subject to the *City of Richmond* appellate
5 case.

6 In fact, I would even state, regarding the fact that
7 this is essentially an add-on activity to the existing
8 requirements -- fact finding, that is -- to the already
9 approved *Local Employee Government Relations* -- because
10 both of those involved MMBA, Meyers-Milias-Brown Act,
11 and also PERB, the Public Employment Relations Board.

12 Lastly, one thing I do agree with Finance in their
13 letter dated April 13, is the fact that they state the
14 statute merely adds a new fact-finding element to the
15 Collective Bargaining program.

16 I actually believe that's the Commission's position,
17 and I would agree with that as well, that this is an
18 add-on activity that's new and unique, and therefore
19 state-mandated cost reimbursable.

20 Thank you very much.

21 CHAIR WONG-HERNANDEZ: Thank you.

22 Mr. Hill?

23 MR. HILL: I would just added that we respectfully
24 disagree with the committee staff's recommendation, the
25 Commission staff recommendation. The Department of

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1 Finance does not believe this creates a new program, and
2 we also do not believe it requires provision of a higher
3 level of service to the public.

4 CHAIR WONG-HERNANDEZ: Thank you.

5 Okay, any questions from members of the Commission?

6 *(No response)*

7 CHAIR WONG-HERNANDEZ: Okay, seeing none, any other
8 further discussion or public comment before we -- or do
9 I wait for the motion on that?

10 Okay, we'll take public comment on this issue.

11 *(No response)*

12 CHAIR WONG-HERNANDEZ: Seeing none, I'd be willing
13 to entertain a motion to adopt staff recommendation to --
14 where are folks?

15 MEMBER ALEX: I'll move staff recommendation.

16 MEMBER HARIRI: I'll second.

17 CHAIR WONG-HERNANDEZ: Okay. We have a motion and
18 a second to approve the staff recommendation.

19 MS. HALSEY: Call the roll?

20 CHAIR WONG-HERNANDEZ: Yes, please.

21 MS. HALSEY: Mr. Adams.

22 MEMBER ADAMS: Aye.

23 MS. HALSEY: Mr. Alex.

24 MEMBER ALEX: Aye.

25 MS. HALSEY: Mr. Hariri.

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1 MEMBER HARIRI: Aye.

2 MS. HALSEY: Mr. Wong-Hernandez.

3 CHAIR WONG-HERNANDEZ: Aye.

4 MS. HALSEY: Thank you.

5 MR. NICHOLS: Thank you.

6 CHAIR WONG-HERNANDEZ: The motion carries.

7 MS. HALSEY: Senior Commission Counsel Eric Feller
8 will present Item 4, the parameters on *Cal-Grant Opt-Out*
9 *Notice and Grade-Point Average Submission*.

10 MR. FELLER: Good morning.

11 The proposed parameters and guidelines address the
12 mandated activities performed by K through 12 school
13 districts for pupils in grades 11 and 12, to assist the
14 California Student Aid Commission in determining their
15 eligibility for Cal Grant A or B awards through which the
16 State provides financial assistance to college students
17 who meet eligibility criteria.

18 Proposed parameters and guidelines identified the
19 mandated activities approved by the Commission and the
20 test-claim decision and clarify activities that are not
21 eligible for reimbursement.

22 The State Controller's Office submitted comments
23 concurring with the draft expedited parameters and
24 guidelines.

25 The Claimant and the Department of Finance have not

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1 submitted comments.

2 Staff recommends the Commission adopt the decision
3 and proposed parameters and guidelines and recommends the
4 Commission to -- that the Commission authorize staff to
5 make technical non-substantive changes following the
6 hearing.

7 Will the parties and witnesses please state your
8 name for the record?

9 MR. DYER: Patrick Dyer from MGT Consulting,
10 representing the claimant, Fairfield-Suisun Unified
11 School District.

12 MS. FEREBEE: Donna Ferebee, Department of Finance.

13 CHAIR WONG-HERNANDEZ: Okay, great.

14 Mr. Dyer, go ahead.

15 MR. DYER: Yes, the staff, although were able to
16 make the trip for the Statement-of-Decision part of this
17 process -- we had a high-school registrar that was here
18 to answer questions about the program -- they were not
19 able to make it, as it's the end of the school year.

20 Staff from the District agree with the staff
21 recommendation and the proposed parameters and
22 guidelines. They wanted a few more activities; but
23 understand the position of Commission staff and the State
24 Controller. So we support the draft P's and G's.

25 CHAIR WONG-HERNANDEZ: Thank you, Mr. Dyer.

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1 Ms. Ferebee?

2 MS. FEREBEE: Yes, thank you.

3 The Department of Finance has no objections to the
4 draft P's and G's.

5 Thank you.

6 CHAIR WONG-HERNANDEZ: Okay. Any questions or
7 comments from members on the P's and G's?

8 *(No response)*

9 CHAIR WONG-HERNANDEZ: No?

10 Any public comment on this item?

11 *(No response)*

12 CHAIR WONG-HERNANDEZ: All right, I'd be willing to
13 entertain a motion.

14 MEMBER ADAMS: Madam Chair, I'd move the staff
15 recommendation.

16 MEMBER HARIRI: I'll second.

17 CHAIR WONG-HERNANDEZ: A motion and a second.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Mr. Alex.

21 MEMBER ALEX: Aye.

22 MS. HALSEY: Mr. Chivaro.

23 *(No response)*

24 MS. HALSEY: Mr. Hariri.

25 MEMBER HARIRI: Aye.

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1 MS. HALSEY: Ms. Wong-Hernandez.

2 CHAIR WONG-HERNANDEZ: Aye.

3 MS. HALSEY: Thank you.

4 CHAIR WONG-HERNANDEZ: Okay, the motion carries.

5 MS. HALSEY: Senior Commission Counsel Eric Feller
6 will present Item 5, an incorrect reduction claim on
7 *Integrated Waste Management*.

8 MR. FELLER: Good morning again.

9 The Controller's audit reductions were taken because
10 the claimant did not deduct offsetting savings from its
11 diversion of solid waste and the associated reduction of
12 disposal costs in accordance with the test-claim
13 statutes.

14 Staff finds the Controller timely initiated the
15 audit of fiscal year 2003-04 reimbursement claim and
16 timely completed the audit for all years. Staff also
17 finds that the Controller's reduction of costs claimed
18 for all years in the audit period except the first half
19 of fiscal year 2003-04 is correct as a matter of law, and
20 not arbitrary, capricious, or without evidentiary
21 support.

22 But the Controller's audit reduction for the first
23 half of fiscal year 2003-2004 is incorrect as a matter of
24 law because the Controller calculated the cost savings
25 using a 50 percent required diversion rate, when the law

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1 required only 25 percent.

2 The difference between the reduction and the amount
3 that it should have been reduced is \$2,431, which was
4 incorrectly offset and should be reinstated to the
5 claimant.

6 The Controller agreed with the proposed decision to
7 reinstate this amount.

8 Staff recommends the Commission partially approve
9 this IRC and requests the Controller reinstate \$2,431 to
10 the claimant. Staff also requests the Commission
11 authorize staff to make any technical, non-substantive
12 changes to the proposed decision following the hearing.

13 Will the parties and witnesses please state your
14 names for the record?

15 MS. KUROKAWA: My name is Lisa Kurokawa. I'm the
16 Bureau Chief of the Compliance Audits Bureau. And like
17 Mr. Feller just stated, we do agree with the Commission's
18 recommendations.

19 CHAIR WONG-HERNANDEZ: Okay, thank you,
20 Ms. Kurokawa.

21 Is there any public comment on this item?

22 *(No response)*

23 CHAIR WONG-HERNANDEZ: I'm going out of order now.
24 And any questions from Commission members?

25 *(No response)*

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1 CHAIR WONG-HERNANDEZ: No? Okay, well, I would
2 entertain a motion to approve staff recommendation -- or,
3 you know, whatever other crazy things you all want to do
4 on Dan's last day.

5 MEMBER HARIRI: Move approval.

6 CHAIR WONG-HERNANDEZ: Move approval? Okay.

7 MEMBER ALEX: Second.

8 CHAIR WONG-HERNANDEZ: And a second.

9 Go ahead.

10 MS. HALSEY: Mr. Adams.

11 MEMBER ADAMS: Aye.

12 MS. HALSEY: Mr. Alex.

13 MEMBER ALEX: Aye.

14 MS. HALSEY: Mr. Hariri.

15 MEMBER HARIRI: Aye.

16 MS. HALSEY: Mr. Wong-Hernandez.

17 CHAIR WONG-HERNANDEZ: Yes.

18 Great. Motion carries.

19 MS. HALSEY: Senior Commission Counsel Eric Feller
20 will present Item 6, an incorrect reduction claim on
21 *Integrated Waste Management*.

22 We have been notified that the District will not
23 have a representative present for this item.

24 MR. FELLER: So, again, the audit reductions were
25 taken because the claimant did not deduct offsetting

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1 savings from its diversion of solid waste and the
2 associated reduction of disposal cost in accordance with
3 the test-claim statutes.

4 Staff finds that the Controller's reduction of costs
5 claimed for all years in the audit period, except
6 calendar years 2002 and 2003, is correct as a matter of
7 law and not arbitrary, capricious, or without evidentiary
8 support. However, the Controller's finding that the
9 claimant did not exceed the mandated diversion rate in
10 2002 is incorrect as a matter of law because the
11 requirement to divert 50 percent of solid waste did not
12 become operative until January 1st of 2004. And the
13 Controller did not allocate the diversion rate for this
14 year as it had for other years in the audit period; so
15 that was arbitrary, capricious, and entirely lacking in
16 evidentiary support.

17 For 2003, the Controller's use of 50 percent to
18 calculate the allocated rate is incorrect as a matter of
19 law. The difference between the reduction and the amount
20 that should have been reduced for these years is \$22,884;
21 and that amount should be reinstated to the claimant
22 because it was incorrectly offset.

23 The Controller agreed with the proposed decision
24 to reinstate this amount. So staff recommends the
25 Commission partially approve this IRC and requests the

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1 Controller reinstate \$22,884 to the Claimant, and also
2 requests the Commission authorize staff to make any
3 technical, non-substantive changes to the proposed
4 decision following the hearing.

5 Again, will the parties and witnesses please state
6 your name for the record?

7 MS. KUROKAWA: My name is Lisa Kurokawa. I'm the
8 Bureau Chief of the Compliance Audits Bureau.

9 And like Mr. Feller just stated, we do agree with
10 the Commission's recommendation.

11 CHAIR WONG-HERNANDEZ: Thank you.

12 Questions from Commission members?

13 *(No response)*

14 CHAIR WONG-HERNANDEZ: Any public comment on this
15 item?

16 *(No response)*

17 CHAIR WONG-HERNANDEZ: Seeing none, is there a
18 motion?

19 MEMBER ADAMS: I would move the staff
20 recommendation.

21 CHAIR WONG-HERNANDEZ: Okay, thank you.

22 MEMBER HARIRI: Second.

23 CHAIR WONG-HERNANDEZ: Motion and a second.

24 Go ahead and take roll.

25 MS. HALSEY: Mr. Adams.

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1 MEMBER ADAMS: Aye.

2 MS. HALSEY: Mr. Alex.

3 MEMBER ALEX: Aye.

4 MS. HALSEY: Mr. Hariri.

5 MEMBER HARIRI: Aye.

6 MS. HALSEY: Ms. Wong-Hernandez.

7 CHAIR WONG-HERNANDEZ: Aye.

8 MS. HALSEY: Item 7 is reserved for County
9 applications for a finding of significant financial
10 distress, or SB 1033 applications.

11 No SB 1033 applications have been filed.

12 Program Analyst Kerry Ortman will present Item 8,
13 the Legislative Update.

14 MS. ORTMAN: Good morning.

15 SB 1498, the Local Government Omnibus Act of 2018,
16 was introduced by the Senate Governance and Finance
17 Committee on March 1st, 2018. This is an omnibus bill
18 which, among other things, proposes amending Government
19 Code section 17551 to specify that, for purposes of
20 filing a test claim based on the date of first incurring
21 increased costs, "within 12 months" means by June 30th of
22 the fiscal year following the fiscal year in which
23 increased cost were first incurred by the test claimant.
24 On May 10th, 2018, this bill passed to the Assembly.

25 We'll continue to monitor this bill.

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1 On May 11th, 2018, the Governor issued the 2018
2 May Revision to his budget, which includes the following
3 changes to state-mandated program funding:

4 The May Revision includes \$286 million in additional
5 funds, providing more than \$2 billion in one-time
6 discretionary funding to schools in 2018-19. The
7 funding, among other things, will be used to offset any
8 applicable mandates claims owed to school districts,
9 charter schools, and county offices of education.

10 It is anticipated that these resources, coupled with
11 more than \$5.8 billion in one-time Prop. 98 funding
12 provided to schools from 2014-15 to 2017-18 for the same
13 purposes, will reduce the outstanding mandate debt owed
14 to local educational agencies to \$972 million.

15 The May Revision also includes a one-time payment of
16 \$312.2 million General Fund to repay local agencies for
17 costs incurred for 14 mandates that have been identified
18 by the Legislature as expired or repealed.

19 The repayment amount represents the retirement of
20 state obligations to local agencies for costs incurred
21 between 2004 and 2011.

22 The majority of the repayment is owed as a result
23 of mandates associated with mental health services for
24 seriously emotionally disturbed children.

25 MS. HALSEY: Thank you, Kerry.

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1 CHAIR WONG-HERNANDEZ: Thank you.

2 Any questions for Kerry on the update?

3 *(No response)*

4 CHAIR WONG-HERNANDEZ: Okay, any public comment on
5 this item?

6 *(No response)*

7 CHAIR WONG-HERNANDEZ: Do we need to take public
8 comment at this time?

9 MS. HALSEY: No.

10 CHAIR WONG-HERNANDEZ: All right, well, then we'll
11 continue.

12 MS. HALSEY: Okay. Chief Legal Counsel Camille
13 Shelton will present Item 9, the Chief Legal Counsel
14 Report.

15 MS. SHELTON: Good morning.

16 Since our last hearing, we've had several recent
17 decisions issued by the Court.

18 The first one, the California Supreme Court has
19 denied the State's petition for review on the mandate
20 issue on the challenge to the Commission's decision in
21 *Discharge of Stormwater Runoff* test claim. So that case
22 goes back to the trial court now on the new-program,
23 higher-level-of-service, and the fee-authority issues.

24 Number two, the California Supreme Court has granted
25 CSBA's petition for review in the CSBA case on the

1 following two issues:

2 Number 1, does the State violate Article 13B,
3 section 6, of the California Constitution when it
4 identifies general education funding it already provides
5 to school districts and county offices of education as
6 offsetting revenue for the purpose of reimbursing state
7 mandates; and number 2, does the State violate
8 separation-of-powers principles when it allows general
9 education funding or special education funding to be
10 identified as offsetting revenues for state-mandated
11 purposes.

12 Number three, the Los Angeles County Superior Court
13 has upheld the Commission's decisions on the incorrect
14 reduction claims for *Handicapped and Disabled*, and
15 specifically found that the Commission does have
16 authority under its completeness regulations to determine
17 if an IRC is timely filed, even though the issue is not
18 initially raised by the State Controller's Office.

19 And the last, the Los Angeles County Superior Court
20 has granted the State's petition for writ of mandate on
21 the *Municipal Stormwater and Urban Runoff Discharge* claim
22 on remand from the California Supreme Court, finding that
23 the permit did not impose a new program or higher level
24 of service. The Court found that, although the permit
25 applied only to local government and was unique, the

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1 relevant state policy implemented by the permit is the
2 federal and state law prohibition against unlawful
3 discharges. That policy applies generally to all
4 residents and entities in the state.

5 We do have a litigation calendar coming up. Two
6 hearings.

7 On July 10th, the hearing in Los Angeles County
8 Superior Court on the *Seriously Emotionally Disturbed*
9 *Pupils* incorrect reduction claim will be heard.

10 On August 17th, 2018, the Sacramento County Superior
11 Court will hear the challenge from Fresno Unified School
12 District on the test claim for *Certificated Employee*
13 *School Employees' Parental Leave* program.

14 CHAIR WONG-HERNANDEZ: Thank you.

15 Any questions for Camille on any of this?

16 *(No response)*

17 CHAIR WONG-HERNANDEZ: Okay.

18 MS. HALSEY: Item 10 is the Executive Director
19 report.

20 Before I present my report, I would like to
21 introduce our newest staff attorney, Ms. Elena Wilson.

22 *(Mr. Chivaro entered the hearing room.)*

23 MS. HALSEY: Elena has extensive legal writing and
24 research experience, and is coming to us from a two-year
25 clerkship with the U.S. Attorney's office, where she

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1 worked on complex investigations of potential violations
2 of the Financial Institutions Reform, Recovery, and
3 Enforcement Act.

4 Ms. Wilson has also worked as a foreign-language
5 litigation specialist and has held several positions as
6 a judicial extern, research assistant, and legal intern.
7 And prior to attending law school in the U.S., Elena was
8 a practicing attorney in Russia and worked for the U.S.
9 Agency for International Development, focusing on
10 anti-corruption and judicial reform issues.

11 Welcome, Elena.

12 MS. WILSON: Thank you.

13 CHAIR WONG-HERNANDEZ: Welcome.

14 MS. HALSEY: In addition, I had planned to announce
15 that we had also hired another attorney who was to start
16 with the Commission next week. Unfortunately, though,
17 he has just informed us that he has taken another, more
18 lucrative position outside of state service and will not
19 be coming to the Commission. So we'll be recruiting
20 again for that position.

21 CHAIR WONG-HERNANDEZ: I'm sorry to hear that.

22 MS. HALSEY: Me, too.

23 But on the bright side, the Commission's budget was
24 approved by both budget subcommittees as proposed, and is
25 expected to be enacted as proposed; and the Governor's

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1 May Revision reflects that proposed budget.

2 After this hearing, there are 19 pending test
3 claims, 15 of which are regarding *Stormwater NPDES*
4 *Permits*; and we have one parameters and guidelines and
5 one statewide cost estimate also regarding *Stormwater*
6 *NPDES Permits*. And those are also on inactive status
7 pending the outcome of litigation regarding the
8 test-claim decisions underlying those matters.

9 In addition, there is one parameters and guidelines
10 amendment on inactive status pending the outcome of
11 litigation in the *CSBA* case, which is currently pending
12 before the California Supreme Court.

13 And finally, we have eight IRCs pending, four of
14 which were filed this fiscal year. So we're getting much
15 better about hearing these more timely.

16 As of today, Commission staff expects to complete
17 all currently pending test claims and IRCs by
18 approximately the January 8, 2020, Commission meeting,
19 depending on staffing and other workload.

20 And that's all I have.

21 CHAIR WONG-HERNANDEZ: Okay, thanks.

22 Any questions for Heather?

23 *(No response)*

24 CHAIR WONG-HERNANDEZ: All right, then we're going
25 to be recessing to closed executive session.

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1 We're going to meet in closed session pursuant to
2 Government Code section 11126(e) to confer with and
3 receive advice from legal counsel for consideration and
4 action, as necessary and appropriate, upon the pending
5 litigation listed on the published notice and agenda;
6 and to confer with and receive advice from legal counsel
7 regarding potential litigation.

8 The Commission will also confer on personnel matters
9 pursuant to Government Code section 11126(a)(1).

10 And we'll reconvene in open session in approximately
11 15 minutes.

12 *(The Commission met in closed executive session*
13 *from 10:26 a.m. to 10:35 a.m.)*

14 CHAIR WONG-HERNANDEZ: We have reconvened in open
15 session.

16 The Commission on State Mandates met in closed
17 executive session pursuant to Government Code section
18 11126(e)(2), to with confer with and receive advice from
19 legal counsel for consideration and action, as necessary
20 and appropriate, upon the pending litigation listed on
21 the published notice and agenda; and to confer with and
22 receive advice from legal counsel regarding potential
23 litigation; and pursuant to Government Code section
24 11126(a)(1) to confer on personnel matters.

25 With no further business to discuss, I will

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1 entertain a motion to adjourn.

2 Those in favor of adjourning, say "aye."

3 *(A chorus of "ayes" was heard.)*

4 CHAIR WONG-HERNANDEZ: All those opposed, say "no."

5 *(No response)*

6 CHAIR WONG-HERNANDEZ: This meeting is adjourned.

7 *(The Commission meeting concluded at 10:35 a.m.)*

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REPORTER' S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 14th day of June 2018.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter