

**ATTACHMENT J**  
**OTHER PLEADINGS**

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BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal Regarding  
Membership Exclusion of Foundation  
Employees by  
  
SANTA CLARA COUNTY HEALTH  
AUTHORITY AND KATHLEEN KING,  
  
Respondents.

Agency Case No. 2014-1087  
OAH Case No. 2015030359

**ADMINISTRATIVE LAW JUDGE MARY  
MARGARET ANDERSON**

**RESPONDENT SANTA CLARA COUNTY  
HEALTH AUTHORITY'S POST-  
HEARING BRIEF**

**I. INTRODUCTION**

There is no dispute that Cal-PERS follows the "common law" test of employment in determining who is an employee of a public agency. Under the common law, Respondent Kathleen King was correctly enrolled in Cal-PERS because she was jointly employed by a public entity, the Santa Clara County Health Authority, dba Santa Clara Family Health Plan ("the Plan" or "the Authority") and the Santa Clara County Health Foundation ("the Foundation"). The evidence amply demonstrates that King was jointly employed by both entities because the Authority:

- Hired King, reserving the right to terminate her at-will;
- Issued all of King's paychecks and W-2 forms showing only the Authority as her employer;
- Determined King's compensation;
- Directed specific assignments to accomplish;
- Controlled who King could hire and fire;

1.

- Required that King agree to the same policies, contracts, performance review process and complete the same training as Authority employees; and
- Provided King the same health and insurance benefits as similar Authority employees.

In short, King was fully integrated into the Authority's operation, and the Authority exercised substantial control over her conditions of employment. Consequently, Cal-PERS finding should be reversed, and a finding should issue that the Authority properly enrolled King in Cal-PERS during the relevant years.

## **II. KING WAS A COMMON LAW EMPLOYEE OF BOTH THE AUTHORITY AND THE FOUNDATION**

### **A. The Common Law Provides An Expansive Definition Of An "Employee"**

The parties agree that a common law test of employment applies to persons who qualify as "employees" permitted to enroll in Cal-PERS. *Metropolitan Water District of S. Calif. v. Superior Court*, 323 Cal.4th 491, 500-01 (2004). Under the common law, an "employee" or "servant" is "an agent employed by a master to perform service in his affairs where physical conduct in the performance of the service is controlled or is subject to the right to control by the master." Restatement of the Law (Second) of Agency §§ 2(2), 220(1). A "master" is defined as "a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service." *Id.*, § 2(1). In defining both terms, the employment relationship is defined by *either* the "right to control" *or* the *actual* control of the servant's performance by the master. *Id.*

Further, two entities can be joint employers of the same individuals under the common law. *NLRB v. Browning-Ferris Indus.*, 691 F. 2d 1117, 1124 (3d Cir. 1982); *Browning-Ferris Indus of Calif., Inc.*, 362 NLRB 186 at 12 (Aug. 27, 2015) (the Board's joint employer doctrine always incorporated the common law definition of an employee and the Restatement (Second) of Agency).

Two entities are joint employers of the same individual where "from the evidence it can be shown that they *share or co-determine* those matters governing essential terms and

1 conditions of employment.” *Id.* at 1124 (emphasis added). Thus, a joint employer relationship  
2 exists when **both** entities are involved in governing the employee’s conditions of employment. For  
3 instance, in *Browning-Ferris*, the two entities were joint employers because they **shared** the right to  
4 hire and fire the workers, the two entities **together** determined the employees’ compensation, both  
5 entities **shared** in the day to-day supervision of the workers, and both **shared** the power to approve  
6 the employees. *Id.* at 1124-25.

7           Moreover, the control required to establish an employment relationship can be  
8 exercised indirectly, and may be “very attenuated.” *Browning-Ferris*, 362 NLRB 186 at 14, *citing*  
9 Rest. Agency § 220(1), comm. d. A joint employment relationship also may exist when one  
10 employer directly controls the employee and the other entity indirectly controls him. *Id.*; *Schmidt v.*  
11 *Burlington Northern & Santa Fe Rwy. Co.*, 605 F. 3d 686, 689-90 (9th Cir. 2010). Thus, joint  
12 employers not only may co-determine terms and conditions of employment, they may exercise  
13 authority over different terms and conditions of employment, such as where one employer sets  
14 wages and hours while another assigns work. *Browning-Ferris*, 362 NLRB 186 at 15 n. 80.  
15 Alternatively, co-employers may each “affect different components of the same term,” such as one  
16 employer defining and assigning tasks, while the other employer supervises how those tasks are  
17 performed. *Id.*

18           There are many factors considered to determine whether an individual is an  
19 “employee” of an organization. Indicia of an employment relationship include the act of offering  
20 employment, determining the worker’s compensation and benefits, tax treatment of the relationship,  
21 assignment of work, directing when and where work is performed, discipline (including  
22 termination), performance reviews, and required training. *E.g., Int’l Ass’n of Machinists & Aero.*  
23 *Workers, Local Lodge 964 v. BF Goodrich*, 387 F.3d 1046, 1059 (9th Cir. 2004) (worker was  
24 common law employee because “[t]he structure of his work week is controlled by the company, and  
25 he reports to Goodrich’s personnel department, which must approve any overtime, sick leave, and  
26 vacation days he wishes to take.”); *Krasner v. Episcopal Diocese of Long Island, NY*, 420 F.Supp.2d  
27 321, 324-25 (E.D.N.Y. 2006) (direct or indirect payment of compensation factor in determining  
28 whether worker was an employee); *Shah v. Deconess Hosp.*, 355 F. 2d 496, 499 (6th Cir. 2002) (tax

1 treatment of worker's compensation relevant to employment determination under common law);  
2 *Doud v. Yellow Cab of Reno, Inc.*, 2015 U.S. Dist. LEXIS 40535, at \*40-41 (D. Nev. Mar. 30, 2015)  
3 (discipline of taxi drivers is indicia of employment relationship); *Estrada v. Fed Ex Ground Package*  
4 *System*, 154 Cal.App.4th 1, 7-9 (2007) (employment relationship established by worker's integration  
5 into the entity's operation, including imposition of policies and procedures in a handbook and  
6 manual, required training, setting of compensation, receipt of benefits, and annual performance  
7 review).

8 For instance, in *NLRB v. Browning-Ferris Indus.*, 691 F. 2d 1117, the court found that  
9 Browning-Ferris was a joint employer of certain workers because Browning-Ferris shared with the  
10 trucker brokers the right to hire and fire them, it determined their work hours, it shared the  
11 responsibility for determining compensation and supervision of the drivers' work, it devised rules  
12 governing the drivers' operation, and it provided the workers the same uniforms as Browning-Ferris  
13 employees wore. *Id.* at 1124-1125.

14 Similarly, a worker was held to be an "employee" under the common law when that  
15 entity hired Plaintiff, assigned Plaintiff her work projects, provided Plaintiff feedback regarding her  
16 work, dictated when and where Plaintiff would work, disciplined Plaintiff when necessary, and  
17 ultimately fired Plaintiff. *Drott v. Park Electrochemical Corp.*, 2012 U.S. Dist. LEXIS 54274, at  
18 \*15 (D. Ariz. Apr. 18, 2012) (denying motion to dismiss on basis plaintiff adequately alleged  
19 employment relationship).

20 The facts here also establish that King – like other Foundation personnel – was  
21 employed by two entities: the Authority and the Foundation.

22 **B. The Evidence Amply Demonstrates That King Was An "Employee" Of The**  
23 **Authority**

24 The various indicia of the relationship between King and the Authority establish that  
25 she was jointly employed by the Authority and the Foundation.

26 **The Work Of The Foundation And The Authority Were Integrated:** The  
27 interconnection between the Authority and the Foundation started from the top of the organizations.  
28 The Authority's CEO, Leona Butler, also was President of the Foundation. (Reporter's Transcript

1 (“RT”) 193:16-24) Ron Wojtaszek was treasurer of the Foundation at the same time he was CFO of  
2 the Authority. (RT 194:2-12) When Ms. Darrow was hired after the retirement of Ms. Butler to be  
3 CEO of the Authority, she also was a board member of the Foundation until 2010 or 2011. (RT  
4 130:10-21, 201:11-202:5)

5 The integration of the Authority and the Foundation was logical given the mission of  
6 the Foundation. The Foundation could only raise funds that the Authority could use for children  
7 enrolled in the Authority. (RT 117:4-118:20) The Foundation raised money from public entities,  
8 health care foundations, and individual donors to be used by the Authority, and the Foundation  
9 tracked whether those funds were spent on the right programs so that the Authority could report back  
10 to the donors. (RT 226:3-228:13) The Authority required the Foundation to adhere to the same  
11 regulatory restrictions as the Authority in conducting outreach, requiring California Department of  
12 Health Care Services’ approval of marketing flyers and attendance at health fairs and similar events,  
13 and the Foundation, like the Authority, was prohibited from conducting outreach at hospitals, clinics  
14 and other primary care facilities. (RT 238:11-241:23, Ex. A, Tab 64 at 275, Tab 65 at 281-288)<sup>1</sup>

15 As directed by the Authority’s CFO, the Foundation invoiced the County on behalf of  
16 the Authority, requiring the Foundation to send funds directly to the Authority. (RT 229:20-231:12,  
17 Ex. A, Tab 56) Also under the Authority’s direction, the Foundation prepared invoices – signed by  
18 the Authority’s CFO – to require the Foundation to pay monies to the Authority for premiums for the  
19 Healthy Kids’ members. (RT 231:13-232:12, Ex. A, Tab 56, at 254) Ms. Hennessy, although  
20 assigned to the Foundation, prepared a budget for the Authority’s staff to implement costs incurred  
21 by expanding services to certain adults not covered by the Affordable Care Act. (RT 228:14-229:13,  
22 Ex. A, Tab 55) Conversely, when the Foundation wanted to refund money back to certain school  
23 districts, it had to obtain approval from the Authority’s CEO, who directed the timing of when those  
24 funds would be released. (RT 241:24-243:2, Ex. A, Tab 66)

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26  
27 <sup>1</sup> Unless referenced as a “Cal-PERS” Exhibit, all exhibits referenced were submitted by Respondent  
28 King. Exhibit A refers to the binder submitted by King, with the tab designation referencing the  
exhibit tabs within the binder.

Ms. King's work was intertwined with the Authority. Ms. King's offer letter stated that "[i]n collaboration with the Chief Executive Officer of Santa Clara Family Health Plan," her "general duties" would be the responsibility for all fundraising efforts and the strategic, programmatic and financial management of the organization. (Cal-PERS Ex. 13) These fundraising efforts were *entirely* on behalf of the Authority. (RT 108:20-109:18; 111:23-112:2) Ms. King's work was to raise money primarily for children who could enroll in the "Healthy Kids" medical program offered *by and through* the Authority. (RT 114:7-25, 115:6-14, 116:9-117:3)

As further evidence of the interrelationship, Ms. King described how, at the specific direction of the Authority's CEO, she created a strategic plan to detail what the Authority and Foundation sought to accomplish jointly. (RT 118:10-119:22; Ex. A, Tab 8, 053) In addition, Authority CEO Elizabeth Darrow asked Ms. King to renegotiate the lease for certain office space used by the Authority, which Ms. King did. (RT 186:5-187:9, Ex. A, Tab 49 at 225)

As Ms. King testified, as Executive Director she did not have the authority to make decisions regarding staffing or compensation without the approval of the Authority's CEO. (RT 205:22-206:3) Even the Foundation's Board did not have unfettered authority to make those types of decisions. (RT 206:4-13) As Ms. King stated, "it was the way things had always worked." (*Id.*) No countervailing evidence was offered.

**Hiring:** King was hired as the Foundation Executive Director through an offer written by the Authority, signed by the Authority's Human Resources Director in March, 2008. (Cal-PERS Ex. 13) The offer letter indicated that "[o]n behalf of the *Santa Clara County Health Authority*" King was offered employment at a stated salary, with "all benefits afforded members of senior staff" of the Authority. (*Id.*; RT 122:11-24 [emphasis added]) No one from the Foundation signed the offer letter. (*Id.*) King's offer letter further noted that the Authority was an "at will employer," thus reserving the right for the Authority to terminate her employment at-will. (*Id.*)

This was not an isolated incident. The Authority – rather than the Foundation – issued offer letters to other persons to work on Foundation projects. Both Emily Hennessy (Ex. A, Tab 10, 057) and Ernesto Villalobos (Ex. A, Tab 11, 058) received offer letters from the Human Resources Directors of the Authority on Authority letterhead. Any modifications of these offers

1 could be made only by the Authority's human resources department, not the Foundation. (*Id.*) The  
2 offer letters stated that both Ms. Hennessy and Mr. Villalobos were required to comply with all  
3 **Authority** policies and procedures, including being at-will. (*Id.*) Once again, no one from the  
4 Foundation signed the offer letter. (*Id.*) The Foundation had no human resources department itself.  
5 (RT 122:25-123:7) Indeed, the Foundation did not draft the offer letters. (RT 129:10-16)

6 The Authority also exerted significant control over who the Foundation could hire.  
7 For instance, the Authority refused to allow Ms. King to convert a temporary employee into a  
8 permanent one. (RT 164:5-165:2) The Authority required that the Foundation utilize the services of  
9 an Authority employee. (RT 165:9-166:9, Ex. A, Tab 34) Conversely, Ms. King was required at the  
10 direction of the CEO of the Authority to transfer a Foundation staff member to the Authority, and  
11 Ms. King was not allowed to replace this staff member. (RT 166:24-168:15) The Authority on  
12 several occasions prevented Ms. King from hiring additional staff. (RT 169:7-20) As Ms. King  
13 expressed it, "I didn't even hire a temp without the Health Authority saying it was all right." (RT  
14 203:12-20)

15 **Compensation:**

16 Ms. King received her paychecks from the Authority, not the Foundation. (RT 125:1-  
17 10, 148:10-15; King Ex. A, Tab 21 at 120-132) The Authority was the only entity indicated on her  
18 paychecks to be her employer. (*Id.*) Ms. King's W-2 likewise identified the Authority as her sole  
19 employer. (RT 151:17-23) Ms. King received executive level life insurance at the same level as  
20 executives of the Authority. (RT 125:16-25)

21 In 2009 Ms. King's compensation was raised by the Foundation board chair and  
22 approved by the Authority's human resources director. (Ex. A, Tab 12, 062; RT 119:19-25; 131:4-  
23 132:13) Ms. King's compensation was increased in June 2010, as approved by Elizabeth Darrow,  
24 the CEO of the Authority. (RT 120:1-11; 136:13-137:2) No one from the Foundation approved that  
25 raise, or even was aware of it. (RT 136:13-137:2) This raise was an across-the-board salary merit  
26 increase for all Authority employees, which was applied to Ms. King as well. (RT 132:14-133:10)

27 Ms. King testified it was the Authority's CEO who controlled Ms. King's  
28 compensation, as evidenced by the fact that when Ms. King sought a raise, it was the Authority's



1 CEO, Ms. Darrow, who denied that request. (RT 141:2-16) Ms. Darrow's determination was final.  
2 (*Id.*) The Authority's compensation determinations were never reversed. (RT 141:17-20)

3 Ms. Hennessy similarly received pay increases as agreed to by the Authority and the  
4 Foundation. (RT 133:11-134:3, Ex. 12, 066) Ms. Hennessy also worked as the CFO for the  
5 Authority on an interim basis, and received a wage increase as agreed to by both the Authority and  
6 the Foundation for having performed well "for both organizations." (RT 134:7-135:1; Ex. A, Tab  
7 12, 067) She also received the same merit-based salary increase as Authority employees in 2010.  
8 (RT 135:2-16, Ex. A, Tab 13 068) That increase was approved by the CEO of the Authority, Ms.  
9 Darrow. (RT: 136:6-12) In 2012 Ms. Hennessy received an across-the-board salary merit increase,  
10 just like that given to all Authority employees. (RT 137:7-19) Mr. Villalobos likewise received a  
11 pay increase based on a pay range set by the Authority. (RT 137:20-138:4; Ex. A, Tab 14, 070)

12 The Foundation staff, including Ms. King, received the same health and insurance  
13 benefits as Authority senior staff. (RT 154:13-18, 155:18-156:1, Ex. A, Tab 26 at 156, Tab 28 at  
14 163, Tab 29 at 165-67, Tab 30 at 168-171) Ms. King was subject to the same open enrollment  
15 period. (RT 157:2-11) Life insurance was provided to Ms. King on the same terms as for Authority  
16 senior staff and administered by the Authority. (RT 157:12-158:17, Ex. A, Tab 27) No Foundation  
17 regular employee received any benefits other than what was provided to Authority employees. (RT  
18 160:9-17)

19 **Employment Policies And Conditions of Work:**

20 As her offer letter stated, Ms. King's work was in collaboration with, and often under  
21 the direction of, the CEO of the Authority. (RT 121:2-122:7) The Authority controlled various  
22 conditions of employment for Ms. King and Foundation personnel. Ms. King was subject to the  
23 same employee policies as Authority employees, being required to acknowledge and agree to its  
24 terms. (RT 154:19-155:1, 163:11-13) For four years Ms. King needed approval of the Authority's  
25 CEO to take vacation. (RT 153:12-154:4) Ms. King had to sign the same confidentiality agreement  
26 as Authority employees. (RT 172:14-19, 180:5-11, Ex. A, Tab 38) The Foundation never had any  
27 employment policies separate from the Authority's. (RT 163:5-10)

28 The Authority exercised control over the hours of work as well. The Authority would

1 inform Foundation staff when they could leave early, such as before a holiday weekend, without  
2 seeking the permission of the Foundation Executive Director. (RT 170:3-8, 175:13-23, Ex. A, Tab  
3 41 at 198) Company picnics and holiday luncheons included the Foundation. (RT 170:22-25-171:8,  
4 Ex. A, Tab 37 at 193) Staff meetings likewise included Foundation staff. (RT 173:23-174:18)

5 **Performance Reviews:**

6 Ms. King and Foundation supervisors were required to use the same process as the  
7 Authority to review the job performance of employees. (RT 135:17-136:5) The Authority's human  
8 resources director trained Ms. King on how to conduct performance reviews using the Authority's  
9 forms that contained the Authority's logo. (*Id.*, 142:6-13; 142:20-143:10; 146:5-21; Ex. A, Tab 16,  
10 072, Tab 17, 091) The Foundation never conducted performance reviews using a different form.  
11 (RT 142:14-19) The Authority's human resources director reviewed and approved the evaluation  
12 form completed by Ms. King before it could be presented to Ms. Hennessy or any other Foundation  
13 employee. (RT 143:23-144:15) Ms. King, like all Authority managers, received reminders from the  
14 Authority regarding the required completion of these performance reviews of staff. (Ex. A, Tab 17,  
15 87-88)

16 **Discipline/Termination:**

17 Consistent with controlling the performance review process, the Authority also  
18 exerted control over discipline and termination of Foundation personnel. As noted above, the offer  
19 letters expressly stated that Foundation employees served at-will, and the same employment policies  
20 applicable to Authority employees applied to Foundation staff. Thus, when Ms. King wanted to  
21 terminate a Foundation staff member, the Authority's HR department interceded and prevented that  
22 from occurring. (RT 160:18-162:6)

23 **Other Indicia Of An Employment Relationship:**

24 King was enrolled under the Authority's workers' compensation benefit insurance.  
25 (RT 125:11-15) Ms. King and Foundation staff were required to complete the same training with  
26 respect to sexual harassment, HIPAA compliance, privacy, Knox-Keene Act compliance, and  
27 security as Authority employees. (RT 180:17-183:25; Ex. A, Tab 44, 207-08, Tab 45, 209-15, Tab  
28 46, 217-19, Tab 47, 220-22) Changes in employee status with respect to positions, hours,

1 compensation and benefits were determined by the Authority, not the Foundation. (RT 129:17-22)

2 **Shared Services:**

3 Ms. King and persons working for the Foundation used office space provided by the  
4 Authority, and the particular office space was determined by the Authority CEO, not Ms. King. (RT  
5 123:18-124:3) Ms. King and the Foundation used the same email system as the Authority, with the  
6 same domain designation (Kk@scfhp.com). (RT 124:4-11) The Authority provided office supplies  
7 and the computer server, purchasing only desktop computers, but ones chosen by the Authority. (RT  
8 124:12-25) Although the Foundation paid \$1,000 a month for services (RT 126:1-14), the market  
9 value of those services far surpassed that nominal fee. (RT 126:18-127:9, 243:23-244:13, 245:2-13)

10 **Formal Written Documents Do Not Override The Reality Of The Relationship**

11 Cal-PERS ignores all of this compelling evidence that the Authority shared control of  
12 Ms. King's working conditions with the Foundation. Cal-PERS focuses instead exclusively on the  
13 by-laws of the Foundation, arguing that Ms. King reported only to the Foundation's board, and the  
14 two entities were indicated to be separate and independent entities. (First Amended Statement of  
15 Issues, 4-5) Cal-PERS presented no evidence that the bylaws were *enacted*, offering only an  
16 unsigned document. (Cal-PERS Ex. 10) But even assuming this document was officially adopted, a  
17 common law employment relationship is not determined solely by what is stated in a formal  
18 document prepared by counsel. As the Restatement of Agency (Second) declares, it is *either* the  
19 *reality* of the control exercised by the master or the formal right to control. Respondents do not need  
20 to establish *both*.

21 This principle has long been recognized. For instance, a retailer was held to be the  
22 joint employer of the delivery drivers of a separate trucking company despite a contractual provision  
23 that stated that the trucking company was in "full control over the direction of [its] employees."  
24 *Teamsters Local Union No. 688 (Fair Mercantile Co., Inc.)*, 211 NLRB 496 (1974). In so finding,  
25 the Board noted that "notwithstanding the intended relationship manifested by the written agreement  
26 between Fair and Sweeting, in practice, Fair's management assumed in its own interest substantial  
27 employer functions and shared or codetermined with Sweeting matters governing the essential terms  
28 and conditions of the employment of the employees herein." *Id.* at 497. The reality of the parties'

1 circumstances trumped any written agreement to the contrary.

2 California courts have recognized the same principle. An employment relationship  
3 has been found repeatedly despite a formal signed agreement that clearly disavowed any such  
4 relationship. *E.g., Estrada*, 154 Cal.App.4th at 10-11. As that court noted, “[t]he parties’ label is  
5 not dispositive and will be ignored if their actual conduct establishes a different relationship.” *Id.*  
6 *Accord, S.G. Borello & Sons, Inc. v. Dep’t of Indus. Relations*, 48 Cal. 3d 341, 358 (1989).

7 The same is true here. The evidence demonstrated that the Authority treated the  
8 Foundation employees as if they were Authority employees in many respects. Foundation  
9 employees were not only hired by the Authority, they were required to adhere to its policies,  
10 practices, training, and procedures. The undisputed testimony was that the Authority controlled  
11 hiring and firing, as was compensation and benefits. The reality of this shared relationship cannot be  
12 countermanded by a document that was ignored in practice.

### 13 **I. CONCLUSION**

14 The evidence amply demonstrates that Respondent King was employed by both the  
15 Authority and the Foundation. The operations of the Foundation were integrated into the Authority,  
16 since the sole function of the Foundation was to raise and oversee funds entirely for the benefit of  
17 the Foundation and its health programs. Foundation staff shared not just the Authority’s office space  
18 and computer systems, but also all of the Authority’s employment policies and procedures, its  
19 training, performance review processes, and even “across-the-board” compensation increases. The  
20 Authority either shared, co-determined or controlled myriad features of King’s employment,  
21 including offering her the job, determining her compensation, benefits, and vacation schedule,  
22 directing some of her work, and controlling who she could hire and terminate. The Authority was  
23 listed not only on King’s offer letter and paychecks, but also on her W-2.

24 Under the common law definition of “employee,” the inescapable conclusion is that  
25 Ms. King in fact was an “employee” of the Authority as well as the Foundation. Accordingly, Cal-  
26 PERS erred in determining that Ms. King was erroneously enrolled in Cal-PERS, and its audit  
27 finding to the contrary should be reversed.

1 Dated: October 7, 2015

2  
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**PROOF OF SERVICE**

I am employed in the County of San Francisco, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is Littler Mendelson, P.C., 650 California Street, 20th Floor, San Francisco, California 94108.2693. On October 7, 2015, I served the foregoing document entitled:

• **RESPONDENT SANTA CLARA COUNTY HEALTH AUTHORITY'S POST-HEARING BRIEF**

on interested parties in this action as follows:

- ☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick-up box or office designated for overnight delivery, and addressed as set forth below.
- ☒ I caused the above-referenced document(s) to be sent to the addressee(s) at the e-mail address(es) below on the date stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is [chgoodman@littler.com](mailto:chgoodman@littler.com).

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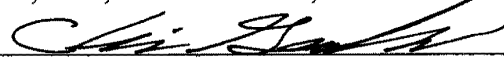
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 7, 2015, at San Francisco, California.



Charisse Goodman

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