

**ATTACHMENT A**

**LOS ANGELES COUNTY SUPERIOR COURT ORDER**

**AMENDED SEE PAGES 4 AND 5**  
**Exhibit "F"**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

DATE / TIME JUDGE	December 20, 2019 / 9:00 A.M. James P. Arguelles	DEPT. NO. CLERK	17 Slort
<b>CHARLES A. THERRIEN,</b>  Petitioner,  v.  <b>CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT  SYSTEM and DOES 1 through 50, Inclusive,</b>  Respondents.		Case No.: 34-2019-80003058	
Nature of Proceedings:		Interlocutory Order Remanding the Case to the CalPERS Board	

This is an action for administrative mandamus pursuant to CCP § 1094.5. The issue is whether Petitioner Charles A. Therrien (Therrien) is eligible for industrial disability PERS retirement. Therrien served the California Department of Forestry and Fire Protection (CalFire) between 1988 and 2007. In the face of disciplinary charges, Therrien applied to Respondent CalPERS for a service retirement in 2007. The application was granted. In 2017, Therrien applied to convert his service retirement into an industrial disability retirement. CalPERS rejected the application without considering whether Therrien was actually disabled. Therrien appealed the rejection, but the administrative law judge (ALJ) and CalPERS Board (Board) affirmed.

In its adopted written decision (Decision), the Board concluded that judicial and precedential administrative authorities rendered Therrien ineligible for a PERS disability retirement. (See Decision, pp. 5-9.) Broadly speaking, these authorities bar a PERS member who is separated from employment from receiving a disability retirement absent the potential for reinstatement with the employer. In some of the cases, there was no such potential because the employee had executed a settlement agreement precluding further employment. Therrien did not expressly forfeit further employment with CalFire as a means to settle the discipline pending when he secured a service retirement. When the Board denied Therrien's appeal for disability retirement, it did so with an understanding that Therrien had not promised to forego future employment with CalFire.

When Therrien filed the writ action at bench, he attached several exhibits to his petition. One of the attachments appears to be an agreement that Therrien signed in 2011 (the "2011 Agreement"). (See Pet., Exh., F.)<sup>1</sup> The 2011 Agreement appears to memorialize the settlement of FEHA causes of action that Therrien leveled against CalFire and CalFire employees in Riverside County Superior Court in 2008. Therrien tendered the 2011 Agreement in the administrative proceedings giving rise to the case at bench, but only as evidence that workplace stress had rendered him disabled. (See Admin. Record 00202, lines 13-22.) The ALJ and the Board decided that the 2011 Agreement was irrelevant to the limited issues before them, and the 2011 Agreement was not admitted into the record.

Like the Board in the proceedings below, the parties initially approached this writ action without regard to the 2011 Agreement. When the court discovered the 2011 Agreement attached to the petition, however, it questioned whether the provisions precluding Therrien's reinstatement with CalFire might provide a straightforward basis on which to resolve the case. The court requested supplemental briefing, and the parties agreed in their submissions that the 2011 Agreement was properly before the court. Based on rules of contractual interpretation, Therrien nonetheless argued that provisions in the 2011 Agreement preserved his right to a disability retirement notwithstanding other provisions barring his reinstatement.

On 12/19/19, the court posted a tentative ruling on the merits of Therrien's writ petition. For the first time at oral argument on 12/20/19, Therrien's counsel asserted that the 2011 Agreement never took effect. Therrien's counsel referred to recently discovered information establishing that the 2011 Agreement was drafted for "internal" purposes only. He tendered a witness to testify in this regard.

After an on-the-record discussion with counsel, the court proposed remanding the case to the ALJ/Board for additional findings about the validity and impact of the 2011 Agreement. Both sides agreed to the proposal.<sup>2</sup>

Accordingly, the court REMANDS this matter to the Board to reconsider its Decision in light of the 2011 Agreement. The Board, or any ALJ assigned in the first instance, shall consider whether the 2011 Agreement ever took effect and, if so, any impact it has on Therrien's eligibility for an industrial disability retirement. Nothing in this order is otherwise intended to limit or control the Board's discretion.

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<sup>1</sup> The copy of the 2011 Agreement in the court's files does not contain any countersignature on behalf of CalFire.

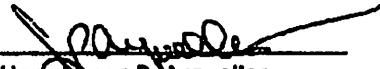
<sup>2</sup> The court initially contemplated a final order remanding this case such that further writ review would require the commencement of a new superior court case. After conducting legal research, the court elects to enter an interlocutory order that will allow the parties to return to this court without the need for a new case. (See *Voices of Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 525-532.)

Once the Board has complied with this order, the parties may return directly to this court for further proceedings.

SO ORDERED.

Dated: December 20, 2019



  
Hon. James P. Arguelles  
California Superior Court Judge  
County of Sacramento

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

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing Interlocutory Order Remanding the Case to the CalPERS Board by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

Matthew G. Jacobs, General Counsel  
Preet Kaur, Senior Staff Attorney  
CalPERS  
P. O. Box 942707  
Sacramento, CA 94229-2707

Yuri Kvichko, Esq.  
Law Office of Yuri Kvichko  
520 Capitol Mall, Ste 150  
Sacramento, CA 95814

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: December 23, 2019

Superior Court of California,  
County of Sacramento

By:   
S. SLORT  
Deputy Clerk

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This nine (9) page Settlement Agreement and Release of Claims ("AGREEMENT") is made and entered into by and between CHARLES THERRIEN ("THERRIEN") and the State of California, California Department of Forestry and Fire Protection ("CAL FIRE"). THERRIEN and CAL FIRE are collectively referred to herein as "the parties." Former Defendants Steve Curley ("CURLEY") and Brad Moore ("MOORE") join in and sign this AGREEMENT solely for the purposes of agreeing to waive their Judgment against THERRIEN for \$740.00 in costs, and to have a Notice of Satisfaction of Judgment entered on the terms described below in paragraph 3.

### **RECITALS**

A. THERRIEN is a former employee of CAL FIRE who received a Notice of Adverse Action of dismissal from employment with CAL FIRE effective November 16, 2007. Prior to dismissal from employment, he applied for retirement and his application was accepted and the retirement became effective on November 15, 2007, the day before his dismissal would have become effective. THERRIEN filed various actions against CAL FIRE and its employees, including a lawsuit filed on May 19, 2008 which is still pending against defendant CAL FIRE in the Riverside County Superior Court, Case No. RIC 499660, alleging various claims including ones arising under the Fair Employment and Housing Act, Government Code section 12940 *et seq.*, but following demurrer to Second Amended Complaint, the only remaining claim is one cause of action against CAL FIRE for age discrimination. That litigation shall be referred to herein as the "2008 LAWSUIT". Judgment in favor of the dismissed individual defendants MOORE and CURLEY was entered by the Superior Court on January 24, 2011, which was amended on March 10, 2011 to include an award of costs against THERRIEN in the amount of \$740.00.

B. In 2007, THERRIEN filed appeals with the State Personnel Board ("SPB"), including an appeal of his alleged dismissal, and two requests to file charges against colleagues at CAL FIRE including Brad Moore, Steve Curley, Stan Lake and John Hawkins. Those requests to file charges were assigned SPB Case No. 07-1266N. The appeal of his dismissal, SPB Case No. 07-4839, was dismissed on September 3, 2008, and THERRIEN filed a Petition for Rehearing which the SPB denied on April 28, 2009. THERRIEN did not exhaust judicial remedies with respect to Case No. 07-4839. On January 20, 2009, the SPB issued a decision denying the requests to file charges, SPB Case No. 07-1266N. Collectively, THERRIEN's SPB appeal and his two requests to file charges will be referred to herein as the "SPB ACTIONS".

C. On July 24, 2009, THERRIEN challenged the SPB's denial of his requests to file charges by filing a Petition for Writ of Mandate in the Riverside Superior Court, Case No. RIC 531930 (herein, the "2009 ACTION"). That Petition was heard and denied by the

Court, and judgment in favor of the SPB and the real parties in interest CAL FIRE. MOORE and CURLEY was entered by the Court on July 8, 2010.

D. On July 17, 2007, and September 11, 2007, THERRIEN filed applications for restraining orders against MOORE with the Riverside Superior Court, which were assigned case numbers HEC 025777 and RIC 480162. Both of those applications resulted in denial of THERRIEN's requests for temporary restraining orders and injunctions/restraining orders.

E. Aside from the 2008 LAWSUIT, THERRIEN has no other lawsuits or actions pending or planned against CAL FIRE or any current or former agent or employee of CAL FIRE, before any administrative body or any state or federal court.

F. CAL FIRE denies and continues to deny in every particular way, each and every claim, allegation or contention made by THERRIEN in connection with the aforementioned legal actions. THERRIEN denies the allegations and contentions which have been made by CAL FIRE against him, including those made in the Notice of Adverse Action. However, in the interests of avoiding further litigation and without admitting any liability or wrongdoing whatsoever, the parties desire to fully and finally settle, resolve, compromise and discharge all differences, controversies or claims between them, whether known or unknown, which may have arisen before the execution of this AGREEMENT, including but not limited to the 2008 LAWSUIT.

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants and promises contained herein, the parties agree as follows:

### **AGREEMENT**

1. **Denial of Liability; Sufficiency of Consideration**

The sufficiency of the consideration for this AGREEMENT is acknowledged by all parties. This AGREEMENT is the result of a negotiated compromise, which the parties believe and acknowledge is fair and equitable. A primary consideration for this AGREEMENT is the parties' interest in buying peace from the expense and trouble of litigation, in furtherance of which, the parties shall bear their own fees and costs.

2. **Dismissal of the 2008 LAWSUIT with Prejudice**

Upon exchange of THERRIEN's, CAL FIRE's, CURLEY's and MOORE'S signatures executing this AGREEMENT, THERRIEN shall file with the Riverside County Superior Court an executed Request for Dismissal with Prejudice of the 2008 LAWSUIT, including all parties and all causes of action.

**3. Notice of Satisfaction of Judgment**

Upon receipt of the entered Dismissal with Prejudice of the 2008 LAWSUIT, CURLEY and MOORE will file a Notice of Satisfaction of Judgment, in full, relating to the cost Judgment in their favor that was entered against THERRIEN in the 2008 LAWSUIT. CURLEY, MOORE and CAL FIRE agree that this will extinguish any and all liability that THERRIEN has under that Judgment.

**4. No Effect Upon THERRIEN's Retirement or Medical Benefits**

THERRIEN is receiving retirement benefits and medical benefits from the State of California, by virtue of his retirement from for CAL FIRE. This AGREEMENT does not have and is not intended to have any effect upon THERRIEN's receipt of or eligibility for medical and retirement benefits. Those benefits are not the subject of this AGREEMENT.

**5. Representation and Warranties**

Each party hereto represents and warrants to the other party that he or it has the full power and authority to execute, deliver and perform under this AGREEMENT, and that any needed consent or approval from any other person has been obtained. Each party shall indemnify and hold the other party or parties harmless with respect to any and all liability, cost, expense, or claim with respect to, pertaining to, or arising from any assertion of any obligation or lack of such power or authority.

**6. General Releases**

**a. General Release by THERRIEN of CAL FIRE and its Agents and Employees**

THERRIEN fully and forever releases, acquits, and discharges CAL FIRE, and any of its current or former agents and employees, including without limitation Steve Curley, Brad Moore, Stan Lake, John Hawkins, CAL FIRE's staff counsel and CAL FIRE's counsel at the Office of the Attorney General, from all claims, causes of action, obligations, damages, liabilities, costs, attorneys' fees, judgments, liens and indebtedness of any nature whatsoever, whether legal, equitable, administrative, or otherwise and whether or not now known, suspected or claimed, which heretofore existed or now exist, including, without limitation on the generality of the foregoing, any and all claims which relate to, arise from, or are attributable to THERRIEN's employment with CAL FIRE, as well as all matters which were or could have been raised in the 2008 LAWSUIT, the SPB ACTIONS and the 2009 ACTION.

THERRIEN understands and acknowledges that he is waiving any and all rights he may have had, now has, or in the future may have, to pursue any and all remedies available to him under any claims or causes of action relating in any way to THERRIEN's employment with CAL FIRE, the SPB ACTIONS or the 2009 ACTION, including but not limited to claims of discrimination and harassment on the basis of race, age and disability, retaliation, constructive termination, failure to reasonably accommodate, failure to engage in the

interactive process, unlawful retaliation, Whistleblower retaliation, physical injury, emotional distress, failure to pay wages, bonuses, benefits, vacation pay, new worker's compensation claims, or other compensation of any sort, violation of constitutional rights, harassment, appeals of his dismissal, or other wrongful conduct and/or violation of any statutes, rules, regulations, or ordinances, whether federal, state or local, including, without limitation, claims under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Family Medical Leave Act, Family Care Leave Act, and the California Fair Employment and Housing Act.

Note however that per paragraph 4, above, this AGREEMENT will not have any effect upon THERRIEN's retirement, retirement benefits, or the medical benefits he is receiving in retirement.

**b. General Release by CAL FIRE of THERRIEN**

CAL FIRE fully and forever releases, acquits, and discharges THERRIEN and any of his current or former agents or counsel, from all claims, causes of action, obligations, damages, liabilities, costs, attorneys' fees, judgments, liens and indebtedness of any nature whatsoever, whether legal, equitable, administrative, or otherwise and whether or not now known, suspected or claimed, which heretofore existed or now exist, including, without limitation on the generality of the foregoing, any and all claims which relate to, arise from, or are attributable to THERRIEN's employment with CAL FIRE, as well as all matters which were or could have been raised in the 2008 LAWSUIT, the SPB ACTIONS, or the 2009 ACTION.

**7. Waiver of Civil Code Section 1542**

The parties understand and expressly waive any rights or benefits available under Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The parties understand and acknowledge that the significance and consequence of this waiver of Section 1542 of the California Civil Code is that even if either of them should suffer additional damages relating in any way to any claims or rights released in this AGREEMENT, including any related in any way to the 2008 LAWSUIT, the SPB ACTIONS or the 2009 ACTION, or THERRIEN's employment with CAL FIRE, the parties will not be permitted to make any claim for those damages. Furthermore, the parties acknowledge that they intend these consequences even as to claims for damages that may now exist as of the date of this AGREEMENT, but which are not known to exist, and which, if known, would

materially affect their decision to execute these releases, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.

**8. Promise Not To Sue**

THERRIEN promises and agrees that he will never sue CAL FIRE or any of its divisions, area offices, facilities or subdivisions, or any of its past, present or future employees, agents, attorneys, or representatives or otherwise institute or participate in any legal or administrative proceeding against the CAL FIRE or any of its divisions, area offices, facilities or subdivisions, or any of its past, present or future employees, agents, attorneys, or representatives, relating in any way to his employment with CAL FIRE for any act which occurred prior to the signing of the AGREEMENT.

**9. No Future Employment with CAL FIRE**

THERRIEN agrees that he will not in the future apply for or otherwise seek any employment with CAL FIRE, nor will he ever accept employment with CAL FIRE. Should THERRIEN apply for employment with CAL FIRE in the future, the parties agree that this AGREEMENT constitutes good cause for CAL FIRE to reject THERRIEN's application. If THERRIEN is ever appointed to employment with CAL FIRE again, he may be immediately dismissed without any time limit as to when that dismissal occurs, and he waives the right to appeal or bring action upon such dismissal with the SPB or any other administrative agency, and he waives the right to sue upon such dismissal in any state or federal court.

**10. Period To Consider Terms of Agreement**

THERRIEN acknowledges that this Agreement was presented to him on May 13, 2011, and that he is entitled to have a twenty-one (21) day period in which to consider this Agreement. THERRIEN acknowledges that he has obtained the advice and counsel from a legal representative of his choice and executes this Agreement having had sufficient time within which to consider its terms. THERRIEN represents that if he executes this Agreement before twenty-one (21) days have elapsed, he does so voluntarily, upon the advice and with the approval of his legal counsel, and that he voluntarily waives any remaining consideration period.

**11. Right to Revoke Agreement**

THERRIEN understands that after executing this Agreement, he has the right to revoke it within seven (7) days after his execution of it. THERRIEN understands that this Agreement will not become effective and enforceable unless the seven (7) day revocation period passes and THERRIEN does not revoke the Agreement in writing. THERRIEN understands that this may not be revoked after the seven (7) day revocation period has passed. THERRIEN understands that any revocation of this Agreement must be made in writing and delivered to the Attorney General's Office counsel of record for DOJ at the following address:

Theodore S. Dracar, Deputy Attorney General  
State of California, Department of Justice  
Office of the Attorney General  
110 West "A" Street, Suite 1100  
San Diego, CA 92101  
Facsimile: (619) 645-2581

within the seven (7) day period. A facsimile copy of the waiver is sufficient to meet the requirements of this provision.

THERRIEN understands and acknowledges that because of this seven day revocation period, he will not be entitled to any benefits under this Agreement until (1) the 21 day review period either passes or is waived by THERRIEN and (2) the 7 day revocation period has passed. At that time, he will receive all benefits of this Agreement including CAL FIRE's waiver of recovery of costs and attorneys' fees. If, however, THERRIEN fails to enter into the Agreement or revokes the Agreement, litigation of the 2008 LAWSUIT will recommence and he will be subject to the existing judgment for costs and all claims that CAL FIRE might make for costs and attorneys' fees if it prevails.

**12. No Confidentiality**

This AGREEMENT is not confidential and the parties understand and acknowledge that CAL FIRE will comply with its legal obligations in disclosing or reporting terms of this settlement. If an inquiry is made concerning the AGREEMENT, the party receiving the inquiry may provide accurate factual information regarding the terms of this AGREEMENT.

**13. Change in Fact**

The parties to this AGREEMENT fully understand and declare that if the facts from which this AGREEMENT are found hereafter to be different from the facts now believed to be true, the parties hereto assume the risk of such possible differences in fact, and hereby agree that the AGREEMENT shall be, and will remain, effective notwithstanding such differences in fact.

**14. Warranty**

THERRIEN warrants and represents that except for the ACTION, he has no pending complaints, claims or charges against CAL FIRE or any of its current or former employees with any state or federal court or any local, state or federal agency based on any events occurring prior to the date of execution of this AGREEMENT.

**15. The Parties Will Bear Their Respective Attorneys' Fees and Costs**

Each party shall bear his or its costs and attorneys' fees and costs in connection with the 2008 lawsuit, the 2009 ACTION and the SPB ACTIONS, and all matters arising out of or pertaining to those actions. Each party agrees that it will not seek to recover costs and/or attorneys' fees from the other party for any costs and/or attorneys' fees.

**16. Voluntary Consent to Agreement**

Each party declares that she or it knows and understands the contents of this AGREEMENT and that this AGREEMENT has been executed voluntarily and free from duress or undue influence on the part of any person or entity.

**17. Agreement Reviewed with Legal Counsel**

Each party declares that he or it has been advised by counsel for purposes of this settlement and have conferred with their respective attorneys regarding the meaning of the terms and provisions of this AGREEMENT and agree to be bound by it.

**18. Mutual Drafting Contribution**

This AGREEMENT has been drafted on the basis of the parties' mutual contribution to the drafting language and it is not to be construed against any party as being the drafter of this AGREEMENT. Should there be any finding of ambiguity in any provision of this AGREEMENT, such ambiguity shall not be construed against any party herein.

**19. Binding Effect**

This AGREEMENT shall, to the extent applicable, be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**20. Applicable Law**

This AGREEMENT shall be interpreted in accordance with, governed by, and enforced in all respects by the laws of the State of California.

**21. Entire Agreement**

This AGREEMENT contains all the terms and conditions agreed upon by the parties regarding the subject matter of this AGREEMENT. The parties hereby represent and acknowledge that in executing this AGREEMENT, they do not rely and have not relied upon any representation or statement made by any of the parties or by any of the parties' agents, attorneys, or representatives with regard to the subject matter, basis, or effect of this AGREEMENT, or otherwise, other than those specifically stated in this written agreement. This AGREEMENT supersedes any previous oral agreement or understanding between the parties regarding any matter contained in it.

**22. Amendments and Modifications Must Be In Writing**

Any amendment or modification of this AGREEMENT must be in writing and signed by each party.

**23. Disputes Regarding Agreement**

The parties further understand and agree that if, at any time, a violation of any term of this AGREEMENT is asserted by any party hereto, that party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including but

not limited to damages and interest. The parties agree that the exclusive venue for litigation of any disputes arising under this AGREEMENT shall be the Superior Court for the County of Riverside. Attorneys' fees and costs shall be awarded to the prevailing party.

**24. Severability of Agreement**

Should any provision of this AGREEMENT be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term, or provision shall not be deemed to be a part of this AGREEMENT.

**25. Execution in Counterparts**

This AGREEMENT may be executed in counterparts and shall be binding on all parties as if the original was signed by all parties. All original signatures shall be transmitted to and kept by counsel for CAL FIRE.

**26. Binding Settlement Authority**

This AGREEMENT shall be binding on and inure to the benefit of the heirs, descendants, legatees, devisees, executors, administrators, legal representatives, successors, successors-in-interest, assigns, assignors, insurers, attorneys, owners, guarantors, sureties, partners, members, servants, employees, employers, agents, officers, directors, shareholders, beneficiaries, predecessors, affiliates, subsidiaries, related or associated entities or individuals, and any other person or entity claiming under or through THERRIEN in any manner. **CAUTION: PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND RELEASE CONTAINS A RELEASE OF KNOWN AND UNKNOWN CLAIMS. THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT AND RELEASE. ITS CONTENTS HAVE BEEN FULLY EXPLAINED TO THEM BY THEIR ATTORNEYS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT, AND TO SIGN THIS AGREEMENT, ARE CONTAINED IN THIS AGREEMENT. THE SIGNATORIES ARE SIGNING THIS AGREEMENT VOLUNTARILY. SO AGREED:**

Dated: 5/17/11

CHARLES THERRIEN

  
PETITIONER, PLAINTIFF, APPELLANT

Dated: \_\_\_\_\_

**CALIFORNIA DEPARTMENT OF FORESTRY  
AND FIRE PROTECTION**

**REAL PARTY IN INTEREST, RESPONDENT,  
DEFENDANT**

**By Dale Hutchinson, Region Chief**

Dated: \_\_\_\_\_

**BRAD MOORE**

**Judgment Creditor and former DEFENDANT**

Dated: \_\_\_\_\_

**STEVE CURLEY**

**Judgment Creditor and former DEFENDANT**

**APPROVED AS TO FORM AND CONTENT:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**DANIEL KODAM, ESQ.**  
Attorney for THERRIEN

Dated: \_\_\_\_\_

**KAMALA D. HARRIS, Attorney General**  
**CHRISTINE MERSTEN, Supervising Deputy**  
Attorney General

\_\_\_\_\_  
**THEODORE S. DRGAR, ESQ.**  
Deputy Attorney General  
Attorneys for CAL FIRE, MOORE, CURLEY

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