

PUBLIC MEETING
COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.
DATE: Friday, July 25, 2014
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
(Commission Chair)
Representative for MICHAEL COHEN, Director
Department of Finance

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER A. HALSEY
Executive Director
(Items 2, 9, and 12)

JASON HONE
Assistant Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 11)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

GINY CHANDLER
Senior Commission Counsel
(Item 4 and Item 5)

ERIC FELLER
Senior Commission Counsel
(Item 3)

KERRY ORTMAN
Program Analyst
(Item 10)



PUBLIC TESTIMONY

Appearing Re Item 3:

For Claimant County of Santa Barbara:

ANNE M. RIERSON
Senior Deputy County Counsel
Office of County Counsel
County of Santa Barbara
105 E. Anapamu Street, Suite 201
Santa Barbara, California 93101

RENEE BISCHOF
Chief Deputy Registrar of Voters
County of Santa Barbara
4440-A Calle Real
Santa Barbara, California 93110

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3: *continued*

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance
915 L Street, Suite 1280
Sacramento, California 95814

LEE SCOTT
Department of Finance
915 L Street, Eighth Floor
Sacramento, California 95814

Appearing Re Item 4:

For Claimants Los Rios Community College District,
et al.:

KEITH B. PETERSEN
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For State Controller's Office

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816

JIM VENNEMAN
Audit Manager
Division of Audits
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4: *continued*

For Department of Finance:

DONNA FEREBEE
Department of Finance
915 L Street, Suite 1280
Sacramento, California 95814

Appearing Re Item 5:

For Department of Finance:

SUSAN GEANACOU
Department of Finance

LEE SCOTT
Department of Finance



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1 The first item is the minutes from the May 30th
2 meeting.

3 Are there any corrections or objections to
4 the minutes?

5 *(No response)*

6 CHAIR ORTEGA: Any public comment on the
7 minutes?

8 *(No response)*

9 MEMBER CHIVARO: Move approval.

10 CHAIR ORTEGA: Okay.

11 MEMBER RAMIREZ: Second.

12 CHAIR ORTEGA: Motion by Mr. Chivaro, second by
13 Mr. Ramirez.

14 All in favor of the adoption of the minutes?

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

16 CHAIR ORTEGA: No objections or abstentions?

17 *(No response)*

18 CHAIR ORTEGA: The next item.

19 MS. HALSEY: Is public comment for items -- for
20 matters not on the agenda.

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

25 CHAIR ORTEGA: Okay, any public comment

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1 generally?

2 (No response)

3 CHAIR ORTEGA: Seeing none, we'll move on.

4 MS. HALSEY: The next item is the proposed
5 consent calendar, which consists of Items 7 and 8.

6 CHAIR ORTEGA: Okay, any objections to the
7 proposed consent calendar?

8 MEMBER OLSEN: I'll move the consent calendar.

9 MEMBER CHIVARO: Second.

10 CHAIR ORTEGA: Okay. Is there any public
11 comment on the consent calendar?

12 (No response)

13 CHAIR ORTEGA: Okay, all in favor of the
14 adoption of the consent calendar?

15 (A chorus of "ayes" was heard.)

16 CHAIR ORTEGA: Any objections or abstentions?

17 (No response)

18 CHAIR ORTEGA: None.

19 The consent calendar is adopted.

20 MS. HALSEY: Moving on to the Article 7 portion
21 of the hearing.

22 First, to note that Item 6 has been postponed
23 to the September 26th, 2014, hearing, at the request of
24 the claimant.

25 Will the parties and witnesses for Items 2, 3,

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1 4, and 5 please rise?

2 *(Parties and witnesses stood to be sworn*
3 *or affirmed.)*

4 MS. HALSEY: Do you solemnly swear or affirm
5 that the testimony which you are about to give is true
6 and correct, based on your personal knowledge,
7 information, or belief?

8 *(A chorus of affirmative responses was*
9 *heard.)*

10 MS. HALSEY: Thank you.

11 Item 2 is reserved for appeals of executive-
12 director decisions. There are no appeals to consider
13 under Item 2 for this hearing.

14 Item 3 is a test claim on *Post Election Manual*
15 *Tally*, which will be presented by Commission Counsel Eric
16 Feller.

17 MR. FELLER: Good morning.

18 This test claim seeks reimbursement for
19 emergency regulations that require new standards and
20 procedures to conduct post election manual tallies of
21 votes for races with very narrow margins of victory
22 during elections conducted in whole or in part on a
23 voting system.

24 The emergency regulations were effective for
25 about six months in 2008 and 2009, coinciding with the

1 November 2008 presidential election, but claimant alleged
2 costs for only about a two-week period in November of
3 2008.

4 Staff finds that the new requirements imposed
5 by the test-claim regulations are mandated by the State.
6 Although having a voting system is discretionary under
7 state law, counties are required by the Federal Help
8 America Vote Act to have at least one voting system at
9 each polling place during federal elections to be
10 accessible for individuals with disabilities.

11 In addition, the regulations became effective
12 only 16 days before the November 2008 presidential
13 election so counties could not, as a practical matter,
14 stop using their approved voting systems to avoid
15 test-claim regulations because there was not time to
16 obtain approval for a different voting system before the
17 election.

18 So staff finds that the test-claim regulations
19 impose a reimbursable state mandate for a manual tally
20 as specified in the analysis.

21 Would the parties and witnesses please state
22 your names for the record?

23 MS. RIERSON: Good morning. I'm Anne Rierson.
24 I'm a senior deputy county counsel for the County of
25 Santa Barbara.

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1 MS. BISCHOF: Good morning. My name is Renee
2 Bischof. I am the Chief Deputy Registrar of Voters and
3 the claimant representative for the County of
4 Santa Barbara.

5 MR. SCOTT: Lee Scott, Department of Finance.

6 MS. GEANACOU: Susan Geanacou, Department of
7 Finance.

8 CHAIR ORTEGA: Ms. Rierson or Ms. Bischof,
9 whoever is going to start, go ahead.

10 MS. RIERSON: I'll start.

11 We want to thank Commission staff for their
12 analysis and work on this test claim; and we do not have
13 additional comments at this time, but Renee is here in
14 case the Commission has any questions.

15 CHAIR ORTEGA: Okay. Department of Finance?

16 MS. GEANACOU: Thank you.

17 Susan Geanacou.

18 We appreciate the Commission staff reviewing
19 and responding to our most recently filed comments; and
20 we have nothing further to offer at this time.

21 CHAIR ORTEGA: Okay, are there any questions
22 from Board members?

23 *(No response)*

24 CHAIR ORTEGA: Ms. Ramirez?

25 MEMBER RAMIREZ: More like a comment.

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1 This is some of the most complicated stuff I
2 have ever read in my life. So congratulations,
3 everybody.

4 MEMBER CHIVARO: I'll move approval of the
5 staff recommendation.

6 MEMBER RIVERA: Second.

7 CHAIR ORTEGA: Okay, Mr. Chivaro moves approval
8 of the staff recommendation, and Mr. Rivera seconds.

9 Is there any additional comment?

10 Mr. Saylor?

11 MEMBER SAYLOR: I appreciate the playing out of
12 the concept of practical compulsion in this case; and I
13 think that makes good sense here.

14 CHAIR ORTEGA: Any other public comment on this
15 item?

16 Heather?

17 MS. HALSEY: Do we have a motion and a second?
18 I wasn't sure.

19 CHAIR ORTEGA: Yes. Motion by Mr. Chivaro,
20 second by Mr. Rivera.

21 Please call the roll.

22 MS. HALSEY: Mr. Alex?

23 MEMBER ALEX: Aye.

24 MS. HALSEY: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

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1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ortega?

4 MEMBER ORTEGA: Aye.

5 MS. HALSEY: Ms. Ramirez?

6 MEMBER RAMIREZ: Aye.

7 MS. HALSEY: Mr. Rivera?

8 MEMBER RIVERA: Aye.

9 MS. HALSEY: Mr. Saylor?

10 MEMBER SAYLOR: Aye.

11 MS. HALSEY: The motion carries.

12 CHAIR ORTEGA: Okay, Item 4.

13 MS. HALSEY: Senior Commission Counsel Giny
14 Chandler will present Item 4, a parameters and guidelines
15 amendment on *Enrollment Fee Collection and Waivers*.

16 MS. CHANDLER: Good morning, Chair and
17 Commission Members.

18 This is a request to amend the parameters and
19 guidelines for the *Enrollment Fee Collection and Waiver*
20 *Program* to adopt a reasonable reimbursement methodology
21 in lieu of filing detailed documentation of actual costs.

22 The proposed RRM is in the form of two proposed
23 unit costs associated with calculating and collecting the
24 student enrollment fee and for waiving student fees.

25 Staff finds that the evidence in the record is

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1 not sufficient to support a finding that the proposed
2 unit cost RRM reasonably represents the costs mandated by
3 the State for this program. Thus, staff recommends that
4 the Commission adopt the decision to deny the request to
5 amend the parameters and guidelines.

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

8 MR. PETERSEN: Keith Petersen, representing the
9 requesting 16 districts.

10 MR. SPANO: Jim Spano, Audit Bureau Chief,
11 Division of Audits, State Controller's Office.

12 MR. VENNEMAN: Jim Venneman, Audit Manager,
13 State Controller's Office.

14 MS. FEREBEE: Donna Ferebee, Department of
15 Finance.

16 CHAIR ORTEGA: Okay, Mr. Petersen?

17 MR. PETERSEN: We'll stand on the written
18 submissions.

19 CHAIR ORTEGA: Okay. Mr. Spano or -- go ahead.

20 MR. VENNEMAN: Jim Venneman, State Controller's
21 Office.

22 The Controller's office supports staff's
23 conclusion and recommendation.

24 CHAIR ORTEGA: Okay. Any questions or comments
25 from the Commission?

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1 Yes, go ahead.

2 MS. FEREBEE: Yes, thank you.

3 The Department of Finance also concurs with the
4 staff recommendation.

5 Thank you.

6 CHAIR ORTEGA: Thank you.

7 Any comments from the public on this item?

8 *(No response)*

9 CHAIR ORTEGA: Okay.

10 MEMBER CHIVARO: Move approval of staff
11 recommendation.

12 MEMBER OLSEN: Second.

13 CHAIR ORTEGA: Motion by Mr. Chivaro, second by
14 Ms. Olsen.

15 Call the roll.

16 MS. HALSEY: Mr. Alex?

17 MEMBER ALEX: Aye.

18 MS. HALSEY: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MS. HALSEY: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HALSEY: Ms. Ortega?

23 MEMBER ORTEGA: Aye.

24 MS. HALSEY: Ms. Ramirez?

25 MEMBER RAMIREZ: Aye.

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1 MS. HALSEY: Mr. Rivera?

2 MEMBER RIVERA: Aye.

3 MS. HALSEY: Mr. Saylor?

4 MEMBER SAYLOR: Aye.

5 MS. HALSEY: The motion carries.

6 Thank you.

7 MS. HALSEY: Item 5, Senior Commission Counsel
8 Giny Chandler will present Item 5, the adequate showing
9 hearing for mandate redetermination on *Fire Safety*
10 *Inspections of Care Facilities*.

11 MS. CHANDLER: This is a request by the
12 Department of Finance to redetermine the Commission's
13 statement of decision on the *Fire Safety Inspections of*
14 *Care Facilities Program* on the basis that a subsequent
15 change in law authorize sufficient fee authority to cover
16 the full costs of the mandated activities, thus,
17 modifying the State's liability.

18 This first hearing is to determine whether the
19 Department of Finance has made an adequate showing that a
20 subsequent change in law has occurred that modifies the
21 State's liability for the program.

22 Staff finds that the Department of Finance has
23 made an adequate showing that a subsequent change in law
24 has modified the State's liability, thus, requiring the
25 adoption of a new test-claim decision.

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1 Staff recommends that the Commission adopt the
2 decision and direct staff to provide notice of the second
3 hearing to determine if a new test-claim decision shall
4 be adopted to supersede the previously adopted test-claim
5 decision.

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

8 MR. SCOTT: Lee Scott, Department of Finance.

9 MS. GEANACOU: Susan Geanacou, Department of
10 Finance.

11 CHAIR ORTEGA: Okay, Department of Finance?

12 MS. GEANACOU: Thank you.

13 We are the requester here. We appreciate the
14 staff's time and effort in analyzing our request. And
15 we agree with the outcome of the staff recommendation to
16 proceed to the second phase of the request for a new
17 test-claim decision.

18 CHAIR ORTEGA: Okay, any questions or comments
19 from the Commission?

20 *(No response)*

21 CHAIR ORTEGA: No?

22 Any public comment on this item?

23 *(No response)*

24 CHAIR ORTEGA: Seeing none...

25 MEMBER SAYLOR: Move approval.

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1 MEMBER CHIVARO: Second.

2 CHAIR ORTEGA: Moved by Mr. Saylor, seconded by
3 Mr. Chivaro.

4 MS. HALSEY: Mr. Alex?

5 MEMBER ALEX: Aye.

6 MS. HALSEY: Mr. Chivaro?

7 MEMBER CHIVARO: Aye.

8 MS. HALSEY: Ms. Olsen?

9 MEMBER OLSEN: Aye.

10 MS. HALSEY: Ms. Ortega?

11 MEMBER ORTEGA: Aye.

12 MS. HALSEY: Ms. Ramirez?

13 MEMBER RAMIREZ: Aye.

14 MS. HALSEY: Mr. Rivera?

15 MEMBER RIVERA: Aye.

16 MS. HALSEY: Mr. Saylor?

17 MEMBER SAYLOR: Aye.

18 MS. HALSEY: Thank you.

19 The motion carries.

20 As previously noted, Item 6 has been postponed
21 to the September 26th, 2014, hearing, at the request of
22 claimant.

23 Item 7 and Item 8 were on the consent calendar.

24 Item 9 is reserved for county applications for
25 a finding of significant financial distress, or SB 1033

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1 applications. No SB 1033 applications have been filed.

2 Now, Commission Staff Member Kerry Ortman will
3 present Item 10, the Legislative Update.

4 MS. ORTMAN: Good morning.

5 Commission staff continues to monitor
6 legislation for bills that might affect the mandates
7 process. There are no new bills to report on at this
8 time.

9 MS. HALSEY: And also, the bills that we were
10 monitoring all died. We were monitoring bills, but now
11 there are none.

12 MEMBER RAMIREZ: Can I ask?

13 CHAIR ORTEGA: Yes.

14 MEMBER RAMIREZ: We, in the last hearing or
15 before that, discussed some communication with the
16 legislators about the whole process and maybe
17 fine-tuning.

18 Has anything happened with that?

19 MS. HALSEY: No. I didn't really interpret
20 that as direction to go to the Legislature. If it is,
21 then we can do that. But I just interpreted it more as...

22 MEMBER RAMIREZ: Just general complaining?

23 MS. HALSEY: Yes.

24 Well, maybe hoping it would get to the right
25 ears, but...

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1 MEMBER RAMIREZ: Yes, I think my concern was
2 that people -- claimants, perhaps, didn't seem to -- some
3 folks didn't seem to get what our role was in terms of
4 changing the results. And a lot of the answer lies with
5 the Legislature providing the funding that the different
6 agencies and jurisdictions need to conduct their work.
7 And we're not here to make the law; just to interpret it,
8 so...

9 Anyway, I'll leave it there. See what other
10 folks want to say or do -- or not.

11 MS. HALSEY: Thank you.

12 Item 11, Chief Legal Counsel Camille Shelton
13 will present the Chief Legal Counsel report.

14 MS. SHELTON: Good morning.

15 Since our last Commission hearing, there have
16 been two new lawsuits filed. The first one is County of
17 Los Angeles challenging the Commission's test-claim
18 decision on *Public Guardianship* claim.

19 The second one is Coast Community College
20 District challenging the Commission's test-claim decision
21 and parameters and guidelines in the *Minimum Conditions*
22 *for State Aid Claim*.

23 The Court has set two hearings:

24 The first one on the *Upper Santa Clarita River*
25 *Chloride Requirements*. That writ hearing is scheduled

1 for December 16th.

2 And a hearing on a motion for summary
3 adjudication in the *California School Board Association*
4 case is scheduled for November 4th.

5 CHAIR ORTEGA: Okay, any questions or comments
6 on the counsel report?

7 (No response)

8 CHAIR ORTEGA: Okay.

9 MS. HALSEY: Item 12 is the Executive
10 Director's report. And this is my first report for this
11 fiscal year, so I wanted to just recap our prior fiscal
12 year.

13 In the 2013-14 year, the Commission completed:
14 13 test claims; eight parameters and guidelines; ten
15 parameter-and-guideline amendments; .5 request for
16 reconsideration, since those requests require two
17 hearings; 12 statewide cost estimates; 12 mandate
18 redeterminations; and 22 incorrect-reduction claims.

19 Overall, 45 items were heard and decided by the
20 Commission in 2013-14 versus 34 items in 2012-2013.

21 This is a significant increase, which has
22 resulted from our increased staffing as a result of the
23 BCP that we had approved for the 2013-14 fiscal year, and
24 also the fact that we had fewer new staff members this
25 year, and also the many measures Commission staff has

1 been undertaking to increase efficiency in the office.

2 And these measures include, among other things:

3 Combining the staff analysis and proposed
4 statement of decision into a single document, which we're
5 now calling the "proposed decision."

6 Also, our e-filing process, which in addition
7 to reducing the burden on filing parties, makes all of
8 the documents available to the attorneys in an electronic
9 format, and that seizes the analysis process.

10 I would like to thank the Commission staff for
11 their substantial efforts in reducing the backlog this
12 year. It has certainly been a team effort, and every
13 member of staff has played a role in increasing the
14 productivity of the Commission.

15 With regard to the budget, the Commission's
16 operation budget, as adopted, was funded as originally
17 proposed in the Governor's budget. The 2014 budget also
18 includes \$34 million to fund local agency mandates, and
19 nearly \$251 million to fund the costs of K-12 and
20 community-college mandates.

21 In addition, the budget includes \$100 million
22 to pay down the amount owed on pre 2004-2005 local agency
23 mandate claims. So that's kind of a big deal. It's the
24 first such payment we've had in a long time.

25 The following local agency mandates were newly

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1 funded in the 2014 budget: *Local Agency Ethics* and
2 *Tuberculosis Control*.

3 There were no newly suspended local agency
4 mandates in the 2014 budget.

5 And while *Behavioral Intervention Plans*, or
6 *BIPs*, was not listed as a funded mandate in the budget,
7 the Budget Act does provide that funds appropriated for
8 special education instruction shall first be considered
9 offsetting revenues for any reimbursable mandated cost
10 claim for *BIPs*.

11 With regard to the remaining eight new
12 education mandates, they are each funded at \$1,000. And
13 that's also known as "*deferred funding*" in the 2014
14 budget. And they are also included, though, in the block
15 grant.

16 In addition, SB 858 added section 17581.8 to
17 the Government Code. And this new section appropriates
18 just over \$287 million and \$49.5 million to K-12 and
19 community colleges in one-time funds, respectively.
20 The new section provides that these funds shall first
21 satisfy outstanding claims for state-mandated program
22 costs for any fiscal year.

23 And then with regard to the tentative agenda
24 items, please see the executive director's report to see
25 if your item is coming up over the course of the next few

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1 hearings.

2 CHAIR ORTEGA: Okay, any questions or comments?

3 *(No response)*

4 CHAIR ORTEGA: No?

5 I think that's it. We will now recess into
6 closed session.

7 The Commission will meet in closed executive
8 session pursuant to Government Code section 11126(e), and
9 we will confer also on personnel matters.

10 We will reconvene in about 15 minutes.

11 *(The Commission met in closed executive
12 session from 10:17 a.m. to 10:31 a.m.)*

13 CHAIR ORTEGA: Okay, the Commission met in
14 closed session to confer with and receive advice from
15 legal counsel.

16 We are returning to open session.

17 Do we have anything else from the commissioners
18 on open session?

19 *(No response)*

20 CHAIR ORTEGA: Any other public comments?

21 *(No response)*

22 CHAIR ORTEGA: Seeing no other public, I don't
23 think so.

24 Oh, Ms. Ramirez?

25 MEMBER RAMIREZ: Just real quickly.

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1 I know at one point we were talking about
2 digitizing and scanning all of the records of the cases.
3 And I just wondered what the status is of that.

4 MR. HONE: I can speak to that.

5 We have been making a lot of progress. We
6 first started with everything that was pending before the
7 Commission; and that is fully digitized. And we're
8 working our way backwards through past decisions. And,
9 in fact, we had just hired a student assistant to help
10 with that project, because it's not just scanning, it's
11 putting together sometimes really complicated stories and
12 histories of old decisions.

13 And he was here -- he's not in the room now,
14 but he is doing a fantastic job, and he's helping a lot,
15 and so we're moving forward, absolutely.

16 MEMBER RAMIREZ: Thank you for that.

17 I also felt remiss in not also supporting the
18 staff's tremendous work in getting us up to speed here.
19 So unsung heroes, I think.

20 Thank you.

21 CHAIR ORTEGA: Okay, anything else?

22 All right, with that, we'll be adjourned.

23 Thank you.

24 *(The meeting concluded at 10:31 a.m.)*

25 --oOo--

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 18th of August 2014.



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