

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



April 4, 2014

Mr. Tom Dyer
Department of Finance
915 L Street
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Request for Additional Briefing and Evidence on Costs Pertaining to Housing Potential Sexually Violent Predators**
Sexually Violent Predators, CSM-4509 (12-MR-01)
Welfare and Institutions Code Sections 6602;
Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
California Department of Finance, Requester

Dear Mr. Dyer:

The proposed parameters and guidelines for the *Sexually Violent Predators* program, which were before the Commission at the March 28, 2014 hearing, provided for reimbursement to counties for costs incurred for the county's designated counsel and indigent defense counsel to prepare for and attend a probable cause hearing. In addition, and based in part on evidence in the record introduced by the County of San Diego, the proposed parameters and guidelines provided for reimbursement for investigative costs, and for expert witnesses, as necessary to aid county designated counsel and indigent defense counsel to prepare for the state-mandated probable cause hearing as reasonably necessary activities to perform the mandated program. Finally, the proposed parameters and guidelines provided for transportation of potential sexually violent predators to and from a secured facility pertaining to the state-mandated probable cause hearing.

However, the proposed parameters and guidelines did not provide for reimbursement for housing potential sexually violent predators (SVPs) pending or during the probable cause hearing. The final staff analysis and proposed statement of decision reasoned that because Proposition 83 required a potential SVP to be held in custody pending trial, and because the state-mandated probable cause hearing occurs at some time prior to trial, there is no higher level of service or incremental increase in costs inherent in holding a potential SVP in custody pending the probable cause hearing. Although County of San Diego did submit comments requesting reimbursement for housing a potential SVP pending or during the probable cause hearing, Commission staff did not find that those comments adequately demonstrated that housing for this purpose imposes a higher level of service than housing while awaiting trial and therefore staff did not identify an incremental increase in service or costs attributable to housing a potential SVP pending a probable cause hearing.

Moreover, the new test claim decision adopted by the Commission at the December 6, 2013 expressly struck reimbursement for housing from the previously approved activity, as follows:

Therefore, the following activities are required as modified, only for probable cause hearings:

¶...¶

Activity 8 – ~~Transportation and housing~~ for each potential sexually violent predator from at a secured facility to the probable cause hearing while the

~~individual awaits trial~~ on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

And, the new test claim decision expressly denied reimbursement, pursuant to section 17556(f) for “[t]ransportation and housing for each potential sexually violent predator at a secured facility *while the individual awaits trial* on the issue of whether he or she is a sexually violent predator,” on the theory that these activities were necessary to complete the trial required before commitment under the Sexually Violent Predator law, and thus necessary to implement Proposition 83.

The day before the March 28, 2014 hearing on this matter, Timothy Barry, representing the County of San Diego, contacted Commission staff to clarify whether the reasoning for denying housing while awaiting the probable cause hearing was properly supported by an *express denial* of housing costs pending or during a probable cause hearing in the new test claim decision, or whether the finding was based only on the decision’s silence on the question of housing pending a probable cause hearing. At the hearing, Craig Osaki, on behalf of the County of Los Angeles, and Timothy Barry, on behalf of the County of San Diego, introduced argument and evidence pertaining to costs of housing potential SVPs pending or during the probable cause hearing.

Specifically, Mr. Osaki explained on the record that the stay in county custody prior to a probable cause hearing is separable from the later period of time in county custody pending trial. Mr. Osaki indicated that a potential SVP might, in some cases, be returned to state custody between the probable cause hearing and the trial. In light of those comments, staff recommended that the Commission not adopt the proposed parameters and guidelines as written, but allow staff to reexamine the evidence, and solicit further briefing on the issues raised. The Commission decided to postpone its decision on the parameters and guidelines and directed staff to request additional information and briefing on the issue of whether the activities and costs associated with housing a potential SVP pending a probable cause hearing impose a higher level of service (i.e. require housing the potential SVP for a longer duration or require a separate stay in county custody, as suggested at the hearing) than would be required to house the same individual pending trial.

Commission staff therefore requests the parties and interested parties to submit additional briefing and evidence on whether activities and costs pertaining to housing potential SVPs, pending or during a probable cause hearing, impose a higher level of service than that required to house the potential SVP during trial and, if so, to specifically isolate those activities and costs that do not pertain to the eventual conduct of an SVP trial.

Written Comments

As requested, the additional briefing and evidence may be filed by **April 18, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission’s website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission’s regulations.

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Hearing

This matter is set for hearing on **May 30, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about May 16, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Matt Jones at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 4, 2014, I served the:

Request for Additional Briefing and Evidence on Costs Pertaining to Housing Potential Sexually Violent Predators

Sexually Violent Predators, CSM-4509 (12-MR-01)

Welfare and Institutions Code Sections 6602;

Statutes 1995, Chapter 762; Statutes 1995, Chapter 763; Statutes 1996, Chapter 4
California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 4, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/4/14

Claim Number: CSM-4509 (12-MR-01)

Matter: Sexually Violent Predators

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Bob Adler, *County of San Mateo*

555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 363-4777

badler@smcgov.org

Roberta Allen, *County of Plumas*

520 Main Street, Room 205, Quincy, CA 95971

Phone: (530) 283-6246

robertaallen@countyofplumas.com

LeRoy Anderson, *County of Tehama*

444 Oak Street, Room J, Red Bluff, CA 96080

Phone: (530) 527-3474

landerson@tehama.net

LeRoy Anderson, *County of Tehama*

444 Oak Street, Red Bluff, CA 96080

Phone: (530) 527-3474

landerson@tehama.net

Paul Angulo, Auditor-Controller, *County of Riverside*

4080 Lemon Street, 11th Floor, Riverside, CA 92501

Phone: (951) 955-3800

pangulo@co.riverside.ca.us

Socorro Aquino, *State Controller's Office*

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

Phone: (916) 322-7522

SAquino@sco.ca.gov

Auditor Auditor, *County of Trinity*

P.O. Box 1230, 11 Court St. , Weaverville, CA 96093

Phone: (530) 623-1317

TC_Auditor@trinitycounty.org

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Timothy Barry, *County of San Diego*

Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469

Phone: (619) 531-6259

timothy.barry@sdcountry.ca.gov

Deborah Bautista, *County of Tuolumne*

2 South Green St. , Sonora, CA 95370

Phone: (209) 533-5551

dbautista@co.tuolumne.ca.us

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Mary Bedard, *County of Kern*

1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301

Phone: (805) 868-3599

bedardm@co.kern.ca.us

John Beiers, *County of San Mateo*

Office of the County Counsel, 400 County Center, Redwood City, CA 94063

Phone: (650) 363-4775

jbeiers@smcgov.org

Richard Benson, Assessor - Recorder - County Clerk, *County of Marin*

3501 Civic Center Drive, Room 208, San Rafael, CA 94903

Phone: (415) 499-7215

rbenson@co.marin.ca.us

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916) 595-2646

Bburgess@mgtamer.com

Jeff Burgh, *County of Ventura*

County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540

Phone: (805) 654-3152
jeff.burgh@ventura.org

Michael Byrne, *Department of Finance*

Requester Representative

915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
michael.byrne@dof.ca.gov

Rebecca Callen, *County of Calaveras*

891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

Robert Campbell, *County of Contra Costa*

625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bob.campbell@ac.cccounty.us

Michael Cantrall, *California Public Defenders Association*

10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
webmaster@cpda.org

Lisa Cardella-Presto, *County of Merced*

2222 M Street, Merced, CA 95340
Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
gcarlos@sco.ca.gov

Rebecca Carr, *County of Kings*

1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinners@aol.com

Vicki Crow, *County of Fresno*

2281 Tulare Street, Room 101, Fresno, CA 93721
Phone: (559) 488-3496
vcrow@co.fresno.ca.us

William Davis, *County of Mariposa*

Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
mdelfin@sco.ca.gov

Tom Dyer, *Department of Finance (A-15)*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
tom.dyer@dof.ca.gov

Jennie Ebejer, *County of Siskiyou*
311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8030
Jebejer@co.siskiyou.ca.us

Richard Eberle, *County of Yuba*
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

Susan Elliott, *Sacramento District Attorney's Office*
907 G Street, Sacramento, CA 95814
Phone: (916) 874-8743
elliotts@sacda.org

James Erb, *County of San Luis Obispo*
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jerb@co.slo.ca.us

Karen Fouch, *County of Lassen*
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

Scott Frizzie, *California Board of State and Community Correction*
Bureau of Justice Assistance, 600 Bercut, Sacramento, CA 95811
Phone: (916) 445-7672
Maria.RodriguezRieger@bscc.ca.gov

George Gascon, *City and County of San Francisco*
District Attorney, 850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

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

Robert Geis, *County of Santa Barbara*
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2100
geis@co.santa-barbara.ca.us

Joe Gonzalez, *County of San Benito*

440 Fifth Street Room 206, Hollister, CA 95023

Phone: (831) 636-4090

jgonzalez@auditor.co.san-benito.ca.us

Lori Greene, *Sacramento District Attorney's Office*

907 G Street, Sacramento, CA 95814

Phone: (916) 874-8761

greenel@sacda.org

Jan Grimes, *County of Orange*

P.O. Box 567, Santa Ana, CA 92702

Phone: (714) 834-2459

jan.grimes@ac.ocgov.com

Marcia Hall, *County of Madera*

Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637

Phone: (559) 675-7707

marcia.hall@madera-county.com

Joe Harn, *County of El Dorado*

360 Fair Lane, Placerville, CA 95667

Phone: (530) 621-5633

joe.harn@edcgov.us

Emily Harrison, *Interim Finance Director, County of Santa Clara*

70 West Hedding Street, San Jose, CA 95110

Phone: (408) 299-5205

emily.harrison@ceo.sccgov.org

Sean Hoffman, *Director of Legislation, California District Attorneys Association*

921 11th Street, Suite 300, Sacramento, CA

Phone: (916) 443-2017

mailto:shoffman@cdaa.org

Dorothy Holzem, *California Special Districts Association*

1112 I Street, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dorothyh@csda.net

David Houser, *County of Butte*

25 County Center Drive, Suite 120, Oroville, CA 95965

Phone: (530) 538-7607

dhouser@buttecounty.net

Linnea Hull, *California District Attorneys Association (CDA)*

921 11th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 443-2017

lhull@cdaa.org

Mark Ibele, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*

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

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.gov

Ferlyn Junio, *Nimbus Consulting Group, LLC*
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jean Kinney Hurst, Senior Legislative Representative, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814-3941
Phone: (916) 327-7500
jhurst@counties.org

Lauren Klein, *County of Stanislaus*
1010 Tenth Street, Suite 5100, Modesto, CA 95353
Phone: (209) 525-6398
kleinl@stancounty.com

Kendra Kruckenberg, *State Board of Equalization*
District 2 - Sen. George Runner (Ret.), 500 Capitol Mall, Suite 1750, Sacramento, CA 95814
Phone: (916) 322-3116
kendra.kruckenberg@boe.ca.gov

Tammy Lagorio, Deputy Auditor-Controller III, *County of San Joaquin*
Auditor-Controller's Office, 44 N. San Joaquin Street, Suite 550, Stockton, CA 95202
Phone: (209) 953-1184
tlagorio@sjgov.org

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Darcy Locken, *County of Modoc*
204 S. Court Street, Alturas, CA 96101
Phone: (530) 233-6204
darcylocken@co.modoc.ca.us

Joe Lowe, *County of Amador*

810 Court Street, Jackson, CA 95642-2131

Phone: (209) 223-6357

jlowe@amadorgov.org

Amber Lozano, *Department of Justice BCIA (D-08)*

Criminal Justice Statistics Center, P.O. Box 903427, , CA

Phone: (916) 227-3282

amber.lozano@doj.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*

915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

kathleen.lynch@dof.ca.gov

Van Maddox, *County of Sierra*

211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936

Phone: (530) 289-3273

vmaddox@sierracounty.ws

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3000

hmato@newportbeachca.gov

Michelle McClelland, *County of Alpine*

P.O. Box 266, Markleeville, CA 96120

Phone: (530) 694-2284

mmclelland@alpinecountyca.gov

Joe Mellett, *County of Humboldt*

825 Fifth Street, Room 126, Eureka, CA 95501

Phone: (707) 476-2452

jmellett@co.humboldt.ca.us

Michelle Mendoza, *MAXIMUS*

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845

michellemendoza@maximus.com

Michael Miller, *County of Monterey*

168 W. Alisal Street, 3rd floor, Salinas, CA 93901

Phone: (831) 755-4500

millerm@co.monterey.ca.us

Howard Moseley, *Department of Corrections*

Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812

Phone: (916) 323-1643

howard.moseley@cdcr.ca.gov

Brian Muir, *County of Shasta*

1450 Court St., Suite 238, Redding, CA 96001

Phone: (530) 225-5541

bmuir@co.shasta.ca.us

John Naimo, Acting Auditor-Controller, *County of Los Angeles*
Auditor-Controller, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
jnaimo@auditor.lacounty.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Howard Newens, *County of Yolo*
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

Doug Newland, *County of Imperial*
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

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

Marianne O'Malley, *Legislative Analyst's Office (B-29)*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov

Patrick OConnell, *County of Alameda*
1221 Oak Street, Room 249, Oakland, CA 94512
Phone: (510) 272-6565
pat.oconnell@acgov.org

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Simona Padilla-Scholtens, *County of Solano*
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6280
spadilla@solanocounty.com

Alice Park-Renzie, *County of Alameda*
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Anita Peden, *County of Sacramento*
711 G Street, Room 405, Sacramento, CA 95814
Phone: (916) 874-8441

apeden@sacsheriff.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbsixten@aol.com

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

Roberta Reed, *County of Mono*
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 932-5490
RReed@mono.ca.gov

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Cynthia Rodriguez, *Department of State Hospitals*
1600 9th Street, Room 443, Sacramento, CA 95814
Phone: (916) 654-2319
cynthia.rodriguez@dmh.ca.gov

Benjamin Rosenfield, *City & County of San Francisco*
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Cathy Saderlund, *County of Lake*
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

Marcia Salter, *County of Nevada*
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

Kathy Samms, *County of Santa Cruz*
701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101

Phone: (619) 531-5413
tracy.sandoval@sdcountry.ca.gov

Clinton Schaad, *County of Del Norte*
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Tracy Schulze, *County of Napa*
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Matthew Schuneman, *MAXIMUS*
900 Skokie Boulevard, Suite 265, Northbrook, IL 60062
Phone: (847) 513-5504
matthewschuneman@maximus.com

Roberta Schwartz, *Los Angeles County District Attorney*
320 West Temple St, Suite 540, Los Angeles, CA 90012
Phone: (213) 974-1616
rschwartz@da.lacounty.gov

Lee Scott, *Department of Finance*
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Peggy Scroggins, *County of Colusa*
546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Jennifer Shaffer, *Department of Corrections*
Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812
Phone: (916) 445-7950
jennifer.shaffer@cdcr.ca.gov

Amy Shepherd, *County of Inyo*
Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Lucy Simonson, *County of Mendocino*
501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, *County of Placer*
2970 Richardson Drive, Auburn, CA 95603

Phone: (530) 889-4026
asisk@placer.ca.gov

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

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Robert Stark, *County of Sutter*
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Marv Stern, *County of Sacramento*
District Attorney, 901 G Street, Sacramento, CA 95814
Phone: (916) 874-6612
Sterm@SacDA.org

David Sundstrom, *County of Sonoma*
585 Fiscal Drive, Room 100, Santa Rosa, CA 95403
Phone: (707) 565-3285
david.sundstrom@sonoma-county.org

Meg Svoboda, *Senate Office of Research*
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Sheryl Thur, *County of Glenn*
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

Jolene Tollenaar, *MGT of America*
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

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

Brian Uhler, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

Julie Valverde, *County of Sacramento*
700 H Street, Room 3650, Sacramento, CA 95814

Phone: (916) 874-7248
valverdej@saccounty.net

Ruby Vasquez, *County of Colusa*
546 Jay Street, Suite 202, Colusa, CA 95932
Phone: (530) 458-0424
rvasquez@countyofcolusa.com

Mary Walker, *County of Santa Cruz*
Auditor-Controller's Office, 701 Ocean Street, Room100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

Mary Jo Walker, *County of Santa Cruz*
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

Larry Walker, *County of San Bernardino*
222 W. Hospitality Lane, 4th Floor, San Bernardino, CA 92415
Phone: (909) 387-8322
Larry.walker@atc.sbcounty.gov

Jack Weedon, *Los Angeles County Public Defender*
LA County Public Defender, 320 W. Temple St., Ste. 590, Los Angeles, CA 90012
Phone: (213) 974-3067
jweedon@pubdef.lacounty.gov

David Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, Suite 121, Sacramento, CA 95927
Phone: (916) 368-9244
dwa-david@surewest.net

Jeff Woltkamp, *County of San Joaquin*
44 N San Joaquin St. Suite 550, Stockton, CA 95202
Phone: (209) 468-3925
jwoltkamp@sjgov.org

Rita Woodard, *County of Tulare*
County Civic Center , 221 South Mooney Blvd, Room 101-E, Visalia, CA 93291-4593
Phone: (559) 636-5200
rwoodard@co.tulare.ca.us

Brendon Woods, *County of Alameda*
Office of the Public Attorney, 1401 Lakeside Drive, Suite 400, Oakland, CA 94612
Phone: (510) 272-6600
debra.green@acgov.org

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

Mark Zahner, *California District Attorneys Association*
921 11th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 443-2017
mzahner@cdaa.org