



## NAPA COUNTY

## OFFICE OF COUNTY COUNSEL

1195 THIRD STREET, SUITE 301, NAPA, CALIFORNIA 94559  
AREA CODE 707/253-4521 FAX 707/259-8220

ROBERT WESTMEYER, County Counsel

MARGARET L. WOODBURY, Chief Deputy  
LAURA J. ANDERSON, Deputy  
JACQUELINE M. GONG, Deputy  
SILVA DARBINIAN, Deputy  
ROBERT C. MARTIN, Deputy  
PATRICIA L. TYRRELL, Deputy



ROBERT W. PAUL, Deputy  
KRISHAN CHOPRA, Deputy  
CARRIE R. GALLAGHER, Deputy  
CHRIS R.Y. APALLAS, Deputy  
JANICE D. KILLION, Deputy

CHERI HUBER, Privacy Officer

### COUNTY OF NAPA RESPONSE TO PROPOSED STATEMENT OF DECISION FOR RECONSIDERATION OF PRIOR DECISION

#### *Binding Arbitration* (01-TC-07)

Code of Civil Procedures Sections 1281.1, 1299, 1299.2,  
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8 and 1299.9  
As Added by Statutes 2000, Chapter 906

The proposed Statement of Decision for Reconsideration finds the test claim statutes mandate activities within the meaning of Article XIII B, Section 6 of the California Constitution and analyzes the scope of these activities. The Prior Final Decision, having erroneously found that the test claim statutes do not impose a new program or higher level of service, did not address the scope of mandated activities. The proposed Statement of Decision for Reconsideration for the first time extensively analyzes the scope of these mandated activities, including those relating to participation in the arbitration proceeding (see pages 17-19).

The County of Napa respectfully submits that mandated participation in the arbitration hearing necessarily encompasses preparation for that participation. Pursuant to the test claim statutes, an arbitration decision requires findings on an array of factors, including - financial condition of the employer and the ability to pay, the availability and sources of funds, comparison of matters of other employees performing similar services, and the peculiarities of the requirements of employment (Code of Civil Procedure 1299.6 (c)). Fully addressing these factors in a hearing requires considerable collection and analysis of data that ultimately becomes the evidence presented at hearing. A state-mandated hearing includes those activities reasonably necessary to carry out that hearing. The plain reading of the test claim statutes is that the hearing and its reasonable implementation contemplate activities in preparation of it. Preparatory activities are an integral part of meaningful participation in the hearing. The County submits that such activities are "methods *not specified in statute*...that are necessary to carry out the mandated program" (Title 2 of California Code of Regulations Section 1183.1). The proposed Statement of Decision for Reconsideration too narrowly interprets the scope of participation in a hearing, restricting

Page 2 – Response to Proposed Statement of Decision for Reconsideration  
Binding Arbitration

state-mandated activities to only those directed by the arbitration panel. This does not reflect the reality of how an arbitration hearing is carried out.

The County respectfully requests the Commission direct staff accordingly to amend the proposed Statement of Decision for Reconsideration so that the first full sentence at page 19 reads: "...However, to the extent that any of the above activities are directed by the arbitration panel within the scope of its authority, ***“or the activity is deemed a necessary and reasonable method to carry out the arbitration proceeding as established in the Parameters and Guidelines for this test claim,*** the activity is state-mandated.”

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 26, 2007, in Napa, California.

  
JACQUILINE M. GONG,  
Deputy County Counsel  
County of Napa

**PROOF OF SERVICE**

I am a resident of the United States and of the State of California. I am employed in the County of Napa. My business address is 1195 Third Street, Suite 301, Napa, California. My business telephone is (707) 253-4234; fax number (707) 259-8220. I am over the age of eighteen years. I am not a party to the within action or proceeding. On March 26, 2007, I served the following document(s);

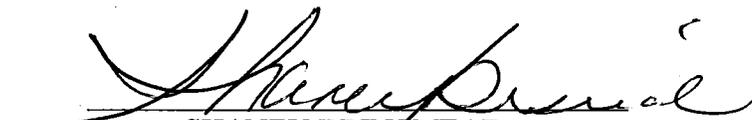
**BINDING ARBITRATION (01-TC-07) - City of Palo Verdes Estates Test Claim**

**COUNTY OF NAPA'S RESPONSE TO PROPOSED STATEMENT OF DECISION FOR RECONSIDERATION OF PRIOR DECISION**

I am familiar with the practice of Napa County Counsel's Office, for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on the same day on which it was placed at Napa County Counsel's Office.

- X by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Napa County, California, addressed as set forth below. (CCP § 1012, 1013, and 1013(a))
  
- by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below. (CCP §1011)  
Time: \_\_\_\_\_ Person served: \_\_\_\_\_
  
- by personally delivering, or causing to be delivered, a true copy thereof to the office/court folder of the addressee.
  
- X by causing a true copy thereof to be delivered to the person(s) at the address(es) set forth below, by and/or through the services of:
  - a.  United Parcel Service
  - b.  Federal Express
  - c.  Express Mail
  - d. X Facsimile (Followed by First Class Mail; Rules of Court §2008) Pursuant to Rules of Court §2008(e), this document was sent by facsimile transmission and this transmission was reported as complete and without error. A copy of this transmission report shall be attached to this proof of service and kept with the file. **(VIA FACSIMILE TO PAULA HIGASHI ONLY AT (916) 445-0278)**

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on March 26, 2007, at Napa, California.

  
SHANEY BRINSMEAD

## SERVICE LIST

Mr. Steve Shields  
Shields Consulting Group, Inc.  
1536 – 36<sup>th</sup> St.  
Sacramento, CA 95816

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Ms. Leslie McGill  
California Peace Officers' Association  
1455 Response Road, Suite 190  
Sacramento, CA 95815

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 West Temple Street, Room 525  
Kenneth Hahn Hall of Administration  
Los Angeles, California 90012

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Ms. Jess McGuinn  
Department of Finance (A-15)  
915 L Street, 8<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Daniel Terry  
California Professional Firefighters  
1780 Creekside Oaks Drive, Suite 200  
Sacramento, CA 95833

Mr. Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell St., Suite 294  
Folsom, CA 95630

Mr. Gerald Shelton  
California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Mr. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 95661

Ms. Amy Benton  
California Professional Firefighters  
1780 Creekside Oaks Drive, Suite 200  
Sacramento, CA 95833

Mr. Jim Jagers  
PO Box 1993  
Carmichael, CA 95609

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95818

Mr. Glen Everroad  
City of Newport Beach  
PO Box 1768  
Newport Beach, CA 92659-1768

James B. Hendrickson  
City Manager  
City of Palos Verdes Estates  
340 Palos Verdes Drive West  
Palos Verdes Estates, CA 90274

Allan Burdick  
Maximus, Inc.  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Confirmation Report - Memory Send

Page : 001
Date & Time: Mar-26-07 11:32
Line 1 : 707 259 8220
Machine ID : NAPA COUNTY COUNSEL

Job number : 769
Date : Mar-26 11:31
To : 919164450278
Number of pages : 003
Start time : Mar-26 11:31
End time : Mar-26 11:32
Pages sent : 003
Status : OK

Job number : 769

\*\*\* SEND SUCCESSFUL \*\*\*



NAPA COUNTY

ROBERT WESTMEYER, County Counsel

MARGARET L. WOODBURY, Chief Deputy
LAURA J. ANDERSON, Deputy
JACQUELINE M. GONG, Deputy
SILVA DARBENIAN, Deputy
ROBERT C. MARTIN, Deputy
PATRICIA L. TYRRELL, Deputy

OFFICE OF COUNTY COUNSEL
1195 THIRD STREET, SUITE 301, NAPA, CALIFORNIA 94559
AREA CODE 707/253-4521 FAX 707/299-8220

ROBERT W. PAUL, Deputy
KRISHAN CHOPRA, Deputy
CARRIE R. GALLAGHER, Deputy
CHRIS R.Y. APALLAS, Deputy
JANICE D. KILLION, Deputy

CHERI HUBER, Privacy Officer

COUNTY OF NAPA
RESPONSE TO PROPOSED STATEMENT OF DECISION
FOR RECONSIDERATION OF PRIOR DECISION

Binding Arbitration
(01-TC-07)

Code of Civil Procedures Sections 1281.1, 1299, 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8 and 1299.9
As Added by Statutes 2000, Chapter 906

The proposed Statement of Decision for Reconsideration finds the test claim statutes mandate activities within the meaning of Article XIII B, Section 6 of the California Constitution and analyzes the scope of these activities. The Prior Final Decision, having erroneously found that the test claim statutes do not impose a new program or higher level of service, did not address the scope of mandated activities. The proposed Statement of Decision for Reconsideration for the first time extensively analyzes the scope of these mandated activities, including those relating to participation in the arbitration proceeding (see pages 17-19).

The County of Napa respectfully submits that mandated participation in the arbitration hearing necessarily encompasses preparation for that participation. Pursuant to the test claim statutes, an arbitration decision requires findings on an array of factors, including - financial condition of the employer and the ability to pay, the availability and sources of funds, comparison of matters of other employees performing similar services, and the peculiarities of the requirements of employment (Code of Civil Procedure 1299.6 (c)). Fully addressing these factors in a hearing requires considerable collection and analysis of data that ultimately becomes the evidence presented at hearing. A state-mandated hearing includes those activities reasonably necessary to carry out that hearing. The plain reading of the test claim statutes is that the hearing and its reasonable implementation contemplate activities in preparation of it. Preparatory activities are an integral part of meaningful participation in the hearing. The County submits that such activities are "methods not specified in statute...that are necessary to carry out the mandated program" (Title 2 of California Code of Regulations Section 1183.1). The proposed Statement of Decision for Reconsideration too narrowly interprets the scope of participation in a hearing, restricting