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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

PHYLLIS FABER, an individual, and ALLIANCE FOR LOCAL SUSTAINABLE AGRICULTURE, an unincorporated organization, DRAKES BAY OYSTER COMPANY, a California corporation,

Petitioners and Plaintiffs,

v.

CALIFORNIA COASTAL COMMISSION, CHARLES LESTER, DOES 1 through 10, inclusive,

Respondents and Defendants,

And Related Cross Actions

Case No. CIV 1301469 and 1301472
CONSOLIDATED

REPLY IN SUPPORT OF DRAKES BAY OYSTER COMPANY'S MOTION FOR PEREMPTORY WRIT OF MANDATE

Hearing Date:	March 11, 2014
Time:	9:00 a.m.
Department:	L
Judge:	Honorable Mark A. Talamantes

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I. INTRODUCTION

Drakes Bay cited one case holding that the "wholesale disqualification" of a party's experts violates due process as a matter of law, and another case holding that the exclusion of a "credible and substantial" expert report violates due process. Here, Drakes Bay argued, the Commission violated due process by its wholesale disqualification of Drakes Bay's expert testimony, which included credible and substantial expert reports. And what does the Commission say to distinguish these two cases? Nothing. It never mentions either of the cases, and does not disagree with the factual predicate, i.e. that the Commission conducted a wholesale exclusion of credible expert testimony. The Commission thereby concedes the issue, and the motion. This due-process violation, alone, is enough to invalidate the Orders.

Drakes Bay also argued that the Commission violated due process by not allowing for cross-examination, and that the Commission's decision was not supported by competent evidence. The Commission responds with a series of small, mostly procedural arguments. All are wrong.

The Court should declare the Orders invalid, and issue a writ of mandate.

II. THE PROCEDURE WAS PROPER

The Commission argues that Drakes Bay's motion "is incompatible" with the *briefing schedule* "that ended in June 2013". (Respondents' Opposition [etc.] ("Opp.") 2:8-11.) But that schedule applies, by its terms, only to the hearing held in July 2013. (Respondents' Opposition To Motion For Leave To Amend at 3:18-21.) At that hearing, the Court decided not to rule on the merits, and instead stayed the case. (*Id.* at 4:14-17.) When the Court set the March 2014 date for hearing the motions that had previously been briefed, it did not impose any briefing schedule or prohibit any new motions that the parties might want to file for hearing that same day. Drakes Bay was therefore free to file other motions in accordance with Code of Civil Procedure ("CCP") § 1005(b). Drakes Bay complied with § 1005(b), and the Commission does not argue otherwise.

Drakes Bay also complied with the essence of the Court's briefing schedule, which was that claims "triable by a writ" be heard "at the same time". (Commission's Request For Judicial Notice [etc.], Ex. 1 at 11:27-12:1.) Drakes Bay's motion is set for the same time as the other writ claims.

The Commission calls the motion a "sur-reply". (Opp. 2:14-15, 2:17-21.) But the motion is

a motion as defined by CCP § 1003. A motion filed in accordance with statute is proper.

III. THE COMMISSION CONCEDES DRAKES BAY'S LEAD ARGUMENT

The most telling part of the Commission's brief is what it does *not* say. The Commission does not even mention, much less try to distinguish, Drakes Bay's two best cases: *Sinaiko* and *Gaytan*. *Sinaiko* held that the "wholesale disqualification" of a party's experts "render[s] the administrative proceedings unfair as a matter of law." (*Sinaiko v. Superior Court* (2004) 122 Cal.App.4th 1133, 1141.) *Gaytan* held that an agency's exclusion of a "credible and substantial" expert report violates due process. (*Gaytan v. Workers' Comp. Appeals Bd*. (2003) 109 Cal.App.4th 200, 219.) Here there is no dispute that there was a wholesale disqualification (the Commission voted to exclude all of Drakes Bay's expert reports), or that the excluded reports (including two from Dr. Goodman[1]) were credible and substantial. This was a denial of a fair trial as a matter of law. That is enough for the Court to invalidate the Orders.

IV. ALLEGED ENVIRONMENTAL HARM WAS THE CENTRAL ISSUE BEFORE THE COMMISSION

The Commission tries to downplay the importance of the evidence it excluded by asserting that "the environmental impacts of [Drakes Bay's] operations" were "not the central issue before it." (Opp. 2:28-3:1.) But they were. The Commission's argument is very technical. It concedes that environmental issues were central to the "restoration" part of the Orders. (Opp. 3:8-10.) It tries to differentiate the other parts of the Orders on the grounds that, for them, "[n]o finding of environmental harm is necessary…all that is necessary is unpermitted development…." (Opp. 3:1-2.) But the Orders are not about unpermitted development in the usual sense. After all, the oyster farm has been operating for 80 years, and the racks have been there for 50 years or more. Instead, the Orders impose new conditions (conditions in addition to those in the 2007 Consent Order) on an operating business. These conditions were intended to protect the environment, as the Commission

[1] The Commission asserts, without citation, that Drakes Bay has "retained Dr. Goodman" who "has acted as an advocate for them". (Opp. 12:16-17) As the Commission knows quite well, Dr. Goodman has done all of his scientific analysis about Drakes Bay pro bono as a public service. For the Court's information, it was Steve Kinsey, President of the Marin County Board of Supervisors (and current Chair of the California Coastal Commission), who first asked Dr. Goodman to analyze whether the claims of environmental harm by Drakes Bay were supported by the data. They were not. Dr. Goodman conducted that analysis before he even met the owner of Drakes Bay.

concedes when it admits that the "critical 'Interim Use Provisions'" impose "governing environmental safeguards". (Opp. 3:11-12.) The new conditions were justified entirely by accusations of environmental harm—which was the central issue before the Commission. (*See* AR 26-33 (findings about environmental impacts to support new operational conditions).)

V. THE COMMISSION DENIED DRAKES BAY A FAIR TRIAL

The Commission does not dispute the standard of review: Drakes Bay is entitled to an "independent judicial determination" of whether it received a fair trial. (Mem. 6 (quoting *Sinaiko* at 1140); *see* Opp. 3-5 (not disputing issue).)

A. Drakes Bay Did Not Get A Meaningful Opportunity To Be Heard

The parties agree that "[d]ue process requires the opportunity to be heard at a meaningful time and in a meaningful manner." (Opp. 3:25-26.) The Commission argues that giving Drakes Bay the opportunity to respond to the staff report "only at the hearing" satisfied due process. (Opp. 5 n.1.) The Commission is wrong.

The Commission relies entirely on *Today's Fresh Start*, which it incorrectly cites for the proposition that "due process [is] satisfied by [an] opportunity to respond to charges and written staff report *orally* at public hearing." (Opp. 5:18-20, emphasis added, citing *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 228).) In that case, the petitioner "had the opportunity to present *written* materials in advance of the hearing" as well as "the opportunity to prepare and submit at the hearing a *written* rebuttal addressing every alleged problem, whether material or not." (*Today*'s *Fresh Start* at 229, emphasis added.) Here the Commission has denied Drakes Bay the very opportunity to submit a written rebuttal by the hearing that was granted to the petitioner in *Today's Fresh Start*. In *Today's Fresh Start*, there was no due-process violation *because* the petitioner had a full opportunity to rebut the allegations, *including* the opportunity to present written materials on every issue. Here there is a due-process violation because Drakes Bay did not have this opportunity. The case therefore supports Drakes Bay, not the Commission.

In arguing that it gave Drakes Bay a meaningful opportunity to respond, the Commission tries to downplay its staff report—"it was actually only a 46-page report". (Opp. 5 n.1.) Actually, the report released on January 25, 2013 consisted of a 46-page, single-spaced brief, and almost 250

pages of attachments. (AR 3-279.) That brief almost certainly had more words than the 14,000 allowed for an opening brief in the Court of Appeal. Respondents get 30 days to file an opposition brief in the Court of Appeal, and that time is often extended. Here the staff report was filed a mere 13 days before the hearing, which gave Drakes Bay little time to respond. And when Drakes Bay filed its response ten days later (3 days before the hearing), the Commission's three lawyers objected. It was too late, they said, for Drakes Bay to file *any* written response.

But it was not too late for the Commission staff to file another brief and more exhibits. On the very morning of the hearing, staff submitted an 8-page, single-spaced brief, plus more than 50 pages of attachments. (*Id.* at 280-343.) Drakes Bay had no opportunity to file a written response. Staff had an opportunity to respond to third-party comments; Drakes Bay did not. (Mem. 6:2-7.)

Plainly, the procedure was unfair. According to the Commission, its staff can submit a supersized appellate brief that Drakes Bay cannot respond to with even a single written page. And a written submission made by Drakes Bay 3 days before the hearing is too late, whereas a 58-page submission from staff the day of the hearing is timely. Fundamental to any due-process analysis is the concept that the rules apply equally to both sides. Here the Commission refuses to apply the rules equally, and insists that it is above the law.

To respond to the more than 20 issues raised in staff's 54 single-spaced pages of briefing, nearly 300 pages of attachments, and 45-minute oral presentation, the Commission gave Drakes Bay only 45 minutes to respond orally. The question here is not whether a 45-minute oral presentation can ever provide due process. The question is whether it provides due process when there are many hotly disputed issues requiring expert testimony: issues about harbor seals, eelgrass, Manila clams and their supposed invasiveness, the purifying effect of oyster filtration, and *Didemnum* sea squirts.

What process is due depends on the circumstances. (*Today's Fresh Start, Inc.*, 57 Cal.4th at 228-229.) Here the circumstances required decisions on a long list of complicated scientific issues. Any person needs some time even to understand a complicated scientific issue, and more time to consider the evidence and reasoning behind each position, and more time still to determine which is right. Even a single issue—harbor seals, for example—should properly consume more than a 45-minute presentation. Here, due process required much more than 2 minutes per issue to respond to

350 pages of written submissions plus staff's own 45-minute presentation.

The Commission appears not to understand due process. It is enough, the Commission says, that parties can respond in writing to a short notice listing some issues. (Opp. 4:18-21.) But the law recognizes that a short notice—a notice of motion—is not enough to satisfy due process. The notice must be accompanied by points and authorities. (CRC 3.1112(a)(3).) Here the Commission insists that it need not accompany its notice with points and authorities, that it is free to file its briefs whenever it wants to (up to the day of the hearing), and—most importantly—that a party is *prohibited* from responding to the brief in writing. Due process requires more.[2]

B. Due Process Required Cross Examination

The Commission argues that Drakes Bay did not exhaust its administrative remedy on cross-examination, and that cross-examination was not required in this case because cross-examination is never required in Commission hearings. Both arguments are wrong.

Exhaustion is not required for a facial challenge to the constitutionality of an agency's procedures. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 611.) Here exhaustion was not required because Drakes Bay challenges the constitutionality of Commission regulations.

Exhaustion is also not required when there is no available remedy, or when it would be futile. (*Ramos v. County of Madera* (1971) 4 Cal.3d 685, 691 (exhaustion not required where "no such administrative remedy existed"); *Truta v. Avis Rent a Car Sys.* (1987) 193 Cal.App.3d 802, 812 (no requirement to exhaust when plaintiff "knows what the administrative agency's decision in this case would be").) Here there was no remedy because Commission regulations do not provide for cross-examination. (14 Cal. Code Regs. § 13185.) It would have been futile to request cross-examination, because the Commission's position is that cross-examination is *never* authorized. (Opp. 6:8-9.) Drakes Bay comes within all three of these exceptions, and exhaustion was not required.

[2] In an apparent reference to the *CREED* case, the Commission says it "previously discussed case law specifically holding that an agency may exclude … a last-minute, voluminous document dump." (Opp. 5:8-10; *see Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515).) But there was no exclusion of evidence in *CREED*. The issue was whether a submission that "raised no substantive issues" sufficiently exhausted administrative remedies. (*CREED* at 528.) Here the Commission does not dispute that Drakes Bay's submission raised substantive issues (such as whether Drakes Bay actually causes environmental harm) and that Drakes Bay exhausted administrative remedies by objecting, at the hearing, to the Commission's wholesale exclusion of evidence. *CREED* does not apply.

On the merits, the Commission relies on a false inference. It argues that because cross-examination is required by the California Administrative Procedure Act, cross-examination is not required when the APA does not apply. (Opp. 6:22-7:8.) But the Commission cites no case that stands for this proposition, and there is no reason why cross-examination cannot be required *both* in APA proceedings and in at least some non-APA proceedings. After all, the right to cross-examine originates not from the APA or any other statute. It arises from Constitutional due-process protections. As *Manufactured Home* explains, "in 'almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.'" (*Manufactured Home Communities v. County of San Luis Obispo* (2008) 167 Cal.App.4th 705, 711, quoting *Goldberg v. Kelly* (1970) 397 U.S. 254, 269.)[3]

Here, cross-examination is required because "important decisions turn on questions of fact". (*See id*.) Those questions of fact could not be readily resolved by a review of documents. They required expert knowledge, which was presented as a series of accusations by the three lawyers. The Commission's findings consist *only* of those accusations. Here, the truth counts more than anything else. In circumstances like these, where Drakes Bay is threatened with debilitating penalties based on lawyers' accusations, due process requires allowing Drakes Bay to cross-examine those lawyers.

Not applicable here is the Commission's concern that cross-examination may hinder public comment. Drakes Bay is not asking to cross-examine the public, only the Commission's three lawyers, who will surely not be intimidated by a search for the truth.

VI. THE FINDINGS ARE NOT SUPPORTED BY COMPETENT EVIDENCE

A. The Administrative Record Is Sufficient

The Commission asserts, without citation to any authority, that the absence of a "certified" administrative record precludes Drakes Bay from "making factual arguments that require an administrative record to adjudicate." (Opp. 9:8-12.) But "it is the responsibility of the petitioner to produce a *sufficient* record of the administrative proceedings". (*Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354, emphasis added.) Drakes Bay has produced a *sufficient* administrative record

[3] The Commission argues that Drakes Bay cites to only one land-use decision. (Opp. 7:25-26.) But land-use decisions are not specially exempted from due-process protections. Here, due-process protections apply because there is a deprivation of property. (See section VI.B below.)

because it has produced an accurate record of the evidence and proceedings before the Commission.[4] The Commission does not argue otherwise.

B. The Independent Judgment Test Applies

The Commission concedes that "[t]he substantial evidence standard of review applies to [land] use decisions *unless* a decision implicates fundamental vested rights." (Opp. 10:22-23, emphasis added.) Here, the Coastal Commission's decision implicates Drakes Bay's vested rights in the oyster farm and the racks, which predate the Coastal Act. (Mem. 11:3-16.)

The Commission tries to distinguish the *Goat Hill* and *Termo* cases by arguing that here the Commission has not "announced an intention to shut DBOC's facility down". (Opp. 10:8-9, 10:16-18, referring to *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519 and *The Termo Co. v. Luther* (2008) 169 Cal.App.4th 394.) Yet in the very same paragraph the Commission asserts that "there is no coastal development permit for the shellfish operation", and "the lack of a permit…render[s] it unlawful." (Opp. 10:14-15.) If the Commission were being honest and fair, it would acknowledge that no permit is needed for those facilities and operations that predate the Coastal Act. By insisting that the entire "shellfish operation" is "unlawful", the Commission has disclosed its intent to take away those rights that vested in Drakes Bay and its predecessors long ago.[5] That brings this case within the scope of *Goat Hill* and *Termo*. Independent judgment applies.[6]

The Commission mis-cites *Halaco Engineering* for the proposition that "[f]ailure to follow the Commission's vested rights procedure precludes application of the independent judgment standard." (Opp. 11:4-7, citing *Halaco Engineering Co. v. South Central Coastal Regional Com.* (1986) 42 Cal.3d 52, 63.) But in that case the Commission had made a determination that a person

[4] The administrative record includes everything considered by the Commission during the hearing, including the notice of intent, the staff report and its addendum, and the transcript of the hearing. The Commission implies that Drakes Bay did not submit a transcript. (Opp. 9:2-3.) But it did.

[5] *See also* Commission's Amended Cross-Complaint (alleging that "the entire facility continues to lack Coastal Act authorization" (¶ 17) and praying for penalties and exemplary damages).

[6] The Commission asserts that Drakes Bay did not raise the issue that facilities and operations predating the Coastal Act are exempt from the Commission's jurisdiction. (Opp. 5:5-8.) But it did. Drakes Bay submitted a history of the oyster farm's leases, which go back some 80 years. (Mem. 2:7-9.) At the hearing, Drakes Bay argued that the Orders should not apply to "the racks that were installed in the estero before the Coastal Act became law". (AR 1418:18-24.)

did not have vested rights, and the issue was which standard of review applied to that decision. (*Halaco Engineering* at 63.) Here the Commission has made no decision on vested rights. Independent judgment applies.[7]

C. The Commission's Evidence Is Insufficient Under Any Standard

Drakes Bay argued that the assertions made by the three lawyers were not evidence. (Mem. at 11:23-24.) The Commission responds that a "law degree [does not] disqualif[y] a person from discussing scientific or policy issues." (Opp. at 8:27-28.) But "discussing…issues" is not presenting evidence. Because the Commission's Orders were not based on evidence, they are invalid.

In each case, the Commission has turned a blind eye to the extraordinary amount of data available on Drakes Estero and on the oyster farm's operations—data showing that the oyster farm does not harm the environment—and relies instead on out-of-area reports that, according to the Commission, show a "potential" for harm. By systemically refusing to consider any of the most relevant (and exonerating) data, the Commission leaves no doubt that its findings are not based on a fair assessment of the evidence. They are merely excuses for imposing disruptive conditions.

The Commission mis-cites the *Saad* case for the proposition that the restoration order can be upheld "[a]s long as one of the Commission's findings regarding one type of resource damage is upheld". (Opp. 15:3-6, citing *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1214).) But *Saad* stands for the unremarkable proposition that when a standard includes several conditions, the standard is not met when any of the conditions are not met. (*Saad* at 1214.) Here, each provision of the restoration order is independent, and each must therefore be supported by the evidence.

Harbor Seals. The Commission quotes a finding that, in the abstract, "[p]edestrian and boat traffic *can* result in…changes in harbor seals…." (Opp. 11:24-27, emphasis added.) But the Commission did not present evidence that *Drakes Bay's operations* cause any changes in harbor seals. Nor could it. The 2007 Consent Order specifies that Drakes Bay must not come within 100 yards of the harbor seals. (AR 100.) In the channel at issue, Drakes Bay's boats stay at least

[7] *See also Stanson v. San Diego Coast Reg. Comm'n* (1980) 101 Cal.App.3d 38, 48-49 (independent judgment applies when the Commission changes position on its permit requirements and a person relies on the Commission's original position, even when that person has not gone through the formal vested rights procedure). Here, Drakes Bay has relied on the Commission's position that it could continue its operations pending the Commission's issuance of a permit. (Mem. 2:20-3:5.)

700 yards away from the seals. (AR 824:5-6.) And that's not all. The Park Service has taken hundreds of thousands of photos of the seals and of Drakes Bay's operations, and had them evaluated by a harbor-seal expert—who concluded that there is "no evidence" that Drakes Bay has *ever* disturbed the seals. (AR 15:3-6, 822:17-19.) The Commission, in short, has no evidence that Drakes Bay has ever disturbed any harbor seal, or that its new conditions would make any difference to any harbor seal.[8] It has refused to consider the strong evidence establishing that Drakes Bay does not disturb seals.[9]

Water Quality. The Commission supports its requirement to remove "deteriorating" racks by arguing that they have a "potential to leach toxic" preservatives. (Opp. 12:13-14.) But the evidence from Drakes Estero shows that the racks are not toxic. Oysters grow just fine on the racks, and flora and fauna are especially thriving near the racks. (Mem. at 4:8-14.) Deteriorating racks are especially unlikely to leach preservatives—if they had preservatives to leach, they would not be deteriorating.

Invasive Species. The Commission found that Manila clams are an "invasive" species, and prohibited Drakes Bay from growing them. (Mem. 11:12-15.) But the responsible California and Federal agencies have decided that Manila clams are *not* an invasive species, and have not listed them on the official lists of invasive species. (Mem. 14 n.10.) Drakes Bay also submitted evidence that its Manila clams were not spreading in Drakes Estero. (Mem. 4:17-18.) In support of its finding, the Commission points only to "letters from various environmental organizations". (Opp. 14:4-6.) The Commission provides no explanation of *why* these organizations should be believed when the expert agencies responsible for the control of invasive species have concluded otherwise, and the actual evidence submitted by Drakes Bay on Drakes Estero demonstrates otherwise.

Debris. The Commission cites no evidence to support its finding that there is debris in Drakes Estero "attributable to…ongoing operations." (*Compare* Mem. 14:6-7 (quoting finding) *with*

[8] Drakes Bay now knows that, at the time of the Commission's hearing, the Commission had, but did not disclose, a secret internal report concluding that Drakes Bay's operations "probably would not result in disturbance" to the harbor seals it now claims may be harmed by Drakes Bay's operations.

[9] The Commission proceeds to argue from evidence submitted by Drakes Bay—the very evidence it excluded from the record. (Opp. 12:15-28.) It makes much of documents that, as Dr. Goodman noted, did not accurately report the conclusion of the National Park Service's harbor-seal expert, who found no evidence that Drakes Bay caused any disturbance. (AR 814:13-17.)

Opp. 14:7-10 (citing no evidence).) The Commission implicitly concedes the point when it argues that Drakes Bay can be required to clean up the debris of its predecessor, "whose liabilities it assumed". (Opp. 14:9-10.) But Drakes Bay acquired the farm in an asset purchase agreement (AR 1403:4-6); there was no evidence that Drakes Bay assumed liabilities.

Public Access. The Commission found that the racks "present a potential hazard to those recreating in the overlying waters" because they become exposed a low tide. (Opp. 14:12-13.) But there is no evidence that the racks have ever presented any hazard to kayakers or anybody else.[10]

Eelgrass. Drakes Bay submitted evidence that eelgrass is booming in Drakes Estero, at least in part because of the oyster farm, and that it is especially thriving near the racks. (Mem. 4:9-12.) The National Academy of Sciences "dismissed the concerns" that the oyster farm was harming eelgrass. (Mem. 15:7-9.) Yet the Commission argues that this evidence "does not undercut the finding that racks harmed the eelgrass on which they sit." (Opp. 14:20-21.) Yes it does. A passing observation from 2007 cannot override authoritative scientific research from the National Academy.

In the quasi-judicial proceeding at issue, the Commission did not act as an impartial judge. It was too happy to embrace criticisms of the oyster farm, too hostile to any evidence that favored the farm, and too quick to dismiss evidence that rebutted the staff report. Its behavior demonstrated a desire to win at any cost, and no respect for the truth.

VII. CONCLUSION

This Court should issue an order declaring the Orders invalid, and issue a writ of mandate.

DATED: March 4, 2014

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[10] For the Court's information, the three kayak companies operating in Drakes Estero all submitted comments on the Park Service's environmental review *supporting* Drakes Bay. (http://www.nps.gov/pore/parkmgmt/upload/planning_dboc_sup_deis_public_comments_51000_51999_webform.pdf (correspondence ID 51105).) Drakes Bay's employees frequently rescue kayakers who get stuck in Drakes Estero's mudflats; for a gripping account of a rescue of two kayakers just last week, *see* http://www.norcalyak.com/2014/02/paddlers-escape-gooey-death-at-drakes.html

PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 155 Sansome St., Suite 700, San Francisco, California 94104.

On March 4, 2014, at San Francisco, California, I served the attached document(s):

REPLY IN SUPPORT OF DRAKES BAY OYSTER COMPANY'S MOTION FOR PEREMPTORY WRIT OF MANDATE

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X **BY FIRST CLASS MAIL:** On the date written above, I deposited with the United States Postal Service a true copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.

X **BY E-MAIL OR ELECTRONIC TRANSMISSION:** On the date written above, I e-mailed the documents to the persons on the service list at the e-mail addresses listed above. I did not receive, within a reasonable time after transmission, any electronic message or other indication that transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on March 4, 2014, at San Francisco, California.

Arlene Won