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**BEFORE THE GOVERNING BOARD OF THE
LONG BEACH UNIFIED SCHOOL DISTRICT**

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11 In the Matter of the Accusation Against:] OAH No. 2010020244
12 Certificated Employees,] CLOSING BRIEF OF CERTAIN
13 Respondents.] RESPONDENTS

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15 **I. INTRODUCTION**

16 Certain respondents hereby wish to reiterate some of the points made in their opening
17 statement and again draw attention to the overall ineffectiveness of this reduction in force, which
18 was ill-conceived and poorly implemented. Throughout this process the Long Beach Unified
19 School District (hereinafter "District") repeatedly changed its mind about who it did or did not
20 intend to serve a final layoff notice, which effectively made most, if not all, of Ruth Ashley's
21 testimony on the first day of hearing moot, as well as the initial documents (Exhibits 11 and 12)
22 submitted into evidence by the District regarding the identity of and reasons why certain individuals
23 should receive final lay off notices. This is evidenced by the numerous revisions to the seniority
24 list and the District's exhibits indicating on who it intends to serve final notice. It is also clear that
25 the District engaged in excessive "overnoticing." Emblematic of this is the District's issuance of
26 scores of precautionary notices to respondents who it has no intention of serving a final layoff
27 notice. For example, there are countless individuals who received preliminary layoff notices who
28 do not appear on the District's "Identification of Final Notices by Service Area." And yet, these

1 individuals have been forced to take time away from their students and put up with the stress and
2 anxiety of receiving a preliminary layoff notice when in all likelihood the District will not issue
3 them a final layoff notice, and in the case of many of these individuals, was aware of this fact from
4 the outset of these proceedings. In addition, the District was at times slow to provide needed
5 information to respondents. For example, it was not until the last few days of the hearing that the
6 District finally articulated what its skipping criteria would be and how it was being applied. This
7 constant movement of the goal posts, so to speak, and the District's unwillingness to rescind more
8 precautionary notices or to rescind such notices in a timely fashion unnecessarily prolonged the
9 hearing and greatly and unnecessarily added to the stress and anxiety of all the respondents.

10 To some extent the District has been transparent about the constantly changing nature of the
11 individuals it intended to ultimately lay off. While it is unfortunately true that in any reduction in
12 force hearing there are bound to be numerous issues or problems that arise, in a hearing of the
13 magnitude of this proceeding, those issues and problems are multiplied to a point at which the
14 District's conduct--the failure to be consistent with regard to who it was seeking to ultimately lay
15 off and by grossly overnoticing--substantially interfered with respondents' due process right to
16 obtain a clear statement of the most basic issues of if and why the District intends to lay each of
17 them off. Without this clear consistent statement of these significant issues, respondents, most of
18 whom are permanent employees of the District, have been deprived of their right to due process,
19 which requires they be afforded a *meaningful* opportunity to challenge the District's layoff. With
20 this backdrop in mind, certain respondents ask that the ALJ carefully review the evidence and
21 arguments presented, both here and at the hearing, when drafting his proposed decision.

22 **II. THE DISTRICT FAILED TO SERVE PRELIMINARY LAYOFF NOTICES ON A**
23 **NUMBER OF JUNIOR EMPLOYEES TO THE DETRIMENT OF MORE SENIOR**
24 **RESPONDENTS.**

25 In reviewing the District's seniority list, there are numerous instances where junior
26 employees were retained in error (Attached hereto as Exhibit A is a list of these individuals with
27 brief explanations of their erroneous retention). In some instances, the District admits it intended
28 to serve preliminary layoff notices on retained junior employees but failed to do so by its own error.

1 In other instances, the District will not admit its error, but a review of the District's own documents
2 shows that the District retained these junior employees in error because their retention does not
3 conform with the requirements of Education Code section 44955¹, let alone common sense. As
4 discussed in more detail in Section IV, below, the improper retention of these junior employees
5 must result in the dismissal of the Accusations of multiple respondents. Even if the District
6 disputes that this is the case, at the hearing it stipulated that the improper retention of any junior
7 employee will result in the dismissal of the Accusation of the most senior respondent who is
8 qualified to teach that employee's assignment.

9 The retention of the junior employees identified in Exhibit A severely cripples respondents'
10 right to due process during these proceedings. Each error the District makes creates a ripple effect
11 across the entire seniority list and entire layoff proceedings. When multiplied to the scale of this
12 hearing, the effect is to make the entire proceeding unintelligible and meaningless. Although
13 identifying these errors for the District may help it correct some of its mistakes, given how it has
14 conducted the hearing thus far, it is difficult to believe that the District has the ability to correct all
15 deficiencies flowing from each mistake. Thus, the District's inability to properly implement this
16 layoff seriously calls into question whether it has met its burden to provide respondents a
17 meaningful opportunity to be heard.

18 **III. THE DISTRICT FAILED TO FOLLOW THE REQUIREMENTS OF SECTION**
19 **44955 FOR ASSIGNMENTS AND REASSIGNMENTS BEFORE ISSUING**
20 **PRELIMINARY LAYOFF NOTICES.**

21 Under section 44955, "the services of no permanent employee may be terminated . . . while
22 any probationary employee, or any other employee with less seniority, is retained to render a
23 service which said permanent employee is certificated and competent to render." Cal. Educ. Code
24 § 44955(b).² As a general rule, Section 44955 *requires* school districts to make assignments and
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26 ¹All further statutory references are to the Education Code.

27 ² Probationary employees are also entitled to the protections in section 44955 if termination is due to
28 economic circumstances. *See Cousins v. Weaverville Elementary School District*, (Cal. App. 3d
Dist. 1994) 24 Cal. App. 4th 1846, 1854.

1 reassignments in a manner that allows employees "to be retained to render any service which their
2 seniority and qualifications entitle them to render." Cal. Educ. Code § 44955(c). This process is
3 commonly referred to as "bumping" and cannot include an evaluation of the quality of an
4 employee's work performance, but must relate solely to specific skills and qualifications, such as
5 academic background, training, credentials, and experience. *See Forker v. Bd. of Trustees of*
6 *Whittier Union High Sch. Dist.*, (Cal. App. 2 Dist. 1984) 160 Cal. App. 3d 13, 206 Cal. Rptr. 303.
7 Before identifying junior employees who the District improperly retained, certain respondents
8 would like to address some preliminary issues affecting all assignment and reassignments.

9 A. The District May Deviate From Laying Off Individuals in Seniority Order Only When it
10 Determines Less Senior Employees Possess Special Training and Experience Necessary to
11 Teach a Particular Course of Study.

12 The sole exception to the general rule requiring school districts to make assignments and
13 reassignments based on seniority is what is commonly referred to as "skipping," which allows a
14 school district to deviate from terminating employees in order of seniority when it demonstrates:
15 (1) it has a specific need for individuals to teach a specific course of study; and (2) a less senior
16 employee has special training and experience necessary to teach that course that others with more
17 seniority lack. Cal. Educ. Code §44955(d). Here, Ruth Ashley, the District's Assistant
18 Superintendent of Human Resource Services, testified that the District skipped individuals
19 possessing special training and experience in the following areas:(1) Advancement Via Individual
20 Determination (hereinafter "AVID"); (2) International Baccalaureate (hereinafter "IB"); and
21 Advanced Placement (hereinafter "AP"). Unless an employee falls into one of the three articulated
22 skipping criteria, he or she is subject to being bumped by a more senior employee or to being laid
23 off because they are teaching in a particular area which is being reduced.

24 1. AVID Skips

25 Ms. Ashely testified that full certification in AVID requires completion of three levels of
26 training. If an individual has completed this training, it is noted on the District's seniority list as
27 "17C" in the Tie Rank/Tie Break column. The District did not skip individuals who possess the
28 ability to teach the AVID elective if they are not currently teaching the elective. For example, Ms.

1 Ashley testified that the District did not skip Danielle Salisbury (Rank 428) even though she
2 possesses all three levels of AVID training and has the ability to teach the AVID elective. Instead,
3 the District only skipped individuals who are currently teaching the AVID elective, even if they
4 never completed all three levels of training. For example, Jennifer Ho (Rank 698), an individual
5 skipped based on AVID, testified she currently teaches the AVID elective but has not completed all
6 three levels of training. Other witnesses identified individuals who were currently teaching the
7 AVID elective course but had received no training beyond a few hours of on site training (and none
8 of the week long training described by Ms. Ashley) or had at most only the first level of AVID
9 training.

10 Some respondents testified that it is improper to use AVID as a skipping criteria because
11 *any* employee is able to participate in the training to receive AVID certification. However,
12 whether an employee possesses the certification or not it outside of his or her control because the
13 District determines who will attend these trainings. Because any employee can become AVID
14 certified, the possession of this certification does not meet the "special training and experience"
15 requirement of Section 44955(d). In addition, the District failed to meet its burden to show that
16 any AVID training is necessary at all to teach the AVID elective. At the very least, it is clear that
17 full AVID certification is not required to do so. The District also failed to meet its burden to show
18 that it has a "specific need" for the AVID program in its schools, as required by Section 44955(d).
19 Thus, some respondents argued that the ALJ must strike the use of AVID as a skipping criteria and
20 allow them to bump into the positions of junior employees who were skipped based on their
21 teaching of the AVID elective which would result in their being retained as the more junior
22 employee who has been skipped has had their notice rescinded.

23 Other respondents testified that if the District is going to use AVID as a skipping criteria, it
24 must do so for all respondents with some level of AVID training, especially any AVID training that
25 would let them teach the AVID elective. Again, it is unclear which trainings, if any, are required to
26 teach the AVID elective. There is at least one skipped individual who does not possess complete
27 AVID certification, but is currently teaching the AVID elective. Thus, some respondents argued
28 that the District should be forced to skip all respondents who completed any of the AVID trainings

1 leading to full certification. The District stipulated that should the ALJ order it to do so, it will
2 skip respondents who have some of the training required to obtain AVID certification (Attached
3 hereto as Exhibit B is a list of individuals who possess some or all of the three trainings required to
4 obtain AVID certification).

5 Some respondents argued that the District should be forced to skip all respondents with any
6 AVID training, even if not the kind that will lead to AVID certification (i.e. some respondents
7 received training in AVID that helps them incorporate AVID strategies into their daily curriculum,
8 but does not lead to full AVID certification). The District also stipulated that should the ALJ order
9 it to do so, it will skip individuals who have some level of AVID training, even if not the type that
10 leads to full AVID certification (Attached hereto as Exhibit C is a list of individuals who possess
11 AVID training, but not the type that leads to full AVID certification).

12 2. IB Skips

13 Ms. Ashely testified that the District skipped individuals based on IB if they are IB-certified
14 and teaching at Jordan Academy, which is the District's only IB-designated high school. Ms.
15 Ashely also testified that the District implements the IB program in grade levels other than high
16 school. For example, Hudson, Dooley, and Lindsey are middle school sites in the District that are
17 currently, or in the process of becoming, approved as IB-designated sites. A number of individuals
18 at these sites are IB-certified, which is noted on the District's seniority list as "17D" in the Tie
19 Rank/Tie Break column. Ms. Ashley testified that the District did not skip IB-certified individuals
20 at these sites because doing so would result in the entire school site being skipped. However, Ms.
21 Ashley also testified that the District did not verify who at those sites would be subject to layoff.

22 Some respondents testified that if the District is going to skip some IB-certified employees,
23 it must skip all IB-certified employees. They testified that the IB system consists of three
24 components--primary years program, middle years program, and the high school diploma program--
25 -that act together as a cohesive whole. In other words, that the three programs are a continuum.
26 Here, the District is skipping IB-certified employees in the high school diploma program.
27 However, a number of IB-certified respondents testified that the primary and middle years
28 programs are necessary to the success of the entire IB system. Without teachers to foster the

1 program in these elementary and middle school levels, the high school program will be ineffective,
2 or worse, fail completely. Furthermore, there is nothing in the record to indicate that skipping IB-
3 certified respondents will force the District to skip all employees at the District's IB-certified
4 elementary and middle schools. Thus, some respondents argued that the District must be forced to
5 skip all IB-certified respondents. The District stipulated that if the ALJ ordered it to do so, it will
6 skip all IB-certified respondents (Attached hereto as Exhibit D is a list of respondents who possess
7 IB-certification or are currently teaching the IB curriculum).

8 3. AP Skips

9 Ms. Ashley testified that the District skipped individuals based on AP if they are currently
10 teaching AP courses or have the ability to teach AP courses. The ability to teach AP courses is
11 noted on the District's seniority list as "17A" in the Tie Rank/Tie Break column. One individual
12 testified (Anna Huynh (Rank 160) that she had received AP training while employed in another
13 school district and provided evidence of her AP certification (Exhibit CCC). The District has
14 stricken her name from the list of individuals for whom it is seeking a final lay off notice but in the
15 event the District were to change its position it is clear that Ms. Huynh has established that if the
16 ALJ upholds skips based upon AP certification then she should also be skipped.

17 B. The District Must Allow Individuals Holding a Multiple Subject Credentials to Bump Into
18 Middle School Positions That Consist of a Core Assignment.

19 Most of the individuals receiving preliminary layoff notices teach at the elementary school
20 level and hold a Multiple Subject teaching credential. Although holders of Multiple Subject
21 teaching credentials traditionally teach at the elementary school level in self-contained classrooms,
22 they have the ability to teach at the middle school level if the assignment is a core assignment.

23 Multiple Subject credentials state on their face that:

24 In addition [to allowing the holder to teach in a self-contained classroom], this
25 credential authorizes the holder to teach core classes consisting of two or more subjects
26 to the same group of students in grades five through eight, and to teach any of the core
27 subjects he or she is teaching to a single group of students in the same grade level as
28 the core for less than fifty percent of his or her work day.

1 See Exhibit AAA (Copy of Megan Kaplinsky's Clear Multiple Subject Teaching Credential).

2 Here, Ms. Ashley confirmed that a number of individuals in the District's middle schools
3 teach these core assignments, which is indicated on the District's the seniority list in the "School
4 Subjects" column and/or the "LYNX Subjects" column. For example, Monique Robertson (Rank
5 571), holds a Multiple Subject credential and teaches Language Arts 8 ABCD Core, Intermediate
6 LANGUAGE! Core, Language Arts 8, and U.S. History and Geography with that credential. Ms.
7 Ashley testified that in addition to core classes, a teacher teaching a core assignment will typically
8 have some non-core or "hanging" periods, which an individual may teach using his or her Multiple
9 Subject credential. Using Ms. Robertson as an example again, although her line on the seniority
10 list indicates she has the ability to receive Board Authorizations in Social Science K-12 and
11 English K-8, she currently does not hold these authorizations.³ Accordingly, she is teaching her
12 complete assignment, including her hanging period or non-core classes, with *only* her Multiple
13 Subject credential.

14 Because the District maintains middle school classes that consist of a core assignment, it
15 must allow more senior Multiple Subject credential holders to bump into core positions held by
16 junior employees. Specific cases will be discussed further below.

17 C. The District's Use of Board Authorizations In Making Assignments and Reassignments
18 Was Inconsistent and Not in Compliance with Section 44955.

19 1. The District Must Consider an Individual's Board Authorizations When Making
20 Assignments and Reassignments.

21 Education Code sections 44256 and 44263 authorize a school district to issue temporary
22 teaching authorizations commonly referred to as "Board Authorizations." These authorizations
23 give the holder the same ability to teach in the designated subject area as a teaching credential
24 conferred by the California Commission on Teacher Credentialing (hereinafter "CTC") for the
25 limited duration of the Board Authorization which is one school year. A Multiple Subject
26 credential holder may obtain a Board Authorization to teach a designated subject in grades K-8 so

27 ³ Ms. Ashley testified that only individuals with a "2010" notation next to their Board
28 Authorization(s) on the seniority list currently possess these authorizations. All other notations
indicate the individuals have the ability to obtain such an authorization.

1 long as he or she has completed at least 12 semester units of coursework in the designated subject.
2 Cal. Educ. Code § 44256(b). Any credential holder may obtain a Board Authorization to teach a
3 Single Subject class in grade K-12 so long as he or she has completed at least 18 semester hours of
4 coursework in the subject. Cal. Educ. Code § 44263. A major difference between a Board
5 Authorization and a credential from the CTC is that a school district must issue Board
6 Authorizations each year because the Board Authorization is only valid for one school year.

7 Here, Ms. Ashley testified that numerous individuals in the District hold Board
8 Authorizations and are currently fulfilling their assignments with these authorizations. For
9 example, Lisa Marie Weyh (Rank 605) holds a Single Subject physical education credential and a
10 Board Authorization in English K-8. Ms. Ashley confirmed in her testimony that Ms. Weyh is
11 teaching her assignment using *only* her Board Authorization. The "2010" notation next to Ms.
12 Weyh's Board Authorization confirms that she currently possesses this authorization. Ms. Ashley
13 testified that individuals with a Board Authorization listed on their seniority list who do not have a
14 "2010" notation are individuals who do not currently possess the listed authorization but have the
15 ability to obtain it by virtue of already completed coursework.

16 Although it is clear the District relies heavily on the use of Board Authorizations, its
17 treatment of such authorizations for assignment and reassignment purposes is inconsistent at best.
18 On the one hand, Ms. Ashley testified that an individual cannot use his or her currently held Board
19 Authorization to bump into a junior employee's position because that authorization will not exist at
20 the end of this school year, and it is not guaranteed that the District will renew the authorization.
21 And yet, she also testified that in certain situations the District prevented an employee from
22 bumping into a junior employee's position because the junior employee possessed a Board
23 Authorization allowing him or her to teach an assignment the senior employee could not. For
24 example, Ms. Ashley testified it was her belief that Lorena Wohlgezogen (Rank 608) could not
25 bump into Ms. Weyh's position because Ms. Weyh possesses a Board Authorization in English,
26 which allows her to teach the Elements of Journalism component of her assignment and Ms.
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1 Wohlgezogen could not teach that class.⁴ However, because Board Authorizations expire at the
2 end of each school year, at the beginning of the upcoming school year, Ms. Weyh will only possess
3 a Single Subject physical education credential whereas Ms. Wohlgezogen will possess a Multiple
4 Subject teaching credential. Ms. Weyh's credential does not allow her to teach her current
5 assignment without a Board Authorization whereas, Ms. Wohlgezogen's credential lets her fill Ms.
6 Weyh's entire assignment because it is a core assignment. To argue that Ms. Weyh's Board
7 Authorization, which will not exist next at the end of this school year, somehow precludes Ms.
8 Wohlgezogen from bumping into her assignment is arbitrary and capricious. The arbitrary nature
9 of the District's position is exemplified by the fact that both Ms. Weyh and Ms. Wohlgezogen have
10 the ability to obtain a Board Authorization in English--the District's seniority list indicates that Ms.
11 Wohlgezogen has the ability to obtain a Board Authorization in English K-12, and Ms. Weyh
12 cannot teach her current assignment without obtaining a new Board Authorization for next year. In
13 fact Ms. Wohlgezogen can teach Ms. Weyh's assignment even without a Board Authorization
14 because she holds a Multiple Subject credential authorizing her to teach a core assignment while
15 Ms. Weyh holds only a Single Subject physical education credential and as a result she cannot
16 teach the assignment in the absence of a Board Authorization.

17 Even if an individual does not currently possess a Board Authorization, he or she should be
18 treated as possessing the authorization in those circumstances where the District's seniority list
19 indicates has the ability to receive such an authorization. In other words, whether an individual is
20 eligible or not for a Board Authorization is not speculative because the District already took the
21 time and effort to verify on its seniority list which Board Authorizations employees are eligible to
22 obtain. Furthermore, whether an individual currently possesses a Board Authorization is largely
23 dependent on his or her current assignment. For example, the District's seniority list indicates
24 Danielle Salisbury (Rank 428) has the ability to obtain Board Authorizations in English K-12 and
25 Social Science K-12. However, she does not currently possess these authorizations because she
26 does not need them for her current position as a Program Facilitator, which, as discussed in more

28 ⁴ As it turns out Ms. Wohlgezogen can teach Ms. Weyh's entire assignment using her Multiple
Subject credential. *See* Section III-B, above.

1 detail below, is a leadership position that the District selects individuals to fill. Allowing the
2 District not to consider Ms. Salisbury's capacity to obtain Board Authorizations in making
3 assignments and reassignments essentially punishes her for taking a leadership position within the
4 District. Thus, the District should have also considered an individual's ability to obtain a Board
5 Authorization when making assignments and reassignments.

6 Because the District used Board Authorizations in determining how to make certain
7 assignments and reassignments, it is required to do so consistently in making *all* assignments and
8 reassignments. Allowing the District to "cherry pick" the situations in which it would like to use
9 Board Authorizations is arbitrary and capricious and in violation of Section 44955. As it stands
10 now, some employees received the benefit of a Board Authorization and some did not. The fact
11 that the District considered Board Authorizations to prevent some bumps necessarily implies that
12 only junior employees were allowed to use their authorizations to the disadvantage of senior
13 employees. This is in direct contradiction to the requirements of Section 44955 regarding
14 seniority, assignment, and reassignment. Thus, the District is required to reevaluate its
15 assignments and reassignments to allow individuals to use their Board Authorizations to bump into
16 positions held by more junior employees. Anything short of this will result in an inconsistent,
17 arbitrary, and capricious outcome and result in the invalidity of the entire layoff.

18 2. The District's Use of Board Authorizations in its Tie-Breaking Criteria Does Not Serve the
19 Needs of the District.

20 Section 44955 allows a school district to implement tie-breaking criteria to determine order
21 of layoff for employees who have the same seniority date. These criteria must be based "solely on
22 the basis of the needs of the district and the students thereof." Cal. Educ. Code § 44955(b).

23 Here, the District's tie-breaking criteria are found in Exhibit B of the its Governing Board's
24 Resolution No. 021610-B. See Exhibit 1-B. At issue here is the District's treatment of Board
25 Authorizations vis-a-vis Supplemental Authorization credentials. Possession of a Board
26 Authorization is reflected in the District's seniority list as "012," and possession of a Supplemental
27 credential is listed as either "15C" and/or "15D." As structured, each tie-break criterion has more
28 weight than the subsequent criterion, meaning that for individuals with the same seniority date,
those with a Board Authorization ("012") will be laid off *after* those with a Supplemental

1 credential ("015").

2 At least one respondent testified that giving more weight to a Board Authorization than a
3 Supplemental credential does not serve the needs of the District or its students. For one, obtaining
4 a Supplemental credential requires 20 semesters hours of coursework in the subject area whereas a
5 Board Authorization only requires 12 semester units or 18 semester hours of coursework. See Cal.
6 Educ. Code §§ 44256(a) - (b) & 44263. The fact that an individual completed more coursework to
7 obtain a Supplemental credential shows that individual has more training in the content area than
8 someone with a Board Authorization. In addition, Board Authorizations are temporary in nature
9 whereas Supplemental credentials are designed to last multiple years. The practical effect of this
10 distinction is that the District can more easily assign and reassign individuals with Supplemental
11 credentials because their ability to teach in the designated subject areas is not contingent on
12 approval each year from the District's Governing Board. And, finally, it is disingenuous for the
13 District to place more value on Board Authorizations when it makes an effort to encourage
14 individuals to complete the coursework required to obtain Supplemental credentials. Thus, the
15 District's tie-breaking criteria, at least with regard to Board Authorizations and Supplemental
16 credentials, is so arbitrary that it can actually be said that in this regard it does not meet the needs
17 of the District and its students and must be stricken.

18 D. The District Improperly Retained Junior Employees Whose Duties a More Senior
19 Employee Could Perform.

20 As mentioned above, the District retained a number of junior employees when a number of
21 more senior employees could perform their duties (Attached hereto as Exhibit E is a list of
22 improperly retained junior employees). As discussed in more detail in Section IV, below, the
23 Accusations of all respondents with more seniority than those junior employees must be dismissed.
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1 The following are individuals bumping arguments on behalf of specific respondents
2 warranting the dismissal of their Accusations⁵:

3 1. Iyaunna Towery (Rank 1335/1170K)

4 Ms. Towery is an elementary school teacher with a Multiple Subject teaching credential.
5 She testified at the hearing that based on her training and experience she has the ability to bump
6 into the position of Toiya Smith (Rank 940), who is currently a Program Facilitator. According to
7 the District's job posting, the position of Program Facilitator is a leadership development position
8 requiring at least: (1) a minimum of three years of classroom teaching; (2) a valid California
9 teaching credential; and (3) support of the individual's supervisor to pursue a leadership position.
10 See Exhibit YYY (District's Posting of Leadership Development Positions). In reviewing the
11 District's seniority list, it is evident that Ms. Towery possesses both (1) and (2). Regarding (3), Ms.
12 Towery submitted a letter of recommendation from her site principal, Rosana Madrid-Arroyo,
13 indicating support for Ms. Towery to pursue a leadership position. See Exhibit YYY (Letter of
14 recommendation from Ms. Madrid-Arroyo).

15 Ms. Ashley testified that in addition to the minimum eligibility requirements, the role of
16 Program Facilitator requires special training and experience, mainly a knowledge of school site
17 budget. Ms. Towery testified that she does in fact have the special training and experience
18 necessary to fill that role. For example, she has taken the initiative to be selected and to serve for
19 several years as the School Site Council Chairperson as well as Lead Teacher and Administrative
20 Designee during her tenure with the District. She testified that for several years she has served as
21 the designated administrator at her site when her principal is not present. These positions afforded
22 her the opportunity to work with site administrators, parents and other teachers while both
23 learning/performing the duties required in any leadership role with the District, including that of
24 Program Facilitator. In addition, these positions allowed Ms. Towery to familiarize herself with

26 ⁵ In reviewing the District's most updated Identification of Final Notices by Service Area (Exhibit
27 23), some of the respondents identified in this section are currently not set to receive a final layoff
28 notice. These individuals are marked with a "*" next to their names. However, given that these
individuals have not had their Accusations withdrawn and that the District has been indecisive
about on who it intends to serve final layoff notices, we ask that the ALJ consider these arguments
when making his proposed decision and dismiss Accusations where appropriate.

1 the maintenance of a school site budget. The District may try to argue that Ms. Towery cannot
2 bump into Ms. Smith's position because Ms. Towery did not interview for the position. This
3 argument must be disregarded because allowing it to stand would preclude *any* employee from
4 bumping into another employee's position since all positions include an interview component upon
5 initial placement. Thus, Ms. Towery can bump into Ms. Smith's position because she has the
6 qualifications to perform Ms. Smith's complete assignment.

7 2. Danielle Salisbury (Rank 428)

8 Ms. Ashley testified that Ms. Salisbury is currently a GEAR UP Program Facilitator and set
9 to receive a final layoff notice. She also testified that Ms. Salisbury possesses full AVID
10 certification, which lets her teach the AVID elective. Based on her Multiple Subject credential,
11 which allows her to teach a core assignment, and her ability to teach the AVID elective, Ms.
12 Salisbury's can bump into the positions of the following retained junior employees because she can
13 teach their complete assignments:

14 (a) Donnell Wright, Jr. (Rank 307); and

15 (b) Hend Ali (Rank 425).

16 3. Megan Kaplinsky (Rank 821), Rosio Osuna* (Rank 1067), and Maya Oliver* (Rank 1188)

17 Ms. Kaplinsky, Ms. Osuna, and Ms. Oliver are elementary school teachers who hold
18 Multiple Subject credentials and Specialist Instruction credentials in reading. Their Specialist
19 Instruction credentials allow them to:

20 assist and support the classroom teacher in reading instruction and teaching strategies,
21 select and adapt reading instruction materials, plan and conduct reading staff
22 development, assess student progress and monitor student achievement in reading,
23 provide direct reading intervention work with students, and develop and coordinate
24 reading programs [in the District].

25 *See Exhibit AAA (copy of Ms. Kaplinsky's Clear Specialist Instruction Credential (Reading)).*

26 Based on their certification as reading specialists and their ability to teach reading intervention and
27 literacy assignments, these individuals are able to bump into the positions of the following retained
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1 junior employees because they can perform their complete assignments.⁶

- 2 (a) Francisco Gomez (Rank 513);
- 3 (b) Michell Brennan (Rank 491);
- 4 (c) Maria La Costa (Rank 386);
- 5 (d) Charlotte Bodoh (Rank 338); and
- 6 (e) Daniel Wellman (Rank 162).

7 4. Amanda Gerritsen* (Rank 1160)

8 Ms. Gerritsen is a middle school language arts teacher with a Multiple Subject teaching
9 credential and a Board Authorization in English K-12. Based on her seniority and qualifications,
10 she can bump into the positions of the following retained junior employees because she can teach
11 their complete assignments:

- 12 (a) Sebastian Puccio (Rank 864) - Mr. Puccio is teaching his assignment using only his
13 Board Authorization in English, which Ms. Gerritsen also possesses;
- 14 (b) Jacquelyn Gainer (Rank 836);
- 15 (c) Carolyn Holler (Rank 832);
- 16 (d) Renee Brown (Rank 740);
- 17 (e) Leslie Theobald (Rank 724); and
- 18 (f) Lisa Marie Weyh (Rank 605).

19 5. Nancy Dalton* (Rank 922)

20 Ms. Dalton is a middle school teacher who currently possesses a Multiple Subject
21 credential and Board Authorizations in English K-12 and Social Science K-8. Based on her
22 seniority and qualifications, she can bump into the positions of the following retained junior
23 employees because she can teach their complete assignments:

- 24 (a) Alison Bestelmeyer (Rank 845);
- 25 (b) Leanne Handy (Rank 641); and
- 26 (c) Racquel Welch-Kitchen (Rank 393) - this assignment consists of all self-contained
27 classes, which Ms. Dalton's Multiple Subject credential allows her to teach.

28 ⁶ It should be noted that the following individuals are teaching their assignments without a specialist instruction credential in reading.

1 6. Jill Pait (Rank 891)

2 Ms. Pait is a middle school language arts, math, social science and science teacher with a
3 Multiple Subject teaching credential. Based on her seniority and qualifications, she can bump into
4 the positions of the following retained junior employees because she can teach their complete
5 assignments:

- 6 (a) Marsha Swinford (Rank 652); and
- 7 (b) Racquel Welch-Kitchen (Rank 393).

8 7. Kara Johns* (Rank 889)

9 Ms. Johns is a middle school language arts teacher with a Multiple Subject teaching
10 credential and Supplemental Authorization in English. Based on her seniority and qualifications,
11 she can bump into the positions of the following retained junior employees because she can teach
12 their complete assignments:

- 13 (a) Sebastian Puccio (Rank 864);
- 14 (b) Jacquelyn Gainer (Rank 836);
- 15 (c) Carolyn Holler (Rank 832);
- 16 (d) Renee Brown (Rank 740);
- 17 (e) Leslie Theobald (Rank 724); and
- 18 (f) Lisa Marie Weyh (Rank 605).

19 8. Erin Vaughn (Rank 678)

20 Ms. Vaughn is an elementary teacher with a Multiple Subject credential and Supplemental
21 Authorizations in English and Social Science. Her Supplemental Authorizations allow her to teach
22 English and/or Social Science in grades 9 and below. Based on her seniority and qualifications,
23 she can bump into the positions of the following retained junior employees because she can teach
24 their complete assignments:

- 25 (a) Keira Malkus (Rank 615);
- 26 (b) Jessica Kane (Rank 442);
- 27 (c) Karla Sorensen (Rank 439); and
- 28 (d) Jeremy Bucko (Rank 417)

1 9. Wendy Cavanaugh (Rank 622)

2 Ms. Cavanaugh is an elementary teacher with a Multiple Subject credential. Based on her
3 seniority and qualifications, she can bump into the positions of the following retained junior
4 employees because she can teach their complete assignments:

5 (a) Lisa Marie Weyh (Rank 605); and

6 (b) Monique Robertson (Rank 571)

7 10. Ingrid Guntner (Rank 604)

8 Ms. Guntner is a high school art teacher with a Single Subject teaching credential in art.
9 Based on her seniority and qualifications, she has the ability to bump into the position currently
10 held by Allison Rockwood (Rank 502) because she can teach Ms. Rockwood's current assignment.

11 11. William Feliciano* (Rank 578)

12 Mr. Feliciano is a middle school math and art teacher with a Single Subject teaching
13 credential in foundational-level math and a Multiple Subject teaching credential. Based on his
14 seniority and qualifications, he has the ability to bump into the position currently held by Sayed
15 Alawi (Rank 492) because Mr. Feliciano's Single Subject foundational-level math credential
16 allows him to teach Mr. Alawi's complete assignment, which consists solely of math classes.

17 12. Eddie Cruz* (Rank 527)

18 Mr. Cruz is a middle school US History teacher with a Single Subject teaching credential in
19 English and Supplemental Authorizations in Introductory Social Science and US History and
20 History of California. Based on his seniority and qualifications, he has the ability to bump into the
21 positions of the following retained junior employees because he can perform their complete
22 assignments:

23 (a) Matthew Johnson (Rank 514);

24 (b) Krystal Ortiz (Rank 498);

25 (c) Lisa Coussell (Rank 495);

26 (d) Marchell Williams (Rank 460);

27 (e) Jessica Kane (Rank 442);

28 (f) Karla Sorensen (Rank 439);

(g) Jeremy Bucko (Rank 417); and

1 (h) Joel Lovelace (Rank 396).

2 13. Olga Galaviz (Rank 485)

3 Ms. Galaviz is a middle school math, science, health, ELD, and world history teacher with
4 a Multiple Subject credential and Board Authorizations in Social Science K-12, Spanish K-12,
5 Mathematics K-8, and Biological Science K-8. Based on her seniority and qualifications, she has
6 the ability to bump into the position currently held by Suzanne Hennessey (Rank 474) because she
7 can teach Ms. Hennessey's complete assignment, which consists solely of math classes. It should
8 be noted that Ms. Hennessey is teaching her assignment using only her Board Authorization in
9 Mathematics, and that Ms. Galaviz possesses a similar Board Authorization allowing her to teach
10 math at the middle school level.

11 14. Mark Jonas* (Rank 484)

12 Mr. Jonas is a middle school health and science teacher with a Multiple Subject teaching
13 credential, Supplemental Authorization in health science, and Board Authorizations in health
14 science K-8 and biological sciences K-8. Based on his seniority and qualifications, he has the
15 ability to bump into the position currently held by Carla Valdez (Rank 151) because he can teach
16 Ms. Valdez's complete assignment, which consists of health and science classes. In fact, Mr.
17 Jonas' current assignment is virtually identical to that of Ms. Valdez.

18 15. Paul Mason* (Rank 254)

19 Mr. Mason is a middle school math teacher with a Single Subject teaching credential in
20 mathematics. Based on his seniority and qualifications, he has the ability to bump into the position
21 currently held by Andrew Lewis (Rank 233) because Mr. Mason's Single Subject math credential
22 allows him to teach Mr. Lewis' complete assignment, which consists solely of math classes.

23 16. Steven Hoffman (Rank 153)

24 Mr. Hoffman is a high school math teacher with a Single Subject credential in business, a
25 Supplemental Authorization in introductory mathematics, and a Board Authorization in
26 mathematics K-12. Based on his seniority and qualifications, he has the ability to bump into the
27 position currently held by Marcos Rodriguez (Rank 139) because his Supplemental Authorization
28 in introductory mathematics and his Board Authorization in mathematics K-12 allows him to teach
Mr. Rodriguez's complete teaching assignment, which consists solely of math classes.

1 17. Darin O'Connell (Rank 85)

2 Mr. O'Connell is a high school/middle school physical education teacher with a Single
3 Subject credential in physical education.⁷ He works at Avalon High School/Middle School on
4 Catalina Island and is the only male physical education teacher at his site. According to Exhibit
5 23, Mr. O'Connell is set to receive final notice because Angelina Freligh (Rank 2969) is set to
6 bump into his position. However, Ms. Freligh is not qualified to bump into Mr. O'Connell's
7 position because she cannot perform all of his duties. Part of Mr. O'Connell's duties as a physical
8 education teacher includes supervision of the male locker room. As the only male physical
9 education teacher at his site, he is the only person qualified to perform this duty. If Ms. Freligh is
10 allowed to bump into Mr. O'Connell's position, there will be no male physical education teacher at
11 the site, which means no one will be supervising the male locker room.

12 18. Justin Gaschen* (Rank 1183)

13 Mr. Gaschen is an elementary school teacher with a Multiple Subject teaching credential
14 and a Supplemental Authorization in English. He would like to argue that based on his seniority
15 and qualifications, he can bump into the positions of the following retained junior employees
16 because he can teach their complete assignments:

- 17 (a) Marie Richelle Bergman (Rank 1154);
- 18 (b) Leslie Walker (Rank 1151);
- 19 (c) Susana Ramos (Rank 1104);
- 20 (d) Ana Laura Frausto (Rank 1066); and
- 21 (e) Susan Garate (Rank 706).

22 19. Donna Dean (Rank 1127)

23 Ms. Dean is an elementary teacher with a Multiple Subject teaching credential and a Life
24 Secondary teaching credential in drama. She would like to argue that based on her seniority and
25 qualifications, she can bump into the positions of the following retained junior employees because
26 she can teach their complete assignments:

27 _____
28 ⁷ Mr. O'Connell is currently on active duty with the United States Navy and has been serving in
Afghanistan since December of 2009. He was unable to attend the hearing, but did submit a
request for hearing and is a respondent in this matter.

- 1 (a) Mary Stewart (Rank 1109);
- 2 (b) Claudia Reasoner (Rank 1072);
- 3 (c) Ana Laura Frausto (Rank 1066);
- 4 (d) Demetra Papadopoulou (Rank 909); and
- 5 (e) Kristy Freund-Mcfeggan (Rank 902).

6 20. Valerie Munroe (Rank 1094)

7 Ms. Munroe is an elementary school teacher with a Multiple Subject teaching credential.
8 She would like to argue that based on her seniority and qualifications, she has the ability to bump
9 into the positions of the following retained junior employees because she can teach their complete
10 assignments:

- 11 (a) Claudia Reasoner (Rank 1072);
- 12 (b) Demetra Papadopoulou (Rank 909); and
- 13 (c) Kristy Freund-Mcfeggan (Rank 902).

14
15 21. Kay Whitman* (Rank 982)

16 Ms. Whitman is an elementary school teacher with a Multiple Subject teaching credential
17 and Supplementary authorizations in English and Social Science. She would like to argue that
18 based on her seniority and qualifications, she can bump into the positions of the following junior
19 employees because her seniority and qualifications allow her to teach their complete assignments:

- 20 (a) Kristy Freund-Mcfeggan (Rank 902);
- 21 (b) Monique Robertson (Rank 571); and
- 22 (c) Rebecca Kuyper (Rank 64).

23 22. Adrienne Doung (Rank 943)

24 Ms. Doung is a District Math Coach with a Multiple Subject teaching credential. She
25 would like to argue that based on her seniority and qualifications, she can bump into the positions
26 of the following junior employees because her seniority and qualifications allow her to teach their
27 complete assignments:

- 28 (a) Toiya Smith (Rank 940);
- (b) Kristy Freund-Mcfeggan (Rank 902);

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- (c) Alison Bestelyemeyr (Rank 845)
- (d) Tiffany Brodowski (Rank 700) - Ms. Brodowski is teaching her assignment using only her Board Authorization in English K-12. Ms. Doung has the ability to obtain this authorization;
- (e) Joy Fuller (Rank 682) - Ms. Fuller is teaching her assignment using only her Board Authorization in Math K-8. Ms. Doung has the ability to obtain this authorization;
- (f) Marsha Swinford (Rank 652);
- (g) Leanne Handy (Rank 641);
- (h) Gene Ros (Rank 618) - Mr. Ros is teaching his assignment using only his Board Authorization in Math K-8. Ms. Doung has the ability to obtain this authorization;
- (i) Gerlynn Montiel (Rank 482) - Ms. Montiel is teaching her assignment using only her Board Authorization in Science K-12. Ms. Doung has the ability to obtain an authorization in science that will allow her to teach Ms. Montiel's assignment; and
- (j) Heather Schaffer (Rank 415) - Ms. Schaffer is teaching her assignment using only her Board Authorization in Math K-8. Ms. Doung has the ability to obtain this authorization.

23. Alma Rios (Rank 865)

Ms. Rios is an ELD/SDAIE elementary school teacher with a Multiple Subject teaching credential and a BCLAD. She would like to argue that based on her seniority and qualifications, she can bump into the positions of the following retained junior employees because she can teach their complete assignments:

- (a) Susan Garate (Rank 706) - Ms. Rios possesses the same credentials as Ms. Garate. In order to teach a dual immersion assignment, an individual need only possess a BLCAD, which Ms. Rios possesses;
- (b) Monique Robertson (Rank 571); and
- (c) Misrak Sykes (Rank 161).

24. Laura You* (Rank 824)

Ms. You is an elementary school teacher with a Multiple Subject credential and a Supplementary authorization in Social Science. Her Supplemental authorization allows her to

1 teach Social Science in grades 9 and below. She would like to argue that based on her seniority
2 and qualifications, she has the ability to bump into the positions of the following junior employees:

- 3 (a) Georgina Pattison (Rank 756);
- 4 (b) Ann Sourn (Rank 749);
- 5 (c) Gail Hamilton (Rank 728);
- 6 (d) Brendea Ornelas (Rank 727);
- 7 (e) Sandra Partida (Rank 718);
- 8 (f) Cory Clark (Rank 640);
- 9 (g) Matthew Gold (Rank 602); and
- 10 (h) Jeremy Bucko (Rank 417).

11 Ms. You also possesses a Pupil Personnel Services credential, which allows her to perform the
12 duties of a counselor. Accordingly, she would like to argue that she has the ability to bump into
13 the positions of the following retained junior counselors:

- 14 (a) Nicole Hammerschmidt (Rank 790);
- 15 (b) Carissa-Marie Cueva (Rank 788);
- 16 (c) Catherine Salazar (Rank 659);
- 17 (d) Daniel Ho-Ching (Rank 592);
- 18 (e) Cheryl Lax (Rank 590);
- 19 (f) Janice Nabbout (Rank 585);
- 20 (g) Rosa Gonzalez (Rank 462)
- 21 (h) John Tran (Rank 433)
- 22 (i) Spencer Barber (Rank 403);
- 23 (j) Jennifer Carey (Rank 402);
- 24 (k) Michelle Koga (Rank 401);
- 25 (l) Maria Reteguín (Rank 399);
- 26 (m) Lashonda Bogin (Rank 304);
- 27 (n) Loretta Clary (Rank 285);
- 28 (o) Vera Pim (Rank 284);
- (p) Lisa Smith (Rank 283);

- 1 (q) Derek Johanson (Rank 282);
- 2 (r) Nora Valdez (Rank 280);
- 3 (s) Hadley Slevin (Rank 277);
- 4 (t) Ross Morinaga (Rank 276);
- 5 (u) Nancy Freihaut (Rank 275);
- 6 (v) Gabriela Arredondo (Rank 273);
- 7 (w) Lionel Gonzalez (Rank 271); and
- 8 (x) Che Scott (Rank 265).

9 25. Shannon Brizendine (Rank 710)

10 Ms. Brizendine is a middle school health teacher with a Single Subject teaching credential
11 in Health Science. She would like to argue that based on her seniority and qualifications, she can
12 bump into the positions of the following junior employees because her seniority and qualifications
13 allow her to teach their complete assignments:

- 14 (a) Kristen Beckerdite (Rank 577);
- 15 (b) Eleanor Baltazar (Rank 348); and
- 16 (c) Carla Valdez (Rank 151) - Ms. Valdez is currently teaching the science component
17 of her assignment with a Board Authorization, which Ms. Brizendine has the ability
18 to obtain.

19 26. Brandi Janda (Rank 692)

20 Ms. Janda is an elementary teacher with a Multiple Subject teaching credential. She would
21 like to argue that based on her seniority and qualifications, she can bump into the position currently
22 held by Ethel Smith (Rank 480) because she can teach Ms. Smith's complete assignment. It must
23 be noted that although Ms. Smith teaches Senior Chorus, this assignment falls outside the normal
24 course of the workday and is extracurricular. Accordingly, this component cannot be considered in
25 the bumping analysis.

26 27. Victoria Casillas* (Rank 704)

27 Ms. Casillas is dual immersion elementary teacher with a Multiple Subject credential and
28 Supplemental authorizations in Art and English. Her Supplemental authorizations allow her to
teach Art and/or English so long as the curriculum is designed for grades 9 and below. Ms.

1 Casillas would like to argue that based on her seniority and qualifications, she can bump into the
2 positions of the following retained junior employees because she can teach their complete
3 assignments:

4 (a) Allyson Scott (Rank 650);

5 (b) Bruce Gillman (Rank 633) - Ms. Casillas' Supplemental authorization in English
6 allows her to teach at the high school level so long as the curriculum is designed for
7 grades 9 and below. Mr. Gillman, like Ms. Casillas, does not possess as Single
8 Subject credential in English, but only a Supplemental authorization in introductory
9 English;

10 (c) Olivia Buell (Rank 606); and

11 (d) Lisa Marie Weyh (Rank 605).

12 28. Nicole Zeineddine* (Rank 593)

13 Ms. Zeineddine is a middle school science teacher with a Multiple Subject teaching
14 credential and a Supplemental authorization in science. Her Supplemental authorization allows her
15 to teach science in grades 9 and below. She would like to argue that based on her seniority and
16 qualifications, she can bump into the positions of the following retained junior employees:

17 (a) Bunthary Mok (Rank 506);

18 (b) Erika Bolger (Rank 493);

19 (c) Gerlynn Montiel (Rank 482) - Ms. Montiel is teaching this assignment with only her
20 Board Authorization in Science;

21 (d) Michelle Green (Rank 436) - Ms. Green is teaching this assignment with only her
22 Board Authorization in Science;

23 (e) Frederick Dizon (Rank 395); and

24 (f) Joanne Park (Rank 347).

25 29. Michele Early (Rank 486)

26 Ms. Early is a middle school language arts teacher with a Multiple Subject teaching
27 credential and a Board Authorization in English K-8. Ms. Early would like to argue that based on
28 her seniority and qualifications, she has the ability to bump into the position of Gerlynn Montiel
(Rank 482).

1 30. Mireya Valenzuela (Rank 470)

2 Ms. Valenzuela is an elementary school teacher with a Multiple Subject teaching credential
3 and a Supplemental authorization in English. She would like to argue that based on her seniority
4 and qualifications, she can bump into the positions of the following retained junior employees
5 because she can teach their complete assignments:

- 6 (a) Bunthary Mok (Rank 506);
- 7 (b) Erika Bolger (Rank 493);
- 8 (c) Gerlynn Montiel (Rank 482);
- 9 (d) Jessica Kane (Rank 442);
- 10 (e) Karla Sorensen (Rank 439);
- 11 (f) Michelle Greene (Rank 436) - Ms. Greene is teaching her assignment using only her
12 Board Authorization in Science K-8. Ms. Valenzuela has the ability to obtain this
13 authorization;
- 14 (g) Joel Lovelace (Rank 396);
- 15 (h) Frederick Dizon (Rank 395); and
- 16 (i) Joanne Park (Rank 347).

17 31. Lisa Ware (Rank 477/683)

18 Ms. Ware is an elementary school teacher with a Multiple Subject teaching credential. She
19 would like to argue that based on her seniority and qualifications, she has the ability to bump into
20 the positions of the following retained junior employees:

- 21 (a) Leanne Handy (Rank 641);
- 22 (b) Gene Ros (Rank 618);
- 23 (c) Heather Schaffer (Rank 415) - Ms. Schaffer is teaching her assignment using only
24 her Board Authorization in Mathematics K-9. Ms. Ware has the ability to obtain
25 this authorization; and
- 26 (d) Kimberlie Smith (Rank 405).

27 32. Alexandria Moreland (Rank 171)

28 Ms. Moreland is a middle school science teacher with a Single Subject biological sciences
credential and a Multiple Subject teaching credential. Ms. Moreland would like to argue that based

1 on her seniority and qualifications, she has the ability to bump into the positions of the following
2 retained junior employees:

- 3 (a) Anne Maben (Rank 31)
- 4 (b) Jolena Stephenson (Rank 76).
- 5 (c) Doris Zelaya (Rank 122)
- 6 (d) Chelsea McCormick (Rank 166)

7 **IV. THE DISTRICT'S FAILURE TO PROPERLY SERVE LAYOFF NOTICES ON A**
8 **NUMBER OF JUNIOR EMPLOYEES REQUIRES THE REINSTATEMENT OF**
9 **MULTIPLE RESPONDENTS.**

10 Section 44955 is clear with regard to the rights of employees during a workforce reduction
11 vis-a-vis less senior colleagues--"the services of no permanent employee may be terminated . . .
12 while *any* probationary employee, or *any other* employee with less seniority, is retained to render a
13 service which said permanent employee is certificated and competent to render." Cal. Educ. Code
14 § 44955(b) (emphasis added). Here, as discussed in Section III-D, above, the District retained a
15 number of junior employees whose duties more senior respondents could perform. And, in some
16 instances, as discussed in Section II, the District simply failed to serve a preliminary layoff notice
17 on employees who it admits should have received one. Thus, under the plain language of Section
18 44955, the Accusation of each respondent with more seniority than any retained junior employee
19 identified in Sections II and III-D must be dismissed.

20 This result is consistent with the plain language and the intent behind section 44955. The
21 Supreme Court has stated that the "essence" of this statutory system is that "continuity of service
22 *restricts* the power to terminate employment which the institution's governing body would
23 normally possess." *Balen v. Peralta Junior College Dist.*, (Cal. 1974) 11 Cal. 3d 821, 826
24 (emphasis added). Therefore, "the Legislature has prevented the arbitrary dismissal of employees
25 with positions of a settled and continuing nature." *Id.* This is because teachers have a vested right
26 to such positions and cannot be deprived of these rights without due process of law. *See Davis v.*
27 *Gray*, (Cal. Ct. App. 3d Dist. 1983) 29 Cal. App. 2d 403, 407. Accordingly, each teacher has an
28 individual right to protect his or her vested right through the mechanism set forth in Section 44955.
Furthermore, courts have held that a school district's failure to abide by the statutory procedures

1 governing workforce reductions can impact a large part of, if not the entire, reduction for a given
2 school year. *See Bakersfield Elementary Teachers Ass'n v. Bakersfield City Sch. Dist.*, (Cal. App.
3 5th Dist. 2006) 145 Cal. App. 4th 1260, 1302-03 (court set aside the entire workforce reduction for
4 school year based on school district's failure to serve layoff notices on all employees entitled to a
5 hearing under section 44955).

6 The District will most likely contend that a large-scale dismissal of Accusations based on
7 its failure to lay off certain junior employees would be improper or otherwise unjust because the
8 District made a good-faith effort to comply with the requirements of 44955. In addition, it is likely
9 to argue that only the most senior of the affected respondents should have his or her Accusation
10 dismissed. However, there is nothing in Section 44955 or in caselaw that carves out such a "good
11 faith" exception. Rather, the sole exception to the general rule based on seniority is skipping.
12 Here, there is nothing in the record to indicate that the District skipped any of the retained
13 individuals identified in Sections II and III-D nor that any of these individuals meet the District's
14 skipping criteria. Their retention is in error as well as in violation of Section 44955. Thus, the
15 Accusations must be dismissed as to each respondent who can perform any of the duties of retained
16 junior employees.

17 **V. A NUMBER OF RESPONDENTS ARE ENTITLED TO HAVE THEIR SENIORITY**
18 **DATES CHANGED TO REFLECT THEIR ACTUAL FIRST DATE OF PAID**
19 **SERVICE WITH THE DISTRICT.**

20 Although many respondents testified and argued directly to the ALJ that their seniority
21 dates should be changed to reflect their "true" first date of paid service with the District, for
22 purposes of this Brief we address only the following arguments:

23 **A. New Teacher Institute**

24 A number of respondents testified that their seniority dates should be changed to reflect
25 their true first date of paid service with the District, which was attendance at New Teacher
26 Institute. At the hearing, the District stipulated that it will review its records and change the
27 seniority dates of all employees to reflect their attendance at New Teacher Institute.

28 **B. Open Court/Reading First Training**

A number of respondents testified that their seniority dates should be changed to reflect

1 their true first date of paid service with the District, which was attendance at Open Court/Reading
2 First training. These individuals testified that their attendance at these trainings was required as
3 part of their assignment the ensuing school year and that this training occurred prior to New
4 Teacher Institute. At the hearing, the District stipulated that should the ALJ order it to do so, it
5 will change the seniority dates of respondents to reflect their attendance at Open Court/Reading
6 First training prior to their listed seniority date (Attached hereto as Exhibit F is a list of such
7 respondents).

8 **VI. THE DISTRICT IMPROPERLY CLASSIFIED CERTAIN PERMANENT**
9 **EMPLOYEES IN ITS ADULT EDUCATION PROGRAM AS TEMPORARY**
10 **EMPLOYEES.**

11 Section 44929.25 sets forth the requirements for an employee working in a school district's
12 adult education program (hereinafter "adult school teachers") to achieve tenure within that
13 program. Like their K-12 counterparts, that Code section allows adult school teachers to achieve
14 permanent status within the adult education program upon the successful completion of two
15 complete and consecutive school years as a probationary employee. The difference between
16 obtaining tenure as a K-12 employee and as an adult school teacher is that, in addition to requiring
17 the employee to work at least 75% of the days the school district maintains classes, Section
18 44929.25 also requires adult school teachers to work at least 60 percent of the hours per week
19 considered a full-time assignment in order for a year of probationary service to be considered
20 "complete." However, upon obtaining permanent status, adult school teachers are entitled to the
21 same protections afforded their counterparts in the school district's regular K-12 classrooms,
22 including the protections set forth in Sections 44955 and 44956. Cal. Educ. Code § 44929.25.

23 Here, the District served "precautionary" layoff notices on a number of adult school
24 employees. In reviewing the District's most updated "Identification of Final Notices by Service
25 Area," it appears the District classified these employees as "temporary." See Exhibit 23. However,
26 as Gregory Spooner testified at the hearing, a number of these temporary classifications are
27 incorrect. Mr. Spooner testified that, in addition to himself, Ryan De La Vega, Linda Goonetilleke,
28 and Robert Hofius are in fact permanent employees within the adult education program. The
reason for the District's misclassification of these employees stems from its failure to provide

1 temporary contracts for these individuals during at least one year of their employment with the
2 District.

3 The Education Code grants school districts the right to classify employees as temporary.
4 However, a school district must make this classification and notify the employee in writing prior to
5 the his first day of paid service with the district. Cal. Educ. Code § 44916. In *Kavanaugh v. West*
6 *Sonoma County Union High Sch. Dist.*, the Court held that a school district's failure to abide by its
7 obligations under Section 44916 results in the employee being classified as probationary as a
8 matter of law. (Cal. 2003) 29 Cal. 4th 911, 926. In so holding, the Court reasoned that the
9 Legislature's intent in drafting Section 44916 was to ensure that "certificated teachers be informed
10 of their classification at a time that is sufficiently early in the process to enable them to make
11 informed decisions regarding their future employment." *Id.* at 921. Although *Kavanaugh* dealt
12 with an employee in the traditional K-12 setting, its reasoning is broad enough to require
13 application in the adult education setting as well. Accordingly, the District must reclassify the
14 following individuals as permanent employees of the adult school program:

15 A. Gregory Spooner

16 Mr. Spooner began work in the District's adult education program at the beginning of the
17 2002-2003 school year as a full-time temporary employee. *See* Exhibit 101 (Employment Contract
18 for Gregory Spooner for the 2002-2003 school year). He continued to work full-time in the
19 District's adult education program during the 2003-2004 school year, but was never offered a
20 written contract. The effect of this omission was twofold: (1) it converted the 2003-2004 school
21 year into a probationary year of employment; and (2) per Section 44918, converted the 2002-2003
22 school year into a year of probationary employment. Thus, upon reemployment in the adult
23 education program at the beginning of the 2004-2005 school year, Mr. Spooner became a
24 permanent employee in the District's adult education program per Section 44929.25. Accordingly,
25 he is entitled to a seniority date reflecting his first date of paid service at the beginning of the 2002-
26 2003 school year, placement on the adult education program seniority list reflecting this date, and
27 the right to rehire into that program.

28 B. Ryan De La Vega

Ryan De La Vega began work in the District's adult education program at the beginning of

1 the 2000-2001 school year as a full-time temporary employee. *See* Exhibit 103 (Employment
2 Contract for Ryan De La Vegas for the 2000-2001 school year). Mr. De La Vega continued to
3 work full-time in the District's adult education program during the 2001-2002 school year, but was
4 never offered a written contract for this year. The effect of this omission was again twofold: (1) it
5 converted the 2001-2002 school year into a probationary year of employment; and (2) per Section
6 44918, converted the 2000-2001 school year into a year of probationary employment. Thus, upon
7 reemployment in the adult education program at the beginning of the 2002-2003 school year, Mr.
8 De La Vega became a permanent employee in the District's adult education program per Section
9 44929.25. Accordingly, he is entitled to a seniority date reflecting his first date of paid service at
10 the beginning of the 2000-2001 school year, placement on the adult education program seniority
11 list reflecting this date, and the right to rehire into that program.

12 C. Linda Goonetilleke

13 Linda Goonetilleke began work in the District's adult education program on January 4,
14 1999 as a full-time temporary employee. *See* Exhibit 102 (Employment Contract for Linda
15 Goonetilleke for the 1998-1999 school year). She was offered another full-time temporary contract
16 for the 2000-2001 school year. *See* Exhibit 102 (Employment Contract for Linda Goonetilleke for
17 the 2000-2001 school year). She continued to work full-time in the District's adult education
18 program during the 2001-2002 school year, but was never offered a written contract for this year.
19 The effect of this omission was again twofold: (1) it converted the 2001-2002 school year into a
20 probationary year of employment; and (2) per Section 44918, converted the 2000-2001 school year
21 into a year of probationary employment. Thus, upon reemployment in the adult education program
22 at the beginning of the 2002-2003 school year, Ms. Goonetilleke became a permanent employee in
23 the District's adult education program per Section 44929.25. Accordingly, she is entitled to a
24 seniority date reflecting her first date of paid service at the beginning of the 2000-2001 school year,
25 placement on the adult education program seniority list reflecting this date, and the right to rehire
26 into that program.

27 D. Robert Hofius

28 Robert Hofius began work in the District's adult education program on January 29, 2001 as
a 0.95 percent temporary employee. *See* Exhibit 104 (Employment Contract for Robert Hofius for

1 the 2000-2001 school year). He continued to work full-time in the District's adult education
2 program during the 2001-2002 school year, but was never offered a written contract for this year.
3 This omission converted the 2001-2002 school year into a probationary year of employment.
4 Because he was reelected following the end of the 2001-2002 school year, his full-time assignment
5 in the adult education program during the 2002-2003 school year became his second probationary
6 year of employment. Upon reemployment in the adult education program at the beginning of the
7 2003-2004 school year, Mr. Hofius became a permanent employee in the District's adult education
8 program per Section 44929.25. Accordingly, he is entitled to a seniority date reflecting his first
9 date of paid service at the beginning of the 2001-2002 school year, placement on the adult
10 education program seniority list reflecting this date, and the right to rehire into that program.

11 **VI. CONCLUSION**

12 Reviewing the District's seniority list highlights the inconsistent and oftentimes hard-to-
13 explain manner in which the District implemented this layoff. As discussed in Sections II and III,
14 the District retained a number of junior employees while at the same time laying off senior
15 employees who could fulfill their duties. Section 44955 requires that the improper retention of so
16 many junior employees results in the dismissal of the Accusations of numerous respondents. Any
17 other result would violate the specific language of that Code section.

18 DATED: June 9, 2010

REICH, ADELL & CVITAN
A Professional Law Corporation


19
20 By: 
21 MARIANNE REINHOLD
22 KENT MORIZAWA
23 Attorneys for Certain Respondents
24
25
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28

EXHIBIT A

EXHIBIT A

List of Certificated Employees the District Erroneously Failed to Serve with a March 15 Notice or Whose Notice was Subsequently Mistakenly Rescinded

(Individuals on this list appear on District lists or were mentioned in testimony as certificated employees that the District was seeking to have receive final lay off notices despite the fact that they either received no notice or their notice has been rescinded.)

1. Horatio Gomez (Rank 147) – notice rescinded May 13 but his name appears on list of those receiving a final notice (Exhibit 23, at page 13).
2. Jeremy Bucko (Rank 417) - no notice sent although he was shown as being bumped at the end of several bumps starting with Karen Grunst (Rank 3900) on the initial bumping list (Exhibit 12, at page 4) and he appeared on the first Amended Exhibit A (Exhibit 11, at page 15). Ms. Ashley also initially testified he would be bumped by Ms. Grunst.
3. Gerlynn Montiel (Rank 482) - no notice sent although she was shown as being bumped by Kimberly Dalton (Rank 3224) (Exhibit 12, at page 4) and she appeared on the first Amended Exhibit A (Exhibit 11, at page 15). Ms. Ashley also initially testified she would be bumped by Ms. Dalton.
4. Monique Robertson (Rank 571) - no notice sent although she is shown as being bumped at the end of several bumps starting with Armando Duenos (Rank 2559) on the initial bumping list (Exhibit 12, at page 5) and she appeared on the first Amended Exhibit A (Exhibit 11, at page 15). Ms. Ashley also initially testified she would be bumped by Mr. Duenos.
5. Matthew Gold (Rank 602) - no notice sent although he is shown on the bump list (Exhibit 12, at page 5) as receiving a notice and he appeared on the first Amended Exhibit A (Exhibit 11, at page 15). Ms. Ashley also initially testified he should receive a final notice.
6. Lisa Marie Weyh (Rank 605) - no notice sent although she is shown as being bumped at the end of several bumps starting with Kathleen Brown (Rank 2859) (Exhibit 12, at page 5) and she appeared on the first Amended Exhibit A (Exhibit 11, at page 16). Ms. Ashley also initially testified he would be bumped by Ms. Brown.
7. Keira Malkus (Rank 615) - no notice sent although she is shown as being bumped at the end of a bump starting with Erin Vaughn (Rank 678) (Exhibit 12, at page 5) and she appeared on the first Amended Exhibit A (Exhibit 11, at page 2). Ms. Ashley also initially testified she would be bumped by Ms. Vaughn.

8. Cory Clarke (Rank 640) - no notice sent although she is shown as being bumped at the end of a bump starting with Laura You (Rank 824) (Exhibit 12, at page 5) and appeared on the first Amended Exhibit A (Exhibit 11, at page 3). Ms. Ashley also initially testified he would be bumped by Ms. You.
9. Marsha Swinford (Rank 652) - notice rescinded May 13 even though Ms. Swinford is a Multiple Subject credential holder who is shown as teaching Kindergarten and preschool and has no Board Authorizations or Supplemental Authorizations.
10. Angel Luna (Rank 715) - no notice sent although he is shown as being laid off on the initial bumping list (Exhibit 12, at page 5) he appeared on the first Amended Exhibit A (Exhibit 11, at page 11). Ms. Ashley also initially testified he would be laid off as he was within the PKS being reduced.
11. Alison Bestelmeyer (Rank 845) - notice rescinded May 13 even though the District's *Final* list of individuals receiving a final notice by service area (Exhibit 23, at page 16) shows she is to receive a final notice and that she is being bumped by Huphing Taing (Rank 2545).
12. Kristy Freund-McFeggan (Rank 902) - no notice sent although Ms. Ashley testified she was to receive a notice as she was within the PKS being reduced.
13. Maria Andersen (Rank 921) - notice rescinded May 13 although she is a Multiple Subject credential holder with no current board authorization to teach either the Math or Science classes she is shown as teaching. If her assignment is in fact a Core assignment then any number of more senior Multiple Subject credential holders can teach the assignment. If it requires a Board Authorization then several more senior teachers should have been able to bump her — Adrienne Doung (Rank 943) is a TOSA Math Coach with a Multiple Subject credential who is eligible for both a Math and Science Board Authorization; John Wilson (Rank 1161) is a Math and Science teacher with a Multiple Subject credential and current Board Authorizations in both Math and Science (District currently shows he is not to receive a final notice).
14. Teresa Wells (Rank 973) - notice rescinded May 24 although she is a Multiple Subject credential holder with no current Board Authorization to teach the Health, Science, Physical Education or Art classes she is listed as teaching and in fact the seniority list does not even show she is eligible for Board Authorizations in any of these areas. If she is teaching a Core assignment (although the schedule does not show this to be the case) or is teaching a self-contained assignment then any of the hundreds of more senior Multiple Subject credential holder can teach her classes.
15. Marie Richelle Bergman (Rank 1154) - notice rescinded May 13 although she is a

Multiple Subject credential holder with no Board Authorizations who is teaching Second grade. Any of the more senior Multiple Subject credential holders can teach her classes.

16. David Costa (Rank 1196) - no notice sent although he is shown as receiving a notice on the initial Amended Exhibit A listing of employees receiving lay off notices and the initial bump list (Exhibit 11, at page 15; Exhibit 12, at page 10).
17. Maria Perossio (Rank 2624) - no notice sent although she is shown as receiving a notice on the initial Amended Exhibit A listing of employees receiving lay off notices and the initial bump list (Exhibit 11, at page 15; Exhibit 12, at page 10)

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

EXHIBIT E

List of Certificated Employees who are being Retained Despite More Senior Qualified Employees Receiving a Notice

1. Matthew Michelson (Rank 28) - notice rescinded on May 13 despite there being numerous more senior teachers who can teach his Biology classes. Mr. Michelson coaches the basketball team, but his teaching assignment consists of five periods of Anatomy/Physiology, Biology 2, and Biology 1-2. Renny Chu (Rank 42) holds a Single Subject credential in the areas of Science, Biological Science and a Supplementary Authorization in Introductory Mathematics. Ms. Chu is currently teaching Biology 1-2, Zoology and Biology 2. Certificated employees cannot be retained based upon extracurricular assignments beyond the regular school day such as coaching the basketball team in period 7 which is beyond the regular school day and Ms. Chu can teach his classes.
2. Carla Valdez (Rank 151) - notice rescinded on May 13 despite her having a Single Subject Health Science credential and a Board Authorization for Science with an assignment of multiple periods of Health Science and Science combined and it appears some Science periods at a middle school. Shannon Brizendine (Rank 710) also has a Single Subject Health Science credential and is eligible for a Board Authorization in Biological Science K-8. This would permit Ms. Brizendine to teach the classes taught by Ms. Valdez. This is apparent given that the District initially slated Scott Glaser (Rank 906) to bump Ms. Valdez and he hold only a Single Subject Health Science credential. Ms. Brizendine is still indicated on Exhibit 23, at page 9, as receiving a final lay off notice despite Ms. Valdez being retained and despite the District's removing Mark Jonas (Rank 484) from the list of individuals slated to receive a final notice (id.). Ms. Brizendine has more seniority than Mr. Jonas and can teach his Health Science, Science and the Health and Science combination classes given that he only has a Multiple Subject credential with a Supplemental Authorization for Health Science and a Board Authorization for Biological Science for which she is eligible and which she testified were classes that she had taught in the past.
3. Raquel Welch-Kitchen (Rank 393) - notice rescinded on May 13 despite her having a Multiple Subject credential with a Supplementary Authorization in Introductory Social Science and a CLAD authorization. Her assignment is teaching ELL Grade 6 at Hamilton Middle School in a self-contained classroom (math, science, language arts, social science). Annitta James (Rank 431) has what appears to be exactly the same assignment only at Lindbergh Middle School and her notice has not been rescinded. Ms. Welch-Kitchen should not be retained based on her holding a Supplementary Authorization since more senior teachers with an authorization to teach Social Science are being laid off

(Laura Anderson (Rank 454) Single Subject Social Science). Perhaps this is why Ms. Welch-Kitchen is actually shown on Exhibit 23, at page 2, as still receiving a final notice despite the fact that her notice has been rescinded.

4. Heather Schaeffer (Rank 415) - notice rescinded on May 13. She is teaching Math at Franklin Middle School with Multiple Subject credential and a Board Authorization for Math K-8. Several more senior employees can teach these classes: Lisa Ware (Rank 477) has a Multiple Subject credential but is eligible for a Board Authorization for Math K-8; Olga Galaviz (Rank 485) has a Multiple Subject Credential and currently holds a Board Authorization for Math K-8 and is teaching Math at Jefferson Middle School as part of a Core 6 Technology assignment.
5. Krista Wilder (Rank 445) - notice rescinded on May 13. She is teaching Pre-Algebra at Butler Middle School with a Multiple Subject credential and a Board Authorization for Math K-8. Several more senior employees can teach these classes: Lisa Ware (Rank 477) has a Multiple Subject credential but is eligible for a Board Authorization for Math K-8; Olga Galaviz (Rank 485) has a Multiple Subject Credential and currently holds a Board Authorization for Math K-8 and is teaching Math at Jefferson Middle School as part of a Core 6 Technology assignment.
6. Carlin Stein (Rank 504) - no notice while assigned to teach English 1-2 at Wilson High School. Ms. Ashley testified English 1-2 is a 9th grade English class. Several other teachers have English credentials which would authorize them to teach these classes: Erin Vaughn (Rank 678) is a Multiple Subject credential holder with a Supplemental Authorization in English which would permit her to teach English at the 9th grade level¹; Regina Nervo (Rank 665) is a Multiple Subject credential holder with a Supplemental Authorization in English which would permit her to teach English at the 9th grade level.
7. Devonnie Ballew (Rank 579) - no notice while assigned to Lindsay Middle School and holding a Single Subject English credential. She is listed as on a special assignment. Several other teachers have English credentials and could presumably teach her classes: Erin Vaughn (Rank 678) is a Multiple Subject credential holder with a Supplemental Authorization in English which would permit her to teach English at a middle school²;

1. Erin Vaughn (Rank 678) received a notice but initially did not appear on Exhibit 12 nor Exhibit 11 as someone that the District would be requesting that the Administrative Law Judge should authorize receiving a final notice, however Vaughn is now listed on Exhibit 23, at page 3, as a teacher in the area of Elementary Instruction who should receive a final lay off notice. Leaving aside the difficulty of the ever changing nature of the District's position with respect to Vaughn's future employment, the most recent position that she should be laid off to

Regina Nervo (Rank 665) is a Multiple Subject credential holder with a Supplemental Authorization in English which would permit her to teach English at a middle school.

8. Leanne Handy (Rank 641) - notice rescinded on May 13. Her teaching assignment is not listed but she is assigned to Jefferson Middle School and has a Multiple Subject credential with no current Board Authorizations. Apparently any Multiple Subject credential holder could replace her.
9. Tina Cascio (Rank 668) - no notice while teaching Math at Reid High School with only a Multiple Subject credential and no current Board Authorization. Several teachers with either a current Board Authorization or eligibility could apparently teach these classes since Ms. Cascio holds no credential or Board Authorization for her assignment: Adrienne Duong (Rank 943) is a TOSA Math Coach with a Multiple Subject credential who is eligible for a Math Board Authorization; John Wilson (Rank 1161) is a Math and Science teacher with a Multiple Subject credential and current Board Authorizations in both Math and Science (District currently show he is not slated to receive a final notice).
10. Susan Thrasher (Rank 897) - no notice while teaching Drama at Renaissance High School with a Preliminary Single Subject English credential and no additional Board Authorizations. Donna Dean (Rank 1127) received a notice and is shown on Exhibit 23, page 5, as being laid off as part of the reduction in elementary classroom instruction. This ignores that Ms. Dean holds a Life Standard Secondary credential in the area of Drama. She can teach the classes being taught by Ms. Thrasher. Ms. Dean is eligible for a Board Authorization to teach English K-12 and is clearly already able to teach the Introduction to, Intermediate, and Advanced Theatre Arts, as well as the Stage Technology, Play Production, and Introduction to Scriptwriting classes taught by Ms. Thrasher.

satisfy the reduction in PKS of elementary teachers completely ignores her Supplemental Authorizations in both English and Social Science and that there are numerous teachers as listed here with less seniority who have been retained to teach classes she is qualified and competent to teach.

EXHIBIT F

INDIVIDUALS WHO ATTENDED READING FIRST/OPEN COURT TRAINING BEFORE THEIR FIRST DAY IN THE CLASSROOM

Rank	Last	First
1187	Scwiercz	Paula
1185	Un-Maciel	Dinna
1168	McCarty	Sunday
1143	Livingston	Jody
1141	Gagnon	Diane
1140	Faris	Robert
1125	Schwenzfeier	Dominique
980	Freer	Nichole
970	Sarabakhsh	Nooshin
965	Hoover	Jill
959	Coleman	Melanie
932	Camarillo	Holly
828	Valadez	Patricia
827	Garza	Mayra
822	Buford	Tia
818	Warshauer	Michelle
817	Varnell	Linda
810	Manipon	Monica
807	Hodge	Kellie
799	De Rosier	Hilda
798	Brown	Deborah
707	Siddiqui	Hajra
704	Casillas	Victoria
690	Konyalian	Lizbeth
689	Ishida	Rika
686	Dulce	Arlene
685	Arce	Gabriela
677	Zuluaga	Kelly
470	Valenzuela	Mireya
123	Gerson	Victoria

1 **PROOF OF SERVICE**
2 (Code Civ. Proc. § 1013a(3))

3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the County of Orange, State of California. I am over the age of 18 and
5 not a party of the within action; my business address is 2670 North Main Street, Suite 300, Santa
6 Ana, CA 92705.

7 On **June 9, 2010**, I served the document described as **CLOSING BRIEF OF CERTAIN
8 RESPONDENTS** on the interested parties in this action by placing a true copy thereof enclosed in
9 a sealed envelope addressed as follows:

8 The Honorable Daniel Juarez
9 Office of Administrative Hearings
10 320 W. Fourth Street, #630
11 Los Angeles, CA 90013
12 Telephone: (213) 576-7200
13 Facsimile: (213) 576-7244
14 email: laxfilings@dgs.ca.gov

Anthony P. De Marco
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Dr., Suite 300
Cerritos, CA 90703
Telephone: (562) 653-3200
Facsimile: (562) 653-3333
email: ADeMarco@aalrr.com

12 **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope
13 was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice
14 of collection and processing correspondence for mailing. It is deposited with the U.S. postal
15 service on that same day in the ordinary course of business. I am aware that on motion of
16 party served, service is presumed invalid if postal cancellation date or postage meter date is
17 more than one day after date of deposit for mailing an affidavit.

16 **BY OVERNIGHT COURIER:** I sent such document(s) on the above date, by overnight
17 delivery with postage thereon fully prepaid at Santa Ana, California.

18 **BY FAX:** I sent such document by use of facsimile machine telephone number (714) 834-
19 0762. The facsimile cover sheet and confirmation are attached hereto indicating the
20 recipient's facsimile number and time of transmission pursuant to California Rules of Court
21 Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule
22 2003(3) and no error was reported by the machine.

21 **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused
22 said envelope to be delivered by hand to the above addressee.

22 **BY EMAIL:** I caused to be sent such document by use of email to the email addressee
23 above. Such document was scanned and emailed to such recipient.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.

25 Executed on **June 9, 2010**, at Santa Ana, California.

26 

27 Rita A. Pollard
28