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ENDORSED  
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Superior Court of California  
County of San Francisco

NOV 23 2009

GORDON PARKER, Clerk

BY: MARY A. BORDAN  
Deputy Clerk

JUAN ACOSTA, ELVIRA ESTRADA, JAVIER SOTELO  
PADILLA, TOMAS LEDESMA MEJIA, LIDIA LAZO and  
ALVARO LOPEZ

Petitioners,

v.

PATRICK HENNING in his Capacity as Director of the  
CALIFORNIA EMPLOYMENT DEVELOPMENT  
DEPARTMENT; BONNIE GARCIA, in her Capacity  
Executive Director of the CALIFORNIA  
UNEMPLOYMENT INSURANCE APPEALS BOARD;  
ARNOLD SCHWARZENEGGER in his Capacity as  
Governor of California; DOUGLAS HOFFNER, in his  
Capacity as Acting Secretary of the Labor and Workforce  
Development Agency; DEBBIE ENDSLEY in her Capacity  
as the Director of the CALIFORNIA DEPARTMENT OF  
PERSONNEL ADMINISTRATION; and JOHN CHIANG in  
his Capacity as the duly elected CONTROLLER of the State  
of California;

Respondents.

CASE No. CPF-08-508192

**SECOND AMENDED PETITION  
FOR WRIT OF MANDATE**

**Petition Filed: March 20, 2008  
No Trial Date**

1 **INTRODUCTION**

2 1. Petitioners JUAN ACOSTA, ELVIRA ESTRADA, JAVIER SOTELO PADILLA,  
3 TOMAS LEDESMA MEJIA, LIDIA LAZO and ALVARO LOPEZ challenge the Respondents' policies  
4 and practices which delay processing and paying claims for unemployment insurance benefits ("UIB").  
5 Among other things, Petitioners challenge Respondents' (a) secondary identity verification system, on  
6 the grounds that it unfairly delays processing and paying claims and often results in unnecessary and  
7 costly administrative law hearings; (b) the delays in processing appeals when benefit claims have been  
8 denied; (c) exacerbation of processing delays as a result of the Respondents' imposition of furloughs and  
9 salary reductions on EMPLOYMENT DEVELOPMENT ("EDD") and CALIFORNIA  
10 UNEMPLOYMENT INSURANCE APPEALS BOARD ("CUIAB") employees even though (i) UIB  
11 programs are funded almost entirely through United States Department of Labor (USDOL) grants, the  
12 amounts of which are based on the numbers of cases processed, and (ii) the EDD and CUIAB cannot and  
13 will not comply with federal requirements due to the unlawful furloughs ; and (d) the ineffective and  
14 inefficient telephone and internet based claims filing and processing system which can take days or even  
15 weeks to get through, on the grounds that it delays the filing of initial claims, and delays the processing  
16 and payment of filed claims.

17 2. The objective of Congress in establishing the Unemployment Insurance Program was to  
18 provide replacement wages to workers who were unemployed through no fault of their own. These  
19 replacement wages were to help the individual worker and his/her family, and also stabilize purchasing  
20 power in periods of economic decline, thereby helping to stabilize communities. This dual purpose of  
21 helping individuals as well as communities can only be accomplished through prompt payment of  
22 replacement wages. Thus, federal regulations were promulgated to require, *inter alia*, that Respondents  
23 process claims and appeals with the greatest promptness administratively feasible. 20 C.F.R. §§ 640.1, *et*  
24 *seq.* and 650.1 *et seq.* Further, Petitioners assert that they have due process and property rights to  
25 receive replacement wages immediately after losing their employment because eligibility for such  
26 benefits is vested and based upon their actual earnings during the relevant base period. Respondents  
27 violate these rights through their failure to promptly process and pay UIB claims.

1           3.       Respondents systematically violate the mandates of the Unemployment Insurance  
2 Program in multiple ways. Petitioners challenge the State of California's secondary identity verification  
3 system under which predominately Latino claimants who file legitimate claims for unemployment  
4 insurance benefits are denied payment of benefits pending the submission and processing of secondary  
5 proof of identity. Under this secondary identify verification system, Respondent California Employment  
6 Development Department (the "EDD") flags claims, often because of minor inconsistencies in names  
7 and, on occasion, social security numbers in the records maintained by the EDD. When claims are  
8 flagged, the EDD orders the claimants to provide multiple documents to resolve the so-called  
9 "inconsistencies" before UIB benefits will be paid, and payment is delayed pending receipt of that  
10 information.

11           4.       Most of these inaccuracies in identification are due to errors in employer reporting and  
12 other agency error that is not the fault of the claimant and not the result of fraud by the claimant or  
13 another person. Statistics maintained by the EDD appear to show that in 2007, sixty five percent (65%)  
14 of claims that were delayed as a result of this secondary identity verification resulted in a pre-appeal re-  
15 determination that benefits should have been awarded.

16           5.       Respondents rely upon a claims filing and processing system that creates impediments to  
17 initial claims filing and processing of claims. Some Petitioners, and other unemployment insurance  
18 benefits claimants, report having to make repeated attempts over several days or even weeks before they  
19 are able to get through and file a claim on the telephone claims filing system. Claims are opened based  
20 on the date of filing, and these delays can mean that claims are dated a week or more after the claimant  
21 made his/her first attempt to file.

22           6.       Petitioners allege on information and belief that the inadequacy of the telephone claims  
23 filing system is exacerbated by the fact that EDD is currently employing "agents" to accept at least some  
24 calls by claimants attempting to initiate a UIB claim by telephone. Such agents are not claim  
25 representatives and thus do not elicit all of the requisite information to initiate a claim. Instead, such  
26 agents simply take the name and identifying and contact information of the caller for a call back by a  
27 claim representative in five to ten business days. This process can result in the opening of an initial  
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1 claim one or more weeks after the claimant made his/her first attempt to file by telephone.

2 7. Once a claim is opened, claimants are scheduled for interviews and are sometimes asked  
3 to submit additional or clarifying information regarding the claim before the claim can be acted upon and  
4 benefits paid. In some circumstances, the first telephone eligibility review is scheduled more than two  
5 weeks after the initial claim is filed. Claimants who must submit additional information are sometimes  
6 instructed to submit that information by mail or to call into the telephone adjudications system. Some  
7 Petitioners and other claimants report having to make repeated attempts over several days before they are  
8 able to get through and provide the requested information through the telephone system. On occasion a  
9 claim is denied before the claimant is able to submit the requested information and the claimant's only  
10 recourse is to file an appeal.

11 8. As set forth herein, Petitioners are informed and believe that Respondents' conduct  
12 results in unnecessary delays in processing appeals when a claim for UIB has been denied. On  
13 information and belief, Petitioners allege that part of the delays in processing appeals may result from  
14 the large number of claims processing errors and identity verification cases which unnecessarily go to  
15 appeal hearings. Petitioners are informed and believe that the majority of the identity verification  
16 hearings are resolved in the claimant's favor. Petitioners are informed and believe that often, the hearing  
17 files of the Administrative Law Judge ("ALJ") already contain the necessary documents from the EDD  
18 to verify the claimant's identity and resolve other issues that came up during claims processing. Because  
19 of the EDD's failure to process claims when it has all the necessary information, the ALJs and the  
20 claimants are forced to conduct and attend hearings that are, in reality, resolved before they begin. These  
21 unnecessary hearing procedures waste precious resources and add to lengthy delays in resolving other  
22 unemployment insurance disputes.

23 9. As a result of the Respondents' secondary identity verification process, initial claims  
24 processing delays and the delays in appeals processing, Petitioners and other unemployment insurance  
25 claimants who are otherwise eligible to receive unemployment insurance benefits by virtue of their prior  
26 work history and wage credits have been deprived of unemployment insurance benefits for periods of up  
27 to five (5) months following their initial application, and even longer if their case is determined by  
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1 appeal. These policies have resulted in Respondents' systematic denial of constitutional rights to due  
2 process and to property of the Petitioners and other claimants; Respondents' non-compliance with the  
3 Social Security Act, 42 U.S.C. §§ 503(a)(1) and (3); and Respondents' failure to comply with prompt  
4 claims processing and appeal requirements established in implementing regulations.

5 10. Petitioners allege that Respondents' conduct causes delay in processing cases for appeal,  
6 thereby harming Petitioners and other claimants by failing and refusing to provide immediate  
7 replacement wages to eligible claimants as mandated. Petitioners allege that Respondents process only a  
8 fraction of the appeals that they are required to process within mandated time frames. Regular  
9 unemployment insurance only lasts for 182 days. In many instances, due to hearing delays, a claimant  
10 will have exhausted his right to regular UIB benefits before his appeal is decided. Such extensive delays  
11 during this period of economic decline leave thousands of applicants throughout the State without  
12 critically needed funds to provide for the necessities of life for themselves and their families. This lack  
13 of necessary income also interferes with Petitioners' efforts to obtain other work, forcing them into other  
14 public assistance programs, and creating a cycle of public dependency. This outcome is particularly hard  
15 on claimants who are seasonal farm workers and who rely on their accrued unemployment insurance as  
16 their sole source of income between seasons.

17 11. Petitioners allege that at times, claimants with cases on appeal have had their hearings  
18 delayed for so long that they have actually found work by the time their administrative hearing is held.  
19 In such situations, the claimant wishing to continue with his/her appeal to recover unpaid benefits must  
20 weigh the cost of asking for a day off work and losing a day's income against the need to be present for  
21 the appeal hearing. In such situations, the flawed policies and procedures of the EDD at times force a  
22 claimant to lose a day's wages in order to attend an unnecessary hearing to recover benefits to which  
23 he/she is clearly entitled and should have been awarded in the first place. Respondents' failure to  
24 comply with their mandate under the Unemployment Insurance Program thus harms Petitioners and  
25 other claimants in multiple ways.

26 12. Petitioners allege on information and belief that the EDD's communication system is  
27 wholly inadequate to serve the needs of Petitioners and other claimants seeking UIB benefits. On  
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1 information and belief, Petitioners allege that Respondents provide only one "800" number for UIB  
2 claimants to call, even though in April 2009, the EDD acknowledged receiving as many as 1,000,000  
3 call attempts each day. Petitioners allege that they and other claimants have suffered the consequences  
4 of the inadequate communication system in that they and others have spent inordinate amounts of time  
5 trying unsuccessfully to communicate via telephone with EDD representatives. Petitioners allege that in  
6 many cases, the inability of a claimant to communicate via telephone with the EDD has resulted in  
7 erroneous decisions by the EDD and has created unnecessary delays that, but for the antiquated  
8 communication system, would not have occurred. Petitioners allege on information and belief that the  
9 EDD acknowledges that as many as 20% of the claims for UIB benefits are not being processed timely.

10 13. Petitioners allege that, since at least February 1, 2009, the delays in processing UIB  
11 claims and appeals have been further exacerbated by Respondents' imposition of the statewide furlough,  
12 first reducing by two days, and currently by three days, the monthly workdays of most civil service  
13 employees. Petitioners allege, on information and belief, that Respondents have refused to exempt EDD  
14 and CUIAB employees from the mandatory furloughs, despite the fact that furloughing these employees  
15 will have a negligible impact on the State of California's finances because the UIB programs are funded  
16 almost exclusively through the U.S. Department of Labor.

## 17 PARTIES

### 18 **The Petitioners**

19 14. Petitioner JUAN ACOSTA is a Latino individual who at all relevant times was a resident  
20 of Riverside County, California. Petitioner ACOSTA is a farm worker who experiences regular periods  
21 of unemployment as a result of seasonal layoffs. During these periods of unemployment, ACOSTA  
22 depends upon unemployment insurance benefits as the primary source of income for himself and his  
23 family.

24 15. Petitioner JAVIER SOTELO PADILLA is a Latino individual who at all relevant times  
25 was a resident of Riverside County, California. Petitioner SOTELO PADILLA is a farm worker who  
26 experiences regular periods of unemployment as a result of seasonal layoffs. During these periods of  
27 unemployment, SOTELO PADILLA depends upon unemployment insurance benefits as the primary  
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1 source of income for himself and his family.

2 16. Petitioner ELVIRA ESTRADA is a Latina individual who at all relevant times was a  
3 resident of Monterey County, California. Petitioner ESTRADA is a farm worker who experiences  
4 regular periods of unemployment as a result of seasonal layoffs. During these periods of unemployment,  
5 ESTRADA depends upon unemployment insurance benefits as the primary source of income for her and  
6 her family.

7 17. Petitioner TOMAS LEDESMA MEJIA is a Latino individual who at all relevant times  
8 was a resident of Monterey County, California. Petitioner LEDESMA MEJIA is a farm worker who  
9 experiences regular periods of unemployment as a result of seasonal layoffs. During these periods of  
10 unemployment, LEDESMA MEJIA depends upon unemployment insurance benefits as the primary  
11 source of income for himself and his family.

12 18. Petitioner LIDIA LAZO is a Latina individual who at all relevant times was a resident of  
13 San Diego County, California. Petitioner LAZO has worked at a variety of minimum wage jobs, often  
14 through employment agencies. Petitioner LAZO applied for UIB benefits in early December 2008. As  
15 of mid-April 2009, Petitioner LAZO had not received any benefits.

16 19. Petitioner ALVARO LOPEZ is a Latino individual who at all relevant times was a  
17 resident of San Diego County, California. Petitioner LOPEZ has worked at a variety of minimum wage  
18 or low wage jobs. Petitioner LOPEZ applied for UIB benefits on about January 13, 2009 and as of mid-  
19 April 2009 had not received any benefits at all.

20 **The Respondents**

21 20. Respondent PATRICK HENNING is the Director of the Employment Development  
22 Department of the State of California ("EDD"), a department within the Labor and Workforce  
23 Development Agency of the State of California. He is responsible for the enforcement, operation and  
24 execution of laws pertaining to the administration of California's unemployment insurance benefits  
25 program, and for promulgating rules and regulations consistent with the Social Security Act. He is also  
26 responsible for preparing the budget and administering all funds connected with the unemployment  
27 insurance program in a manner consistent with state and federal law. Petitioners sue PATRICK  
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1 HENNING in his official capacity.

2 21. Respondent BONNIE GARCIA is the executive director of the California Unemployment  
3 Insurance Appeals Board ("CUIAB") which conducts hearings of cases concerning claims for  
4 unemployment and disability benefits. These cases are appeals of determinations made by the EDD.  
5 The CUIAB is the final level of administrative review of unemployment insurance benefits decisions.  
6 The CUIAB handles all first and second level administrative appeals of decisions concerning eligibility  
7 for unemployment insurance benefits. The CUIAB has authority to appoint and direct all personnel of  
8 the appeals division, including administrative law judges, and is responsible for scheduling and for all  
9 procedural aspects of the administrative appeal process. Petitioners sue BONNIE GARCIA in her  
10 official capacity.

11 22. Respondent DOUGLAS HOFFNER is the Acting Secretary of the Labor and Workforce  
12 Development Agency of the State of California (hereafter "LWDA"). The LWDA oversees seven major  
13 departments, boards and panels that serve California businesses and workers including the EDD and the  
14 CUIAB. The Secretary of the LWDA has the authority and duty to supervise and control the various  
15 departments within his agency, so as to assure lawful compliance with statutory and regulatory  
16 requirements. Petitioners sue DOUGLAS HOFFNER in his official capacity.

17 23. Respondent ARNOLD SCHWARZENEGGER is the elected Governor of the State of  
18 California. The Constitution of the State of California charges the governor with the duty to "see that  
19 the law is faithfully executed." Cal. Const., art. V. § 1. Petitioners sue GOVERNOR  
20 SCHWARZENEGGER in his official capacity.

21 24. Respondent DEBBIE ENDSLEY is the Director of the California Department of  
22 Personnel Administration ("DPA"). The DPA is, and at all times herein was, a department of the State  
23 of California with the responsibility of managing the non-merit aspects of the state's personnel system.  
24 The DPA, in exercising its power to "provide by rule for days, hours and conditions of work," is  
25 required to take into consideration "the varying needs and requirements" of state agencies. Gov. Code §  
26 19816.10(a). Petitioners sue DEBBIE ENDSLEY in her official capacity.

27 25. Respondent JOHN CHIANG is a state constitutional officer as the duly elected Controller  
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1 of the State of California. Cal.Const., art V. § 11. Among various other duties, the Controller shall  
2 superintend the fiscal concerns of the state. The Controller shall audit all claims against the state and  
3 may audit the disbursement of any state money for correctness, legality, and for sufficient provisions of  
4 law for payment. Gov. Code § 12410. The Controller shall draw warrants on the Treasurer for the  
5 payment of money directed by law to be paid out of the State Treasury; but a warrant shall not be drawn  
6 unless authorized by law, and unless unexhausted specific appropriations by law are available to meet it.  
7 The Controller's "power of audit does include the duty to ensure that the expenditure in question is  
8 authorized by law." *Tirapelle v. Davis* (1993) 20 Cal. App. 4<sup>th</sup> 1317, 1335. Petitioners sue JOHN  
9 CHIANG in his official capacity.

### 10 THE UNEMPLOYMENT INSURANCE PROGRAM

11 26. The California Unemployment Compensation Program is part of a joint federal-state  
12 program established by the Social Security Act, 42 U.S.C. §§ 501 et seq., the Federal Unemployment  
13 Tax Act (FUTA), 26 U.S.C. §§ 3301 et seq., and the California Unemployment Insurance Code §101.  
14 FUTA establishes a federal tax on employers based on the total wages paid to employees. 26 U.S.C  
15 §3301; 42 U.S.C. §§ 1101, 1104. Employers receive a credit against the federal tax for payments made  
16 to an approved state unemployment insurance fund. 26 U.S.C. §3302. This fund finances the actual cost  
17 of benefits. Additionally, the federal government subsidizes the state program by paying for the  
18 administrative costs of its unemployment compensation programs if the state law includes certain  
19 mandatory provisions.

20 27. The federal government grants money to the State of California from the United States  
21 Department of Labor, conditioned upon the State's compliance with federal requirements, including the  
22 mandate that the state assure that it will "**insure full payment of unemployment insurance benefits**  
23 **when due.**" 42 U.S.C. §§ 502, 503(a)(1), 42 U.S.C. §1101(c)(1)(A), 26 U.S.C. §3304 (emphasis  
24 added).

25 28. Pursuant to the California Unemployment Insurance Program as certified by the U.S.  
26 Department of Labor, an unemployment insurance claimant is entitled to and must be paid benefits if he  
27 becomes unemployed due to no fault of his own, and has sufficient earnings based upon the wage credits  
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1 earned by him during the relevant base period of time used to calculate his claim. Benefits are paid from  
2 the unemployment insurance benefits trust fund administered by the EDD.

3 29. In order to ensure that states pay benefits "when due," federal regulations require, *inter*  
4 *alia*, that Respondents process claims and appeals of denied claims with the greatest promptness  
5 administratively feasible. 20 C.F.R. §§ 640.1, *et seq.*, and 650.1 *et seq.*

6 30. Pursuant to federal regulations, California must process at least 87% of all claims within  
7 14 days following the end of first compensable week after filing. 20 C.F.R. §§ 640.5. However,  
8 according to data submitted to and maintained by the U.S. Department of Labor, California has failed to  
9 meet this standard for the last 12 months.

10 31. When the EDD denies a claim, the claimant has a right to appeal. California has  
11 established a two-tiered appeal system including first level and second level appeals. Cal. Unemp. Ins.  
12 Code §§ 1134, 1136. Pursuant to federal regulations, California must process at least 60% of all first  
13 level benefit appeal decisions within 30 days of the date of appeal, and at least 80% of all first level  
14 benefit appeal decisions within 45 days of the date of appeal. 20 C.F.R. § 650.4(b). However, according  
15 to data submitted to and maintained by the U.S. Department of Labor, in the first 6 months of 2009  
16 California processed less than 4% of first level appeals within 30 days, and just 7% within 60 days. As a  
17 result of these delays Petitioners and others have been deprived of the use of benefits owed and due  
18 them.

19 32. To apply for unemployment benefits in California, a person who has become  
20 unemployed, through no fault of his own, files a telephone, fax or internet claim for benefits through a  
21 procedure administered by the EDD. The EDD makes preliminary decisions regarding UIB eligibility  
22 by reviewing information submitted by the claimants as well as a record of earnings submitted by  
23 California employers. The EDD notifies the employer by mail that the claim has been filed and the  
24 employer has an opportunity to submit information regarding the claimants' eligibility. If the EDD finds  
25 the claimant eligible, the claimant will receive regular unemployment insurance benefits for up to 26  
26 weeks. The claimant's eligibility for benefits is, however, subject to periodic reviews.

27 33. Currently most unemployment insurance claims are initiated either through a telephone or  
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1 internet claims filing process. While EDD maintains and staffs offices throughout the state, Petitioners  
2 are informed and believe that EDD staff in those local offices are not authorized to either accept a claim  
3 for unemployment insurance benefits or to accept documents or other information from claimants who  
4 have already filed claims. If individuals seek such services from a local EDD office, they are routinely  
5 advised to use a telephone or computer terminal located in a public area of the office. If the EDD asks  
6 claimants to submit documents to clarify their claims, those documents must be mailed or faxed to one  
7 of several claims processing centers located throughout the state. As a result, all requests for identity-  
8 related and other claim eligibility information are made exclusively by telephone or mailed notice.  
9 Likewise, the claimants' responses must be made by telephone, mail or fax.

10 34. The telephone claims processing system has created enormous access problems for  
11 claimants since its inception. English and Spanish language lines are available both for initial claims  
12 filing and for followup calls with processing centers. However, Petitioners and other claimants, as well  
13 as low wage worker advocates, experience repeated problems getting through on the telephone lines.  
14 Petitioners and others claim that the telephone lines are virtually always busy. If the line is answered, a  
15 recorded message tells callers that they must call back later and the call is then cut off. Calls are  
16 routinely dropped after a caller has been on the line for several minutes. It is not unusual for a claimant  
17 or advocate to make repeated calls over the course of several days before reaching an individual with  
18 whom they can speak. For example, Petitioner ESTRADA called the phone service 50 times and never  
19 succeeded in reaching an EDD representative. Petitioner LAZO tried unsuccessfully to apply for  
20 benefits by telephone for an entire week, making about 20 calls each day without ever getting through.  
21 Petitioners are informed and believe that in the case of the secondary identity verification process, and  
22 other initial eligibility issues allowing EDD employees in their statewide (local) offices to meet  
23 personally with claimants and assist them with these issues would result in such matters being processed  
24 much more expeditiously. Under the current system, claimants often wait months after submitting  
25 verification documents or other information for the opportunity to identify  
26 themselves in person to an ALJ at a face-to-face hearing.

27 35. As part of the initial claims processing system, Respondent EDD has implemented the  
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1 identity verification requirements described above under which certain claimants, including some  
2 Petitioners, must submit independent verification of their identity in addition to their claim form as a  
3 condition of receiving benefits. Petitioners are informed and believe that claimants are not paid benefits  
4 pending submission of the requested information and completion of the identity verification.

5 36. Petitioners are informed and believe that the EDD does not consider a claim to have been  
6 filed until such time as the claimant either submits the requested proof of eligibility, and/or fails to do so  
7 within the 10 day period allowed by the EDD for the purpose of reporting compliance with timeliness  
8 requirements related to the processing of initial claims for benefits found in 20 C.F.R. § 640.1, *et seq.*  
9 Petitioners are further informed and believe that, for the reasons stated herein, if these “incomplete”  
10 claims were included as filed claims, then the State of California would be even more seriously out of  
11 compliance with the standards for processing initial claims contained in 20 C.F.R. § 640.1, *et seq.*

12 37. When a claimant receives a mailed notice requesting identity verification or other  
13 eligibility information, the notice requires submission of information within 10 days. The forms  
14 requesting information are confusing and the information requested is not necessarily readily available to  
15 the claimant. The claimant is not told, verbally or in writing, why he/she is being asked to verify  
16 identity. Often, minor inconsistencies are the reason for the verification requirement and the delay. For  
17 example, the claim of Petitioner MEJIA was delayed for approximately three (3) months as the result of  
18 a minor error in his birth-date on his driver’s license. Because of this error, all documents that Petitioner  
19 MEJIA submitted reinforced the same unknown error. The EDD did not tell Petitioner MEJIA the  
20 reason for the delay until his appeals hearing when he was granted the opportunity to review the EDD  
21 report explaining the cause of his delay. If the EDD had told Petitioner MEJIA the basis for the identity  
22 questions, he could have resolved the problem well before the appeal hearing, saving himself, the EDD  
23 and the State of California precious time and resources.

24 38. Many claimants, confused by the EDD forms, unable to get through on the telephone  
25 lines, and unable to get assistance at their local EDD office are unable to submit the requested  
26 information within the 10 day period demanded by the EDD, or they submit documents, such as a copy  
27 of their own social security card, or a letter from the Social Security Administration, which are deemed  
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1 unacceptable as proof of identity. In some circumstances, the EDD then makes a determination of  
2 ineligibility and sends out a notice to the claimants weeks or even months after the initial claim was  
3 filed. Once this notice goes out, claimants have 20 days within which to appeal.

4 39. Petitioner LOPEZ, for example, filed for UIB benefits on about January 13, 2009. He  
5 received a letter from the EDD asking for additional identity documentation. Acting on his own,  
6 Petitioner LOPEZ mailed to the EDD the information which he understood would comply with the EDD  
7 request. The EDD then sent a Notice of Decision to Petitioner LOPEZ dated 01/27/09 telling him that  
8 he had not complied with the request for additional identity information, and denying him UIB benefits.  
9 Petitioner LOPEZ appealed that decision on his own and as of mid-April 2009 was still waiting for a  
10 hearing date. Had the EDD explained to Petitioner LOPEZ the nature of the identity question, or had  
11 Petitioner LOPEZ been able to get help from EDD staff in the local office, or had he been able to reach  
12 an EDD representative by phone, perhaps he could have complied with the EDD request to its  
13 satisfaction, and have been determined eligible for benefits without the need for an administrative  
14 hearing and the inherent associated delay.

15 40. A claimant may appeal an EDD eligibility determination to an ALJ who considers the  
16 claimant's eligibility *de novo*. A claimant has a further right to a second-level appeal to the California  
17 Unemployment Insurance Appeals Board. If EDD denies the claim at the initial determination, no  
18 unemployment insurance benefits are paid to the claimant until the determination is reversed by an  
19 administrative law judge after hearing. For example, in Petitioner LOPEZ's case, he filed for benefits in  
20 January, 2009. The EDD denied his claim because of alleged identity issues and approximately three  
21 months after filing for benefits, Petitioner Lopez had not received any UIB benefits (nor had an  
22 administrative hearing date been set).

23 41. California's two tiered appeals process provides claimants and employers with the  
24 opportunity to participate in an in-person hearing at the first level of appeal. For many claimants dealing  
25 with identity verification and other eligibility issues the administrative hearing is the first time they  
26 learn the precise nature of the alleged identification or eligibility problem. It is also the first opportunity  
27 for many claimants to present their identification to a human being and explain their side of the story.  
28

42. Respondent EDD has the authority to issue a re-determination of a prior decision within 15 days after a claimant files an appeal (and prior to the administrative hearing) based upon a review of the appeal, documents and statements submitted in support of the appeal and EDD records. Respondent EDD is mandated to assign staff the responsibility to review appeals and issue re-determinations. Unemp. Ins. Code § 1332(b).

43. The following data submitted by Respondent EDD to the U.S. Department of Labor demonstrates that California has experienced delays in processing initial claims and, since January 2007, has failed to meet the federal timeliness standards of processing 87% of all initial claims within 14 days:

MONTH	Total Claims Processed	%of Claims Processed in 7 days	%of Claims Processed in 14 days	%of Claims Processed in 21 days
3/31/2008	90,694	46.10%	66.90%	76.70%
4/30/2008	92,835	56.10%	77.80%	86.00%
5/31/2008	86,380	54.20%	79.10%	88.20%
6/30/2008	82,157	56.10%	80.60%	89.10%
7/31/2008	110,079	59.00%	82.90%	91.30%
8/31/2008	99,046	52.60%	77.90%	89.00%
9/30/2008	91,468	51.30%	76.30%	86.80%
10/31/2008	108,748	60.70%	83.40%	90.80%
11/30/2008	110,177	62.80%	83.90%	91.70%
12/31/2008	158,886	58.80%	81.30%	90.70%
1/31/2009	165,375	56.10%	78.30%	88.10%
2/28/2009	159,251	52.50%	75.30%	86.00%
3/31/2009	161,347	48.10%	70.40%	82.10%

44. The following data, submitted by Respondents EDD and the CUIAB to the U.S. Department of Labor, demonstrates that California began experiencing serious delays for first level appeal hearings during 2007. Information reported on the U.S. Department of Labor website shows that the compliance rate has steadily declined since July of 2007 and since March of 2008 California has

1 continued to fail to meet the standards for processing at least 60 percent of all first level benefit appeal  
 2 decisions within 30 days of the date of appeal, and at least 80 percent of all first level benefit appeal  
 3 decisions within 45 days as follows:

4	Month	Total Workload	<=30 Days	45 Days	60 Days
5	4/30/2008	25,830	7.60%	26.30%	54.80%
6	5/31/2008	26,348	7.60%	26.20%	57.50%
7	6/30/2008	24,369	6.60%	25.80%	54.00%
8	7/31/2008	24,379	5.60%	19.70%	49.60%
9	8/31/2008	19,752	4.70%	19.80%	47.30%
10	9/30/2008	23,410	3.30%	12.10%	38.00%
11	10/31/2008	25,579	2.90%	10.10%	33.70%
12	11/30/2008	20,286	4.20%	9.50%	30.10%
13	12/31/2008	24,718	3.20%	7.60%	20.40%
14	1/31/2009	23,844	3.40%	7.20%	14.10%
15	2/28/2009	22,785	3.30%	7.40%	13.80%
16	3/31/2009	26,026	4.30%	8.30%	14.70%

17 45. Pursuant to reports prepared by Respondents, as of June 2009 the balance of open cases  
 18 was 81,750. Since March 2009, California has continued to fail to meet the compliance rate standards  
 19 for processing at least 60 percent of all first level benefit appeal decisions within 30 days of the date of  
 20 appeal, and at least 80 percent of all first level benefit appeal decisions within 45 days. The 30-day  
 21 compliance rates for April, May and June 2009 were 4%, 3%, and 3%, respectively. The 45-day  
 22 compliance rates for those same months were 7%, 7% and 6%, respectively.

23 46. Respondents systematically violate federal mandates by processing only a fraction of the  
 24 appeals that they are required to process within the given time frames. Such extensive delays during this  
 25 period of economic decline leave thousands of applicants throughout the State without critically needed  
 26 funds to provide for the necessities of life for themselves and their families, thereby inhibiting their  
 27 efforts to obtain work, and resulting in their dependency on other public assistance benefits. For many  
 28

1 farm worker families and other minimum and low-wage workers, the extensive delays in processing UIB  
2 benefits, and the months without any income whatsoever, means having to obtain food at a food bank  
3 while waiting for benefits which they already earned through their labor. In some cases, claimants who  
4 have no other source of income may be forced out of rental housing or even lose their homes.

5 47. Respondent EDD has failed and is failing to issue written notices of eligibility  
6 determinations to claimants subjected to identity verifications in violation of its mandatory duties  
7 prescribed in Unemployment Insurance Code § 1328.

8 48. Petitioners are informed and believe that Respondent EDD has failed and is failing to  
9 reconsider identity verification and other eligibility based determinations within 15 days after an appeal  
10 of such a determination in violation of its mandatory duties prescribed in Unemployment Insurance Code  
11 § 1332(b).

12 49. Petitioners (except Petitioner LAZO) have been subjected to the secondary identity  
13 verification system and have suffered significant delays in the receipt of their unemployment insurance  
14 benefits. Petitioners are informed and believe that their experiences, as hereafter alleged, are similar to  
15 those experienced by other individuals claiming unemployment insurance benefits who are subjected to  
16 the secondary identity verification system.

17 50. In 2006 and 2007, Petitioner ACOSTA became unemployed on various occasions, due to  
18 no fault of his own, and applied for unemployment insurance benefits. Each time he applied he was  
19 subjected to the identity verification process. Each time - but only after the passage of several months -  
20 his identity was verified and benefits were paid.

21 51. In 2008, Petitioner ACOSTA again became unemployed due to no fault of his own, and  
22 applied for unemployment insurance benefits by telephone on January 11, 2008, after having tried for  
23 three days to get through to the telephone claims process. Although otherwise eligible to receive  
24 benefits, on approximately January 22, 2008, he received a notice dated January 15, 2008, by mail from  
25 EDD asking that he submit additional information regarding his identity. The EDD notice did not advise  
26 ACOSTA why additional verification of his identity was necessary. On January 23, 2008, ACOSTA  
27 submitted the identity verification information by mail to the address indicated on the notice. On  
28

1 February 8, 2008, ACOSTA's representative contacted the EDD and spoke to a claims representative  
2 and was told it would take four to six weeks to process the claim. ACOSTA's representative advised the  
3 EDD staff that ACOSTA had previously verified his identity multiple times. The EDD representative  
4 responded that the identity issue would be with him for life and he would have the same problem every  
5 time he opened a claim.

6 52. During February 2008, counsel for Petitioners contacted Respondent EDD in an attempt  
7 to resolve these systemic problems without resort to litigation. Respondent EDD would not agree to  
8 implement changes that would result in payment of benefits pending identity verification. On February  
9 14, 2008, Respondent EDD did provide counsel for Petitioners with a private fax number to be used for  
10 submission of identity verification information for counsel's clients.

11 53. On February 26, 2008, ACOSTA's identity verification information was again submitted  
12 to the EDD, to the special fax number provided to Petitioners' counsel by the Respondent EDD. On  
13 February 27, 2008, counsel for Petitioner was notified that the identity had been verified, and on March  
14 3, 2008, Petitioner ACOSTA received his benefits. Petitioners are informed and believe that but for the  
15 special treatment afforded ACOSTA as a client of Petitioners' counsel, California Rural Legal  
16 Assistance, Inc., his identity verification would have taken several weeks longer. Petitioner is further  
17 informed and believes that he will be subjected to identity verification when he files future claims.

18 54. On or about November 16, 2007, Petitioner ESTRADA became unemployed due to no  
19 fault of her own and applied for unemployment insurance benefits by telephone on November 18, 2007.  
20 Although otherwise eligible to receive benefits, EDD mailed a DE 1326c notice to ESTRADA on about  
21 November 20, 2007, asking her to submit additional verification of her identity. The EDD did not tell  
22 ESTRADA why additional verification of her identity was necessary. This notice included a request that  
23 she submit a 1326c form and instructions for completing that form. On about November 30, 2007,  
24 ESTRADA returned the form with copies of the following documents which establish her identity: the  
25 1326c signed form, her 2006 W-2 form, a letter from the Social Security Administration (SSA) verifying  
26 her social security number, and a Bank of America statement verifying her residential address.  
27 Thereafter ESTRADA attempted to contact Respondent EDD more than 50 times by telephone and  
28

1 resolve the issue. On many occasions she was not able to reach anyone on the provided telephone line,  
2 as she got repeated busy signals. She and her representative were unable to resolve the matter through  
3 telephone communication. ESTRADA ultimately received a notice on February 14, 2008, that she had  
4 been determined to be ineligible for benefits based upon her failure to submit information verifying her  
5 identity. ESTRADA timely filed an appeal on February 28, 2008 of this determination and her hearing  
6 was set for March 26, 2008. Prior to the date of the hearing ESTRADA began receiving unemployment  
7 insurance checks approximately 96 days after filing her claim. ESTRADA has never received written  
8 notice that her identity has been verified.

9         55.     Petitioner JAVIER SOTELO PADILLA became unemployed due to no fault of his own  
10 and filed a claim for unemployment insurance benefits by facsimile on or about January 14, 2008.  
11 Although otherwise eligible to receive benefits, on or about January 23, 2008, he received form DE  
12 1326C/S Rev.4 (8-07) PETICION PARA VERIFICAR IDENTIDAD dated January 17, 2008 from  
13 Respondent EDD requesting that he submit information verifying his identity. The EDD did not tell  
14 Petitioner SOTELO PADILLA why he needed to provide additional identity verification information.  
15 On January 24, 2008, SOTELO PADILLA, through his representative, sent the identity packet with  
16 information establishing his identity to Respondent EDD's Identity Verification Unit at Rancho Cordoba  
17 at the address included in the notice. Petitioner SOTELO PADILLA never received verification that the  
18 documents were received by the EDD. On or about March 3, 2008, SOTELO PADILLA received his  
19 first unemployment checks.

20         56.     On or about November 15, 2007, petitioner TOMAS LEDESMA MEJIA became  
21 unemployed due to no fault of his own and applied for unemployment insurance benefits by telephone  
22 on November 16, 2007. Although otherwise eligible to receive benefits, on January 29, 2008, he  
23 received notice by mail from EDD asking that he submit additional information regarding his identity.  
24 This notice included a request that he submit the DE 1326c form and instructions for completing the  
25 form. Petitioner LEDESMA MEJIA timely returned the form with copies of the following documents  
26 which establish his identity: a copy of his Permanent Resident Card, a copy of his Social Security Card,  
27 a copy of his California driver's license, a PG&E bill, a telephone bill, and a credit card statement.  
28

1 Sometime later, EDD asked Petitioner LEDESMA MEJIA to re-submit identification information.  
2 Petitioner LEDESMA MEJIA attempted to contact Respondent EDD by telephone and resolve the  
3 issue. On many occasions he was not able to reach anyone on the provided telephone line, as he got  
4 repeated busy signals. He and his representative were unable to resolve the matter through telephone  
5 communication. Petitioner LEDESMA MEJIA ultimately received a notice that he had been determined  
6 to be ineligible for benefits based upon his failure to submit the necessary information verifying his  
7 identity. MEJIA timely filed an appeal of this determination and his hearing was set for February 14,  
8 2008. At the hearing held on February 14, 2008, MEJIA was informed for the first time that the problem  
9 with his identity verification was an incorrect birth date on his driver's license. After simply looking at  
10 Mr. MEJIA's driver's license and the birth date which MEJIA since noticed and corrected, the ALJ  
11 ordered the EDD to grant benefits.

12 57. As set forth above, Petitioner LOPEZ filed for UIB benefits on about January 13, 2009  
13 when he became unemployed through no fault of his own. He received a letter from the EDD asking for  
14 additional identity documentation. Acting on his own, Petitioner LOPEZ mailed to the EDD the  
15 information which he understood would comply with the EDD request, including a copy of a 2008 W-2,  
16 bearing his correct name, address and social security number; a copy of a mortgage loan statement from  
17 his bank bearing his current address; and a copy of a current gas and electric bill. The EDD then sent a  
18 Notice of Decision to Petitioner LOPEZ dated 01/27/09 telling him that he had not complied with the  
19 request for additional identify information, and denying him UIB benefits. Petitioner LOPEZ appealed  
20 that decision on his own and as of April 2009 is still waiting for a hearing date. Petitioner LOPEZ  
21 expects to quickly and easily resolve the identify verification issue at the time of the administrative  
22 hearing and alleges that he should not have had to go through an administrative hearing.

23 58. Petitioner LAZO filed for unemployment benefits in early December, 2008 when, through  
24 no fault of her own, she became unemployed. Petitioner LAZO found new employment on or about  
25 February 16, 2009. However, Petitioner LAZO alleges that she was and is entitled to unemployment  
26 insurance benefits for the period of time from approximately mid December 2008 to February 15, 2009.  
27 Nonetheless, as of mid-April 2009, Petitioner LAZO has received no benefits.  
28

1           59.     Because of the EDD's inadequate and antiquated communication system, Petitioner  
2 LAZO tried for five days to apply for UIB benefits by phone in early December 2008. Petitioner LAZO  
3 estimates that she made at least twenty calls to the EDD "800" number on each of those five days but  
4 was never able to get through.

5           60.     Petitioner LAZO finally mailed in her application for benefits and received a notice (the  
6 "Telephonic Interview Notice") from the EDD dated 12/12/2008 telling her that she should be available  
7 for a telephonic interview with an EDD representative between 10 a.m. and 12 p.m. on 12/23/2008.  
8 Petitioner LAZO noticed that the phone number listed by the EDD as her number on the Telephonic  
9 Interview Notice was incorrect, and was not the number that Petitioner LAZO had included in her  
10 application. Knowing that she would not be able to call the EDD on the phone, with the assistance of  
11 another person she sent by fax a notice with her correct telephone number and her social security number  
12 and an explanation that EDD should call her at the correct number and not at the incorrect number that  
13 EDD put in the Telephonic Interview Notice.

14           61.     Petitioner LAZO waited for the 12/23/2008 call from EDD. When she did not receive it,  
15 she went the very same day to her local EDD office in Oceanside, California and asked an EDD staff  
16 person for help. The only help the EDD staff person gave Petitioner LAZO was an extension number to  
17 use with the "800" number. The EDD staff person told Petitioner LAZO to call that number. After  
18 numerous attempts, Petitioner LAZO succeeded in reaching an EDD representative who, even after  
19 hearing Petitioner LAZO's explanation, said that nothing could be done and that Petitioner LAZO would  
20 just have to await notice from the EDD.

21           62.     The EDD sent a Notice of Decision dated 12/24/2008 stating that Petitioner LAZO was  
22 not eligible for benefits, having made that decision without ever interviewing Petitioner LAZO to learn  
23 the facts. Petitioner LAZO filed a timely appeal which was finally set for hearing on April 17, 2009.  
24 Petitioner LAZO alleges that if the EDD had an operative communications system and if the EDD  
25 allowed local staff to assist in resolving straightforward issues such as identity verification and EDD  
26 errors in phone number, then Petitioner LAZO likely would have been found eligible for benefits in  
27 December 2008 and would not be awaiting a hearing in April 2009.

1           63.     On December 19, 2008, Respondent GOVERNOR SCHWARZENEGGER issued an  
2 Executive Order, S-16-08 (“the “2008 Furlough Order”), that imposed a furlough of two-days per month  
3 on all state employees. Though exemptions were contemplated in the Executive Order imposing the  
4 furlough, Respondent DPA declined to exempt UIB programs from the furlough. Respondent  
5 GOVERNOR SCHWARZENEGGER alleged that a financial crisis in the State of California justified  
6 the blanket furlough. Respondent DPA imposed the furlough on EDD and CUIAB employees despite  
7 the fact that, because UIB programs are funded almost entirely by USDOL grants, furlough of these  
8 employees would have a negligible impact on the finances of the State of California. Petitioners are  
9 informed and believe that the imposition of the furloughs has and will reduced the number of UIB claims  
10 and appeals that can be processed and will impair Respondents’ ability to come into compliance with  
11 timeliness standards and pay unemployment insurance benefits when due.

12           64.     On or about July 1, 2009, Respondent GOVERNOR SCHWARZENEGGER issued  
13 Executive Order S-13-09 (the “2009 Furlough Order”), imposing an additional furlough day per month  
14 for the stated purpose of continuing to reduce current spending and immediately improving the State’s  
15 ability to meet its obligations to pay for essential services of the State. Respondent DPA imposed the  
16 additional furlough day on EDD and CUIAB employees despite the fact that, because UIB programs are  
17 funded almost entirely by USDOL grants, and the furlough of EDD and CUIAB employees will have a  
18 negligible impact on the finances of the State of California. Petitioners are informed and believe that the  
19 imposition of the furloughs has reduced and will decrease the number of UIB claims and appeals that  
20 can be processed and will impair Respondents’ ability to come into compliance with timeliness  
21 standards and pay unemployment insurance benefits when due.

22           65.     California law mandates that all state unemployment funds be deposited in the State  
23 Treasury. Cal. Un. Ins. Code §§ 318 and 1501. California law further mandates that such funds be kept  
24 separate and apart from all public money or funds of the state, and such funds are continuously  
25 appropriated for the purposes authorized pursuant to the California Unemployment Insurance Code. Un.  
26 Ins. Code § 1521. On information and belief, Petitioners allege that, unlike other state agencies, the  
27 EDD and CUIAB are self-supporting agencies.



1 EDD has a clear, present and ministerial duty to comply with the provisions of the California  
2 Unemployment Insurance Code regarding notice, payment of benefits, and re-determinations  
3 after appeal, but has failed to comply with that duty.

4 73. Respondents have abused their discretion and acted in an arbitrary and discriminatory  
5 manner by adopting and enforcing policies, procedures, and customs that are inconsistent with federal  
6 and state laws and regulations as alleged in this petition.

7 74. Respondents have also violated Petitioners' constitutional rights to due process of law  
8 and interfered with a vested property interest.

9 75. Petitioners have no administrative remedy available to them to resolve this controversy.

10 76. Petitioners have no plain, speedy, or adequate remedy at law other than the relief  
11 requested in this petition. Petitioners can resolve their individual claims through the appeals process, but  
12 resolution of the individual claims will not result in a change to the system. Each Petitioner will file for  
13 unemployment insurance benefits in the future and will likely be subjected to delays in payment of  
14 benefits as described in this petition.

15 77. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law,  
16 other than the relief sought in this petition, in that there is no other legal remedy to prevent or enjoin the  
17 implementation of the unlawful 2008 and 2009 Furlough Orders.

18 78. Petitioners have a beneficial interest in the performance by EDD of its programs in a  
19 manner consistent with the mandates of federal law and the purpose of the unemployment insurance  
20 compensation system in that they are seasonal workers and minimum/low-wage workers who depend  
21 upon unemployment insurance benefits as their primary source of income during seasonal or other  
22 layoffs. Additionally, Petitioners' experiences demonstrate the impact this failure has on unemployment  
23 insurance claimants who have or will file claims or appeals and suffer from similar delays in the future.

24 79. Petitioners' success in this action will result in the enforcement of important rights  
25 affecting the public interest by conferring significant benefits on a large class of persons. Petitioners  
26 seek enforcement of rights not only for themselves but also all other persons who participate or attempt  
27 to participate in the unemployment insurance programs administered by Respondents.



1 times by individuals authorized to accept and open unemployment insurance claims.

2 2. That a writ of mandate issue directing Respondents DOUGLAS HOFFNER and  
3 BONNIE GARCIA to immediately take all steps necessary to ensure that appeals of denials of  
4 unemployment insurance benefits, including Petitioners', as applicable, are held within the timeliness  
5 standards prescribed by 20 C.F.R. § 650.1;

6 3. That a writ of mandate issue directing Respondents DOUGLAS HOFFNER and  
7 PATRICK HENNING to immediately take all steps necessary to remedy the inadequacy of the  
8 communications system through better communications equipment; and/or by assigning more EDD  
9 employees to handle incoming calls; and/or by assigning more duties to local EDD office staff where  
10 appropriate;

11 4. That a writ of mandate issue directing Respondents GOVERNOR  
12 SCHWARZENEGGER and DEBBIE ENDSLEY, in their respective official capacities, to set aside the  
13 portions of the Governor's 2008 and 2009 Furlough Orders calling for furloughs and salary reductions  
14 for EDD and CUIAB employees because the Orders are unlawful when applied to EDD and CUIAB;

15 5. That a writ of mandate issue finding that the portions of the Governor's Furlough Orders, as  
16 they relate to EDD and CUIAB employees, are unlawful, and that the Governor, the directors of DPA,  
17 EDD and CUIAB have violated and continue to violate the provisions of Article 14, Section 4 of the  
18 California Constitution and Unemployment Insurance Code § 318 by furloughing EDD and CUIAB  
19 employees and subsequently reducing their salaries;

20 6. That a writ of mandate issue directing Respondent JOHN CHIANG, in his capacity as  
21 state Controller, to ensure that salaries of CUIAB and EDD employees not be reduced as a result of the  
22 furloughs, and to provide back pay with legal interest for any past reduction in salaries to CUIAB and  
23 EDD employees;

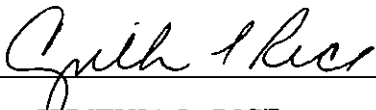
24 7. That a preliminary and permanent injunction issue directing the Governor, the DPA,  
25 EDD and CUIAB and the Controller to cease and desist in their efforts to furlough EDD and CUIAB  
26 employees, and to cease and desist from any further salary reductions of EDD and CUIAB employees;

27 8. That Petitioners recover costs; and  
28

1           9.       Such other and further relief as the court deems proper.

2 Dated: November 17, 2009

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

3  
4 By:   
5           CYNTHIA L. RICE  
6           Attorneys for the Petitioners  
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**VERIFICATION**

I, Cynthia L. Rice, am attorney of record for Petitioners in this matter. The petitioners are absent from the City and County of San Francisco in which I have my office and where I am located today. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that I signed this verification on November 17, 2009 in San Francisco, California.

  
\_\_\_\_\_  
CYNTHIA L. RICE