SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

MICHAEL RUBIN et al.,

Plaintiffs,

vs.

DEBRA BOWEN, in her official capacity as Secretary of State of California,

Defendant,

INDEPENDENT VOTER PROJECT, et al.,

Intervener-Defendants.

Case No. RG11-605301

ORDER ON DEMURRERS TO FIRST AMENDED COMPLAINT

The Demurrer to Verified First Amended Complaint ("FAC"), filed by Intervener-Defendants Independent Voter Project, David Takashima, Abel Maldonado and Californians to Defend the Open Primary ("Interveners") on May 30, 2012, and the Demurrers to First Amended Complaint filed by Defendant Debra Bowen, as Secretary of State (the "Secretary") on May 30, 2012, came on regularly for hearing on October 29, 2012, in Department 16 of the court, the

Honorable Lawrence John Appel presiding. The Secretary appeared by counsel Mark Beckington, Esq. Interveners appeared by counsel Christopher Skinnell, Esq. Plaintiffs Michael Rubin et al. ("Plaintiffs") appeared by counsel Dan Siegel, Esq. and Michael Siegel, Esq.

The court has considered all of the papers filed on behalf of the parties, and the arguments of counsel at the hearing, and good cause appearing, HEREBY ORDERS as follows:

(1) The Secretary's and Interveners' demurrers to the First Cause of Action (ballot access) are SUSTAINED, pursuant to C.C.P. § 430.10(e), WITH LEAVE TO AMEND to plead facts sufficient to state a cognizable cause of action asserting an "as applied" challenge to the Proposition 14 laws ("Prop. 14") under the United States Constitution, Amendments 1 and 14, and/or the California Constitution, Article 1, sections 2 and 3, based on a restriction on access to the ballot.

The First Cause of Action in the FAC remains unclear whether it seeks to state a "facial challenge" to Prop. 14 or an "as applied" challenge. To the extent it seeks to state a facial challenge, it is deficient because it does not plead facts "'establish[ing] that no set of circumstances exists under which [Prop. 14] would be valid,' i.e., that the law is unconstitutional in all of its applications." (*Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442, 449 ["*Washington I*"], quoting *United States v. Salerno* (1987) 481 U.S. 739, 745.) "[A] facial challenge must fail where the statute has a "'plainly legitimate sweep.'" (*Id.*, quoting *Washington v. Glucksberg* (1997) 521 U.S. 702, 739-740, and n. 7.) "In determining whether a law is facially invalid, [the court] must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." (*Id.*, at pp. 449-450.)

Prop. 14, approved by California voters on June 8, 2010, initiated amendments to the California Constitution such that candidates for various state and federal offices run in a single primary election open to all registered voters and the top two vote-getters (regardless of party preference) advance to the general election. (FAC, ¶ 23.) Plaintiffs do not allege that this system results in a lack of access to the primary election ballot by minor or independent party candidates, or that voters are unable to vote for any candidate of their choice (whether party-affiliated or not) in the *primary* election. Instead, Plaintiffs allege (on information and belief) that the "actual result of Prop. 14 has been to deny California voters the ability to vote for minor party candidates during a *general election*." (FAC, ¶ 26 [emphasis added].) While Plaintiffs allege that the U.S. Constitution requires election officials to "grant access to the general election ballot to minor political parties," they acknowledge that states "may condition a minor party's access to the general election ballot upon a showing of a 'modicum of support'" in the primary election. (FAC, ¶ 2, citing, *inter alia, Munro v. Socialist Workers Party* (1986) 479 U.S. 189, 193, and *Jenness v. Fortson* (1971) 403 U.S. 431, 442.) Plaintiffs allege that under Prop. 14, the Secretary "can deny ballot access to candidates who receive as much as 33 percent of the votes cast," based on a "hypothetical scenario, in which three candidates run for a particular office," and two receive 33.5 percent of the votes while the third receives 33 percent. (FAC, ¶ 2, and n. 1.)

Nevertheless, Plaintiffs do not allege that any such "hypothetical" scenario has occurred or would necessarily occur in each election. Instead, Plaintiffs allege only that the Secretary's implementation of Prop. 14 "will *likely* deny ballot access to candidates during the 2012 election cycle, even when candidates receive more

than the 'modicum of support' required by Supreme Court jurisprudence." (FAC, ¶ 2 [emphasis added].)

The court finds these allegations deficient to state a "facial" challenge to Prop. 14, given that there are numerous scenarios in which either no candidates are excluded from advancing to the general election (e.g., where only two candidates compete for a particular office) or the only candidates excluded from advancing are those who fail to receive a "modicum of support" in the primary election under applicable constitutional principles.

In *Munro, supra*, 479 U.S. 189, the Court addressed and upheld a Washington election system similar in some respects to Prop. 14. The system consisted of a "blanket primary" at which registered voters could vote for any candidate of their choice for a partisan office, irrespective of the candidate's party affiliation, but required that a minor-party candidate receive at least 1% of all votes cast for that office in the primary election before the candidate's name would be placed on the general election ballot. (*Id.*, at pp. 191-192.) The Court recognized that "[r]estrictions upon the access of political parties to the ballot impinge upon the rights of individuals to associate for political purposes, as well as the rights of qualified voters to cast their votes effectively, *Williams v. Rhodes*, 393 U.S. 23, 30 (1968), and may not survive scrutiny under the First and Fourteenth Amendments." The Court stated, however, that "it is now clear that States may condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office." (*Id.*) The Court stated that "[w]e think that the State can properly reserve the general election ballot for 'major struggles,'" and that states "are not burdened with a constitutional imperative to reduce voter apathy or to 'handicap' an unpopular

candidate to increase the likelihood that the candidate will gain access to the general election ballot." (*Id.*, at pp. 196 and 198; *see also id.*, at p. 199 ["It can hardly be said that Washington's voters are denied freedom of association because they must channel their expressive activity into a campaign at the primary as opposed to the general election."]) Because the system "affords a minor-party candidate easy access to the primary election ballot and the opportunity for the candidate to wage a ballot-connected campaign," the Court concluded that the effect of the 1% requirement on constitutional rights was "slight" and did not violate the constitutional rights of a candidate who received less than that level of support at the primary. (*Id.*, at p. 199.)

In reaching its holding, the *Munro* Court discussed its earlier decision in *Jenness, supra,* 403 U.S. 431, in which the Court unanimously rejected a challenge to Georgia's election statutes that required independent candidates and minor-party candidates, in order to be listed on the general election ballot, to submit petitions signed by at least 5% of the voters eligible to vote in the last election for the office in question. (*Id.*, at pp. 433-434 and 438.) The Court's opinion observed that "[t]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot – the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." (*Id.*, at p. 442.)

The *Munro* Court also discussed its earlier decision in *American Party of Texas v. White* (1974) 415 U.S. 767, in which candidates of minor political parties in Texas were required to demonstrate support by persons numbering at least 1% of the total vote cast for Governor at the last preceding general election. In

rejecting a First Amendment challenge to the 1% requirement, the Court asserted that the State's interest in preserving the integrity of the electoral process and in regulating the number of candidates on the ballot was compelling and reiterated the holding in *Jenness* that a State may require a preliminary showing of significant support before placing a candidate on the general election ballot. (*Id.*, at p. 782, n. 14.)

As the Court in *Munro* stated, these decisions "establish with unmistakable clarity that States have an 'undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot....'" (479 U.S. at p. 194, quoting *Anderson v. Celebrezze* (1983) 460 U.S. 780, 788-789, n. 9.) Thus, the general framework of Prop. 14 whereby candidates must obtain support in a primary election to advance to the general election is not itself unconstitutional on its face. Instead, as Plaintiffs acknowledge in the FAC, the extent of the burden on constitutional rights of a minor party candidate or his or her supporters depends in large part on the extent to which Prop. 14 operates to exclude a candidate from the general election despite having more than a "modicum of support" recognized in the authority. (See FAC, ¶ 2 ["Although states may condition a minor party's access to the general election ballot upon a showing of a 'modicum of support,' the threshold may not exceed five percent of the electorate."])

Despite the court's sustaining a demurrer to a similar facial challenge to Prop. 14 in the original complaint with leave to amend, Plaintiffs have not included sufficient factual allegations "'establish[ing] that no set of circumstances exists under which [Prop. 14] would be valid'" under the applicable constitutional principles. (*Washington I, supra*, 552 U.S. at p. 449.) There are no allegations, for

example, that Prop. 14 will necessarily result in exclusion of a candidate from the general election ballot who receives more than 5% or even 10% of the vote in the primary election. If only two candidates are on the primary ballot for a particular office, for example, both candidates will advance to the general election even if one receives 99% and the other only 1% of the votes. And if there are 20 candidates on the primary ballot, it may well be that each of the candidates other than the top two vote-getters receives less than 5% or even 1% of the vote. In that situation, there would be no severe burden on the rights of the 18 candidates under *Munro* and similar authority. (*See also Burdick v. Takushi* (1992) 504 U.S. 428, 434 ["when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions."])

Plaintiffs' admittedly "hypothetical" scenario in which there are three candidates who receive 33.5%, 33.5% and 33% of the votes in the primary election (FAC, ¶ 2 and n. 1), and the broad and conclusory allegations that Prop. 14 "has excluded and will continue to exclude minor party voters, minor party candidates, and the minor parties themselves from participation in California's general elections" (FAC, ¶ 45), are insufficient to support a facial challenge. (*See Washington I, supra*, 552 U.S. at pp. 449-450 ["In determining whether a law is facially invalid, [the court] must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases"].) "When forced to determine the constitutionality of a statute based solely on ... conjecture, we will uphold the law if there is any 'conceivabl[e]' manner in which it can be enforced consistent with the First Amendment." (*Milavetz, Gallop & Milavetz,*

P.A. v. U.S. (2010) 130 S.Ct. 1324, 1345; *see also Los Angeles Police Dep't v. United Reporting Pub. Corp.* (1999) 528 U.S. 32, 38 ["The traditional rule is that 'a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.'"])

Similarly, Plaintiffs' challenge to Prop. 14 on the basis that it results in the exclusion of minor political parties from the general election ballot, which is the "moment of peak participation by voters, media, and the candidates themselves," as opposed to the primary election ballot when fewer voters turn out (FAC, ¶ 37), is insufficient to state a facial challenge to Prop. 14. As discussed above, the *Munro* Court also considered and rejected that argument in examining a similar primary and general election structure. (479 U.S. at p. 199 ["It can hardly be said that Washington's voters are denied freedom of association because they must channel their expressive activity into a campaign at the primary as opposed to the general election."]) The Ninth Circuit Court of Appeals also considered and rejected the argument in examining a "top two vote-getters" structure nearly identical to that in Prop. 14. (*See Washington State Republican Party v. Washington State Grange* (9th Cir. 2012) 676 F.3d 784, 794-795 ["*Washington II*"].) Although Plaintiffs seek to distinguish *Washington II* on the basis that the Washington primary is held in August rather than in June, and the *Washington II* Court noted that "election interest is near its peak" in August (*id.*, at p. 794), the text of Prop. 14 does not appear to require a June primary and there are no allegations in the FAC in this regard. If Plaintiffs are contending that the Secretary's implementation of Prop. 14 by holding the primary in June imposes an additional burden on their constitutional rights beyond that considered in *Munro*

and *Washington II*, then this would require additional allegations regarding how Prop. 14 is being implemented in this regard and how it has affected individuals' rights. The current allegations do not and cannot state a "facial" challenge to the statute on this basis.

To the extent Plaintiffs seek to state an "as applied" challenge to Prop. 14, the cause of action is similarly deficient. Although Plaintiffs allege that the Secretary's implementation of Prop. 14 "will likely deny ballot access to candidates during the 2012 election cycle" who receive more than a "modicum of support" (FAC, ¶ 2), they do not allege that this has in fact occurred. In addition, while some of the Plaintiffs alleged in the FAC that they were "running" or "intend[ing] to run" for certain offices (see, e.g., FAC, ¶¶ 11, 12, 13, 15), there are no allegations regarding whether such individuals have been on a primary ballot or were excluded from a general election ballot despite receiving a particular percentage of the primary vote.

The court recognizes, however, that the FAC was filed on May 10, 2012, which was more than three weeks before the California primary election and almost six months before the California general election. Accordingly, the court grants Plaintiffs leave to amend to attempt to allege an "as applied" challenge to Prop. 14 based on the developments in those elections. The court does not grant further leave to amend to seek to state a "facial" challenge to Prop. 14, however. If Plaintiffs are able to amend to allege that implementation of Prop. 14 has resulted in exclusion of candidates who received more than a "modicum of support" under constitutional principles, then this could state an "as applied" challenge but would still not establish that "no set of circumstances exists under

which the [law] would be valid" as required for a facial challenge. (*See Washington I, supra*, 552 U.S. at p. 449.)

(2) The Secretary's and Interveners' demurrers to the Second Cause of Action (violation of rights to freedom of speech and association) are SUSTAINED, pursuant to C.C.P. § 430.10(e), WITHOUT LEAVE TO AMEND. The court's order of April 24, 2012 sustained a demurrer to a similar cause of action in the original complaint with leave to amend to "plead facts sufficient to state a cognizable cause of action challenging the Prop. 14 laws on the basis that they violate the rights to freedom of speech and association under the United States or California constitutions." Plaintiffs' amendments to this cause of action in the FAC do not overcome the facial deficiencies in the similar cause of action in the original complaint.

As with the previous cause of action, this seeks to challenge Prop. 14 based on the assertion that permitting candidates to self-designate a "preferred" political party on the electoral ballot, without the party's approval, interferes with constitutional rights of speech or free association. The cause of action does not withstand demurrer for the reasons discussed in *Washington I, supra*, 552 U.S. at pp. 453-455. As reflected therein, a statute (like Prop. 14) that allows for an open primary in which candidates identify themselves on the ballot by a self-designated party preference does not unconstitutionally interfere with a political party's rights of association or speech. (*Id.*) Unlike the prior California law struck down in *California Democratic Party v. Jones* (2000) 530 U.S. 567, such a statutory framework does not interfere with a party's right to choose "its nominees" because the primary process does not choose the parties' nominees at all. (*Washington I*, 552 U.S. at p. 453 ["The law never refers to the candidates as nominees of any

party, nor does it treat them as such," and "[w]hether parties nominate their own candidates outside the state-run primary is simply irrelevant."])

The challenged provisions of the Prop. 14 laws are indistinguishable from the Washington statute upheld in Washington I, and Plaintiffs have not alleged sufficient facts to the effect that Prop. 14 is being applied in a particular manner that compels individuals or political parties to be associated with particular candidates. As in Washington I, the mere possibility that "voters will misinterpret the candidates' party-preference designations as reflecting endorsement by the parties" is not sufficient to support a facial challenge to the statute. (*Washington I, supra*, 552 U.S. at p. 455.) No new facts are alleged in the FAC that would support a finding that Prop. 14, as applied, results in actual voter confusion by a "well informed electorate" significant enough to rise to a constitutional violation under the applicable standards. (*See Washington I, supra*, 552 U.S. at pp. 454-456; *Washington State Republican Party v. Washington State Grange* (9th Cir. 2012) 676 F.3d 784, 791-793.)

To the contrary, the Secretary and Interveners have requested that the court take judicial notice of the official ballot for June 2012, the Voter Information Guide published in connection therewith, and an official sample ballot for the primary in Solano County. (See Interveners' and State's Requests for Judicial Notice filed on May 30, 2012.) Those unopposed requests are GRANTED. Interveners and the Secretary also cite Election Code §§ 2151(b)(1), 13105, 13206(b), 9083.5, 9084, 14105.1, and 88001(l), among others, that include requirements for disseminating information about the process and the the candidates' "party preference" or lack thereof. Plaintiffs do not address those statutes or materials in their opposition memorandum, and they contradict

Plaintiffs' conclusory allegations that Prop. 14 results in a situation in which "voters are not able to distinguish between candidates who are the official standard-bearers of a political party and those who may not actually represent a party's interests." (FAC, ¶ 30.)

In sum, Plaintiffs' allegations do not suffice to support a finding that Prop. 14 is being applied in a manner that results in a "chilling effect on those parties' rights of expression and association" under the applicable constitutional standards. Plaintiffs have not met their burden of showing how they could amend this cause of action to overcome the deficiencies. (*See, e.g., Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Indeed, at the hearing on October 29, 2012, Plaintiffs did not address the court's tentative ruling that indicated it was inclined to sustain the demurrer to this cause of action without leave to amend.

(3) Although Plaintiffs base their First and Second Causes of Action on the California Constitution in addition to the U.S. Constitution, neither the FAC nor Plaintiffs' memorandum in opposition to the demurrer cites any California decisions, much less decisions that provide a basis to determine that the California Constitution provides additional protection (beyond that of the U.S. Constitution) to Plaintiffs with respect to the challenged provisions of Prop. 14. Indeed, given that Prop. 14 resulted in amendments to the California Constitution, it is itself accorded equal dignity with other provisions of the California Constitution, including those cited by Plaintiffs. (*See Strauss v. Horton* (2009) 46 Cal.4th 364, 465-469.) Further, the Court in *Edelstein v. City & County of San Francisco* (2002) 29 Cal.4th 164, 179, expressly reaffirmed that "[i]n analyzing constitutional challenges to election laws, this court has followed closely the analysis of the United States Supreme Court."

(4) The Secretary's and Interveners' demurrers to the Third Cause of Action are SUSTAINED, pursuant to C.C.P. § 430.10(e), WITHOUT LEAVE TO AMEND. The court's order of April 24, 2012 sustained a demurrer to a similar cause of action in the original complaint with leave "to plead facts sufficient to state a cognizable cause of action challenging the Prop. 14 laws on the basis of the Elections Clause of the United States Constitution." Plaintiffs' amendments to this cause of action in the FAC are minor and do not overcome the facial deficiencies. As with the prior cause of action, this cause of action, including the allegation that Prop. 14 "disadvantages smaller political parties and grants further advantage to wealthy parties and candidates," is conclusory and does not set forth sufficient factual allegations regarding any manner in which the Prop. 14 laws, either on their face or as specifically applied, dictate electoral outcomes as opposed to prescribing the "Times, Places and Manner of holding Elections for Senators and Representatives...." (*See, e.g.*, U.S. Const. Art. I § 4, cl. 1; *Cook v. Gralike* (2001) 531 U.S. 510, 523; *Cartwright v. Barnes* (11th Cir. 2002) 304 F.3d 1138, 1142 and n. 4.)

While it is likely the case that a candidate having a preference of a minor political party will not advance from the primary election to the general election as often as candidates affiliating with a major political party, such a result is a direct outcome of a voting process in which all candidates compete on the same terms. This does set forth a violation of the Elections Clause. (*See id.*; *see also Munro, supra*, 479 U.S. at p. 198.)

(5) The Secretary's and Interveners' demurrers to the Fourth Cause of Action are SUSTAINED, pursuant to C.C.P. § 430.10(e), WITH LEAVE TO AMEND to plead facts sufficient to state a cognizable cause of action asserting a

facial or "as applied" challenge to Prop. 14 under the Constitution of the United States and/or California for violation of equal protection rights.

As currently pled, Plaintiffs allege, among other things, that Prop. 14 "withdraws an established right to participate in statewide general elections from qualified minor political parties, their candidates, and their supporters" and that the "disadvantage Prop. 14 imposes upon minor political parties is the result of disapproval or animus against politically unpopular groups." (FAC, ¶¶ 54-55.) On its face, Prop. 14 does not appear to be directed to any classification or group. (See, e.g., Cal. Const. Art II, § 5; Nowak & Rotunda, Constitutional Law [5th ed.], § 14.4 [and cases cited therein.]) The FAC includes certain allegations which may be argued to assert that Prop. 14 has been applied in a manner which infringes upon the rights of minor political parties as distinguished from major parties. (See, e.g., FAC, ¶ 34 ["As a result of Prop. 14, candidates representing minor political parties have been, de facto, precluded from consideration on the general election ballot"], ¶¶ 54-55.)

In each instance, however, such allegations appear to propose hypothetical threats (*United Public Workers v. Mitchell* (1947) 330 U.S. 75, 88-91) and are unaccompanied by any allegations purporting to describe factually how, when, and/or in what manner Prop. 14 has in fact been applied in any particular case. Rather, the allegations are in each instance linked to an argument that the People of the State of California may not provide for a blanket primary with the top two vote-getters advancing to the general election ballot. In this connection, the court notes that the only classification arguably included in Prop. 14 – i.e. the "top two vote-getters" – does not on its face purport to accord unequal treatment or discriminate between or among any particular groups.

For reasons similar to those discussed in section (1) above, the court does not find Plaintiffs' allegations sufficient to state a "facial" challenge to Prop. 14 that is not based on speculation and conjecture as to the possible manner in which individual candidates or voters will be or have been affected by the implementation of Prop. 14. There are also insufficient allegations regarding how Prop. 14 was actually applied in the June 2012 primary election and November 2012 general election so as to support an "as applied" challenge.

Further, the cause of action is based largely on principles set forth in *Perry v. Brown* (9th Cir. 2012) 671 F.3d 1052, 1083-1084, as to which the U.S. Supreme Court granted certiorari after the hearing on this motion. (*See Hollingsworth v. Perry* (U.S. Dec. 7, 2012) 2012 WL 3134429, No. 12-144.) The Secretary and Interveners have a good argument that Plaintiffs' theory is not supported by *Perry*, in which the court held that "the Equal Protection Clause requires the state to have a legitimate reason for withdrawing a right or benefit from one group but not others, whether or not it was required to confer that right or benefit in the first place." (671 F.3d at pp. 1083-1084.) Here, in contrast to *Perry*, the challenged law does not appear on its face to "target" one group or another for disparate treatment, as discussed above.

Although a facially neutral law that has a disproportionate impact on a disfavored group may be subject to higher scrutiny if "invidious discriminatory purpose was a motivating factor" in the decision (*Village of Arlington Heights v. Metropolitan Housing Dev. Corp.* (1977) 429 U.S. 252, 265-266), there are insufficient factual allegations in this regard in the FAC so as to support a facial or "as applied" challenge. Nevertheless, because the FAC was filed before the June and November elections, and because the court has not previously sustained a

demurrer to a cause of action in this lawsuit alleging a violation of equal protection, the court grants leave to amend.

(6) The Second and Third Causes of Action are DISMISSED. Plaintiffs shall have 20 days after the date reflected in the clerk's certificate of mailing of this order in which to file and serve a Second Amended Complaint which comports with the directions and limitations expressed in this order. The Secretary and Interveners shall have 20 days after service of an amended pleading in which to respond. C.C.P. § 1013 applies to the calculation of these dates.

(7) A fundamental rule of pleading requires that a complaint contain a "statement of the facts constituting the cause of action in ordinary and concise language." (C.C.P. § 425.10(a)(1).) The court notes that the FAC contains allegations which include references to and quotations taken from reported decisions of the Supreme Court of the United States and other courts. (See, e.g., FAC, ¶¶ 1-5, 32, 36, 46, 48, 50 and 54.) Such legal argument does not assist the court in ascertaining the facts upon which Plaintiffs' causes of action are based.

The clerk is directed to serve endorsed-filed copies of this order with proof of service to counsel of record by mail.

IT IS SO ORDERED.

Date: January 25, 2013

Lawrence John Appel
Superior Court Judge

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG11605301
Case name: Rubin vs. Bowen

ORDER FILED ON JANUARY 25, 2013

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document, **ORDER FILED ON JANUARY 25, 2013** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 25, 2013.

Executive Officer/Clerk of the Superior Court
By Ana Liza Tumonong, Deputy Clerk

Michael Siegel, Esq.
Siegel & Yee
499 14th Street, #220
Oakland, Ca 94612

Mark Beckington, Esq.
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, Ca 90013

Christopher Skinnell, Esq.
Parrinello Gross & Leoni LLP
2350 Kerner Blvd., Suite 250
San Rafael, Ca 94901