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<https://www.planjpa.org/>

**CLAIMS COMMITTEE MEETING
AGENDA**

**Thursday, August 25, 2022
1:30 p.m.**

Zoom

Please Contact Katie Sullivan for Videoconference Information

All or portions of this meeting will be conducted by teleconferencing in accordance with Government Code Section 54953(b). Teleconference locations are as follows: Sedgwick, 1750 Creekside Oak Drive, Suite 200, Sacramento, CA 95833; City of Burlingame, 501 Primrose Rd, Burlingame, CA 94010; Town of Hillsborough, 1600 Floribunda Ave, CA 94010; Town of Los Gatos, 110 East Main St., Los Gatos, CA 95030; City of Morgan Hill, 17575 Peak Ave, Morgan Hill, CA 95037; and City of San Carlos, 600 Elm St, San Carlos, CA 94070.

Each location is accessible to the public, and members of the public may address the Claims Committee from any teleconference location.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Katie Sullivan at katie.sullivan@sedgwick.com (916) 244-1164 or (916) 244-1199 (fax). Requests must be made as early as possible, and at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA) Claims Committee less than 72 hours prior to a regular meeting will be available for public inspection at 1750 Creekside Oaks Dr., Suite 200, Sacramento, CA 95833.

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|--------------------|---|
| <u>Page</u> | 1. CALL TO ORDER |
| | 2. INTRODUCTIONS |
| | 3. APPROVAL OF AGENDA AS POSTED (OR AMENDED) |

- Page**
- 4. PUBLIC COMMENTS** - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: katie.sullivan@sedgwick.com. This time is reserved for members of the public to address the Committee relative to matters of the Claims Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total.
- 5. CONSENT CALENDAR**
If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.
- 5** *A. Minutes from the April 28, 2022, Claims Committee Meeting
Recommendation: Staff recommends the Claims Committee approve the Consent Calendar
- 6. CLAIMS MATTERS**
- 8** *A. Consideration of Addition to Defense Counsel Panel
Recommendation: Staff recommends the Claims Committee approve Attorney Kevin Gilbert for PLAN JPA's defense panel.
- 57** *B. Consideration of Updates to Governing Documents for Litigation Manager Authority Regarding Property Claims
Recommendation: Staff recommends the Claims Committee re-affirm the authority for PLAN's Litigation Manager and Sedgwick Third-Party Administrator to settle claims \$200,000 above and \$50,000 above the PLAN member's self-insured deductible, respectively; as well as approval of the proposed updates to the Master Program Document for the Property Program.
- 7. CLOSED SESSION**
- A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:
- Tony Chan, D.T. McKee Petroleum Corp. v. Town of Atherton
 - Patricia Balinski v. City of Campbell
 - Patricia Lee v. City of Pacifica
 - Ronald Peterson v. City of San Bruno
 - Sandra Slosberg v. City of San Carlos
- B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.
- 8. CLOSING COMMENTS**
This time is reserved for comments by Claims Committee members and/or staff and to identify matters for future Claims Committee business.
- A. Claims Committee
- B. Staff

9. ADJOURNMENT

NOTICES:

- The next Claims Committee meeting will occur on Thursday, September 22, 2022, at 1:30pm via videoconference.

August 25, 2022

Agenda Items 5.A

CONSENT CALENDAR

SUBJECT: Consent Calendar

BACKGROUND AND HISTORY:

The Consent Calendar consists of items that require approval or acceptance but are self-explanatory and require no discussion. If a Committee member would like to discuss any item listed, it may be pulled from the Consent Calendar.

STAFF RECOMMENDATION:

Staff recommends the Claims Committee approve the Consent Calendar.

REFERENCE MATERIALS ATTACHED:

A. Minutes from the April 28, 2022, Claims Committee Meeting

**POOLED LIABILITY ASSURANCE NETWORK JOINT
POWERS AUTHORITY
(PLAN JPA)**

**MINUTES OF THE CLAIMS COMMITTEE
MEETING OF APRIL 28, 2022**

A regular meeting of the Claims Committee was held on April 28, 2022, via videoconference.

MEMBERS PRESENT: Donald Larkin, Chair, Morgan Hill
Ann Ritzma, Hillsborough
Michael Guina, Burlingame
Marc Zafferano, San Bruno
Rebecca Mendenhall, San Carlos

MEMBERS ABSENT: Robert Schultz, Los Gatos

OTHERS PRESENT: Jon Paulsen, PLAN JPA General Manager
Katie Sullivan, PLAN JPA Assistant General Manager
Susan DeNardo, PLAN JPA Litigation Manager
Eric Dahlen, Sedgwick (*Left after Agenda Item 6.A*)
Greg Rubens, Board Counsel (*Arrived during Item 4.A*)

1. CALL TO ORDER:

The Regular Meeting of the PLAN JPA Claims Committee meeting was called to order at 1:30 p.m.

2. INTRODUCTIONS:

A roll call was taken and it was determined there was a quorum present. Jon Paulsen, General Manager, introduced Eric Dahlen as Senior Consultant.

3. APPROVAL OF THE AGENDA AS POSTED (OR AMENDED):

Agenda was approved as posted.

4. PUBLIC COMMENTS:

None.

5. CONSENT CALENDAR:

Ann Ritzma moved to approve the following items: A) Minutes from the March 24, 2022, Claims Committee Meeting. Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Donald Larkin, Ann Ritzma, Michael Guina, Marc Zafferano, and Rebecca Mendenhall.

6. CLAIMS MATTERS:

A. Consideration of Attorney Representation

Susan DeNardo, Litigation Manager, informed the Committee the City of Cupertino requested attorneys Yuchih Pearl Kan, Joseph Sep Petta, and Marlene Dehlinger to represent them in the Huang Family v. City of Cupertino claims.

The attorneys are not currently on PLAN JPA's approved Defense Counsel list; however, the City has used them to assist with its defense with respect to the Huang family claims to date. The firm agreed to follow PLAN JPA's Litigation Guidelines.

Ann Ritzma moved to approve the request from the City of Cupertino to utilize Yuchih Pearl Kan, Joseph Sep Petta, and Marlene Dehlinger for the Huang Family v. City of Cupertino claims. Rebecca Mendenhall seconded the motion. A roll call vote was taken and the motion passed unanimously by Donald Larkin, Ann Ritzma, Michael Guina, Marc Zafferano, and Rebecca Mendenhall.

7. CLOSED SESSION:

A. The Committee convened to closed session, pursuant to Government Code section 54956.95(a) at 1:36 p.m. to discuss the following claims:

- Huang Family v. City of Cupertino
- Patricia Lee v. City of Pacifica
- Joo Sik Choe v. City of San Bruno
- Bryan Calles v. City of San Carlos
- Awash/Khalif v. Town of Tiburon

B. Pursuant to Government Code Section 54957.1, the Committee reconvened to open session at 1:59 p.m. The following actions were taken under closed session:

No reportable action was taken during closed session.

8. CLOSING COMMENTS:

A. Claims Committee

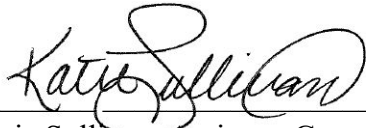
None

B. Staff

Mr. Paulsen requested the Committee provide suggestions for new Claims Committee members to fulfill seats being left vacant.

9. ADJOURNMENT

The Regular Meeting of the PLAN JPA Claims Committee was adjourned at 2:05 p.m.

A handwritten signature in cursive script, reading "Katie Sullivan", is written over a horizontal line.

Katie Sullivan, Assistant General Manager

August 25, 2022

Agenda Items 6.A

CLAIMS MATTERS

SUBJECT: Consideration of Addition to Defense Counsel Panel

BACKGROUND AND HISTORY:

PLAN JPA's Litigation Department periodically reviews its list of panel counsel to confirm appropriate coverage for different types of claims. Jury awards have been sharply increasing in recent years for all types of claims and in particular civil rights cases with attorney fee exposure. Defense Counsel suggest adding Attorney Kevin Gilbert and his team to the PLAN JPA Panel as he has in depth and valuable experience defending these types of cases.

Susan DeNardo, Litigation Manager, will be present to discuss suggestions and answer questions.

STAFF RECOMMENDATION:

Staff recommends the Claims Committee approve Attorney Kevin Gilbert for PLAN JPA's defense panel.

REFERENCE MATERIALS ATTACHED:

- Proposed 2022 PLAN JPA Defense Counsel Panel List
- Application for Defense Counsel Panel

PLAN JPA LIST OF APPROVED COUNSEL 2022

FIRM	ADDRESS	PHONE	EMAIL	ATTORNEYS	RATES	RATES (Police, Federal, ADA)
Allen, Glaessner, Hazelwood & Werth	180 Montgomery St. 12 th Floor, San Francisco, CA 94104	(415) 697- 2000	MHazelwood@aghwlaw.com DAllen@aghwlaw.com PGlaessner@aghwlaw.com	Mark Hazelwood Dale Allen Peter Glaessner		
<i>Practice Areas: Police. Dangerous Condition/Premises Liability, Direct Negligence</i>						
Bertrand, Fox, Elliot Osman & Wentzel	2749 Hyde Street San Francisco, CA 94109 1300 Clay Street, Ste. 58 Oakland, CA 9461	(415) 353- 0999 (510) 466- 6380	GFox@BFESF.com ROsman@BFESF.com EElliot@bfesf.com MWenzel@bfesf.com	Greg Fox Richard Osman Gene Elliott - ADA Michael Wenzel		
<i>Practice Areas: Police. Dangerous Condition/Premises Liability, Direct Negligence, Sexual Abuse and Molestation</i>						
Clapp Moroney Vucinich Beeman & Scheley	1111 Bayhill Dr. San Bruno, CA 94066	(650) 989- 5400	JVucinich@ClappMoroney.com	Jeffrey Vucinich		
<i>Practice Areas: Police. Dangerous Condition/Premises Liability, Direct Negligence</i>						
Law Offices of Dawn Ceizler	165 Lennon Lane, Ste. 101 Walnut Creek, CA 94598	(925) 932- 8225	dc@ceizler.com	Dawn Ceizler		
<i>Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Civil Rights</i>						
Hayes, Scott, Bonino, Ellingson, McKay LLC	203 Redwood Shores Pkw 4 th Floor, Ste. 480 Redwood City, CA 94065	(650) 486- 2869	mbonino@hayesscott.com	Mark Bonino		

Practice Areas: Appellate

Kaufman, Dolowich & Voluck, LLP	425 California Str., Ste. 2100 San Francisco, 94104	(415) 926-7600	ahamoy@kdvlaw.com agaus@kdvlaw.com rserrano@kdvlaw.com	Aimee Hamoy Arthur Gaus Roger Serrano		
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Practice Areas: Police liability, Civil Rights, Dangerous Condition/Premises Liability, ADA

Howard, Rome, Martin, Ridley	1900 O'Farrell Str., Ste 280 San Mateo, CA 94403,	(650) 365-7715	tmaster@hrmlaw.com sridley@hrmlaw.com lrauch@hrmlaw.com bgundert@hrmlaw.com	Todd Master Shawn Ridley Lisa Rauch Bob Gundert		
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Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Inverse Condemnation, Civil Rights, Police

Leone and Alberts	1390 Willow Pass Rd., Suite 700 Concord, CA 94520	(925) 974-8600	bduus@leonealberts.com	Brian Duus		
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Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence

McDowell - Cotter	2070 Pioneer Court San Mateo, CA 94403	(650) 324-9300	drosenbaum@mcdlawyers.net jemmaneel@mcdlawyers.net	David Rosenbaum Jennifer Emmaneel		
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Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence

Matheny, Sears, Linkert and Jaime	3638 American River Dr., Sacramento, CA 95864	(916)978-3434	RBangle@mathenysears.com	Ray Bangle		
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Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Civil Rights

McNamara, Ney, Beatty, Slattery, Borges & Ambacher	3480 Buskirk Ave Suite 250 Pleasant Hill, CA 94523	(925) 939-5330	James.Fitzgerald@Mcnamaralaw.com Noah.Blechman@Mcnamaralaw.com	James Fitzgerald Noah Blechman		
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Practice Areas: Police

Orbach Huff & Henderson, LLP	6200 Stoneridge Mall Pleasanton, CA 94588	(510)350-3582	kgilbert@ohhlegal.com caguilar@ohhlegal.com nfine@ohhlegal.com	Kevin Gilbert Carolyn Aguilar		
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			ccreech@ohhlegal.com rhom@ohhlegal.com	Nicholas Fine Christopher Creech Randolph Hom		
<i>Practice Areas: Police, Civil Rights, Dangerous Condition, ADA</i>						

RIVERA HEWITT PAUL LLP	11341 Gold Express Drive Suite 160 Gold River, CA 95670	(916) 922-1200	SHewitt@rhplawyers.com JPaul@rhplawyers.com DChopra@rhplawyers.com CJanof@rhplawyers.com WMotooka@rhplawyers.com JNathan@rhplawyers.com	Shannan Hewitt Jonathan Paul Dalbir Chopra Christopher Janof Wendy Motooka Jill Nathan		
<i>Practice Areas: Police, Civil Rights, Dangerous Condition/Premises Liability, ADA</i>						
Suzanne M Nicholson, Attorney at Law	770 L Street, Suite 950 Sacramento, CA 95814	(916) 361-6551	suzanne@smnlegal.com	Suzanne Nicholson	225-P	
<i>Practice Areas: Appellate</i>						
Law Office of Matthew Orebic	1870 San Antonio Ave. Berkeley, CA 94707	(510) 808-2000	Matthew@OrebicLaw.com	Matthew Orebic		
<i>Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Inverse Condemnation, Civil Rights, Police</i>						
Rankin, Stock & Heaberlin	96 N. 3 rd Street, Ste. 500 San Jose, CA 95112	(408) 293-0463	Jon@RankinStock.com David@RankinStock.com	Jon Heaberlin David Stock		
<i>Practice Areas: Dangerous Condition/Premises Liability, Direct Negligence, Civil Rights</i>						
Selman-Breitman	33 New Montgomery 6 th Floor San Francisco, CA 94105	(415) 979-2027	DLewis@SelmanBreitman.com	Danielle Lewis		
<i>Practice Areas: Dangerous Conditions/Premises Liability, Direct Negligence, Civil Rights</i>						



**ORBACH HUFF + HENDERSON LLP
RESPONSE TO
REQUEST FOR APPLICATION
FOR PANEL OF DEFENSE COUNSEL FOR
POOLED LIABILITY ASSURANCE NETWORK**





Email: kgilbert@ohhlegal.com

Attorneys at Law

www.ohhlegal.com

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Los Angeles, CA 90067
310 788-9200 • PHONE
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Suite 225
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Suite 200
2877 Historic Decatur Road
San Diego, CA 92106

●
Suite 170
13181 Crossroads Parkway N.
City of Industry, CA 91745

August 15, 2022

VIA EMAIL SUBMISSION ONLY

Susan DeNardo
Litigation Manager
PLAN JPA
1750 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

Re: Application for Panel of Defense Counsel

Dear Ms. DeNardo:

We are grateful to have the opportunity to submit this proposal for legal services to the Pooled Liability Assurance Network. As you will note from the enclosed materials, Orbach Huff + Henderson ("OHH") is uniquely qualified to provide exceptional legal services to PLAN. We are a full-service law firm with over 30 specialist attorneys throughout the state, delivering effective, timely and service-oriented solutions to both routine and complex legal issues facing California's public agencies.

Every day since the Firm's establishment over twenty years ago, we have recognized that the representation of public agencies is a specialty that requires unique expertise, particularly given the nuanced defenses and immunities afforded public entities. Our attorneys have substantial experience in the pertinent areas. Each of our attorneys are experienced litigators, with unparalleled trial experience.

OHH was founded on the principle of providing the highest quality legal services to public entities throughout the state. Established in 1997, our firm prides itself on fostering longstanding relationships, while advising and counseling on complex and ever-changing laws. Since its humble beginnings, OHH has expanded throughout the state, while continuing to maintain its long-standing relationships with the public entities that it we are privileged to



Susan DeNardo
August 15, 2022

serve. The experience of our attorneys and our command of municipal law enable us to efficiently cut to the core of our clients' issues.

Thank you very much for allowing us the opportunity to introduce you to our firm. Please feel free to contact me directly should you have any questions or require additional information. My direct number is 510.350.3582 or you can reach me anytime on my cell at 510.285.7281.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kevin E. Gilbert", is shown within a rectangular box.

Kevin E. Gilbert

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A. Biographical Information

Biographical Information

1. **Attorney's resumes:** The resumes of the proposed litigation team are attached hereto under Appendix A.
 - a. **Member's name:** Kevin Gilbert, Partner at Orbach Huff + Henderson.
 - b. **Office locations in California:** The Firm maintains five offices in California, as follows:

Pleasanton

6200 Stoneridge Mall Rd, Suite 225,
Pleasanton, CA 94588, Ph: (510) 999-7908

Los Angeles

1901 Avenue of the Stars, Suite 575,
Los Angeles, CA 90067, Ph: (310) 788-9200

San Diego

2877 Historic Decatur Road, Suite 200,
San Diego, CA 92106, Ph: (858) 988-4188

City of Industry

13181 Crossroads Parkway N., Suite 170,
City of Industry, CA 91746

Pacific Grove

667 Lighthouse Avenue, Suite 202,
Pacific Grove, CA 93950

- c. **Total number of attorneys in the firm:** The Firm currently has 33 attorneys.
2. **A narrative of the Attorney's experience in public sector general liability litigation:** Please refer to the General Information section below as well as the individual attorney's resumes, attached as Appendix A.
3. **A narrative of the Attorney's experience in public sector general liability counseling or litigation prevention. For example, legal advice or training provided to municipalities regarding law enforcement practices and procedures:** Please refer to the General Information section below as well as the individual attorney's resumes, attached as Appendix A.
4. **A list of attorneys who would be assigned to work on PLAN JPA matters with the applying attorney, as well as those attorney's professional biographies:** Please refer to the Key Personnel section herein below as well as Appendix A.
5. **A list of clients for whom similar services have been performed by key personnel on the team. The following must be included for each client:**
 - a. Name, address, and phone number of contact person
 - b. Overview of services performed
 - c. Number of years providing services

The Firm was founded upon and remains focused on serving public entities. Pursuant thereto, the Firm and its attorneys have had the privilege of representing literally hundreds, if not thousands, of public entities throughout the state. Thus, a listing of our public entity clients from whom we provide similar services would be quite voluminous and difficult to compile. Notwithstanding, please find attached at Appendix C a list which identifies some of our public entity clients, including the scope of services and the dates for which those services have been provided.

6. **A list of three public entity references from the Law Firm's list of clients:** Please refer to Appendix C, which includes a list of references, including the scope of services and the dates for which those services have been provided.

General Information

OHH is well-suited to provide the services requested under the Request for Application. Unlike other law firms whose practice may *involve* public entity representation, our practice is devoted to advising and defending public entity clients. As a leader in the field, OHH has represented hundreds of public entities throughout the state.

OHH was founded on the principle of providing the highest quality legal services to public entities. Established in 1997, our Firm prides itself on fostering longstanding relationships, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of the communities they serve. Since its humble beginnings almost 25 years ago, OHH has expanded throughout the state, with offices in Northern and Southern California. Our attorneys' experience and command of laws applicable to public school districts enables us to cut to the core of our clients' issues quickly and efficiently.

The attorneys proposed to represent PLAN and its members all have specific experience advising public entities and regularly rendering opinions for, and routinely appear before, the governing bodies of our clients. We frequently engage in discussions with other stakeholders and parties to represent our clients before state and federal agencies and in interactions with the media, the court and opposing counsel. Our practice runs the gamut of applicable law, and we can provide timely, accurate advice on all of the issues requested by PLAN and/or its members.

OHH's dedication to representing public entities also assures that our budgets – whether for advisory or litigation matters – are consistently kept in check. For example, we are able to maintain in-house legal “experts” who specialize in the nuanced areas of law that impact only public entities. Likewise, we have developed and maintain an internal database on most of the common issues that repeatedly arise while advising or representing public entities and/or their employees. This greatly reduces the time to research issues and prepare the necessary materials, thereby resulting in substantial savings to our clients.

In complex and challenging matters, we offer a level of support and reassurance that only attorneys with our background succeeding in high-stakes, high-profile matters can offer. Our attorneys have been called upon in some of the most significant matters throughout the state, defending highly-publicized civil rights matters, prosecuting writs against state agencies, prosecuting claims of overbilling and misappropriation of public resources by private entities/individuals, and advising on the development and construction of public projects costing hundreds of millions of dollars.

Case Management. Our goal as litigators is to advantageously resolve claims while maintaining a strong, trial-ready posture. We anticipate developing case evaluations and plans that will identify all litigation tasks (such as discovery, dispositive motions and settlement discussions)

and focus on early settlement conferences. These evaluations and plans also will address expected potential liability, plaintiffs' comparatives, subrogation potential, co-defendant liability, verdict range, settlement value and the basis used to arrive at this value, and estimated defense costs. Our case analysis includes proposed tenders, pre-litigation interviews of key witnesses, policy review, evidence preservation and, as appropriate, plans for broaching potential early settlement to avoid trial. Any changes to initial budget projections are explained. For any matter assigned to us, we will ensure continued communication with PLAN and its member(s) and provide timely updates on the project's status. Our meetings can be conducted via telephone, teleconference, and/or in-person. As our client, PLAN and its members are the decisionmakers and will determine which method works best.

Pre-Litigation Activities. We recommend examining all options before pursuing litigation. To this end, we may consider contacting opposing counsel to determine whether the issues may be resolved informally. If unable to negotiate informally, we will strategize to bring the dispute to early resolution using mediation or other alternative dispute resolution methods, assuming that is PLAN and its member's goal. If unable to use alternative dispute resolution, we will prepare a detailed litigation plan that focuses on resolving the key issues of any dispute short of trial. If a matter heads to trial, we will prepare a separate trial budget and, in an ongoing manner, we will frequently update the in-house team on the status and the financial implications of litigation. Should we recommend filing a motion for summary judgment, our team will present an estimated cost analysis to prepare the motion along with our chances of prevailing before moving forward.

Trial to Appeal. If necessary, we will vigorously defend our client or prosecute claims on its behalf, seeking reimbursement of attorneys' fees when permitted. Should the matter result in an appeal, our experienced appellate counsel can handle trial appeals and writs of mandamus.

Although PLAN's Request for Application did not identify the specific areas of law for which it is seeking legal services, we have attempted to provide a brief description of our experience and expertise in the anticipated areas.

Civil Rights

a. Civil Rights Litigation

In our work with our municipal clients, our attorneys frequently handle claims alleging violation of individuals' civil rights arising under both state and federal law, including lawsuits alleging violations of 42 U.S.C. section 1983 and California's equivalent, the Bane Act. Although these types of claims used to be infrequent as against public entities, the current trend by some plaintiff's counsel is to attempt to bootstrap these allegations in an effort to create a right to recover attorneys' fees where otherwise unavailable. Our litigators are a powerful advocates, routinely defending against a wide variety of claims in both state and federal court, including allegations of wrongful conviction, improper search and/or seizure, use of force, discrimination and disparate impact. Even more important is

their understanding of our public entities' operations as related to these issues, which allows them to articulate the appropriateness of each challenged action.

b. Disability Rights Litigation

Our attorneys are among the most experienced in the state regarding disability rights claims. We routinely advise and defend against claims related to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, California's Disabled Persons Act, the Rehabilitation Act, and related civil rights. By way of example, we represented a large urban school district in defense of a lawsuit from a student that the school district violated his civil rights by both discriminating against him and by failing to provide him with the required FAPE (Free Appropriate Public Education), as mandated by the IDEA. Despite the significance of the plaintiff's claims, our Motion to Dismiss was completely successful, resulting in the entirety of Plaintiff's claims being dismissed early on.

We are equally comfortable defending against claims of inaccessible facilities, programs or services, including recently representing the City of Los Angeles in what is believed to be the largest ADA class action litigation ever prosecuted, based on claims of program access and accessibility barriers. On a smaller scale, we have represented numerous cities, counties, school districts and other public entities in response to claims alleging violations of the ADA, the Disabled Persons Act and the Unruh Act. We have and continue to represent numerous entities in identifying potential violations and remedying those situations as well as directing disputes towards structured negotiations in hopes of avoiding the uncertainty and cost of litigation.

Tort, Including Bad Faith

Although not as dramatized as many other matters, tort claims are at the core of our litigation practice. OHH's attorneys have represented scores of public entities throughout the state in defense of tort-based claims. Our role as defense counsel often expands to assist in updating our clients' business practices and policies in an effort to not only minimize future claims, but also eliminate injuries.

Due in large part to our focus on representing public entities and their employees, we are immensely familiar with the Government Tort Claims Act and the related immunities. That experience has allowed us to take advantage of lesser-known provisions of the Act, successfully arguing key provisions and the related immunities through dispositive motions and assuring that any discovery is carefully undertaken in order to narrow a plaintiff's claims. In situations involving representation of board members and/or council members, this often translates to the case being completely dismissed in response to either a Demurrer or Motion to Dismiss.

Further Information

a. PLAN's Other Requirements

We have reviewed all of the PLAN's specific requirements. OHH fully acknowledges and agrees to meet (actually, to exceed) these requirements and expectations. As more thoroughly described above, our Firm's management of cases from intake, to evaluation, to negotiation, to trial preparation and to adjudication all exceed the baseline parameters in the RFP, both as to scope and timeframes.

OHH particularly positioned to be PLAN's go-to firm to defend its members on the cases we foresee could be assigned. We are a small firm (less than 35 attorneys) with a Pleasanton office housing a third of all of our attorneys.

OHH has no limitations or restrictions that would, in any way, hinder its zealous, attentive and diligent representation of PLAN and/or its members on any matter that would be assigned to our Firm.

b. Number of Jury Cases

PLAN's Request seeks information related to our Firm's litigation experience. Due to the Covid pandemic, the number of jury trials over the last few years has been below our typical average, with approximately 15 jury trials completed in the last five (5) years. This number specifically excludes any bench trials (which would increase the total to approximately 25 trials) or arbitrations, even if those matters were to verdict or resolved a case. If we include those matters, and if we included our attorneys' trials from our Firm's beginning more than 20 years ago, that number would be hundreds of cases.

c. Work Sample

In hopes of helping PLAN to better understand the quality of the legal services provided by our Firm, we have enclosed a recent brief as **Appendix B**.

d. Representative Matters

Finally, we provide a brief list of some recent cases handled by our attorneys as further information that demonstrates our Firm's experience and ability to faithfully and diligent represent PLAN and its members.

Defense of Wrongful Conviction Claims

Smith v. City of Los Angeles, et al.

Plaintiff Smith's claims were centered upon allegations of police misconduct related to his criminal conviction for murder and attempted murder in 1993. After 19 years in prison, the District Attorney and the Superior Court agreed to overturn plaintiff's conviction including stating that the conviction was not supported by credible evidence. Thereafter, all of the major news networks ran specials which characterized plaintiff as "wrongfully convicted."

Despite the Superior Court's determination that the conviction was "not based upon credible evidence" as well as the extremely sympathetic nature of plaintiff's claims after having spent two decades in prison, we were able to obtain a complete defense verdict.

Defense Verdict in Officer-Involved Shooting Matter

Ferguson v. City of Los Angeles, et al.

Following an officer involved shooting involving a Los Angeles Police Department SWAT team, plaintiff filed suit claiming that the use of deadly force violated his civil rights. Despite the Chief of Police determining that the use of deadly force was out-of-policy and improper, we were successful in obtaining a complete defense verdict at trial.

Summary Judgment Granted in Officer-Involved Shooting Matter

Hernandez, et al. v. City of Los Angeles, et al.

In an officer-involved-shooting matter that garnered nationwide attention, our Firm was called upon to defend Officer Toni McBride from allegations that she acted inappropriately in using lethal force on an individual who was more than 50 feet away and armed only with a small boxcutter. Despite being represented by two very prominent civil rights attorneys, we were able to obtain summary judgment on behalf of all defendants.

Defense Verdict on Dangerous Condition Claim

Alves, et al. v. City of Petaluma, et al.

Plaintiff Alves claimed that the City's intersection was dangerous following a vehicle striking him while he was in a marked crosswalk. Plaintiff, represented by a former ABOTA president, claimed that the intersection was dangerous due to the lack of warning signs and crossing lights. Despite evidence that those safety measures were damaged during an earlier accident (and not replaced by the City), the jury returned a unanimous verdict in favor of the City.

City of Fairfield: Defendant in Cross-Complaint of PERC Contamination

McInnis v. Hirsh, et al. (and related cross-actions)

On behalf of the City of Fairfield, one of our attorneys was requested to respond to allegations of toxic exposure which had allegedly leaked from the City's sewer system over the past decades. In response, he was able to identify a number of insurance policies which spanned over four decades which provided coverage to defend the lawsuit alleging contamination of a dry cleaning solvent, tetrachloroethylene (PERC). Plaintiffs alleged that the exposure occurred between the late 1950s and early 1990s. Identifying multiple policies with potential coverage was significant in helping the City trigger coverage which provided not only a full defense by the carrier, but also is available to fund any potential settlement.

City of Los Angeles: One of the Largest Class Action Disability Lawsuits

Willits, et al. v. City of Los Angeles

We represent the City of Los Angeles in one of the largest class action disability lawsuits in the country. The plaintiffs filed a complaint seeking injunctive relief to require the City to install curb cuts and sidewalk repairs throughout the City, to enforce the ADA. This case involves extensive e-discovery of the City and numerous departments' internal data management

systems. A novel issue of statutory interpretation for a portion of the case was certified for interlocutory appeal and is pending before the Ninth Circuit. The Ninth Circuit's ruling will likely redefine aspects of the law as it pertains to key defenses available to public entities under the ADA and Rehabilitation Act.

CRA/LA: Defense in Class Action Lawsuits

Independent Living Center of Southern California v. City of Los Angeles, et al.

The Community Redevelopment Agency of Los Angeles (CRA/LA) engaged OHH in the defense of two class action lawsuits, both of which asserted claims of ADA and Rehabilitation Act violations. The class action lawsuits pertained to dozens of commercial and multi-unit housing projects. OHH capitalized on its coverage and contract expertise to identify grounds for tenders of CRA/LA's defense and indemnity—even though the claims were based on ADA violations, which typically are exempt from coverage. As a result, we identified and executed a plan in which other entities completely funded the defense and resolution of the claims against CRA/LA.

Mt. Diablo Unified School District: Defense of Highly Publicized Allegations of Abuse

Doe, et al. v. Mt. Diablo Unified School District

In *Doe, et al. v. Mt. Diablo Unified School District*, our litigators were called upon to represent the School District and twelve individual Defendants (including Board Members, Superintendent, General Counsel and Principals) in defense of claims by twelve students that they were abused by a former teacher. Despite the teacher being convicted of multiple felony counts, our litigators were able to defend the case through trial that concluded in a hung jury voting 7-5 in favor of the District. Those efforts ultimately led to a very favorable settlement that allowed the District to assist the Plaintiffs and their family members in moving beyond those matters – the most important result of these types of very difficult cases.

Key Personnel

For any given matter, we set small yet specialized teams that are both experienced in relevant areas and available from a time-commitment standpoint. We also encourage our clients to work with us in selecting the appropriate attorneys for any given assignment. Notwithstanding, we respectfully propose the following attorneys as the primary team for assisting PLAN and its members:

Kevin Gilbert. Kevin is one of our most experienced trial attorneys and serves as the primary lead on matters in all our Firm's practice areas as they progress towards trial.

Carolyn Aguilar. Carolyn is a litigator in our Firm who specializes in representation of public entities in defense of civil rights and disability rights lawsuits. She has been practicing for almost ten years, with an emphasis on law and motion and appellate proceedings.

Nicholas Fine. Nick has focused his career on representing public entities in defense of litigation, with extensive experience in civil motion practice, discovery, and dispute resolution. Nick has been practicing for over ten years.

Christopher Creech. Prior to joining the Firm, Chris served as in-house counsel for the City of San Jose where he specialized on defending the City and its employees. Throughout his career, he has focused on the defense of civil rights matters, including not only use of force and unlawful seizure claims, but also claims arising from in-custody events.

Randolph Hom. Randy has spent his entire career representing and advising public entities, beginning as one of the State Bar’s own trial counsel before spending the next two decades serving in various City Attorney roles, including service as a criminal prosecutor in downtown Los Angeles before transitioning to a lengthy career as a civil defense litigator.

Elena LaBella. Elena is a senior paralegal in our Pleasanton office with extensive litigation and trial experience in all of the Firm’s practice areas.

For further information regarding the background and relevant experience of each of these individuals, please refer to Appendix A to this response.

B. Law Firm Philosophy

A description of the Law Firm’s philosophy in litigation where the applying attorney works, including a description of the Law Firm’s strategy and approach to defending a claim it is assigned.

Please refer to the General Information section hereinabove, which addresses these issues.

C. Proposed Hourly Rates

OHH offers discounted rates for our public agency clients. For this proposed engagement, we offer the following rates.

<i>Principal Attorneys</i>	<i>\$275 per hour</i>
<i>Associates</i>	<i>\$250 per hour</i>
<i>Paralegals</i>	<i>\$145 per hour</i>

Please note, with the exception of copying and printing, our hourly rate is “fully loaded.” Additionally, there is no mark-up on direct costs for outside services.

D. Agreement to Litigation Policies, Guidelines and Procedures

We have reviewed PLAN's litigation policies and guidelines and agree to comply therewith.

E. Law Firm Technology

A description of the Law Firm's and Attorney's technology capabilities, including but not limited to, ability to send online documents, time tracking software, access to online research, including identification of electronic research providers.

The Firm uses a wide range of industry-standard products (e.g., Concordance, Summation, Evolution, CaseMap, Logikull, Coyote Analytics, Compulaw, etc.) for all litigation matters. The Firm also uses client-specific FTP sites, VPN and other methodologies so large volumes of data can be securely shared between the Firm and clients.

We have also developed and maintain an internal database on most of the common issues which repeatedly arise while advising or representing a governmental entity and/or its employees. This allows us to greatly reduce the time in researching issues and preparing the necessary pleadings, thereby resulting in substantial savings to our clients.

F. Information Protection

A description of the Law Firm's and Attorney's controls to preserve confidentiality and integrity of information belonging to the Authority and its members.

The Firm employs a multi-tier strategy to protect its infrastructure and data. We understand that traditional viruses are not the only methods used in today's digital environment to disrupt the day-to-day operations of any organization. To stay safe, we arm ourselves to detect all types of malware including adware, ransomware, spyware, hacks, zero-day attacks, exploits, bots, bugs, rootkits, spam, backdoors, keyloggers, browser hijackers, trojan horses, worms, etc. As such, the Firm works together with the leading companies who are the best at what they do in their respective areas of expertise. Listed below are the products and companies used as part of our cyber security measures.

Call One SD-Wan

- With security and threat management

Mimecast

- Mimecast Secure Email Gateway offers 100% anti-virus service levels — removing threats in the cloud before they reach our network.

- Mimecast D1 DLP & Content Security utilizes powerful scanning and quarantine features meaning data is stopped at the gateway or sent securely so social security numbers, credit card numbers and other sensitive information are protected.

Cisco Meraki Firewall

- Meraki Security Appliance supports several features, like a stateful firewall and integrated Sourcefire intrusion prevention (IPS) engine, to keep networks secure.
- Threat definitions and filter lists are seamlessly updated, ensuring we have bleeding-edge protection from the latest vulnerabilities and troublesome websites.

Sentinel One / Carvir Cyber Security

- Carvir Cyber Security provides an around-the-clock, North American based, high-level security engineering team.
- Sentinel One performs constant monitoring and mapping of each running process for incongruous behaviors.

ESET

- ESET's multi-layered technology allows us to detect and react to threats quickly.

G. Malpractice Litigation Claims

Applications shall identify any and all malpractice suits or suit arising out of the Law Firm's or its attorneys' practice of law, including resolution of the same.

We are not aware of any malpractice claims or suits that have ever been asserted against the Firm or any of its attorneys.

APPENDIX A

Resumes of Proposed Team



Kevin Gilbert • Partner

kgilbert@ohhlegal.com

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Pleasanton, CA 94588
T: 510-350-3582

Practice Groups

Litigation specializing in Civil
Rights, Tort and Labor &
Employment

California Bar Number
209236

Bar Admission
San Francisco Law School
Practicing Since 2000

Kevin Gilbert • Partner • Orbach Huff + Henderson LLP

Kevin has focused his career on representation of public entities for over twenty years. During that timeframe he has concentrated on civil litigation, from pre-litigation investigations and negotiations through trial and has successfully tried numerous cases through verdict in both state and federal courts.

Although Kevin has extensive trial experience, he is equally successful in obtaining dismissals through motions, including motions to dismiss, demurrers or motions for summary judgment. In addition to defending the pending claims, he also actively pursues measures to decrease future litigation, including correcting deficient programs or policies as well as pursuing affirmative claims, where available and appropriate.

Kevin received a Bachelor of Arts in Economics from the California State University, Sacramento and a Juris Doctorate from San Francisco School of Law. He is admitted to practice in all California state courts, the United States District Court, Northern, Central, Eastern and Southern Districts, the Federal Court of Claims and the United States Supreme Court.

REPRESENTATIVE EXPERIENCE

Civil Rights and General Litigation Matters

- ***Barnes v. City of Pasadena, et al.***

The plaintiffs - represented by one of the most respected and successful civil rights attorneys in the state who was part of the Rodney King and O.J. Simpson legal teams - sued the City and two of its officers claiming improper use of deadly force and that the involved officers had planted a gun on the decedent to cover-up their alleged wrongful actions. A subsequent investigation noted that the alleged assailant's fingerprints and DNA could not be found anywhere on the weapon. Despite the plaintiffs' allegations, the trial court granted summary judgment in favor of all defendants. The plaintiffs filed an appeal to the 9th Circuit Court of Appeals, which unanimously affirmed the dismissal in favor of the City and its officers.

- ***Doe, et al. v. Mt. Diablo Unified School District, et al.***

Representation of School District and twelve individual defendants (including Board Members, Superintendent, General Counsel and Principals) in defense of claims by twelve students that they were sexually abused by their former teacher. Despite the teacher being convicted of multiple felony counts and those convictions being introduced to the civil jury, our litigators were able to defend the case through a three-month trial which concluded in a hung jury that was voting 7-5 in favor of the defense. Despite demands of over \$66 million submitted to the jury, we were able to reach a very favorable settlement for approximately less than two-percent of that demand, which allowed the District to assist the plaintiffs and their family members in moving beyond those matters while avoiding any further risk or expenditures.

- ***Ferguson v. City of Los Angeles, et al.***

Following an officer involved shooting involving a Los Angeles Police Department SWAT team, plaintiff filed suit claiming that the use of deadly force violated his civil rights. Despite the Chief of Police determining that the use of deadly force was out-of-policy and improper, we were successful in obtaining a complete defense verdict at trial.

- ***Liddy, et al. v. City of Los Angeles, et al.***

Following the well-known Rampart investigation, the City of Los Angeles brought on our legal team in mid-litigation when the first case resulted in a \$15 million verdict for the plaintiffs, former police officers of the Los Angeles Police Department. In Liddy, three former officers filed a series of federal civil rights actions against the City as well as related employment and workers compensation claims. They were suspected officers in the Rampart investigation that arose upon discovery of widespread corruption in the Community Resources Against Street Hoodlums (C.R.A.S.H.) anti-gang unit of the Los Angeles Police Department's Rampart Division in the late 1990s. Two of the three officers had received a \$15 million dollar jury verdict in a companion case with the same judge, but different attorneys. Kevin came in during mid-litigation. Discovery involved dozens of officers and claims. A global settlement of all 28 pending actions was reached at slightly more than the value of the outstanding judgment.

- ***Martinez v. City of Fairfield, et al.***

Plaintiff Martinez, a 13-year-old boy, alleged civil rights violations by Fairfield officers following being struck in the face numerous times during an arrest. All but two of the plaintiff's claims were dismissed via dispositive motions, with the final claim being tried to a jury. The jury returned a complete defense verdict, finding that the officers acted appropriately.

- ***Menbreno, et al. v. City of Los Angeles, et al.***

Plaintiffs Menbreno and Soriano filed suit against the City of Los Angeles and two of its officers based upon allegations that the officers' tactics were out-of-policy and resulted in the improper use of deadly force upon their son. Significantly, plaintiffs' lawsuit was filed only after the Police Commission issued a formal conclusion deeming the officers' tactics and use of force improper. However, we were able to overcome that finding to obtain a complete defense verdict at trial.

- ***Shepherd v. City of Modesto, et al.***

The plaintiff filed suit alleging wrongful arrest, excessive use of force and false imprisonment following her arrest by Modesto officers. She alleged that she was physically assaulted by the officers during her improper arrest, including providing testimony from numerous witnesses to substantiate the allegations. Despite the plaintiff's allegations, the Federal jury returned a complete defense verdict.

- ***Smith v. City of Los Angeles, et al.***

Plaintiff Smith's claims were centered upon allegations of police misconduct related to his criminal conviction for murder and attempted murder in 1993. After 19 years in prison, the District Attorney and the Superior Court agreed to overturn plaintiff's conviction including stating that the conviction was not supported by credible evidence. Thereafter, all of the major news networks ran specials which characterized plaintiff as "wrongfully convicted." Despite the Superior Court's determination that the conviction was "not based upon credible evidence" as well as the extremely sympathetic nature of plaintiff's claims after having spent two decades in prison, we were able to obtain a complete defense verdict.

- ***Topadzhikyan, et al. v. City of Glendale, et al.***

Represented the City of Glendale and over two dozen individual defendants in response to allegations of discrimination, harassment and hostile work environment filed by five Armenian police officers. Following our pretrial motions resulting in the dismissal of almost all of the individual defendants and significantly narrowing Plaintiffs' claims, we were successful in convincing a carrier to accept the City's defense. Shortly thereafter, the case was tried to verdict based upon the arguments and theories developed during our initial handling, resulting in complete defense verdicts.

- ***Willingham v. City of San Leandro, et al.***

The plaintiff alleged that two officers of the San Leandro Police Department falsely arrested him for being drunk in public following a 911 call involving a marital dispute. Following an eight-day trial, the jury found completely for all defendants.

Disability Rights Matters

- ***Multiple Disability Rights Claims***

Represented multiple public agencies, including cities, counties and school districts in response to claims and/or lawsuits alleging violation of the Americans with Disability Act and the Rehabilitation Act. The claims typically included failure to create and implement an acceptable transition plan, failure to provide equal access to the public entities programs as well as failures to complete the required assessments and develop an appropriate education program for qualified students.

- ***Brown v. Napa Valley Unified School District***

Obtained a defense judgment following a motion to dismiss in response to claims from the plaintiff of: failing to accommodate her disability, violations of the Americans with Disabilities Act and Individuals with Disabilities Education Act requirements as well as allegations of assault and battery against the teacher.

- ***Maximo v. San Francisco Unified School District***

Plaintiff filed suit against the District claiming that not only were his civil rights violated, but also that he was discriminated against due to his disabilities in violation of the ADA. Despite the significance of plaintiff's allegations, Kevin was able to prevail early on in the litigation, with the case dismissed in response to a motion to dismiss.

- ***Mei Ling/Independent Living v. CRA/LA***

The Community Redevelopment Agency of Los Angeles (CRA/LA) engaged Kevin in the defense of two class action lawsuits, both of which asserted claims of ADA and Rehabilitation Act violations. The class action lawsuits pertained to dozens of commercial and multi-unit housing projects. Kevin capitalized on his coverage and contract expertise to identify grounds for tenders of CRA/LA's defense and indemnity – even though the claims were based on ADA violations, which typically are exempt from coverage. As a result, he identified and executed a plan in which other entities completely funded the defense and resolution of the claims against CRA/LA.

- ***Willits v. City of Los Angeles, et al.***

Kevin represents the City of Los Angeles in one of the largest class action disability lawsuits in the country, with potential liability upwards of \$6 billion. The plaintiffs filed a complaint seeking injunctive relief to require the City to undertake significant improvements to its programs and services (including its pedestrian rights-of-way) in order to comply with the disability access laws. Significantly, the case involved discovery for over forty years of City operations throughout numerous divisions while also presenting novel legal issues that were certified for interlocutory appeal. Through a collaborative approach, we were able to develop a program for the City's integration which will not only provide protection from future lawsuits, but it will allow the City to implement new protocols and measures to assure Citywide access for all residents – regardless of whether they have disabilities.

Labor and Employment Matters

- ***Banks v. City of Oakland, et al.***

Represented the City of Oakland and Oakland Fire Department Chief in response to claims of retaliation, discrimination and harassment through lengthy jury trial. The matter resolved through direct negotiations subsequent to the court's granting of nonsuit on the majority of plaintiff's claims prior to final judgment being entered.

- ***BART New Year's Day Internal Affairs Investigation***

Served as a part of the team retained by the San Francisco Bay Area Rapid Transit District (BART) to conduct a confidential internal affairs investigation of the officer-involved shooting death of Oscar Grant. This New Year's Day incident gained public attention throughout the Bay Area and the nation, and sparked protests that extended for a number of weeks following the shooting. Kevin conducted crucial interviews and analysis for recommendations involving BART personnel and policy modifications.

- ***Garcia v. County of Napa, et al.***

Represented supervisor and department head in defending against claims from plaintiff of wrongful termination, sexual harassment and hostile work environment. Following a three-week trial, the jury returned a full defense verdict.

- ***Wilkerson v. City of Los Angeles***

Plaintiff, an arson investigator, filed suit in 2010 based upon allegations of racial discrimination against the City of Los Angeles Fire Department and Fire Chief. After initially handling the case in-house, the Los Angeles City Attorney's office transferred the matter following the Court of Appeal's reversal of the trial court's sustaining of a demurrer. Despite having limited time to complete the necessary discovery and significant claims asserted against the defendants, the matter was ultimately dismissed on summary judgment.



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Practice Groups

Labor and Employment, ADA and
Civil Rights

California Bar Number
289550

Bar Admission

University of Hawaii, William S.
Richardson School of Law

Practicing Since 2013

Carolyn M. Aguilar • Associate • Orbach Huff + Henderson LLP

Carolyn's practice focuses on representation of public entities in defense of labor and employment matters as well as claims of civil rights violations. A Bay Area native, she has extensive ties to law enforcement. Before deciding to pursue a career as an attorney, she served as a cadet in the San Francisco Police Department where she was trained in law enforcement proceedings. She later moved to Hawaii where she attended the University of Hawaii, William S. Richardson School of Law and earned a certificate in Environmental Law. During her time there, she externed for Hawaii Supreme Court Justice Simeon R. Acoba and Federal Court Judge, J. Michael Seabright, where she worked on matters of statutory interpretation and environmental law. To round out her legal education, she also externed with Hawaii State Senator Mike Gabbard, chair of the agriculture and environment committee, and worked on legislative issues related to Hawaii's use of alternative energies.



Nicholas D. Fine - Associate

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Practice Groups

Litigation and Appellate

California Bar Number
285017

Bar Admission

University of San Diego Law School
Practicing Since 2012

Nicholas D. Fine • Associate • Orbach Huff + Henderson LLP

Nick has focused his career on litigation, with extensive experience in civil motion practice, discovery, and dispute resolution. He has litigated numerous lawsuits from initiation to settlement or adjudication and has consistently obtained favorable results for his clients.

Prior to joining Orbach Huff + Henderson LLP, Nick served as an associate, senior associate, and partner for other civil litigation firms, where he represented a variety of clients in litigation, transactional, and administrative enforcement actions.

Nick received a B.S. from San Diego State University and a J.D. from the University of San Diego School of Law, where he graduated cum laude and received recognition for academic excellence in several courses. He is admitted to practice in all California state courts and the United States District Court, Northern, Central, Eastern, and Southern Districts.



Christopher R. Creech – Associate

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Pleasanton, CA 94588

T: 510-350-4065

California Bar Number

293037

Bar Admission

Santa Clara University Law School

Practicing Since 2014

● **Practice Groups**

Litigation specializing in ADA, Civil
Rights, Public Interest and
Municipal Law

Christopher R. Creech • Associate • Orbach Huff + Henderson LLP

Chris is a litigator with proven success including in complex litigation. Both individually and as part of a team, he has been responsible as the lead attorney for numerous lawsuits including trials, writs, and appeals. Chris represents various local and state public entities including cities, counties, special districts, and school districts in a wide range of matters including civil rights, disability access and discrimination, and employment.

Chris has also counseled cities, counties, and other public entities prior to and in the wake of litigation in a wide range of matters including compliance with the Brown Act, Public Records Act, and various environmental laws such as the California Environmental Quality Act (CEQA), the Porter-Cologne Act, and the Clean Water Act.

Prior to joining Orbach Huff + Henderson LLP, Chris served as a Deputy City Attorney for the City of San Jose. He provided the City with counseling and representation in issues of eminent domain, public work and labor disputes, as well as the full gamut of personal injury, regulatory, contract, and constitutional cases faced by the City on a daily basis. He also criminally prosecuted violations of the municipal code and protected neighborhoods against drugs, prostitution, gangs, blight, and other nuisances through administrative action, civil abatement, receivership, and unfair business practices actions.

Chris graduated cum laude with a Bachelor of Arts in English from Pomona College and received his juris doctorate from Santa Clara University School of Law where he graduated with honors and upon the Dean's List. While in law school, he clerked for the Santa Clara Superior Court, was a national finalist in multiple moot court competitions, and received multiple awards for academic excellence.



Randolph S. Hom - Senior Counsel

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Practice Groups

Litigation specializing in ADA, Civil Rights,
Municipal Proceedings

California Bar Number
152833

Bar Admission

Golden Gate University School of
Law

Practicing Since 1991

Randolph S Hom · Senior Counsel · Orbach Huff + Henderson LLP

Randy has spent his entire career representing and advising public entities, beginning as one of the State Bar's own trial counsel before spending the next two decades serving in various City Attorney roles, including service as a criminal prosecutor in downtown Los Angeles.

On the transactional side, he has special expertise and has advised his clients on a myriad of issues and projects. He provides advice on the Brown Act and the Public Records Act, ethics, insurance coverage and risk management. He frequently litigates in any number of areas including torts, civil rights defense, inverse condemnation, takings and other land use litigation. He is experienced in dangerous condition of public property and is an expert in design immunity. He advises on and defends his clients on issues under the First, Fourth, Eighth, and 14th Amendments.

Before joining the firm, Randy served in the City Attorney's office for the Cities of Los Angeles, Hayward, San Jose, Merced, Cupertino and Fremont. Throughout his career, he has gained a wealth of experience working with city officials, departments, and public safety agencies. During his tenure, Randy has advised and represented public entities both as a plaintiff and defendant. On the defense side, Randy became a specialist in many areas that confront public agencies including tort defense, dangerous condition of public property and the design immunity doctrine, civil rights defense, police misconduct, consent decrees, employment litigation.

Randy received a B.A. in Political Science/Economics from University of California, Berkeley in 1985, followed by earning his J.D. from Golden Gate University School of Law in 1990.



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•
Practice Groups

Litigation specializing in ADA, Civil
Rights, Municipal Proceedings

Elena D. LaBella • Paralegal • Orbach Huff + Henderson LLP

Elena has served in the legal industry for well over two decades. During that time, she has focused almost exclusively upon the representation of public entities, including hundreds of cities, counties, school districts and special districts throughout the state. Elena has assisted in some of the most significant lawsuits facing public entities over the last decade, many of which have received national media attention. Despite the size and magnitude of the cases, her emphasis has always remained on providing excellent client service while assuring an impeccable work product.

Elena has extensive experience in virtually every aspect of civil litigation, including obtaining/reviewing and organizing records with a view toward identifying relevant information, responding to discovery, drafting pleadings, working with large document databases, as well as interviewing collateral witnesses. She has also successfully assisted in numerous civil rights, premises liability, employment, construction and education trials, including providing invaluable assistance in jury selection and presentation of evidence.

APPENDIX B

Work Sample

Kevin E. Gilbert, Esq. (SBN: 209236)

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Carolyn M. Aguilar, Esq. (SBN: 289550)

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Gabriel S. Dermer, Assistant City Attorney (SBN: 229424)

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Los Angeles, CA 90012

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Attorneys for Defendants

CITY OF LOS ANGELES and PAUL KORETZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

S.G., a minor, by and through her guardian *ad litem*, Brittany Dorn; A.D.G., and R.L., minors, by and through their guardian *ad litem*, Derek Spencer; N.B., a minor, by and through his guardian *ad litem*, Araceli Boyce; A.G., a minor, by and through his guardian *ad litem*, Karla Garcia; CHRISTAL LORD; and DYANNA SANABRIA; individually and as class representatives,

Plaintiffs,

v.

CITY OF LOS ANGELES, PAUL KORETZ
AND DOES 1 THROUGH 10,

Defendants.

Case No. 17-cv-09003 JAK (JPR)

**REPLY IN SUPPORT OF
DEFENDANTS CITY OF LOS
ANGELES AND PAUL KORETZ'S
MOTION TO DISMISS
PLAINTIFFS' FIFTH AMENDED
COMPLAINT**

DATE: July 26, 2021

TIME: 8:30 a.m.

DEPT: Courtroom 10B

JUDGE: Hon. John A. Kronstadt

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<u>United States Code</u>	
42 U.S.C. section: 1983	1
<u>State Statutes</u>	
Code of Civil Procedure section: 863	2, 3
1094.5	2, 3
Education Code section: 17625	6
Government Code section: 815	7
815.2	4, 6
818	10
818.4	<i>passim</i>
820.2	9
821.2	7, 8, 9
821.6	5, 6
861	2
65995	6
Labor Code section: 3800	7

I. INTRODUCTION

In opposing Defendants Motion to Dismiss (“Motion”) Plaintiffs’ Fifth Amended Complaint (“5AC”), Plaintiffs appear to have conceded certain issues, as evidenced by their failure to respond to Defendants’ arguments. For example, Defendants argued that Plaintiffs’ claims have been voluntarily dismissed or waived following their abandonment of their earlier CEQA lawsuits and/or related to their dismissal and release of the Developer Defendants, who they contend are engaged in the inappropriate construction activities that violate Plaintiffs’ rights. As to the arguments proffered by Plaintiffs in their opposition, they are premised on misinterpretations of the law and fail to properly refute the clear defenses and immunities discussed in the Motion. Accordingly, the Motion should be granted in its entirety.

II. ARGUMENT

After this Court’s dismissal of Plaintiffs’ disability rights claims (Dkt. 245, 4AC Order at 3), Plaintiffs attempted to repackage their dismissed claims under a common-law negligence theory. Such efforts are clearly inappropriate and are contrary to law. Indeed, Plaintiffs’ opposition appears to tacitly concede this point, while also attempting to argue that their reassertion of previously dismissed claims is acceptable, despite a complete absence of any legal support for their flawed premise. As discussed in both the Motion and herein, the entirety of Plaintiffs’ claims must be dismissed, with the sole exception of Plaintiff Lord’s Free Speech claims, as asserted through Count One (alleging violations of the First Amendment under [42 U.S.C. § 1983](#)) and Count Two (alleging violation of free speech under [California Constitution Article 1, Section 2](#)).

A. Plaintiffs’ Claims Are Moot, Waived or Barred

Plaintiffs’ negligence claim is undeniably based upon their allegation that the Developers’ construction activities have harmed Plaintiffs. 5AC, ¶ 152a. Nevertheless, Plaintiffs opine – without any factual or legal support – that their dismissal of the prior lawsuits and their claims against the Developer Defendants is of no significance. Fundamentally speaking, it is hard to understand how the Developers or other entities

engaged in construction activities would not be necessary parties in this case, when those entities are alleged to be directly causing harm to Plaintiffs through their construction activities. Plaintiffs allege that it is the debris and pollutants from the Developer Defendants' construction that have harmed them. 5AC, ¶¶ 1-3, 13-15. Therefore, assuming for the moment that Plaintiffs could obtain relief from the City for a third-party's actions, the relief would have to be in the form of an injunction or mitigation of the activities themselves – which will necessarily impact the Developers or owners. Accordingly, Plaintiffs' argument that the Developer Defendants have no "legally protected interest" is absolutely incorrect. That these parties are not participants in this proceeding is a problem as Plaintiffs' alleged harm cannot be fully remedied without their involvement.

Moreover, to the extent that Plaintiffs contend the City is liable for its policies, ordinances or laws involving the approval of construction projects and any required notices to be given to the neighboring community, Plaintiffs have waived any such challenges to these laws and processes. As explained in the moving papers, Plaintiffs' efforts to contest the City's decision granting the construction permits were required to be adjudicated through CEQA and the City's local processes, or after exhausting those processes, through a writ of mandamus proceeding pursuant to [California Code of Civil Procedure section 1094.5](#) or pursuant to [California Code of Civil Procedure section 863](#) for a reverse validation action. On April 12, 2019, however, both of Plaintiffs' CEQA Cases were voluntarily dismissed by Plaintiffs. Motion at RJN, Exs. B and D. More significantly, Plaintiffs have not brought any CEQA actions related to the new project, nor have they filed any writ of mandamus or reverse validation action. In fact, as they have *not* filed any proper administrative complaint for the City's approval of the new construction project pursuant to CEQA, [section 1094.5](#) or [section 863](#), they are now time-barred in any event. Cal. Code of Civ. P. §§ 861, 863 (a reverse validation action must be filed within 60 days after challenged action was made). As a result, Plaintiffs have voluntarily dismissed or waived any claims that can or should have been brought

pursuant to [section 1094.5](#) or [section 863](#), including allegations that Defendants failed to include Plaintiffs in the approval process regarding the Developers' projects.

Plaintiffs' opposition fails to address the waiver of their claims, instead appearing to concede these arguments. The failure of a party to respond to an argument on the merits is deemed as grounds for waiver or concession of the argument. *See Ramirez v. Ghilotti Bros.*, 941 F.Supp.2d 1197, 1210 (N.D. Cal 2013) ("And, Ghilotti has not responded at all to Plaintiffs' detailed breakdown of which affirmative defenses could be saved by amendment, conceding the issue."); *see also Qureshi v. Countrywide Home Loans, Inc.*, No. 09-4198, 2010 U.S. Dist. LEXIS 21843, 2010 WL 841669, at *6 n.2 (N.D. Cal. 2010), citing *Jenkins v. City of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (deeming the plaintiff's failure to address, in an opposition brief, claims challenged in a motion to dismiss, an "abandonment of those claims"); *SportsCare of America, P.C. v. Multiplan, Inc.*, No. 2:10-4414, 2011 U.S. Dist. LEXIS 14253, 2011 WL 589955, at *1 (D.N.J. 2011) ("In most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue."); *Foster v. City of Fresno*, 392 F.Supp.2d 1140, 1147 n. 7 (E.D. Cal. 2005) ("At any rate, failure of a party to address a claim in an opposition to a motion for summary judgment may constitute a waiver of that claims."); *In re Online DVD Rental Antitrust Litig.*, No. 09-2029 PJH, 2011 U.S. Dist. LEXIS 150312, 2011 WL 5883772, at *12 (N.D. Cal. 2011) (absent unusual circumstances, the failure to respond to an argument on the merits is "viewed as grounds for waiver or concession of the argument").

Plaintiffs' failure to have previously and properly challenged the City's construction approvals bars Plaintiffs' claims, confirming the Motion should be granted.

B. Plaintiffs' Negligence Claim Fails as a Matter of Law

Similarly, Plaintiffs' opposition ignores and misses the larger, substantive points advanced in the Motion regarding Plaintiffs' negligence claim. As explained in the moving papers, Plaintiffs' negligence claim is fatally flawed in failing to allege any

proximate cause and in failing to identify any statute that would allow a generalized negligence claim (as Plaintiffs are alleging) to be maintained against Defendants. Furthermore, to the extent Plaintiffs responded at all to the numerous immunities available to Defendants, Plaintiffs' arguments are based on a misunderstanding of law. In fact, Plaintiffs' legal citations actually confirm that Defendants are entitled to immunity. As such, Plaintiffs' negligence claim necessarily fails as a matter of law.

Rather than repeat the arguments from its moving papers, below is a chart highlighting some of the inadequacies for the specific allegations in Plaintiffs' negligence claim. Notably, most of the inadequacies noted below are not addressed by Plaintiffs in their opposition. Consequently, Plaintiffs have conceded most of these arguments. *See, Ramirez*, 941 F.Supp.2d at 1210; *Qureshi*, 2010 WL 841669, at *6 n.2; *Jenkins*, 398 F.3d at 1095 n.4; *SportsCare of America, P.C.*, 2011 WL 589955, at *1; *Foster*, 392 F.Supp.2d at 1147 n. 7; *In re Online DVD Rental Antitrust Litig.*, 2011 WL 5883772, at *12.

Plaintiffs' Allegation	Inadequacies
<p><u>5AC, ¶ 152(a):</u> By permitting demolition and construction activities which would and did create unreasonable and disruptive noise and release poisonous airborne pathogens (¶¶ 59-64, 70, 85, 107, 108, 115, 116); immediately adjacent to an elementary school attended by 350+ young children, some of whom have disabilities for which they wear sound amplifying headgear, others of whom have deadly allergies to airborne pollutants, and all of whom eat, play, run, breathe heavily and roll around in the outdoor play yards of the school while being supervised by teachers and school staff (¶¶ 41-45),</p>	<ol style="list-style-type: none"> 1. No proximate cause against City: Disruptive noise and release of pathogens caused by Developers (who Plaintiffs previously released), not City. 2. No statutory duty alleged/failure to plead with specificity – no employees are identified with any statutorily defined duty to Plaintiffs, thus application of Cal. Gov't Code § 815.2 fails to support a statutory claim of negligence against the City. 3. Allegation barred entirely by Cal. Gov't Code §§ 818.4 (“[a] public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate,

Plaintiffs' Allegation	Inadequacies
	<p>approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked"); 821.6 (immunity for administrative processes and investigations); 820.2 (to the extent Plaintiffs challenge the policies and procedures used to approve building permits, which are legislative enactments).</p>
<p><u>5AC, ¶ 152(b):</u> By banning Plaintiff Lord from attending and participating in community meetings Koretz held at his West Los Angeles office and preventing her from expressing and sharing her concerns about noise, health impacts, pollution and disruption of student education and activities at Palms Elementary with community stakeholders at the meeting, including the developer – who was preparing to begin demolition the very next month (¶ 113); while permitting demolition and construction activities which would and did create unreasonable and disruptive noise and release poisonous airborne pathogens (¶¶ 59-64, 70, 85, 107, 108, 115, 116); immediately adjacent to an elementary school attended by 350+ young children, some of whom have disabilities for which they wear sound amplifying headgear, others of whom have deadly allergies to airborne pollutants, and all of whom eat, play, run, breathe heavily and roll around in the outdoor play yards of the school while being supervised by teachers and school staff (¶¶ 41-45).</p>	<ol style="list-style-type: none"> 1. Fails to identify a specific statutory violation or duty. 2. Duplicative of Plaintiffs' Free Speech Claims – should be dismissed for its redundancy. "When a claim relies on the same acts and seeks the same damages as another cause of action, they may be disregarded as superfluous as no additional claim is actually stated." <i>Swartz v. KPMG LLP</i>, 476 F.3d 756, 766 (9th Cir. 2007); <i>Bionghi v. Metro. Water Dist.</i>, 70 Cal.App.4th 1358, 1370 (1999); <i>Careau & Co. v. Sec. Pac. Bus. Credit, Inc.</i>, 222 Cal.App.3d 1371, 1395 (1990).

Plaintiffs' Allegation	Inadequacies
<p>5AC ¶ 152(c): By Koretz and/or other City officials and employees collaborating with the Developer for the Developer to pay \$500,000 to the LAUSD as a so-called “donation” in exchange for the LAUSD removing its objections and exercising influence specifically to secure City a building permit for the 3568 Motor Project – payable if and only if the City issued the permit (¶¶ 123-127); thus permitting ongoing construction activities which had already created unreasonable and disruptive noise and released poisonous airborne pathogens (¶¶ 59-64, 70, 85, 107, 108, 115, 116); immediately adjacent to an elementary school attended by 350+ young children, some of whom have disabilities for which they wear sound amplifying headgear, others of whom have deadly allergies to airborne pollutants, and all of whom eat, play, run, breathe heavily and roll around in the outdoor play yards of the school while being supervised by teachers and school staff (¶¶ 41-45).</p>	<ol style="list-style-type: none"> 1. No proximate cause against City: Developer allegedly paid LAUSD, not City. 2. No statutory duty alleged/failure to plead with specificity – no employees are identified with any statutorily defined duty to Plaintiffs, thus application of Cal. Gov’t Code § 815.2 fails to support a statutory claim of negligence against the City. <ol style="list-style-type: none"> a. There is no law against a developer meeting with a city and school district to allow a development to go forward, or in agreeing to pay a school district for the impacts of the development. School districts are entitled to developer fees pursuant to Cal. Educ. Code § 17625 and Gov’t Code § 65995. b. Plaintiffs have not identified how this action is unlawful or what statutory duty the City or its employees had to Plaintiffs and what actions violated the alleged duty. 3. Allegation barred entirely by Cal. Gov’t Code §§ 818.4 (immunity for permitting activities); 821.6 (immunity for administrative processes and investigations); 820.2 (immunity for discretionary decisions – to the extent Plaintiffs challenge the policies and procedures used to approve building permits, which are legislative enactments).

1 Plaintiffs' failure to address the substantive arguments as demonstrated in the chart
2 above is fatal to Plaintiffs' negligence claim. Overall, Plaintiffs failed to identify any
3 statutory duty owed by the City or any City employee, let alone a particular employee
4 that allegedly caused them harm. The City and its employees did not owe Plaintiffs any
5 duty to consider the impacts or harms from a third-party's actions on Plaintiffs – and
6 Plaintiffs cannot cite to any authority to support their allegations. Further, Plaintiffs'
7 allegations allege only harms caused by others and therefore fails to allege causation
8 against the City or its employees. Thus, Plaintiffs' negligence claim fails to plead crucial
9 elements necessary to maintain a negligence cause of action against the City. See, *Cal.*
10 *Gov't Code § 815(a)*; *Ellerbee v. County of Los Angeles*, 187 Cal.App.4th 1206, 1214
11 (2010); *Zelig v. County of Los Angeles*, 27 Cal.4th 1112, 1127 (2002); *Tolan v. State of*
12 *California ex rel. Dept. of Transportation*, 100 Cal.App.3d 980, 986 (1979); *Van Kempen*
13 *v. Hayward Area Park Etc. Dist.*, 23 Cal.App.3d 822, 825 (1972); *Susman v. Los*
14 *Angeles*, 269 Cal.App.2d 803, 809 (1969); *SmileCare Dental Group v. Delta Dental*
15 *Plan*, 88 F.3d 780, 783 (9th Cir. 1996) (claims may be dismissed because they fail to
16 allege sufficient facts to support any cognizable legal claim).

17 Moreover, even if there were some plausibility to Plaintiffs' allegations, they are
18 nonetheless barred by the governmental immunities, particularly in *California*
19 *Government Code sections 818.4 and 821.2*, which bars liability when based on the
20 City's mere approval of permits. Plaintiffs cite to case law attempting to argue that the
21 City's immunities are inapplicable, but those cases note that the immunities do not apply
22 to *mandatory* duties. See, *Morris v. Cnty. of Marin*, 18 Cal.3d 901, 911 (1977) (denying
23 application of *Section 818.4 and 821.2* due to violations of mandatory duties under *Labor*
24 *Code section 3800* to require contractor to carry workers' compensation coverage);
25 *Guzman v. Cnty of Monterey*, 178 Cal.App.4th 983, 997 (2009) (denying application of
26 *section 818.4 and 821.2* due to violations of mandatory duties under the California Safe
27 Water Drinking Act related to review of water quality reports).

28 ///

Contrary to Plaintiffs' claims, it is well established that governmental immunity under section 818.4 applies to discretionary decisions, such as the issuance of a building permit. "Under this section, for example, . . . a city is immune if it issues or refuses to issue a building permit, even though negligence is involved in issuing or failing to issue the order or permit." *Morris v. County of Marin* (1977) 18 Cal.3d 901, 920 (conc. opn. of Clark, J.) (Morris), italics omitted. Moreover, "[t]he issuance of building permits . . . is a discretionary function. The permit process not only provides a means of ensuring that structures meet health, safety, and other requirements, it also subserves the public policies or goals of general land use planning. . . . [A] building official has no mandatory duty to issue any particular building permit at all, even if a proposed application and plan meet all existing code and regulatory requirements which would be applicable to a proposed project." *Thompson v. City of Lake Elsinore*, 18 Cal.App.4th 49, 57 (1993). Courts have thus held "that the decision whether or not to issue a building permit is the sort of discretionary decision covered by Government Code sections 818.4 and 821.2." *Id.* at p. 55 (citing cases). Furthermore, as the decision to issue a permit is discretionary, immunity may attach to "integral parts of the process leading to the grant or denial" of the permit, such as the gathering and preliminary analysis of evidence. *Engel v. McCloskey*, 92 Cal.App.3d 870, 881, 882-883 (1979).

As noted above, Plaintiffs have failed to allege *any* duty on the part of the City or its employees, let alone any mandatory duties owed to Plaintiffs. Notably, this Court previously dismissed Plaintiffs' cause of action for breach of alleged mandatory duties for Plaintiffs' failure to allege any actual mandated duty. Dkt. 245 at 24-26. As such, these immunities are entirely applicable and bar Plaintiffs' claims.

Plaintiffs also misunderstand or misrepresent the nature of a public entity's action in issuing building permits. While the act of issuing a permit may be "ministerial" for purposes of exemption from CEQA, the act of issuing a building permit is *discretionary* in nature, as there is no *mandatory* duty requiring a public entity to issue a building permit. In fact, numerous California courts have held that the immunities under

Government Code sections 818.4 and 821.2 are *specifically* meant to embrace the discretionary acts of deciding whether or not to issue a building permit. *See, Burns v. City Council*, 31 Cal.App.3d 999 (1973); *Slagle Constr. Co. v. Cnty of Contra Costa*, 67 Cal.App.3d 559, 565 (1977); *Friedman v. City of Los Angeles*, 52 Cal.App.3d 317, 322 (1975); *Cancun Homeowners Assn., Inc. v. City of San Juan Capistrano*, 215 Cal.App.3d 1352 (1989); *Thompson v. City of Lake Elsinore*, 18 Cal.App.4th 49, 55-56 (1993).

Additionally, not only is the issuance of a building permit a discretionary act, but to the extent that Plaintiffs are challenging the City's *policies* and *procedures* that have been created to process building permits or the *policies* with respect to notification to the community over construction – those are legislative or quasi-legislative acts of discretion entitled to immunity pursuant to Government Code sections 820.2 or 818.4.

Accordingly, Plaintiffs' arguments in opposition are ineffective and Plaintiffs' negligence claim fails as a matter of law and must be dismissed accordingly.

C. Punitive Damages Must Be Dismissed

Notwithstanding Plaintiffs' inartful, confusing and conclusory allegations of punitive damages, their opposition concedes that the state and federal punitive damages were meant to be solely alleged against Koretz. Opp. at 8. As explained in the moving papers, however, Koretz was at all times acting within his official capacity as a City Council member, and as such cannot be held individually liable for any federal or state award of punitive damages. His actions in this case amount to denying Plaintiff Lord access to an alleged public meeting. 5AC, ¶ 113. A city council member is acting within his official capacity when he is meeting with the public on topics of public concern. As such, there are no allegations that Koretz was acting outside the scope of his official capacity and Plaintiffs have not identified any allegations – other than to state in conclusory fashion that the allegations are against Koretz in *both* his individual and official capacity. 5AC, ¶ 24 (“Koretz is sued in his official and individual capacities”).

A “suit against a governmental officer in his official capacity is equivalent to a suit against the governmental entity itself,” and thus Koretz cannot be liable for punitive

1 damages in this case. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991).
2 Punitive damages are expressly prohibited against a municipality under California law.
3 Cal. Gov't Code § 818. Similarly, the United States Supreme Court has confirmed that
4 municipalities are immune from punitive damages. *City of Newport v. Fat Concerts, Inc.*,
5 453 U.S. 247, 271 (1981). As a matter of law, "[i]n California, a plaintiff who alleges
6 injury caused by a public entity may be entitled to actual damages for that injury, but not
7 punitive damages." *Doe v. County of San Mateo*, 2008 WL 5245889 *7 (N.D. Cal.
8 December 17, 2008), citing Cal. Gov't Code § 818. Accordingly, all claims for punitive
9 damages must be dismissed.

10 **III. CONCLUSION**

11 Defendants City of Los Angeles and Paul Koretz respectfully request their Motion
12 to Dismiss Plaintiffs' Fifth Amended Complaint be granted in its entirety without leave to
13 amend.

14 Dated: May 13, 2021

Respectfully submitted,

ORBACH HUFF SUAREZ + HENDERSON LLP

By: /s/ Kevin E. Gilbert

Kevin E. Gilbert
Attorney for Defendants
CITY OF LOS ANGELES and
PAUL KORETZ

APPENDIX C

References

REFERENCES

Company Name: City of Petaluma	Contact Person: Jordan Green
Address: 11 English Street	Telephone Number: 707.778.4565
City, State, Zip: Petaluma, CA 94952	E-mail Address: jgreen@cityofpetaluma.org
Services Provided / Date(s) of Service: Litigation (2005 to the current)	

Company Name: City of Los Angeles	Contact Person: Gustavo Cuadra
Address: 200 N. Main Street, Room 1240	Telephone Number: 213.473.5792
City, State, Zip: Los Angeles, CA 90012	E-mail Address: gustavo.cuadra@lacity.org
Services Provided / Date(s) of Service: Litigation (2007 to the current)	

Company Name: City of Richmond	Contact Person: Shannon Moore
Address: 450 Civic Center Plaza	Telephone Number: 510.620.6509
City, State, Zip: Richmond, CA 94804	E-mail Address: shannon_moore@ci.richmond.ca.us
Services Provided / Date(s) of Service: Litigation (2019 to the current)	

Company Name: City of Berkeley	Contact Person: Farimah Brown
Address: 2180 Milvia Street, 4th Floor	Telephone Number: 510.981.6998
City, State, Zip: Berkeley, CA 94704	E-mail Address: fbrown@cityofberkeley.info
Services Provided / Date(s) of Service: Litigation (2018-current)	

Company Name: L.A. Care	Contact Person: William Seldeen
Address: 1055 West 7th Street 10th Floor	Telephone Number: 213.694.1250
City, State, Zip: Los Angeles, CA 90017	E-mail Address: wseldeen@lacare.org
Services Provided / Date(s) of Service: Litigation (2015-current)	



ORBAC-1

OP ID: BG

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/29/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ahern Insurance Brokerage 9655 Granite Ridge Dr., #500 San Diego, CA 92123 Randy T. Gust	858-571-9030 CONTACT NAME: Randy T. Gust PHONE (A/C, No, Ext): 858-571-9030 FAX (A/C, No): 858-571-9010 E-MAIL: info@aherninsurance.com ADDRESS:														
INSURED Orbach Huff & Henderson LLP Katherine Eaton 1901 Ave of the Stars, Ste 575 Los Angeles, CA 90067	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Sentinel Insurance Company</td> <td>11000</td> </tr> <tr> <td>INSURER B: Chubb National Insurance Co.</td> <td>10052</td> </tr> <tr> <td>INSURER C: CNA/Continental Casualty Co.</td> <td>20443</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Sentinel Insurance Company	11000	INSURER B: Chubb National Insurance Co.	10052	INSURER C: CNA/Continental Casualty Co.	20443	INSURER D:		INSURER E:		INSURER F:	
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INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Business Owners GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			72SBABC9205	11/01/2021	11/01/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			72SBABC9205	11/01/2021	11/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			72SBABC9205	11/01/2021	11/01/2022	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below			71796874	06/01/2022	06/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Lawyer's Prof. Liability			652131823	07/23/2022	07/23/2023	Per Claim 3,000,000 Aggregate 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

PROOF OF INSURANCE

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

August 25, 2022

Agenda Items 6.B.

CLAIMS MATTERS

SUBJECT: Consideration of Updates to Governing Documents for Litigation Manager Authority Regarding Property Claims

BACKGROUND AND HISTORY:

Authority for staff to conduct business on behalf of PLAN JPA and its members is a crucial element to effectively managing claims made against a member entity that surpasses their respective self-insured retention. In addition, allowing staff the flexibility to settle claims in an efficient and quick manner has been proven to lower the total cost of the claim.

At the June 27, 2019, Claims Committee meeting, the Committee was informed of and accepted an updated Claims Policy that delineated settlement authority related to the Litigation Manager within the Liability Program. This authority was also memorialized in the JPA's Liability Master Program Document and accepted by the Board of Directors.

In an August 26, 2021, Claims Committee meeting, the Committee was informed the Property Program Master Program Document (MPD) did not identify settlement authority for the Litigation Manager or the third-party administrator (TPA). Subsequently the Committee approved and extended authority to the Litigation Manager and the TPA for \$200,000 and \$50,000 above the member's retained limit, respectively. This authority has not been added to the Property Program MPD.

Staff is seeking confirmation from the Claims Committee that this current authority is in continued alignment with the desires of the Committee and is requesting consideration of the proposed updates to the Property Program MPD.

STAFF RECOMMENDATION:

Staff recommends the Claims Committee re-affirm the authority for PLAN's Litigation Manager and Sedgwick Third-Party Administrator to settle claims \$200,000 above and \$50,000 above the PLAN member's self-insured deductible, respectively; as well as approval of the proposed updates to the Master Program Document for the Property Program.

REFERENCE MATERIALS ATTACHED:

- Draft Property Master Program Document



POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS
AUTHORITY

MASTER PROGRAM DOCUMENT
FOR THE
POOLED PROPERTY PROGRAM

POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY
MASTER PROGRAM DOCUMENT
FOR THE
POOLED PROPERTY PROGRAM

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POOLED LIABILITY ASSURANCE NETWORK JOINT POWERS AUTHORITY
(PLAN JPA)

MASTER PROGRAM DOCUMENT (MPD)
FOR THE
POOLED PROPERTY PROGRAM (PPP)

ARTICLE I: DEFINITIONS

The following definitions apply to this MPD:

1. **Administrator** shall mean the person responsible for the daily administration, management, and operation of the **Authority's** programs as defined in the Bylaws.
2. **Authority** shall mean the Pooled Liability Assurance Network Joint Powers Authority (PLAN JPA).
3. **Board** shall mean the Board of Directors of the PLAN JPA.
4. **Deductible** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.
5. **Member Contributions** shall mean that amount to be paid by each **Participant** for each **program year** as determined by the **Board** in accordance with Article III, Section C of this MPD.
6. **Joint Powers Agreement** shall mean the agreement made by and among the public entities listed in Appendix A (**Member Entities**) of the **Joint Powers Agreement**, hereafter referred to as **Agreement**.
7. **Limit of Coverage** shall mean the amount of coverage stated in the Declarations or certificate of coverage, or sublimits as stated therein or in the Memorandum of Coverage (MOC) for each **Participant** or **covered party** per **occurrence**, subject to any lower sublimit stated in the MOC.
8. **Participant** shall mean a **Member Entity**, which shall mean a signatory to the **Agreement** establishing the PLAN JPA, who has elected to participate in the PPP.
9. **Program Year** shall mean that period of time commencing at 12:01 a.m. on July 1 and ending at 12:00 a.m. on the following July 1.
10. **Retained Limit** shall mean the amount stated on the applicable Declarations or certificate of coverage, which will be paid by the **Participant** before the **Authority** is obligated to make any payment from the pooled funds.

11. **Self-Insured Retention (SIR)** shall mean the **Authority's limit of coverage** above **Participant's retained limits** and up to the attachment point for excess coverage.
12. **Third Party Administrator (TPA)** shall mean the claims administrator for the **Authority** for the PPP.

ARTICLE II: GENERAL

A. AUTHORITY

1. The Pooled Property Program (PPP) Master Program Document (MPD) is one of the **Authority's** governing documents. However, any conflict between the PPP MPD, the **Authority's Agreement**, the Bylaws, or the PPP MOC shall be determined in favor of the **Agreement**, the Bylaws, or the MOC, in that order.
2. The PPP MPD is intended to be the primary source of information, contain the rules and regulations, and serve as the operational guide for the conduct of the PPP.
3. The PPP has been organized under authority granted by, and shall be conducted in accordance with, the laws of the State of California.

B. PURPOSE

The primary purpose in establishing a PPP is to create a method for providing coverage for protection against damage to the **Participants** real and personal property, including mobile equipment as provided in the MOC.

C. RESPONSIBILITY

1. The **Board** shall have the responsibility for establishing policies and remaining informed as to the financial strength and viability of the PPP. The **Board** has the authority, within the parameters of the **Agreement** and Bylaws of the **Authority** and this MPD, to act as needed to maintain and develop the financial strength of the PPP. The **Board** shall have the authority to enter into insurance contracts for the insurance coverages within the budgeted costs of such insurance.
2. The Executive Committee shall have the responsibility and authority to affect the general policies established by the **Board**.
3. The **Administrator** shall have the responsibility to manage the daily activities of the PPP and shall be given the authority to implement the policies established by the **Board**. The **Administrator** shall report to the Executive Committee and to the **Board**, as necessary.

ARTICLE III: PROGRAM ELEMENTS

A. PROGRAM YEARS

1. Each **program year** shall be accounted for and the funds maintained separately from any other program of the **Authority**. The income and expenses of each **program year** shall be accounted for separately from any other **program year's** income or expenses.
2. Any excess funds at the end of the **program year** shall be retained by the PPP to pay claims and expenses which may be incurred in the future.

B. LIMITS OF LIABILITY

The **Board** shall annually establish the limit of liability for the PPP which may be amended from time to time for subsequent **program years**. This limit of liability shall apply to each real and/or personal property claim as described in the MOC for this PPP.

C. DEDUCTIBLES

1. The PPP shall provide **deductibles** of \$5,000 for all property, and \$5,000 for all vehicles per occurrence.
2. The amount of each loss, including expenses, which is less than the **deductible**, shall be paid by the **Participant**.

D. MEMBER CONTRIBUTIONS

1. The **Administrator**, in conjunction with an actuary, shall establish rates and **Member Contributions**, subject to **Board** approval, adequate to fund the actuarially determined losses in the pooled layer of the PPP, including the cost of excess coverage, flood premiums and the projected administrative costs of the PPP.
2. The annual **Member Contributions** for each **Participant** shall be calculated by applying the **Participant's** most recent Total Insured Values (TIV) to 1) the funding level as determined by the actuary and recommended by the **Administrator**, 2) the cost of any excess coverage and flood premiums, and 3) a charge for the administrative and claims servicing expenses of the PPP as determined by the **Administrator**.

E. DIVIDEND AND ASSESSMENTS

1. DIVIDENDS

- (a). At the end of each **fiscal year**, a dividend calculation shall be performed for all open **program years**. Each year thereafter there shall be an additional dividend calculation made until such time as the **program year** is closed. Any dividends available to be declared and returned to the **Participants**,

who are in good standing under the PLAN JPA and in compliance with their obligations under the PPP, will be at the discretion of the **Board** provided that the total dividend to be distributed from all qualifying **program years** shall not reduce the total equity for all **program years** below a discounted 90% confidence level.

(b). Calculation

- i. Dividends may not be declared from a **program year** until five years after the end of that **program year**.
- ii. Dividends may be declared only at such time as the PPP has equity, with liabilities actuarially stated discounted at a 90% confidence level. The calculated amount shall represent the maximum dividend available to be declared.
- iii. The dividend shall be reduced if any of the five succeeding years (after the five years eligible for dividend calculation) have negative equity, with liabilities actuarially stated at a discounted 90% confidence level.
- iv. Dividends may only be declared if the equity at the expected confidence level is five times the Self-Insured Retention.

2. ASSESSMENTS

- (a). Assessments may be levied on the **Participants** for the risk sharing layer of any **program year(s)**, as approved by the **Board**, at such time as an actuary finds that the assets of the PPP, as a whole, do not meet the expected discounted losses of the PPP. Each **Participant's** share of the assessment shall be allocated based upon the **Member Contributions** collected for the self-insured layer of each respective **program year** being assessed. If such assessment is not sufficient to relieve the pool of its actuarially determined deficit in the year of the assessment, such assessment shall be levied each subsequent year until the actuarially determined deficit is relieved. The timing of payment shall be determined by the **Board** at the time of assessment.
- (b). Equity from the risk sharing layer may be exchanged between eligible **program years** if sufficient funds are available. The transfer of equity will be performed so that the individual **Participant's** share of equity is separately applied so as to maintain the integrity of each **Participant's** balance.

F. EXCESS COVERAGE

1. The **Board** shall ensure that each **program year** is provided with excess property coverage for the **Participants**. It is the intent and purpose of the **Authority** to continue to provide such coverage to the **Participants**, provided that such coverage can be obtained and is not unreasonably priced. This coverage may be obtained from an insurance company, by participating in another pool established under the Government Code as a joint powers authority or offered through another PPP pooling procedure. If the coverage is purchased from an insurance company, such insurance company shall have an A.M. Best Rating Classification of A or better and an A.M. Best Financial Rating of VII or better or their equivalents.
2. Premiums for such coverage shall be paid by the PPP from the proceeds received as **Member Contributions** from the **Participants**.
3. Deductibles for Specific Excess Coverages:
 - a. Deductibles for various perils covered under the excess policy are determined by the excess property program the **Authority** has elected to participate in.
 - b. When a claim is filed for a qualifying loss, the **Participant** will be responsible for their corresponding retention as defined in the Memorandum of Coverage for the Pooled Property Program for the **Authority**.
 - c. The **Authority** shall authorize payment of the difference between the **Participant's** retained limit and the **Authority's** Self-Insured Retention for the corresponding covered loss within the excess program. The **Authority's** obligation to the excess program shall remain despite the total dollar amount of the difference in retained limit amounts.
4. The **Board** may, from time to time, alter excess coverage based on insurance market conditions, available alternatives, costs, and other factors. The **Board** shall place excess coverage with the two competing objectives of security and minimizing costs to the PPP as a whole.

ARTICLE IV: ADMINISTRATION

A. BOARD

1. Discussion of developments and performance of the PPP may occur as part of any scheduled **Board** meeting.
2. The **Board** shall have the responsibility and authority to carry out and perform all functions and make all decisions affecting the PPP, consistent with the powers of the **Authority** and not in conflict with the **Agreement**, the Bylaws, or the MOC.

B. EXECUTIVE COMMITTEE

1. The Executive Committee shall have the responsibility and authority to carry out and perform all other functions and make all other decisions affecting the PPP, provided that such functions and decision are consistent with the powers of the **Authority** and are not in conflict with the **Agreement**, the Bylaws, or the MOC.
2. The Executive Committee shall meet at least twice a year to review the developments and performance of this PPP. The Executive Committee shall review, study, advise, make recommendations to the **Board**, or take any action which the Committee believes to be in the best interests of the PPP and its **Participants**, provided that such action is not prohibited by law or is not an action reserved unto the **Board**.

C. ADMINISTRATOR

The **Administrator** shall be responsible for:

1. The overall operation of the PPP;
2. Monitoring the status of the PPP and its operations, the development of losses, the program's administrative and operational costs, service companies' performance, and brokers' performance;
3. Assisting the **Board** in selecting brokers, actuaries, auditors, and other service companies;
4. Promoting the programs to prospective new participants;
5. Preparing, distributing, and maintaining all records of the PPP, including its MPD and MOC as these may be amended from time to time; and
6. Preparing Certificates of Coverage as may be required by the **Participants** in the PPP.

ARTICLE V: CLAIMS ADMINISTRATION

A. DISPUTES REGARDING MANAGEMENT OF A CLAIM

1. Any matter in dispute between a **Participant** and the **Third-Party Administrator** shall be called to the attention of the **Administrator** and heard by the Executive Committee whose decision may be appealed to the **Board** within thirty (30) days of the Committee's decision. If no appeal is filed, the decision of the Executive Committee shall be final.
2. When an appeal has been filed, the **Board** shall meet within forty-five (45) days to hear the appeal. The decision of the **Board** will be final.

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B. CLAIM SETTLEMENT AUTHORITY

1. Each **Participant** shall have settlement authority for all claims, including attorney fees and other costs, which do not exceed 100% of the **Participant's retained limit**. The Litigation Manager will review these claims from time to time and may offer a recommendation to the **Participant's Third-Party Administrator** and the **Participant** regarding settlement.
2. The **Third-Party Administrator** shall have the authority to settle any claim with an ultimate net loss equal to or less than fifty thousand dollars (\$50,000) in excess of the **retained limit** of the **Participant**.
3. The Litigation Manager shall have the authority to settle any claim with an ultimate net loss equal to or less than two hundred thousand dollars (\$200,000) in excess of the **retained limit** of the **Participant**.
4. The Claims Committee shall have the authority to settle any claim with an ultimate net loss equal to or less than the **Limit of Coverage** for the risk sharing pool layer, combined with any reinsurance retention of the **Authority**. However, such authority shall only apply to those claims where the ultimate net loss, as defined in the PPP MOC, is in excess of the settlement authority given to the Litigation Manager and above the **retained limit** of the **Participant** involved.
5. The **Board** retains unto itself the authority to approve settlement of all other claims. However, the Claims Committee shall periodically review such claims and may make recommendations to the Board.

ARTICLE VI: PARTICIPATION

A. ELIGIBILITY AND APPLICATION

1. ELIGIBILITY

- (a). A new applicant must commit to at least three full **program years** of participation in this PPP.
- (b). Any **Member Entity** may apply to participate in the PPP by providing an adopted resolution of its governing body and such other information/materials as may be required. The applicant's resolution shall commit the applicant to three full **program years** of participation in the PPP, if accepted, and consent to be governed for property coverage in accordance with the MPD, the MOC and other documents and policies adopted by the **Board**.
- (c). The application for participation shall be submitted at least thirty (30) days prior to the date of the last **Board** meeting of the **program year** to ensure the **Board** has adequate time to review and evaluate the acceptability of the applicant. It is recommended that an applicant only enter the PPP at the commencement of a new **program year**. If an applicant chooses to enter the PPP at any other time, the **Member Contributions** for the remainder of the **program year** will be pro-rated. The new **Participant** will begin coverage on the date that is mutually acceptable to the new **Participant** and the **Board**; however, the new **Participant** will be required to share losses with the other **Participants** of the PPP for the entire **program year**.

2. APPROVAL OF APPLICATION

The **Board** shall, after reviewing the resolution and other underwriting criteria, determine the acceptability of the exposures presented by the applicant and shall advise the applicant in writing of its decision to accept or reject the request within ten (10) days after the decision has been made.

B. PARTICIPANTS' DUTIES

1. The **Participants** shall be responsible for providing the data required by the **Authority** to determine the values of covered properties. The data shall be factual and provided in a timely manner in conformance with the policies adopted by the **Board**.
2. The **Participants** shall disclose activities not usual and customary in their operation.
3. The **Participants** shall at all times cooperate with the **Authority's Administrator**,

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Litigation Manager, **Third Party Administrator**, with regard to claims handling and underwriting activities of the **Authority**.

4. Each year the **Authority** shall bill **Participants** for a **Member Contributions** for the next **program year**. The billings shall be due and payable in accordance with the Bylaws.
5. Billings may be made to **Participants** for a **program year** found to be actuarially unsound. All billings for payments to bring a **program year** into an actuarially sound condition are due and payable upon receipt.
6. Former **Participants** in the PPP shall be required to pay all applicable billings for the **program years** in which they participated. Delinquent billings, together with penalties and interest, shall be charged and collected from the **Participant** in accordance with the Bylaws.
7. Penalties and interest shall be charged against any amounts delinquent in accordance with the Bylaws.

C. TERMINATION

1. VOLUNTARY TERMINATION

- (a). A **Participant** shall not be permitted to withdraw from the PPP prior to the end of its commitment period of three full **program years**, and shall be obligated for payment of Member Contributions for these three years.
- (b). A **Participant** which has maintained its participation in the PPP for three full **program years** may terminate its participation if, at least six months before the next **program year**, a written request to terminate participation is received from the **Participant**.
- (c). Any **Participant** seeking to terminate its participation without proper and timely notice shall be responsible for the full cost of the next **program year's** premium. The notice will be deemed effective for the **program year** following the year in which the additional premium is paid.

2. INVOLUNTARY TERMINATION

- (a) The **Board** may initiate termination of a **Participant** from the PPP for the following reasons:
 - (i) Termination as a **Member Entity** of the **Authority**;
 - (ii) Declination to cover the **Participant** by the entity providing excess coverage;

- (iii) Nonpayment of Member Contributions, premiums, assessments, or other charges;
- (iv) Frequent late payment of Member Contributions, premiums, assessments, and/or other charges, subject to interest and penalty charges;
- (v) Failure to timely provide requested underwriting information;
- (vi) Consistent poor loss history relative to the pool;
- (vii) Substantial change in exposures which are not acceptable in this PPP; and/or
- (viii) Financial impairment that is likely to jeopardize this PPP's ability to collect amounts due in the future.

The Board's determination of the existence of any of these conditions shall be final.

- (b) The **Board** shall have the authority, upon a two-thirds approval, to authorize a termination notice be sent to a **Participant**. Such notice shall be sent at least 60 days prior to the effective date of termination.

3. CONTINUED LIABILITY UPON TERMINATION

Termination of participation, whether voluntary or involuntary, in future **program years** does not relieve the terminated **Participant** of any benefits or obligations of those **program years** in which it participated. These obligations include payment of assessments, retrospective adjustments, or any other amounts due and payable.

ARTICLE VII: TERMINATION AND DISSOLUTION OF THE PPP

The PPP may be terminated and dissolved any time by a vote of two-thirds of the **Participants**. However, the PPP shall continue to exist for the purpose of disposing of all claims, distributing assets, and all other functions necessary to conclude the affairs of the PPP.

Upon termination of the PPP, all assets of the PPP shall be distributed only among the **Participants**, including any of those which previously withdrew pursuant to Article VI, in accordance with and proportionate to their **Member Contributions** and assessments paid during the term of participation. The **Board** shall determine such distribution within six months after the last pending claim or loss covered by the PPP has been finally resolved and there is a reasonable expectation that no new claims will be filed.

ARTICLE VIII: AMENDMENTS

This MPD may be amended by a two-thirds (2/3rds) vote of the **Participants** present and voting at the meeting, provided prior written notice, as provided within the **Agreement**, has been given to the **Board**.

Appendix A

City of American Canyon	Town of Los Gatos
Town of Atherton	City of Millbrae
City of Benicia	City of Milpitas
City of Burlingame	City of Morgan Hill
City of Campbell	City of Newark
Town of Colma	City of Pacifica
City of Cupertino	Town of Portola Valley
City of Dublin	Town of Ross
City of East Palo Alto	City of San Bruno
City of Foster City	City of San Carlos
City of Half Moon Bay	City of Saratoga
Town of Hillsborough	City of South San Francisco
Town of Los Altos Hills	City of Suisun City
Town of Tiburon	Town of Woodside