

ENDORSED
FILED
ALAMEDA COUNTY

DEC 30 2005

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CLERK OF THE SUPERIOR COURT
By Wosen Mengiste, Deputy

CAPITOL PEOPLE FIRST, et al,

Plaintiffs,

v.

DEPARTMENT OF DEVELOPMENTAL
SERVICES, et al,

Defendants.

No. 2002 - 038715

ORDER DENYING MOTION OF
PLAINTIFFS FOR CLASS
CERTIFICATION.

Date: December 22, 2005

Time: 1:00 pm.

Dept.: 22

The motion of Plaintiffs for class certification came on for hearing on December 22, 2005, in Department 22 of this Court, the Honorable Ronald M. Sabraw presiding. Counsel appeared on behalf of Plaintiffs and on behalf of Defendants. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of Plaintiffs for class certification is DENIED

LEGAL FRAMEWORK – STANDARD APPROACH.

Class actions in California are governed by Code of Civil Procedure section 382, authorizing such suits “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.”

1 Class certification under the UCL is determined under the standards in C.C.P. 382. The
2 Court must inquire into numerosity, ascertainability, whether common questions of law or fact
3 predominate, whether the class representatives have claims or defenses typical of the class; and
4 whether the class representatives can represent the class adequately. *Linder*, 23 Cal.4th at 435.
5 Other relevant considerations include the probability that each class member will come forward
6 ultimately to prove his or her separate claim to a portion of the total recovery and whether the
7 class approach would actually serve to deter and redress alleged wrongdoing. *Linder*, 23 Cal.4th
8 at 435. In addition, the trial court may assess the advantages of alternative procedures for
9 handling the controversy. *Basurco v. 21st Century Ins. Co.* (2003) 108 Cal. App. 4th 110, 120-
10 122; *Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 660-662. It is plaintiffs'
11 burden to support each of the above factors with a factual showing. See *Hamwi v. Citinational-*
12 *Buckeye Inv. Co.* (1977) 72 Cal.App.3d 462.

13
14 The Court is vested with discretion in weighing the concerns that affect class
15 certification. *Sav-on Drug Stores Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 336.
16 “[B]ecause group action also has the potential to create injustice, trial courts are required to
17 ‘carefully weigh respective benefits and burdens and to allow maintenance of the class-action
18 only were substantial benefits accrue both to litigants and the court’s.’ *Linder v. Thrifty Oil Co.*
19 (2000) 23 Cal.4th 429, 435.
20
21

22 LEGAL FRAMEWORK – WHEN ONLY INJUNCTIVE RELIEF SOUGHT.

23
24 The Court has considered that Plaintiffs are seeking systemwide injunctive relief only and
25 are not seeking individualized relief. C.C.P. section 382 does not include specific standards and
26 analytical categories such as those found in F.R.C.P. 23 and California case law provides little

1 guidance on whether the standard for class certification is different depending on whether the
2 claims are for injunctive relief (as under 23(b)(2)) or for monetary and injunctive relief (as under
3 23(b)(3)). Consistent with the direction in *Sav-On* that the trial courts should adopt innovative
4 procedures, the Court has considered whether a different class certification analysis is
5 appropriate when, as here, Plaintiffs seek injunctive relief only. *Bell v. American Title Ins. Co.*
6 (1991) 226 Cal. App. 3d 1589, 1603-1609 (applying analytical categories of the federal rules in
7 California class action).
8

9 The Court's analysis when a plaintiff seeks injunctive relief would be different in the
10 following particulars. The commonality analysis would be, as suggested by Plaintiffs, focused
11 more on the actions of the defendant than on whether those actions have a common effect on
12 each of the Plaintiffs. *Walters v. Reno* (9th Cir., 1998) 145 F.3d 1032, 1047 ("Although common
13 issues must predominate for class certification under Rule 23(b)(3), no such requirement exists
14 under 23(b)(2). It is sufficient if class members complain of a pattern or practice that is generally
15 applicable to the class as a whole."); *Bynum v. District of Columbia* (D.C. 2003) 214 F.R.D. 27,
16 37-38 (certifying class under 23(b)(2) based on a consistent pattern of activity of overdetaining
17 inmates even though the circumstances of each detention differed). The Court would not address
18 variations in damages because damages would not be sought. *Mendoza v. County of Tulare*
19 (1982) 128 Cal. App. 3d 403, 418-419. The Court would not address variations in individual
20 injunctive relief because Plaintiff would be seeking injunctive relief on the system level and not
21 as applied to specific individuals. *Baby Neal for & by Kanter v. Casey* (3rd Cir., 1994) 43 F.3d
22 48, 64 ("The district court will thus not need to make individual, case-by-case determinations in
23 order to assess liability or order relief. Rather, the court can fashion precise orders to address
24 specific, system-wide deficiencies and then monitor compliance relative to those orders.") The
25
26

1 Court would also pay closer attention to the adequacy analysis because individual absent class
2 members would not be permitted to opt out of the class and seek inconsistent injunctive relief
3 and think more carefully about whether classwide injunctive relief is the best means to address
4 and remedy the alleged wrongdoing.
5

6
7 **DEFINING THE CLAIMS ASSERTED.**

8 Class certification is determined with reference to the claims asserted and the court may
9 take into account whether a class is appropriate for each claim. *Hicks v. Kaufman & Broad*
10 *Home Corp.* (2001) 89 Cal. App. 4th 908, 916 fn 22 and 917-918. In this case, the Plaintiffs and
11 Defendants approach the claims very differently.

12 Plaintiffs take a collective approach to their claims rather than focusing on discrete legal
13 theories or discrete alleged wrongs. (P reply at 7:10-18.) This approach was adopted by the trial
14 court in *Marisol A. by Forbes v. Giuliani* (2nd Cir., 1997) 126 F.3d 372, where the trial court
15 certified a class and held that the common question of law was "whether each child has a legal
16 entitlement to the services of which that child is being deprived" and the common question of
17 fact was "whether defendants systematically have failed to provide these legally mandated
18 services." The trial court "determined that the myriad constitutional, regulatory, and statutory
19 provisions invoked by the plaintiffs are properly understood as creating a single scheme for the
20 delivery of child welfare services" and that the failure of that single scheme was a "super-claim"
21 common to all members of the class. The Second Circuit deferred to the trial court's discretion
22 in certifying a class but also noted that it might unfairly prejudice the defendants if the case were
23 tried without the use of subclasses to refine the claims.
24
25
26

1 Defendants argue that the Court must review the legal theories identified in the Fifth
2 Amended Complaint and groups them in four categories: (1) Lanterman Act (cause of action 1);
3 (2) Disability discrimination (causes of action 2, 3, and 4); (3) Constitutional violations –
4 inalienable rights, due process, equal protection (causes of action 5 and 6); and (4) Medicaid
5 (cause of action 7). This approach is more consistent with California law. This approach was
6 also noted with approval in *J.B. by Hart v. Valdez* (10th Cir. 1999) 186 F.3d 1280, 1289, where
7 the Plaintiffs alleged "that systemic failures in the defendants' child welfare delivery system deny
8 all members of the class access to legally-mandated services which plaintiffs need because of
9 their disabilities." The Court found that an allegation of systematic failures does not create a
10 common legal issue and stated "For a common question of law to exist, the putative class must
11 share a discrete legal question of some kind."
12

13 This Court will not adopt the *Guliani* "super-claim" approach because it would lead to an
14 inherently unmanageable trial. The Court finds that it is more appropriate in this motion and in
15 this case to focus on the alleged wrongs than on the discrete legal theories alleged. California
16 Supreme Court authority suggests that either approach is permissible. Compare *Sav-On*, 34
17 Cal.4th at 324 (Court did not analyze separately the claims under the Labor Code, the UCL, and
18 the common law because all claims concerned whether putative class members were
19 misclassified as exempt from the overtime laws) with *Fletcher v. Security Pacific National Bank*
20 (1979) 23 Cal.3d 442, 447-454 (Court separately analyzed contract and fraud UCL claims even
21 though both claims concerned bank's uniform practices in calculating interest).
22
23

24 The discrete alleged wrongs at the center of Plaintiffs' claims concern primarily the
25 development and implementation of Individual Program Plans ("IPPs"). These wrongs are: (1)
26 failure to provide understandable information in the IPP process; (2) inadequate assessments in

1 the IPP process, (3) basing IPP recommendations on factors (institutional inertia and budget
2 considerations) unrelated to the needs and choices of the disabled persons; (4) failure to provide
3 timely services and supports as suggested by IPPs; and (5) failure to develop adequate
4 community resources. Plaintiffs and Defendants both focused on these alleged wrongs. (P
5 Moving at 22; D Oppo at 14-18.)
6

7
8 PRACTICALITY OF BRINGING ALL CLASS MEMBERS BEFORE THE COURT
9 (NUMERIOSITY).

10 Defendants do not contest numerosity. The Court finds that the proposed class is
11 numerous (approximately 7,800 persons).
12

13 ASCERTAINABILITY

14 A class must be defined in terms of objective characteristics and common transactional
15 facts making the ultimate identification of class members possible. *Hicks v. Kaufman and Broad*
16 *Home Corp.* (2001) 89 Cal.App.4th 908, 915; *Bartold v. Glendale Federal Bank* (2000) 81 Cal.
17 App. 4th 816, 828. If the proposed class is not ascertainable, then the Court can and should
18 redefine the class if the evidence suggests that a redefined class is ascertainable. *Hicks*, 89
19 Cal.App.4th at 916, fn18. At this stage of the proceedings a plaintiff is not required to establish
20 the existence and identity of class members. *Reyes v. Board of Supervisors* (1987) 196
21 Cal.App.3d 1263, 1275.
22

23 Plaintiffs' proposed class is ascertainable. The Court finds that Plaintiffs' proposed class
24 definition is adequate. It defines the members of the class in terms of objective characteristics
25 and common transactional facts that will make the ultimate identification of class members
26

1 possible. Plaintiffs did not suggest subclasses based on particular alleged failures in the system
2 (all persons who did not get an IPP within X days) or based on alleged failures by individual
3 Regional Centers (all persons served by Regional Center Y).

4
5 COMMONALITY – STANDARD APPROACH

6 Plaintiffs' burden on moving for class certification is to show that common issues of fact
7 and law predominate. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1108.

8
9 The Court finds that Plaintiffs have not demonstrated that common factual issues
10 predominate. The trier of fact will need to consider in substantial measure how the policies
11 affect the individual class members. There is no way for the trier of fact to find that Defendants
12 have failed to meet their statutory obligations without examining how individuals have been
13 affected. Given the many variables in each person's Individual Program Plan ("IPP"), the Court
14 has serious questions about whether the case could be tried based on anecdotes and statistical
15 data. The necessary individual inquiries would overwhelm the common issues.

16
17 The Court finds that Plaintiffs have not demonstrated that common legal issues
18 predominate. As held above, the Court will not permit Plaintiffs to proceed on a "super-claim"
19 alleging that the DDS/Regional Center system is broken because it consistently fails to place
20 persons in the least restrictive setting. The Court will follow *Hicks, supra*, and *J.B. by Hart v.*
21 *Valdez* (10th Cir. 1999) 186 F.3d 1280, 1289, and require Plaintiffs to identify common discrete
22 wrongs that affect the individual classmembers. The Court examines the discrete alleged wrongs
23 identified by the parties.

24
25 The claim that Defendants fail to provide understandable information in the IPP process.

26 The evidence suggests that the IPPs are individualized and that much of the information is

1 conveyed orally. This is not a case such as *Vasquez v. Superior Court of San Joaquin County*
2 (1971) 4 Cal. 3d 800, 810-811, where the defendant had a script and the Court could assume that
3 the defendant made the same representations to each putative class member. This case is more
4 like *Hamwi v. Citinational-Buckeye Inv. Co.* (1977) 72 Cal.App.3d 462, 473, where the Court
5 denied certification because resolution of the contract claims would depend on individual
6 discussions the defendant had with substantially all putative class members.
7

8 The claim that Defendants made inadequate assessments in the IPP process. The
9 evidence suggests that each IPP is designed by a team of caregivers/specialists for an individual
10 putative class member. Although many IPPs may be inadequate, the evidence suggests that the
11 alleged legal deficiencies of each will be different.

12 The claim that Defendants base IPP recommendations on factors unrelated to the needs
13 and choices of the disabled persons. As with the above claim, the evidence suggests that
14 although the recommendations in IPPs may not be based on the needs and choices of the disabled
15 persons, the allegedly unlawful variables considered will be different for each IPP.
16

17 The claim that Defendants fail to provide timely services and supports as suggested by
18 IPPs. If IPPs were similar, then this could be a common legal issue. If IPPs were similar, then
19 Plaintiffs could potentially review IPPs and determine that the Defendants had a common
20 practice of unlawfully failing to provide timely services. The evidence, however, suggests that
21 each IPP is designed to meet the individual needs of the classmember. The timing of services
22 and supports will, therefore, be determined by the circumstances of the individual. The Court
23 cannot determine that the DDS or a Regional Center acted unlawfully in every case where X
24 service was not provided to Y individual within Z weeks.
25
26

1 The claim that Defendants fail to develop adequate community resources. This is
2 potentially a common legal issue. If Plaintiffs could prove that classmembers have a common
3 legal right to a certain type of community resource and that the Defendants have not developed
4 the community resource and made it available for classmembers, then Plaintiffs could prevail on
5 a legal claim that was common to the class members. This claim would, however, be dependent
6 on first proving that classmembers have a legal right to a certain type of community resource, and
7 that preliminary inquiry is inherently individualized.
8

9 Therefore, under the standard commonality analysis, the Court finds that Plaintiffs have
10 not demonstrated that common issues of fact and law predominate.
11

12 COMMONALITY – ALTERNATE APPROACH.

13 Because this case involves claims for injunctive relief only concerning alleged
14 systemwide deficiencies, the Court considers the alternative standard of whether Plaintiffs have
15 demonstrated that Defendants have “acted or refused to act on grounds generally applicable to
16 the class.” F.R.C.P. 23(b)(2). The Court finds that Plaintiffs have demonstrated that Defendants
17 have “acted or refused to act on grounds generally applicable to the class.” As in *Sav-On*, 34
18 Cal.4th at 329-330, there is evidence that the Defendants had policies that were common and
19 affected each member of the putative class. The change in emphasis from the claims of the class
20 members (not common) to the policies of the Defendants (common) leads to a different result.
21
22

23 TYPICALITY OF REPRESENTATION.

24 The typicality analysis requires only that a named plaintiff share a community of interest
25 with the class members and have claims and defenses typical of the class members. *Sav-On*
26

1 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326 (The 'community of interest'
2 requirement embodies three factors: ... (2) class representatives with claims or defenses typical
3 of the class; ...). The Court can find a named plaintiff to be typical of the class members even if
4 the named plaintiff's specific factual situation is not the same as the specific factual situation of
5 all the other class members. *Fireside Bank v. Superior Court* (2005) 133 Cal. App. 4th 742, 669-
6 772 (named plaintiff held to be typical despite facts regarding how she bought vehicle and how
7 vehicle was repossessed); *Daniels v. Centennial Group, Inc.* (1993) 16 Cal. App. 4th 467, 473
8 (plaintiff can be typical of the class of persons who differ in some particulars where the alleged
9 misconduct is common). A class representative's claims need not be identical to the claims of
10 other class members and it is only required that the representative be similarly situated so that he
11 or she will have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983)
12 145 Cal.App.3d 47, 46.

13
14 The individual plaintiffs are disabled persons who are or recently were receiving care
15 from the Defendants. The entity plaintiffs are organizations that represent the interests of their
16 members and the members include substantial numbers of disabled persons who are or recently
17 were receiving care from the Defendants. The Court finds that Plaintiffs are sufficiently typical
18 of the class that they can represent the class.
19

20 21 ADEQUACY OF REPRESENTATION.

22 The adequacy inquiry concern whether the named Plaintiffs interests are not antagonistic
23 to the interests of the class and have selected counsel qualified to conduct the litigation. *McGhee*
24 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450. See also *Lazar v. Hertz Corp.* (1983) 143
25 Cal.App.3d 128, 141-142.
26

1 This is a peculiar case because the Court can safely presume that all the class members
2 would like thorough IPPs and the best services possible. The problem arises because each
3 disabled person is different and “the best services possible” for one person may not be
4 appropriate for another person. The named plaintiffs have consistently asserted that each class
5 member is entitled to live in the least restrained setting and that many will benefit from being
6 removed from large institutions and placed into community settings. The Intervenor, however,
7 argue that for many members of the class “the best services possible” are in large institutions and
8 that it would be detrimental to place them in community settings.

10 Class representatives assume a fiduciary responsibility to prosecute the action on behalf
11 of the absent parties and the structure of the class action does not normally allow absent class
12 members to become active parties. *Earley v. Superior Court* (2000) 79 Cal. App. 4th 1420,
13 1434. Therefore, the Court must be diligent in ensuring that the interests of the named plaintiff
14 and class counsel do not overshadow the interests of the absent class members. *Apple Computer,*
15 *Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1264-1274. The Court emphasizes that
16 this is not a case such as *J. P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal. App. 4th
17 195, 212-215 (conflict between the interests of the named plaintiffs and certain members of the
18 class) or *Apple Computer, supra* (concerns raised about the arguably improper self-interest of the
19 named plaintiff and class counsel). In this case the named plaintiffs are legitimately pursuing
20 claims that they honestly think are in the best interests of all the absent class members. The
21 problem is that reasonable minds can differ and the Intervenor, who represent a sizeable number
22 of absent class members, think that prosecution of the claims is not in their best interest.

25 The Court has considered whether the intra-class antagonism can be addressed by means
26 other than denying class certification. Addressing this point, *Richmond v. Dart Industries, Inc.*

1 (1981) 29 Cal. 3d 462, 471-474, states, “When a class contains various viewpoints, the courts
2 may ensure that these viewpoints are represented by allowing them to join as interveners ... or as
3 additional representatives of subclasses within the full class. 29 Cal.3d at 473-474. The Court
4 has already permitted the Intervenors to appear in this action, and they have had the opportunity
5 to participate in all court proceedings. The presence of the Intervenors protects their interests
6 because they could present evidence and make arguments to the trier of fact.
7

8 The Court has also considered that because this case concerns systemwide injunctive
9 relief, the Intervenors cannot elect to opt-out of the class. If the Court provides systemwide
10 injunctive relief, then the policies of the DDS and the regional centers will have to change and
11 those changes will necessarily affect all persons in the system.

12 The Court concludes that Plaintiffs have not demonstrated either (1) they will adequately
13 represent the interests of all the members of the proposed class or (2) the interests of the
14 Intervenors can be adequately protected by their presence in this case. This conclusion is based
15 on a balancing of interests and case management concerns and is not directed at the integrity or
16 competence of the named plaintiffs.
17

18 The Court holds that the named plaintiffs have retained competent counsel.
19

20 DETERRING AND REDRESSING THE ALLEGED WRONGDOING / ALTERNATIVE
21 PROCEDURES FOR HANDLING THE CONTROVERSY.

22 *Linder* states that trial courts have an obligation to consider the role of the class action in
23 deterring and redressing wrongdoing. 23 Cal.4th at 446. In addition, the Court may consider the
24 availability and suitability of alternative procedures for handling the controversy. *Basurco*, 108
25 Cal. App. 4th at 120-122; *Caro*, 18 Cal. App. 4th at 660-662.
26

1 Plaintiffs state that the class settlement in *Coffelt v. DDS*, San Francisco Case # 916401,
2 in 1994 was instrumental in moving disabled persons from institutional to community settings
3 and argue that this case should similarly be certified to proceed as a class action. Defendants did
4 not argue in their briefs that an effective oversight mechanism is already in place, but did assert
5 at the hearing that that the DDS and the Regional Centers are subject to extensive oversight and
6 monitoring.. Compare *Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 660 (no
7 class action necessary where defendant had already entered into various consent decrees).
8

9 Courts have certified classes in cases alleging that government institutions such as
10 schools, prisons, and social welfare programs do not adequately meet the needs of the persons
11 who are served by those facilities. A class action can often be the only effective tool to compel
12 government institutions operated by the Executive branch to meet the obligations imposed on
13 them by the Legislative branch. In those cases, however, the class claims are generally discrete
14 and capable of resolution by a court on a common basis. For example, a court can determine
15 whether a policy of racial segregation is lawful without examining who is placed in what school
16 or cell for what reason. Likewise, a court can review a common policy and determine benefits
17 are being paid in the proper amounts and at the proper times without examining who got what
18 benefits at what time.
19

20 In this case, the Court finds that the alleged wrongs cannot be readily cured on a
21 classwide basis. Unlike the policies in other government institutions that were the subject of
22 other class actions, the development and implementation of the IPPs is inherently individualized.
23 In addition, the Legislature created a hearing procedure for disabled persons to seek relief when
24 they disagreed with their IPPs and treatment. W&I 4701-4716. The Court presumes that the
25 Legislature considered this to be an effective means for individuals to seek relief.
26

1
2 SUMMARY.

3 If the Court applies the standard commonality analysis, then it is clear that class
4 certification is not proper given the individualized factual and legal issues the trier of fact would
5 need to consider in reaching a decision. Because the standard commonality analysis is the
6 soundest basis for its decision, the Court applies this analysis and denies the motion for class
7 certification.
8

9 If the Court were to apply the alternate analysis based on F.R.C.P. 23(b)(2) for class
10 claims seeking injunctive relief only, then the Court would find that Plaintiffs have demonstrated
11 that Defendants have “acted or refused to act on grounds generally applicable to the class.” The
12 Court would, however, still deny the motion for class certification because the claims asserted
13 would require the trier of fact to pay significant attention to the individual circumstances of class
14 members. The trier of fact cannot avoid the reality that each IPP is individualized in its
15 development, content, and implementation, and this would restrict the use of sampling or
16 statistical proof at trial. The Court finds that the presence of the Intervenors demonstrates that
17 different class members have different goals, suggesting that claims should be made on an
18 individual basis. Finally, the Legislature created the fair hearing procedure under Welfare and
19 Institutions Code 4701-4716 and there is no indication that it is not an effective means for
20 individuals to seek relief.
21
22

23 EVIDENCE
24

25 Except as stated otherwise, all evidentiary objections by the parties are OVERRULED.
26 The Court notes, however, that its consideration of the evidence is limited to the motion for class

1 certification only and should not be construed as an indication of admissibility in future motions
2 or at trial.

3
4 MOTIONS TO SEAL

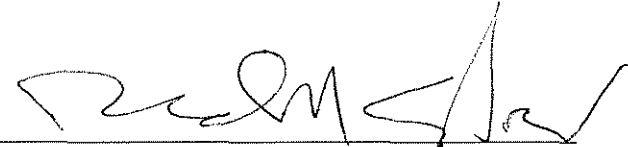
5 The motions to seal are GRANTED. The Court has signed the proposed orders on the
6 motions to seal.
7

8
9 FURTHER PROCEEDINGS

10 The Court sets a case management conference for January 4, 2006, at 2:00 p.m.


11 At the case management conference the parties should also be prepared to discuss (1)
12 whether Plaintiffs intend to appeal from the class certification order; (2) whether the claims of
13 the named plaintiffs should be pursued in this action or in separate claims under W&I 4701 et
14 seq.; (3) the nature, scope, and length of time expected to complete any merits related discovery;
15 (4) further motion practice; (5) mediation and settlement possibilities; and (6) setting a trial date
16 for the individual claims, if any, of the named plaintiffs.
17

18
19 Dated: December 30, 2005

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26
Judge Ronald M. Sabraw

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that I caused a true copy of the foregoing ORDER DENYING MOTION OF PLAINTIFFS FOR CLASS CERTIFICATION to be mailed, first-class, postage pre-paid, in a sealed envelope, addressed as shown below. Executed, deposited and mailed in Oakland, California on this 30th day of December, 2005.



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