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SAN DIEGO
SACRAMENTO
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VISTA

February 26, 2008

Kathy Davis
Senior Director, Internal Business Services
San Diego County Office of Education
6401 Linda Vista Road
San Diego, CA 92111

Re: Hartnett v. SDCOE, et al.
San Diego Superior Court Case No.: TBA
Our Client: Rodger Hartnett
Our File No.: 3060.003

CLAIM AGAINST SAN DIEGO COUNTY OFFICE OF EDUCATION

Dear Ms. Davis,

Please be on notice of this claim against the San Diego County Office of Education ("SDCOE") by claimant Rodger Hartnett. California Government Code Section 905 requires claimants to file a claim with a local public entity prior to proceeding with filing a civil action. The following information is included pursuant to California Government Code Sections 910 and 910.2 to put the SDCOE on notice of the claim :

Name of Claimant: Rodger Hartnett

Address of Claimant: 5282 Camino Playa Malaga, San Diego, CA 92124

Home Phone: (858) 395-9953

Email Address: rj6048@aol.com

Name, telephone, and post office to which claimant desires notices to be sent if other than the above: Barry M. Vrevich, Maxie Rheinheimer Stephens & Vrevich, 350 10th Avenue, Suite 900, San Diego, CA 92101.

On August 27, 2008, Rodger Hartnett was fired from his position as senior claims coordinator with the SDCOE. The stated reason for his dismissal was his use of SDCOE resources to obtain a coverage opinion from an outside counsel and his subsequent failure

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to admit the same.

In reality, Mr. Hartnett was wrongfully terminated from his position with the SDCOE (1) in retaliation for his blowing the whistle on the billing practices and rotation of business between and among panel counsel for SDCOE and (2) discrimination for his disability. We will discuss each of these reasons in turn.

Retaliation for Whistle-Blowing

In 2006, Mr. Hartnett began questioning the billing practices and rotation of cases among panel counsel for the SDCOE. The panel counsel in question are Dan Shinoff and Randy Winet. In tax year 2003-2004, the Shinoff firm received almost \$1,500,000 in business from the SDCOE. The Winet firm received \$150,000 in business. Part of Mr. Hartnett's job was to control legal expenses and to ensure equal rotation of the SDCOE's legal business between panel counsel.

Mr. Hartnett also began pointing out conflicts of interests that exist within the SDCOE and with panel counsel. For example, Dan Shinoff represents SDCOE employee Rick Rinear personally as a plaintiff in at least two separate legal matters. Randy Winet represents Diane Crosier as a plaintiff in a personal injury lawsuit. These are just a few of the conflicts of interest that were brought to the attention of Lora Duzyk at the SDCOE.

On December 4, 2006, Mr. Hartnett met with Lora Duzyk regarding (1) unfair distribution of claims between the panel firms, (2) inadequate auditing of legal billings, (3) lack of policies and procedures for dispensing of and monitoring cases, and (4) conflict of interest because Ms. Crosier worked for many years with Dan Shinoff prior to her employment at SDCOE and her long standing friendship with him.

This meeting led to a subsequent memorandum from Ms. Duzyk on August 8, 2007 wherein Ms. Duzyk discounted all of his concerns based on information received from Diane Crosier and Rick Rinear. This memo, which was written eight (8) months after the December 4, 2006, meeting, coincides with Mr. Hartnett's termination. According to the August 17, 2007, letter from the SDCOE, Lora Duzyk recommended that Mr. Hartnett be dismissed from his position.

Discrimination for Disability

In January 2006, Mr. Hartnett learned that he had a learning disability. On January 23, 2006, Mr. Hartnett submitted a "Disability Report" to Ms. Crosier wherein he conveyed that he had a learning disability known as a Visual Processing Impairment. This report indicated that Mr. Hartnett did not visualize when he reads and therefore his memory and editing skills are impaired. It was determined that Mr. Hartnett needed

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outside rehabilitation training and closer supervision by Ms Crosier. However, neither SDCOE, nor Mr. Hartnett's health insurer would pay for the outside training, so he elected to pay for it himself. The closer supervision and realization that he had a disability led to a campaign of retaliation by Ms. Crosier against Mr. Hartnett.

Because of Mr. Hartnett's disability, Ms. Crosier began to closely inspect Mr. Hartnett's files for completion and accuracy and began reviewing all of Mr. Hartnett's reports before being sent out to the districts. Ms. Crosier did not review the reports of all of the Claims Coordinators, just those being sent by Mr. Hartnett. This led to subsequent negative annual performance reviews for inadequate reports. The negative reviews were also based largely on clerical and administrative nit-picking items or isolated instances of second-guessing of Mr. Hartnett's judgment. These negative performance reviews stemmed from Ms. Crosier's retaliation against Mr. Hartnett for his disability.

In August 2006, Mr. Hartnett's supervisory responsibilities were reassigned to Rick Rinear. The reason given for this reassignment was to help with Mr. Hartnett's disability. Mr. Hartnett did not ask for this reassignment and, in fact, had submitted paperwork indicating his improvement with regard to his learning disability. This reassignment, and ultimate dismissal, of Mr. Hartnett's was in retaliation for his disability.

SDCOE Employees at Fault

The following SDCOE employees were at fault in causing the damage or injury:

- **Diane Crosier** - SDCOE employee. As Mr. Hartnett's immediate supervisor she began a campaign of retaliation for the whistle blowing and the discrimination due to Mr. Hartnett's disability.
- **Lisa Jensen** - SDCOE employee. As a subordinate to Mr. Hartnett, and a close friend of Diane Crosier, she contributed to his wrongful termination
- **John Vincent** - Staff Investigator for the SDCOE who had a difficult working relationship with Mr. Harnett Because he is widely known to be having an extra-marital affair with Diane Crosier, he contributed to Mr. Hartnett's termination.
- **Michele Fort-Merrill** - Executive Director of Human Resources for SDCOE and wife of panel counsel William "Woody" Merrill; has a personal interest in the assignments of panel counsel and signed letter terminating Mr. Hartnett's employment.

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- **Lora Duzyk** - SDCOE employee - Assistant Superintendent, Business Services Division, received Mr. Hartnett's concerns regarding legal billing practices the rotation of panel counsel; ultimately recommended Mr. Hartnett's dismissal.
- **Randolph E. Ward** - Superintendent, SDCOE; participated in termination of Mr. Hartnett's employment.

Names and Addresses of Witnesses Not Employed by SDCOE:

Dan Shinoff
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Rd., Unit 200
San Diego, CA 92106-6113

William "Woody" Merrill
Best Best & Krieger
665 W. Broadway. 15th Fl.
San Diego, CA 92101-3301

Judy Lemm
Judy Lemm Consulting
5681 Laramie Way
San Diego, CA 92120

Pete McNulty
Carl Warren & Company
5465 Morehouse Drive, Ste. 150
San Diego, CA 92121

Damages

Mr. Hartnett's Salary was \$110,000 per year at the time he was terminated. He intended to continue working at a minimum until retirement. Vesting was to occur in part on August 11, 2008, and in full on August 11, 2013. Because he was wrongfully terminated, Mr. Hartnett will neither vest for nor receive those retirement benefits including the monetary value of his employment benefit package.

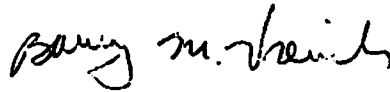
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Mr. Hartnett has also suffered emotional distress damages suffered as a result of the adverse employment actions taken against him. The effects of the emotional distress have been independently diagnosed, verified, documented, and determined to be wholly employment-related and compensable.

Because the amount of damages is greater than \$10,000, pursuant to California Government Code 910(f) the amount need not be included at this time. This action would be not be a limited civil case.

Very truly yours,

**MAXIE RHEINHEIMER STEPHENS
& VREVICH, LLP**



BARRY M. VREVICH

BMV:JMF

cc: Rodger Hartnett (via e-mail)

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Sent To: Kathy Davis
Address: S.D. City office of Education

1 **Barry M. Vrevich, Esq. (SBN 123999)**
2 **Jillian M. Fairchild, Esq. (SBN 246846)**
3 **MAXIE RHEINHEIMER STEPHENS & VREVICH, LLP**
4 **350 10th Avenue, Suite 900**
5 **San Diego, CA 92101**
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FILED
CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA
08 APR -7 PM 4:12

7 Attorneys for Plaintiff
8 **RODGER HARTNETT**
9 *J EL*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 **RODGER J. HARTNETT,**) **CASE NO 37-2008-00081583-CU-WT-CTL**
13 **Plaintiff,**)
14 **v.**) **COMPLAINT FOR WRONGFUL**
15 **SAN DIEGO COUNTY OFFICE OF**) **TERMINATION IN VIOLATION OF**
16 **EDUCATION, DIANE CROSIER, LISA**) **PUBLIC POLICY; CIVIL CONSPIRACY**
17 **JENSEN, (JOHN VINCENT) (RICK**) **TO COMMIT WRONGFUL TERMINATION;**
18 **RINEAR) LORA DUZYK, MICHELE**) **AND INTENTIONAL INFLICTION OF**
19 **FORT-MERRILL, RANDOLPH E. WARD**) **EMOTIONAL DISTRESS**
20 **and DOES 1 through 100,**)
21 **Inclusive,**)
22 **Defendants.**)

23 1. Plaintiff, *EL* **RODGER HARTNETT** is and at all times herein
24 mentioned was a resident of the County of San Diego, State of
25 California.

26 2. Plaintiff is informed and believes and thereon alleges
27 that at all times herein mentioned **SAN DIEGO COUNTY OFFICE OF**
28 **EDUCATION** (hereinafter "**SDCOE**") is, and at all times mentioned in
this complaint was, a governmental agency organized and existing
under the laws of the State of California, conducting activities in
the County of San Diego, State of California.

1 3. Plaintiff is informed and believes and thereon alleges
2 that at all times mentioned herein, each of the individual
3 defendants at all times mentioned herein reside and were employed
4 within the County of San Diego, State of California.

5 4. Plaintiff is informed and believes and thereon alleges
6 that at all times mentioned herein, each individual defendant was
7 the agent, servant, or employee of the SDCOE and was at all times
8 herein mentioned acting within the course and scope of their
9 employment.

10 5. Plaintiff is unaware of the true names and capacities of
11 defendants sued herein as DOE 1-100, inclusive, and therefore sues
12 such DOE defendants by such fictitious names pursuant to California
13 Code Civ. Proc. § 474. Plaintiff will amend this complaint to allege
14 their true names and capacities when ascertained.

15 6. Plaintiff is informed and believes and thereon alleges
16 that each fictitiously named defendant is responsible in some manner
17 for the occurrences herein alleged and plaintiff's injuries and
18 damages as herein alleged are directly, proximately and/or legally
19 caused by defendants and all of their acts.

20 7. Plaintiff is informed and believes and thereon alleges
21 that each of these defendants named herein as DOES are the agents,
22 employers, representatives or employees of the other named
23 defendants and when performing the acts alleged herein, were acting
24 within the scope of their agency or employment and/or representative
25 capacity and are therefore responsible for the acts complained of
26 herein.

27 8. Plaintiff filed his charges of discrimination with the
28 California Department of Fair Employment and Housing ("DFEH") and

1 thereafter received from the DFEH his "right to sue" letter on
2 November 21, 2007, which is attached hereto as "Exhibit 1."

3 9. Plaintiff filed a claim against SDCOE and thereafter
4 received a letter rejecting this claim on March 19, 2008, which is
5 attached hereto as "Exhibit 2."

6 10. Plaintiff filed his charges of discrimination with the
7 Equal Employment Opportunity Commission and received his "right to
8 sue" letter on January 10, 2008, which is attached hereto as
9 "Exhibit 3."

10 11. On August 11, 2003, plaintiff was hired by SDCOE in the
11 position of senior claims coordinator. At all times pertinent to
12 this complaint, plaintiff was employed by defendant and was a loyal
13 and competent employee.

14 12. Plaintiff received positive performance evaluations and
15 accolades during his first two years with SDCOE.

16 13. In January 2006, plaintiff was diagnosed with a mental
17 disability called "Visual Processing Impairment".

18 14. Plaintiff's evaluation as an employee started to go
19 downhill when around the same time as the diagnosis of his
20 disability, plaintiff began investigating the rotation of business
21 and billing practices of government panel counsel Stutz Artiano
22 Shinoff & Holtz and Winet Patrick & Weaver.

23 15. Because of the SDCOE's failure to accommodate plaintiff's
24 disability and in retaliation for plaintiff's investigation and
25 reporting of the rotation of business and billing practices of panel
26 counsel, plaintiff was wrongfully terminated on October 5, 2007.

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1 FIRST CAUSE OF ACTION

2 (Wrongful Termination in Violation of Public Policy v. SDCOE)

3 16. Plaintiff re-alleges and incorporates by reference each
4 and every allegation contained in the preceding paragraphs as though
5 fully set forth herein.

6 17. SDCOE failed to accommodate plaintiff's disability in
7 violation of California's Fair Employment and Housing Act. Cal. Gov.
8 Code § 12900 et. seq.

9 18. SDCOE failed to accommodate plaintiff's disability in
10 violation of the Americans with Disabilities Act of 1990, 42 U.S.C.
11 12111, et. seq.

12 19. Plaintiff investigated and reported illegal rotation of
13 business and billing practices of panel counsel Stutz Artiano
14 Shinoff & Holtz and Winet Patrick & Weaver in violation of the
15 Political Reform Act pursuant to Cal. Gov. Code § 81000 et. seq.

16 20. Plaintiff was wrongfully terminated in violation of Cal.
17 Labor Code § 1102.5, which provides protection to whistleblowers who
18 report illegal activity to the government.

19 SECOND CAUSE OF ACTION

20 (Civil Conspiracy to Commit Wrongful Termination and
21 Intentional Infliction of Emotional Distress v. DIANE
22 CROSIER, LISA JENSEN, JOHN VINCENT, RICK RINNEAR,
LORA DUZYK, MICHELE FORT-MERRILL, RANDOLPH WARD)

23 21. Plaintiff re-alleges and incorporates by reference each
24 and every allegation contained in the preceding paragraphs as though
25 fully set forth herein.

26 22. Defendant Michele Fort-Merrill at all times herein
27 mentioned was the Executive Director of Human Resources for SDCOE,
28 in which capacity she authorized and ratified the wrongful

1 termination of plaintiff's employment.

2 23. Defendant Michele Fort-Merrill is and at all times herein
3 mentioned was married to William Wood "Woody" Merrill, a shareholder
4 in the law firm of Best Best & Kriger. Mr. Merrill acted as general
5 counsel to the SDCOE at the administrative hearing conducted by the
6 SDCOE following Mr. Hartnett's termination. Plaintiff is informed
7 and believes and thereon alleges that defendant Michele Fort-Merrill
8 and her husband "Woody" Merrill failed to disclose their marital
9 relationship to the hearing officer or to the other participants
10 prior to the hearing, after which plaintiff's wrongful termination
11 was finalized.

12 24. Plaintiff was informed and believes and thereon alleges
13 that defendant Michelle Fort-Merrill directed SDCOE legal business
14 to her husband and his law firm, resulting in his direct or indirect
15 receipt of financial benefits in violation of the Political Reform
16 Act Cal. Gov. Code § 81000 et seq.

17 25. Plaintiff is further informed and believes and thereon
18 alleges that defendant Michele Fort-Merrill, in her capacity as
19 Executive Director of Human Resources for the SDCOE, conspired with
20 her husband as general counsel for the SDCOE to authorize and ratify
21 the wrongful termination of plaintiff's employment with the SDCOE.

22 26. Defendant Diane Crosier is and all times mentioned herein
23 was the Executive Director of the Risk Management Joint Powers
24 Authority for the SDCOE, and was plaintiff's immediate supervisor.

25 27. Plaintiff is informed and believes and thereon alleges
26 that defendant Diane Crosier at all time relevant hereto was engaged
27 in an extramarital relationship with defendant John Vincent, an
28 investigator and fellow employee of plaintiff, and an effective

1 subordinate of plaintiff.

2 28. Plaintiff is informed and believes and thereon alleges
3 that in the course of their extramarital relationship, defendants
4 Diane Crosier and John Vincent agreed and conspired together to
5 effect the wrongful termination of plaintiff's employment with the
6 SDCOE and to traumatize and otherwise intentionally inflict severe
7 emotional distress upon plaintiff.

8 29. Plaintiff is informed and believes and thereon alleges
9 that defendant Diane Crosier orchestrated the wrongful termination
10 of plaintiff's employment and intentionally inflicted severe
11 emotional distress upon him because plaintiff investigated and
12 exposed inappropriate billing practices and rotation of business
13 between panel counsel for the SDCOE, Stutz Artiano Shinoff & Holtz
14 and Winet Patrick & Weaver.

15 30. Plaintiff is informed and believes and thereon alleges
16 that his employment was wrongfully terminated and that severe
17 emotional distress was intentionally inflicted upon him by defendant
18 Diane Crosier as part of a conspiracy, an agreement based on her
19 extramarital relationship with defendant John Vincent, and her
20 personal business relationships with both panel counsel firms for
21 the SDCOE. Plaintiff is informed and believes and thereon alleges
22 that the firm of Stutz Artiano Shinoff & Holtz represented defendant
23 Diane Crosier's son in a personal injury lawsuit in San Francisco
24 on a courtesy or gratuitous basis, and that the firm of Winet
25 Patrick & Weaver represented defendant Diane Crosier in a
26 plaintiff's personal injury lawsuit on a similar courtesy or
27 gratuitous basis, all in exchange, express or implied, for the
28 continued receipt of legal work from the SDCOE, a government entity,

1 in violation of the Political Reform Act.

2 31. Plaintiff is informed and believes and thereon alleges
3 that defendant Rick Rinear, a same-level co-employee of the SDCOE,
4 whose responsibilities included referring SDCOE legal business out
5 to its panel firms, is or was represented by the firm of Stutz
6 Artiano Shinoff & Holtz in at least two personal legal matters
7 involving real estate disputes, also on a courtesy or gratuitous
8 basis, in return for exchange for continued receipt of legal
9 business from the SDCOE, a public entity, in violation of the
10 Political Reform Act.

11 32. Plaintiff is informed and believes and thereon alleges
12 that defendant Rick Rinear conspired and agreed with defendants
13 Diane Crosier, John Vincent, Lisa Jensen, and Michele Fort-Merrill
14 to wrongfully terminate plaintiff's employment and to intentionally
15 inflict severe emotional distress upon him.

16 33. Defendant Lisa Jensen is and at all times herein
17 mentioned was a Senior Claims Adjuster for the SDCOE, and a
18 subordinate to plaintiff. Plaintiff is informed and believes and
19 thereon alleges that the civil conspiracy to wrongfully terminate
20 his employment and intentionally inflict severe emotional distress
21 upon him, began with an incident where plaintiff reprimanded and
22 subjected defendant Lisa Jensen to discipline for insubordination
23 during defendant Diane Crosier's absence from the office due to her
24 personal injury referenced above. Plaintiff is informed and
25 believes and thereon alleges that defendant Diane Crosier and
26 defendant Lisa Jensen are longtime personal friends and professional
27 colleagues, together with defendants Rick Rinear and John Vincent.

28 34. Plaintiff is informed and believes and thereon alleges

1 that defendant Lisa Jensen's husband, Chris Jensen, was at some
2 times relevant hereto employed as a law clerk by the firm of Winet
3 Patrick & Weaver, to which Lisa Jensen directed SDCOE legal
4 business, in violation of the Political Reform Act. Plaintiff is
5 further informed and believes and thereon alleges that defendant
6 Lisa Jensen's husband, Chris Jensen, is now employed by an
7 investigative firm known as E.I., which is routinely retained by the
8 firm of Stutz Artiano Shinoff & Holtz to perform investigations on
9 SDCOE legal claims referred to that firm for defense by defendant
10 Lisa Jensen in the course and scope of her employment with the
11 SDCOE, in violation of the Political Reform Act.

12 35. Defendant Lora Duzyk is and at all times mentioned herein
13 was the Assistant Superintendent, Business Services Division, of the
14 San Diego County Office of Education, in which capacity she
15 recommended Plaintiff's dismissal. Plaintiff is informed believes
16 and thereon alleges that defendant Lora Duzyk conspired and agreed
17 with defendants Diane Crosier, John Vincent, Lisa Jensen, and
18 Michele Fort-Merrill to wrongfully terminate plaintiff's employment
19 and to intentionally inflict severe emotional distress on him.
20 Plaintiff is informed believes and thereon alleges that defendant
21 Lora Duzyk failed to perform an investigation regarding reports
22 plaintiff made regarding the illegal rotation of business and
23 billing practices of panel counsel Stutz Artiano Shinoff & Holtz and
24 Winet Patrick & Weaver in violation of the Political Reform Act.

25 36. Defendant Randolph E. Ward is and at all times mentioned
26 herein was the Superintendent of Schools for the San Diego County
27 Office of Education, in which capacity he ultimately authorized and
28 ratified the wrongful termination of plaintiff's employment and the

1 intentional infliction of severe emotional distress upon plaintiff
2 by his co-workers, subordinates, and superiors. Plaintiff is
3 informed and believes and thereon alleges that defendant Randolph
4 E. Ward knew or should have known of the civil conspiracy which
5 existed to wrongfully terminate Mr. Hartnett's employment and
6 intentionally inflict severe emotional distress upon him by the
7 remaining co-defendants, but failed to properly investigate or take
8 remedial action to prevent the harm and damages plaintiff has
9 suffered as a result.

10 37. As the legal result of the civil conspiracy to wrongfully
11 terminate his employment and intentionally inflict severe emotional
12 distress upon him, plaintiff has suffered economic damages
13 represented by lost earnings and earning capacity, past and future
14 employment and retirement benefits, and other economic damages, all
15 in an amount according to proof at the time of trial.

16 38. As a legal result of a civil conspiracy to wrongfully
17 terminate his employment and to intentionally inflict severe
18 emotional distress upon him, plaintiff has suffered noneconomic
19 damages including humiliation, anguish, mental and emotional
20 distress, pain and suffering with physical manifestations, and other
21 noneconomic damages in an amount according to proof at the time of
22 trial.

23 39. Plaintiff alleges that defendants, and each of them,
24 conspired to and did wrongfully terminate his employment and
25 intentionally inflict severe emotional distress upon him with the
26 intent that he would suffer economic and noneconomic damages which
27 plaintiff alleges was despicable conduct carried on by the
28 defendants with a willful and conscious disregard of his rights, and

1 was intended to and did subject him to cruel and unjust hardship and
2 conscious disregard of his rights, thereby constituting malice and
3 oppression as defined in Civ. Code. § 3294 and entitling plaintiff
4 to an award of punitive and exemplary damages against defendants,
5 and each of them, in an amount according to proof at time of trial.

6 40. Plaintiff further alleges that defendants Randolph E.
7 Ward and the SDCOE are liable for punitive and exemplary damages to
8 plaintiff, based upon the acts of their employees, because they
9 authorized and ratified the wrongful termination of plaintiff's
10 employment and intentional infliction of severe emotional distress
11 upon him by the other defendants, all of whom remain employed and
12 undisciplined by the SDCOE and defendant Randolph E. Ward.

13 **WHEREFORE, plaintiff prays judgment as follows:**

- 14 1. For compensatory economic and noneconomic damages in
15 amount according to proof at the time of trial;
- 16 2. For punitive and exemplary damages in an amount according
17 to proof at the time of trial;
- 18 3. For prejudgment interest thereon;
- 19 4. For attorneys' fees and costs as allowed by statute,
20 e.g., Gov. Code § 12965(b); and

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1 5. For such other and further relief that the court deems
2 just and proper.

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4 DATED: April 7, 2008.

**MAXIE RHEINHEIMER STEPHENS &
VREVICH, LLP**

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6
7 By: *Barry M. Vrevich*
8 BARRY M. VREVICH
9 JILLIAN M. FAIRCHILD
10 Attorneys for Plaintiff
11 RODGER J. HARTNETT
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