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11

12 WORKERS' COMPENSATION APPEALS BOARD
13 STATE OF CALIFORNIA

14 WANDA OGILVIE,
15 Applicant,
16 vs.
17 CITY AND COUNTY OF SAN FRANCISCO,
18 Defendant.

WCAB Case No. SFO 0487779
DEFENDANT'S ANSWER TO
APPLICANT'S PETITION FOR
RECONSIDERATION AND
PETITION FOR
RECONSIDERATION

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21 Defendant City and County of San Francisco, hereinafter the City or Defendant, is aggrieved
22 by the *en banc* decision of the WCAB (Board) and hereby petitions for reconsideration. Further
23 Defendant herein answers Applicant's Petition For Reconsideration on the following grounds:

- 24 (a) That by the order, decision or award made and filed by the Board, the appeals board acted
25 without or in excess of its powers.
26
27 (b) That the evidence does not justify the findings of fact.
28
(c) That the findings of fact do not support the order, decision or award.

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Workers' Compensation Appeals Board
SAN FRANCISCO-RECONSIDERATION UNIT

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SAN FRANCISCO

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2 INTRODUCTION

3 Upon the Petition for Reconsideration by Defendant, the Board issued an *en banc* opinion
4 allowing for the rebuttal of the Diminished Future Earning Capacity (DFEC) portion of the 2005
5 Schedule for Rating Permanent Disabilities(Schedule). The case was remanded and further
6 proceedings have been scheduled for April 13, 2009.

7 The Board held that: (1) the DFEC portion of the 2005 Schedule is rebuttable; (2) the DFEC
8 portion of the 2005 Schedule ordinarily is *not* rebutted by establishing the percentage to which an
9 injured employee’s future earnings capacity has been diminished; (3) the DFEC portion of the 2005
10 Schedule is not rebutted by taking two-thirds of the injured employee’s estimated diminished future
11 earnings, and then comparing the resulting sum to the permanent disability money chart to
12 approximate corresponding permanent disability rating; and (4) the DFEC portion of the 2005
13 Schedule may be rebutted in a manner consistent with Labor Code §4660 – including §4660(b)(2)
14 and the RAND data to which §4600(b)(2) refers.

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17 ISSUES

- 18 A. WHETHER THE DFEC COMPONENT OF THE 2005 SCHEDULE IS DEFINED
19 BY STATUTE AND WHETHER THAT DEFINITION CANNOT BE ALTERED
20 BY JUDICIAL INTERVENTION?
21 B. WHETHER THE CASES UPON WHICH THE BOARD RELIES DO NOT
22 PROVIDE SUBSTANTIVE LEGAL JUSTIFICATION FOR A WHOLESALE
23 REBUTTAL OF THE 2005 SCHEDULE?

24 ARGUMENT

25 A. THE DFEC COMPONENT OF THE 2005 SCHEDULE IS DEFINED BY STATUTE AND
26 THAT DEFINITION CANNOT BE ALTERED BY JUDICIAL INTERVENTION.

- 27 1) THE BOARD ACTED IN EXCESS OF ITS AUTHORITY AND USURPS THE
28 ADMINISTRATIVE DIRECTOR'S REGULATORY AUTHORITY TO CREATE
THE SCHEDULE AS SET FORTH IN LABOR CODE §4660

When the legislature enacted Senate Bill 899 (SB 899) and specifically Labor Code §4660
(c) and (e), it’s intent was clear and unambiguous when it charged the Administrative Director (AD)
with developing, adopting and amending the 2005 Schedule for determining permanent disability.

1 The California Legislature's "plenary power" " to create and enforce "a complete system of
2 workers' compensation, by appropriate legislation..." is provided by the Constitution of California.
3 See Cal. Const., Art.14, § 4. By extension of these Legislatures powers, Labor Code §55 charges the
4 AD with "...mak[ing] rules and regulations that are reasonably necessary to carry out the provisions
5 of this chapter and to effectuate its purposes."

6
7 The Board's opinion is inconsistent with this legislative delegation of authority to the AD
8 when it judicially redefines the DFEC portion of the 2005 Schedule codified in §4660(b)(2). By
9 providing this alternative method for determining permanent disability, the Board has also acted in
10 excess of its authority and has substituted its own concept of fairness rather than interpreting the
11 clear policy decisions of the legislature in addressing the workers' compensation crisis. See Rio
12 Linda Union Sch. Dist. v. Workers' Comp. Appeals Bd. [Scheftner] (2005) 131 Cal. App. 4th 517,
13 532 [31 Cal. Rptr. 3d 789, 70 Cal. Comp. Cases 999].

14
15 Specifically, the Board has usurped the AD's regulatory authority to create a schedule as set forth
16 in §4660. This violates California's Administrative Procedure Act (APA), Cal. Gov't Code §11340
17 et seq. "The Legislature expressly stated that APA is enacted to clarify and reduce the amount of
18 administrative regulations, which saves time and money and promotes business and social goals.
19 (Gov. Code, §§ 11340, 11340.1.) The APA provides procedures for state agencies to adopt
20 regulations. (Tidewater Marine Western, Inc. v. Bradshaw (1996) 14 Cal.4th 557, 571 [59 Cal. Rptr.
21 2d 186, 927 P.2d 296]) The procedures include public notice of the proposed regulation, an
22 opportunity for comment by interested parties, and review by the Office of Administrative Law.
23 (Ibid.)", Rea v. Workers; Comp. Appeals Bd. (2005) 127 Cal. App. 4th 625. The Board has acted in
24 excess of its powers by substituting its own method for the clearly defined statutory method for
25 "determining the percentages of permanent disability" §4660(a).
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1 When the Board issued the instant decision, it created a new system for determining injured
2 worker's diminished future earning capacity. Yet, the language of §4660(b)(2) already defines
3 "diminished future earning capacity" and expressly charges the Administrative Director in
4 formulating the adjusted rating Schedule. This formulation is based on empirical data and findings
5 from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report
6 (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional
7 empirical studies.
8

9 Again, the Board's decision is an attempt to legislate an alternative measure for determining
10 the DFEC factor, which oversteps it's power and the legislative intent of SB 899.

11 2) THE BOARD'S DECISION TO PERMIT INDIVIDUALIZED DFEC
12 CALCULATIONS IS IN CONFLICT WITH THE LANGUAGE OF LABOR CODE
13 §4660(D) REQUIRING CONSISTENCY, UNIFORMITY, AND OBJECTIVITY.

14 The mandate of §4660 (d) is clear. It provides, in part, "the schedule **shall** promote
15 consistency, uniformity and objectivity." Emphasis added.

16 As discussed in section iii., below, §4660, as amended, was created as part of an emergency
17 overhaul of the workers' compensation system. The above quoted language of subsection (d) was
18 specifically added to address disparate results in cases with similar facts and findings.

19 The Board ignores this mandate to achieve greater uniformity by allowing alternative
20 methods for calculating the DFEC factor in individual cases. They suggest that parties inundate
21 already economically stressed public entities such as the California Employment Development
22 Department and/or the United States Department of Labor for information already taken into account
23 by the AD and as set forth in §4660(b)(2). If the aforementioned resources do not provide the
24 necessary information, the Board suggests a party may turn to public employment cases, collective
25 bargaining agreements and vocational experts. In essence, the Board has provided that almost any
26 type of evidence which may tend to show diminished future earnings can be taken into account if, in
27 the judge's discretion, such evidence is relevant.
28

1 These amorphous guidelines will lead to significantly increased litigation, increased
2 discovery costs and wide-ranging results based on a parties source - and cost - of information. As a
3 result, the Board's opinion is actually in opposition to the mandate of §4660(d) to promote
4 consistency, uniformity and objectivity.

5 The facts of the instant case illustrate this position. It was noted by the DFEC evaluators that
6 applicant had limited employment skills and very limited education. As a result, there were only 3
7 job matches from a database of 2975 jobs frequently available in the applicant's area of residency.
8 Yet, applicant earned significant wages as a transit operator for the City, even with her industrial
9 injuries.
10

11 Conversely, had applicant earned less, had a higher level of education, had requested an
12 ADA accommodation through the City, or had the same position but for lower wages, the DFEC
13 analysis in each specific circumstance would produce different results. Of note is the fact that had
14 applicant returned to work, her loss of future earnings would likely lower her permanent disability
15 described by the medical-legal evaluators and stipulated to by the parties at 25%, after
16 apportionment.
17

18 The above case shows that the Board's decision to allow for the rebuttal of the DFEC
19 component removes the "consistency, uniformity and objectivity" specifically determined by the
20 legislature to be paramount in determining an injured worker's percentage of permanent disability.
21 As such, the WCJ's reliance on a set of facts unique only to applicant violates the clear legislative
22 intent as contained in §4660. In addition, the DFEC determination provided by the schedule does
23 not consider whether an injured worker has returned to work, in any capacity, at any wage and in any
24 location. As such, allowing these factors to be considered when determining one's DFEC is
25 contrary to §4660(d).
26
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1 3) THE BOARDS DECISION INDIVIDUALIZED REBUTTAL OF THE
2 DFEC FACTOR IN THE 2005 SCHEDULE CONFLICTS WITH THE LEGISLATIVE
3 INTENT OF SB 899.

4 In 2004 and facing a "workers' compensation crisis" in California, the Legislature passed SB
5 899, which reformed the workers' compensation statutes in an effort to reduce costs to employers.
6 (Stats. 2004, ch. 34, § 49. As explained by the Assembly Republican Caucus in its Analysis of
7 Senate Bill No. 899,

8 California has the highest workers' compensation costs in the nation. These
9 high costs are killing jobs for hard-working California. SB 899 contains a
10 series of reforms to eventually lower cost experienced by self-insured
11 employers and premiums for businesses, the state and local governments, and
12 nonprofits. (Assem. Republican Caucus, analysis of Sen. Bill No. 899 (2003-
13 2004 Reg. Sess as amended Apr. 15, 2004, p. 6.)

14 In order to reduce these costs, the Legislature, among other things, amended the Schedule
15 for determining permanent disability. The relevant changes discussed herein occur in the amendment
16 of §4600. These changes were as follows: (1) it added subsection (b)(2) defining the diminished
17 future earning capacity factor used when adjusting a "standard" level of disability under the AMA
18 Guides and the information upon which that DFEC factor is to be based; and (2) amended subsection
19 (d) by adding to the beginning of that subsection, "The schedule shall promote consistency,
20 uniformity, and objectivity."

21 The Board's decision to allow for the rebuttal of the DFEC factor based on an individualized
22 proportional earnings loss ignores the call for uniformity, ignores the call to reduce workers'
23 compensation costs in California and ignores the plain language in §4660 (b)(2).

24 Moreover, the Board's decision is an attempt to circumvent the intent and mandate of SB
25 899, which previously has been rejected by the California Supreme Court and Court of Appeals in
26 the Welcher/Brodie decision and Benson decision.

27 In Welcher/Brodie the Supreme Court recognized that changes to the apportionment statutes
28 were meant to curtail employer costs when it provided, "In the end, the relevant portions of SB 899
(2003-2004 Reg. Sess.) and the history behind them reflect a clear intent to charge employers only

1 with that percentage of permanent disability directly caused by the current industrial injury."

2 Welcher v. Workers' Comp. Appeals Bd.(2007), 40 Cal. 4th 1313; 156 P.3d 1110; 57 Cal. Rptr. 3d
3 644.

4 Similarly, in *Benson*, the Court of Appeals overturned a long-standing legal principle of
5 apportionment established by Wilkinson v. Workers' Comp. Appeals Bd. (1977) 19 Cal.3d 491 [42
6 Cal.Comp.Cases 406]. The Court of Appeal recognized that SB 899 had changed the manner in
7 which apportionment was calculated, including the observation that one must interpret the plain
8 language of a statute which in that case provided that an employer shall only be responsible for that
9 portion of the disability the employer actually caused. Dianne Benson, v. The Permanente Medical
10 Group(2008), A120462, CA Crt. of Appeals, First Appellate District, Div Two.

11
12
13 Based on the above, the Board's finding that the DFEC component of the 2005 Schedule is
14 rebuttable is contrary to the legislative intent behind SB 899. Moreover and as noted above, the
15 California Supreme Court and the Court of Appeals made it clear that the legislative intent of SB
16 899 must be considered by the Board when issuing its decisions.

17
18 B) THE CASES UPON WHICH THE WCAB RELIES DO NOT PROVIDE SUBSTANTIVE
19 LEGAL JUSTIFICATION FOR A WHOLESALE REBUTTAL OF THE 2005 SCHEDULE.

20 The WCAB relies almost entirely on 3 cases to substantiate its holding that the 2005
21 Schedule is rebuttable. These cases are:

22 1) Liberty Mutual Ins. Co. v. Industrial Acc. Com (Serafin) (1948) 33 Cal.2d 89, 93 [13
23 Cal.Comp.Cases 267]

24 2) Universal Studios, Inc. v. WCAB (Lewis)(1979) 99 Cal.App.3d 647 [44 CCC 1133] and

25 3) Glass v. WCAB (1980) 105 Cal.App.3d 297, 307 [45 Cal. Comp. Cases 441, 449]
26

27 A more detailed review of these case reveals that they do not support the holding that the
28 2005 Schedule is rebuttable.

1 In *Serafin* the issue presented was whether there was substantial evidence to support a WCJ's
2 "range of evidence" award of permanent disability which was based on multiple efforts made by the
3 injured worker while being evaluated by the physicians in the case. Applicant demonstrated strong
4 grip strength measurements, resulting in a low level of permanent disability while being evaluated
5 by one physician. Yet, while being evaluated by Dr. Harrison, applicant demonstrated
6 extraordinarily weak grip strength measurements, resulting in a much higher level of permanent
7 disability. Dr. Harrison also provided that applicant put forth a less than best effort while
8 undergoing these tests.
9

10 The WCJ issued a findings and award based upon grip strength measurements which would
11 provide a compromise between the measurements taken by the various physicians. The WCJ
12 acknowledged that Dr. Harrison felt that the applicant was exaggerating. However, the WCJ also
13 gave applicant the benefit of the doubt by issuing an award based upon the range of evidence by
14 finding that applicant's grip strength testing results were 50% better than as measured by Dr.
15 Harrison.
16

17 The California Supreme Court ruled that the WCJ's award was the product of mere guess-
18 work and thereby not based upon substantial medical evidence as the WCJ was not present while
19 these grip strength measurements were performed. The Court determined that the Commission had
20 the power to choose between expert medical opinions, but that the WCJ had not done this in the
21 instant case. (*Liberty Mut. Ins. Co. v. Industrial Acc. Com.*, 73 Cal. App. 2d 555, [166 Pac.2d 908,
22 11 Cal. Comp. Cases 66]) The Court reasoned that had the WCJ relied on an actual measurement,
23 his award would constitute substantial evidence. The Court further acknowledged that had the WCJ
24 determined applicant was a credible witness and accepted Dr. Harrison's reported grip strength
25 measurements, his award would constitute substantial evidence. But since the referee made the
26 arbitrary determination that applicant was only exerting an arbitrary 50% effort, the Supreme Court
27 noted that the WCJ may have well guessed the percentage at 10% or 500%.
28

1 The Court held that there was no basis in the evidence for the WCJ's determination based
2 upon unverified grip strength measurements. The Court further held that Defendant was entitled to
3 have an award against it based on substantial evidence rather than merely surmise and conjecture.

4 The Board was misplaced in citing the *Liberty* case, supra, as a basis to expand a WCJ's
5 discretion to determine that the 2005 Schedule is rebuttable. In this case, the Supreme Court does
6 the opposite and actually limits a WCJ's discretion by mandating that awards of permanent disability
7 be based on substantial evidence. As a result, the *Liberty* case does not support nor provide legal
8 justification for the Board's ruling that the 2005 Schedule is rebuttable.
9

10 The *second* case upon which the Board relies to substantiate its holding that the 2005
11 Schedule is rebuttable is the case of *Lewis*. This case, much like *Liberty*, stands for the proposition
12 that an award of permanent disability must be based upon substantial evidence. In *Lewis*, the Board
13 awarded permanent disability of 61% based on the factor of slight tenderness or discomfort resulting
14 from a sprained ankle.
15

16 The decision was annulled by the Court of Appeals. Although the parties relied upon the
17 medical opinion of an AME, Dr. Rolston, his report was not supported by adequate evidence of
18 actual impairment. The Court noted that there was no testimony or objective evidence,
19 physiologically or functionally, which showed applicant was disabled from performing whatever
20 work she could have or would have performed in the future.
21

22 The court further noted that the record did not reflect that the WCJ had weighed and
23 considered all of the evidence relative to the physical ability and the impairment of the employee and
24 that the WCJ has simply referred the AME report to the DEU rater to determine the level of
25 permanent disability sustained by applicant. The court noted, "Expert medical opinion does not
26 always constitute substantial evidence on which the Board may rest its decision. Courts have held
27 that the Board may not rely...upon inadequate medical history or examinations." (*Redner v. WCAB*
28

1 [(1971)], 5 Cal.3d 83, 96 [36 Cal. Comp. Cases 371, 95 Cal. Rptr. 447, 485 P.2d 799].) The Court
2 ultimately found the Board's award defective.

3 The Board was again misplaced in citing *Lewis* to support its holding that a WCJ has the
4 discretion to rebut the 2005 Schedule. What this case does stand for is the proposition that any
5 physicians opinion on the issue of permanent disability must be supported by substantial medical
6 evidence.
7

8 The *third* case upon which the WCAB relies to substantiate its holding that the 2005
9 Schedule is rebuttable is the case of *Glass*. This case, like the others mentioned above, does not
10 support the finding that the 2005 Schedule is rebuttable. This case involved a 1976 injury to the
11 head and nervous system, resulting in an award of permanent disability of 57.5 % based upon a
12 limitation to light work restriction. The Schedule applicable to a 1976 date of injury provided that a
13 light duty work restriction was applicable only to pulmonary, heart disease, abdominal weakness and
14 spinal disabilities and not to head and nervous system disabilities.
15

16 The Court of Appeals ruled that the light duty work restriction may extend to head and
17 nervous system injuries as these body parts were not specifically addressed in the Schedule and the
18 rater must evaluate the standard rating appropriate for the work restriction by analogy or comparison
19 and achieve a judgment rating. This holding was based on the premise that "judgment" or "non-
20 scheduled" ratings were an accepted part of the rating process under the former Schedule due to the
21 fact that not all disabilities were expressly covered. (See *Department of Motor Vehicles*, 20 Cal.
22 *App. 3d at pp. 1043-1045*; *Fidelity & Cas. Co.*, 252 Cal. App. 2d 327; *Young v. Industrial Acc. Com.*
23 *(1940) 38 Cal. App. 2d 250-255 [5 Cal. Comp. Cases 67, 100 P.2d 1062]*.) The court further
24 pointed out that the former rating Schedule itself directed the evaluation of non-scheduled
25 disabilities and provided general rules applicable to cases in which a disability was not specifically
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1 covered. The former Schedule specifically stated that omission of a disability from the Schedule did
2 not necessarily signify that the disability was not ratable.

3 The holding in *Glass* was not that the Schedule was rebutted in coming to a determination of
4 permanent disability. Rather, *Glass* dealt with ratings in which a disability was not specifically
5 covered by the Schedule. As such, the *Glass* case does not stand for the proposition that the 2005
6 Schedule may be rebutted and therefore should not have been relied upon by the Board in the instant
7 case.
8

9 As a result of a closer reading of the above cases, it becomes clear that the authority relied
10 upon by the Board does not stand for the proposition that the 2005 Schedule may be wholesale
11 rebutted. The above cases address (1) an abuse of discretion by a WCJ by basing an award of
12 permanent disability on speculation and conjecture as in *Liberty*; (2) that an award of permanent
13 disability must be based on substantial evidence and that it is a WCJ's obligation to determine that
14 the foundation upon which a medical opinion is based constitutes substantial evidence as in the
15 *Lewis* case; and (3) that a WCJ does have discretion to go beyond the Schedule when said Schedule
16 is silent on a specific body part and when the Schedule expressly authorizes going beyond the plain
17 language of the Schedule as in *Glass*.
18

19
20 Applicant cites the case of *LeBoeuf v. WCAB* (1983) 34 Cal.3d 234 [48 CCC 587] to support
21 the contention that the 2005 Schedule can be rebutted. This case is no longer relevant as the holding
22 is based entirely upon pre-SB 899 law. This case involved the interplay of vocational rehabilitation
23 benefits, a determination by the Rehabilitation Bureau, and the interpretation of §4660 in its pre SB
24 899 form which required that in determining percentages of PD consideration should be given to
25 applicant's diminished ability to compete in the open labor market. In *LeBoeuf*, the Court held that a
26 permanent disability award could be reopened based upon a determination by the Rehabilitation
27 Bureau that an injured worker was ineligible for vocational rehabilitation.
28

1 Section 4660 has been significantly amended pursuant to SB 899 since the holding in
2 *LeBoeuf*. The requirement to consider the diminished ability to compete in the open labor market
3 was specifically removed from the statute. An applicant's eligibility for vocational rehabilitation
4 benefits is also no longer a factor in determining permanent disability as vocational rehabilitation
5 benefits have been specifically removed as a statutory benefit.

6
7 Section 4660 now requires that in determining percentages of PD consideration should be
8 given to diminished future earning capacity. Section 4660 states that an employee's diminished
9 future earning capacity shall be a numeric formula based upon empirical data encompassed within
10 the rating schedule designed to promote consistency, uniformity and objectivity. Notably, this new
11 2005 Schedule gives consideration to an employee's diminished future earning capacity by providing
12 a DFEC adjustment. The older Schedule did not have adjustments for diminished ability to compete
13 in the open labor market thus supporting the argument that additional evidence could be introduced
14 on the issue of determining permanent disability. As the 2005 Schedule gives consideration to an
15 employee's diminished future earning capacity by providing a DFEC adjustment there is no basis for
16 supplementing the record with additional evidence to address this issue.

18 CONCLUSION

19
20 The Board has improperly attempted to redefine the DFEC component of the 2005 Schedule
21 in excess of its authority and has attempted to usurp the legislative delegation of authority that has
22 been bestowed upon the Administrative Director.

23 By the Board permitting a party to present evidence of an individualized DFEC calculation, it
24 ignores the mandates of SB 899 and §4660 to provide emergency relief to a system in crisis by
25 providing a uniform, consistent and objective means to deliver benefits.
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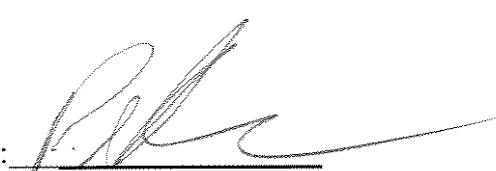
1 Despite the Supreme Court and the Court of Appeals holding that the legislative intent
2 behind SB-899 must be taken into account, the Board has continued to ignore this directive when
3 issuing its decisions.

4 Finally, the concept of the Schedule being wholesale rebuttable by traditional means has been
5 abrogated by SB 899. Indeed a clear reading of the cases relied upon by the Board and applicant
6 show that these cases are completely distinguishable on the facts and do not stand for the proposition
7 that the 2005 Schedule is wholesale rebuttable.
8

9 DATE:

Respectfully Submitted,

10 DENNIS J. HERRERA
11 City Attorney

12
13
14 By: 

15 DYANA M. LECHUGA
16 Deputy City Attorney
17 PETER J. SCHERR
18 Deputy City Attorney
19 SEAN SULLIVAN
20 Deputy City Attorney
21 Attorneys for Defendant
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VERIFICATION

I, Peter Scherr, hereby verify that I have read the foregoing Defendant's Petition for Reconsideration and know the contents thereof; that the facts contained in said document are true and correct, except to matters stated on information and belief, and as to those matters I believe them to be true; that I make this verification on behalf of the officers of the party defendant because, as counsel, I am more familiar with the facts of this case than are the officers.

Sworn under penalty of perjury under the laws of the State of California this 2ND day of March, 2009, at San Francisco, California.



PETER SCHERR
Deputy City Attorney.

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PROOF OF SERVICE

WCAB NO. SFO 487778

I, Theresa Lacson-Kuan, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Suite 700, San Francisco, CA 94102.

On March 2, 2009, I served the following document(s):

**DEFENDANT'S ANSWER TO APPLICANT'S PETITION FOR RECONSIDERATION AND
PETITION FOR RECONSIDERATION**

on the following persons at the locations specified:

Joseph C. Waxman, Esq.
114 Sansome Street, Suite 1205
San Francisco, CA 94104

Cathy Higuchi, Claims Examine
Sedgwick CMS
P.O. Box 14433
Lexington, KY 40512

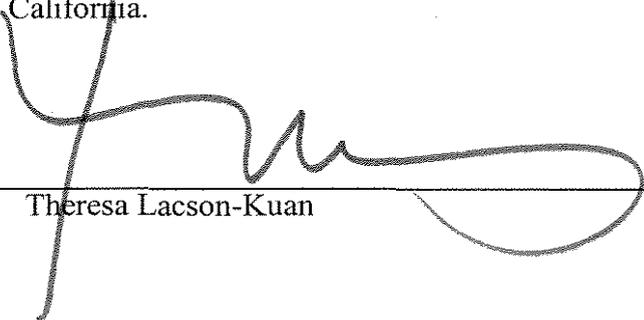
Workers' Compensation Appeals Board
Post Office Box 429459
San Francisco CA 94142-9459

in the manner indicated below:

BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed March 2, 2009, at San Francisco, California.



Theresa Lacson-Kuan