

In The Matter Of:

JOHN DOE

v.

DONALD DUDLEY

HEARING

September 22, 2015



Court Reporting Solutions

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF YOLO

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JOHN DOE, an individual,)	
)	
Plaintiff,)	
)	
vs.)	No. PT 15-1253
)	
DONALD DUDLEY, et al.,)	
)	
Defendants.)	
_____)	

--o0o--

Hearing Before
The Honorable Timothy L. Fall
Department 11

Tuesday, September 22, 2015
9:00 a.m.

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Reported by: CATHERINE D. LAPLANTE
CSR License No. 10140

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A P P E A R A N C E S

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1 THE COURT: This is Doe versus Dudley, the Ex
2 Parte Application regarding the Request to Stay the
3 interim suspension.

4 And so who's here for John Doe?

5 MR. HATHAWAY: Mark Hathaway, Your Honor.

6 Good morning.

7 THE COURT: Good morning.

8 And then who's here for the University and its
9 individuals?

10 MR. KAPLAN: Good morning.

11 This is Adam Kaplan, Munger, Tolles & Olson on
12 behalf of Respondents.

13 THE COURT: Okay.

14 MR. DAVIS-DENNY: And Grant Davis-Denny,
15 Munger, Tolles & Olson on behalf of Respondents.

16 THE COURT: Thank you.

17 I understand this arose at the UC Davis campus.
18 I have a cousin who is an attorney at the Office of
19 General Counsel, Office of the President down in
20 Oakland. He used to be on the UC Davis campus. That
21 was -- I don't remember how many years ago that was.

22 And then I've read through the Ex Parte
23 Application and the supporting paperwork there, and I've
24 read through the Opposition and the supporting paperwork
25 there.

1 What else did you want to argue this morning
2 regarding the application?

3 MR. HATHAWAY: A significant amount of the
4 information in the Opposition is what should have been
5 presented to a hearing at the campus on the interim
6 suspension.

7 And what we're here for is a writ to appeal the
8 imposition of the interim suspension that was issued,
9 and there's been no hearing.

10 For instance, the -- Mr. Dudley in his
11 declaration, and also the University in its Opposition
12 on page 12, talks about that UC Davis satisfied
13 Petitioner's due process rights.

14 That's not correct, Your Honor.

15 The due process rights that are set forth in UC
16 Davis' policies are included in Exhibit A in
17 Mr. Dudley's declaration at page six, and that lists the
18 hearing authorities, the types of hearings on page
19 seven, the hearing procedures on page eight, and the
20 qualification on page nine of the individual or
21 individuals that are supposed to be the hearing officers
22 or hearing panel.

23 Asking the Petitioner to meet with the same
24 official that imposed the interim suspension and asking
25 the Petitioner to essentially prove a negative, shifting

1 the entire burden of proof as to whether UC Davis'
2 interim suspension was justified under the circumstances
3 is a denial of due process as set forth in the
4 University's policy.

5 All the University has to do is hold a hearing,
6 a prompt hearing, and it has failed to do that. That's
7 really the only issue before the Court.

8 The Court could also just force just a hearing,
9 and that would be a proper resolution of the writ, but
10 the University simply suspends an interim suspension
11 with no hearing, that meeting with the official that
12 imposed the sanctions in the interim suspension doesn't
13 satisfy the University's own policy and code regarding
14 the due process that that student is entitled to.

15 I notice that Mr. Dudley in his declaration
16 says he handles 1,200 cases a year, so there are at
17 least 1,200 other students that may be subject to the
18 same denial of due process.

19 There's 35,000 students at UC Davis, and so
20 allowing the University to merely interim suspend based
21 on allegations without allowing and holding the prompt
22 hearing that is required under their policy diminishes
23 their due process rights.

24 The University of California seems to have a
25 pattern of doing this as opposed to the State

1 University, the University of the State -- State
2 University system, which actually holds a hearing.

3 So there's 238,000 students within the UC
4 system that are also -- their rights are diminished by
5 this practice, at least -- especially as illustrated in
6 this case.

7 That upon allegations, the University similarly
8 issues an interim suspension without a hearing, doesn't
9 hold a prompt hearing that's required by the Code and
10 tries to pass off as due process, shifting the burden to
11 the Petitioner to prove -- to prove the negative.

12 And unless the Court has other questions, I
13 would submit on that basis.

14 THE COURT: Procedural question.

15 Your client was informed of the interim
16 suspension back in June?

17 MR. HATHAWAY: That's correct.

18 THE COURT: Two days before school starts.

19 Why are you here now? Why weren't you here in
20 June or July setting this by regularly-noticed motion,
21 giving everyone an opportunity to brief the matter, even
22 giving the Court an opportunity to set an Evidentiary
23 Hearing, if necessary.

24 Why are you here saying, I'm entitled to
25 Ex Parte Emergency Relief because I've been diligent,

1 and we will face irreparable harm?

2 Where is the diligence of going from June 5th
3 to September 22nd?

4 MR. HATHAWAY: The diligence is the Petitioner
5 following the instructions of the official complying
6 with their orders and simply not understanding and not
7 being aware of and having been given no notice, specific
8 notice of what rights he's entitled to, that he could
9 come to court, he could request and require the
10 University to conduct an actual hearing.

11 In fact, on June 5th Mr. Dudley says in his
12 declaration, I had the hearing.

13 They're trying to represent to this Court that
14 the hearing on June 5th was the hearing that is required
15 under the University's Code. It is not.

16 And the Petitioner, essentially a high school
17 graduate, partially completed his high school degree --
18 or his college degree, simply was unaware, had no actual
19 knowledge of what his rights are, and as soon as he
20 became aware of them, we filed a petition last week,
21 sought to resolve the issue with the University
22 informally. We're unable to reach a resolution and
23 learned late Sunday night that they would keep the
24 interim suspension in place. And we're referring to
25 Mr. Dudley's meetings with the Petitioner as the due

1 process hearing, which it is not.

2 So under the circumstances that the Student
3 Petitioner could have been more diligent to try to sift
4 through the policy, but if you'll notice, the policy
5 even in Respondent's -- Mr. Dudley's declaration, the
6 policy is contained in multiple pages over five, six,
7 seven exhibits, and to ask a non-graduate -- college
8 graduate to try to figure that out, and what he should
9 demand when the University isn't telling him and, in
10 fact, misleading him that he's had his hearing when, in
11 fact, that's not true.

12 THE COURT: When did they tell your client
13 that? When did they tell your client, this is the
14 hearing you were entitled to?

15 MR. HATHAWAY: The only actual statement that
16 I'm aware of is the letter of Sunday night, that came
17 on --

18 THE COURT: Couple of days ago?

19 MR. HATHAWAY: A couple of days ago.

20 THE COURT: So your client wasn't misled from
21 June to September 22nd? He was just misled from
22 September 20th to September 22nd?

23 MR. HATHAWAY: Well, I would say --

24 THE COURT: I'm just asking, Counsel, because
25 you're the one who said that they didn't tell him --

1 that they asserted to him that hearing was your hearing,
2 and you're telling me that the time they said that to
3 him was September 20th; is that right?

4 MR. HATHAWAY: If I -- whether --

5 THE COURT: If there is an earlier date that
6 they said something misleading to your client, you need
7 to tell me when that happened and when it was.

8 MR. HATHAWAY: June 2nd. June 2nd they said,
9 if you move out, if you don't move out, if you don't
10 agree to move out, we'll impose the interim suspension,
11 and you'll lose all your rights for -- for the spring
12 semester, the spring term, which was just finishing.

13 This was Friday before -- a week before the
14 finals were to be done, and the Student Petitioner
15 agreed, said, okay, I've moved out.

16 Then they meet and say, well, here's an interim
17 suspension. I'm still reconsidering the interim
18 suspension.

19 The next day when he's supposed to start finals
20 on June 6, an hour or so before, he gets an e-mail
21 attached to Mr. Dudley's declaration that says, you've
22 got to move out of the city limits of Davis. You can't
23 be inside the city limits.

24 I believe that's Exhibit --

25 THE COURT: F?

1 MR. HATHAWAY: -- H.

2 Is it Exhibit F?

3 MR. KAPLAN: It's in Exhibit J.

4 MR. HATHAWAY: So he complies with that. If
5 you move out, you'll be able to take your exams. That
6 never came to fruition.

7 There is nothing in the letter notifying or any
8 of the documents attached to Mr. Dudley's declaration
9 where they say, you have a right to this hearing, and it
10 doesn't mean just coming and talking to me.

11 He can't have waived some right; he didn't know
12 about the right. He'd had to sift through Exhibits A
13 through D to figure out what title -- what actual due
14 process means and whether they misled by telling him,
15 you had your hearing, or they misled by omitting telling
16 him he had a hearing, he had a right to a hearing, and
17 what that hearing meant. He was still misled.

18 THE COURT: Okay. And regarding your client
19 not knowing the procedures, the same exhibit you pointed
20 me to, you said e-mail, and they said Exhibit J, but in
21 Exhibit J it says that the Petitioner and his father
22 already have advice of Counsel, where they --
23 Petitioner's father says, when it comes to taking
24 examinations, he says, quote, we can organize an
25 acceptable off-site location, such as our attorney's

1 office, close quote.

2 So what is it about your client not knowing
3 when on June 7th apparently the lawyer is already in the
4 case?

5 MR. HATHAWAY: I don't know what the lawyer
6 knew at that point, Your Honor, but I would just point
7 out to the Court that even now the school, the
8 University is representing to this Court that the due
9 process required by their code is the meeting with the
10 individual, one-on-one meeting with the individual that
11 imposed the sanction. That is not correct.

12 So even lawyers can have a difficult time
13 figuring out what the due process that's required by
14 UC's policy.

15 UC's policy requires that there to be a
16 hearing, a prompt hearing. A hearing is defined in
17 their code in several sections of their policy. It's
18 someone -- with someone who's not involved in the --

19 There's a hearing officer who's qualified, and
20 there's rules and procedures that govern that.

21 There's a five-day hearing notice requirement
22 for the interim suspension. That can be waived by a
23 student. All of those -- none of those procedures the
24 school followed.

25 It issues an interim suspension upon the

1 accusation and then puts the burden now on the
2 Petitioner to prove a negative, to prove -- to shift the
3 whole burden to convince the same official --

4 It's like the police arrest someone, believe
5 they should be put in jail, but you can talk to the
6 police and try to talk the cop out of it.

7 The University -- and this is --

8 If the Court could just draw the attention to
9 the Opposition at footnote two on page three and also
10 within the Code -- the University's policy, the
11 University has the burden of proof.

12 Shifting the burden of the proof to the
13 student, whether it's this particular student or any of
14 the other 1,200 or any of the other 238,000 in the UC
15 system does not afford due process.

16 And the school in this case on the footnote
17 two, the foot --

18 The University is acting as a prosecuting
19 agency. This is not an agency that is trying to
20 determine what the facts were. It is a prosecuting
21 agency. They write charging documents, they enter into
22 plea negotiations, they have a burden of proof as the
23 University that bears the burden of proof to prove the
24 violation of its policy.

25 So it's a prosecuting agency, part of the

1 California government that doesn't tell the student that
2 they have a right to a hearing by someone independent of
3 the police officer or the official who's reached a
4 conclusion and has issued the sanction. They don't tell
5 them that.

6 It's a denial of due process. They don't
7 follow the Code. They should either -- it should either
8 be remanded for them to hold a hearing --

9 THE COURT: I'm hearing you say the same thing
10 as you said before.

11 Okay. Anything else that I haven't heard?

12 MR. HATHAWAY: No, Your Honor.

13 THE COURT: Okay. Thank you.

14 If you look at the Exhibit J, Mr. Kaplan, the
15 e-mail from Mr. Dudley in the first line says that there
16 is an interim suspension in place. It says, the current
17 interim suspension. So apparently there is discipline
18 already imposed as of June 6th.

19 And then an alternative is offered, which is
20 also discipline. It's just not an interim suspension
21 because when you tell someone, move out of Davis, you're
22 putting them under a form of discipline in order to
23 regulate their conduct.

24 When was the hearing that led to the various
25 disciplines mentioned in the June 6 e-mail? What's the

1 date of that hearing?

2 MR. KAPLAN: Your Honor --

3 THE COURT: What's the date of that hearing
4 that led to that?

5 MR. KAPLAN: So on June 5th --

6 THE COURT: Was June 5th the day --

7 MR. KAPLAN: June 5 was the day that --

8 THE COURT: -- of the hearing?

9 MR. KAPLAN: -- that Petitioner had an
10 informal --

11 Well, all that's required by due process would
12 be an informal give and take under Goss, Supreme Court,
13 and that hearing took place on June 5th, Your Honor.

14 THE COURT: Okay. If the --

15 MR. KAPLAN: If I might -- I'm sorry, Your
16 Honor.

17 THE COURT: You said the Goss case? Is that in
18 your --

19 MR. KAPLAN: Yes. 419 US 582, describing the
20 due process.

21 THE COURT: All right. So US Supreme Court
22 said, giving notice and an opportunity to be heard, and
23 your point is he got that on June 5th.

24 The UC regulations say, you're entitled to
25 notice and opportunity to be heard, and here's what that

1 looks like: Five-day notice, get a hearing, and some of
2 the schools and colleges, it's an ad hoc committee, in
3 others -- for other students, it's a hearing officer,
4 it's a number of things.

5 So just because you've met the minimum that
6 Goss requires, why are you not supposed to live up to
7 your own regulations, which every student should be able
8 to rely upon?

9 MR. KAPLAN: That's very important, Your Honor.
10 Petitioner's Counsel has -- there's some
11 different issues being conflated.

12 In the interim -- the procedures of Petitioner
13 was citing to, and that Your Honor is referring to,
14 refer to the full conduct hearing that will occur and
15 with all the full address, procedures and considering
16 the full investigation that has taken place.

17 The interim suspension requirement is governed
18 by Appendix B of the Student Disciplinary Procedures,
19 and this mirrors the language in the UC's procedures for
20 interim suspension.

21 THE COURT: Where is Appendix B?

22 MR. KAPLAN: So if you look at Exhibit A, Your
23 Honor, to the Dudley declaration on page 19.

24 THE COURT: 19.

25 MR. KAPLAN: So here you have the standard for

1 an interim suspension.

2 And, Your Honor, if the full --

3 THE COURT: Hold on. I'm reading the
4 paragraph. Let me read.

5 One of the things in that paragraph is a review
6 by the Chancellor within 24 hours.

7 Did that occur?

8 MR. KAPLAN: That did, Your Honor.

9 THE COURT: Where is your evidence saying that
10 occurred? Who's declaration is that?

11 MR. HATHAWAY: Your Honor, it's attached to the
12 petition of Exhibit 7, I believe. The Chancellor did
13 sign it. That was sent June 8th.

14 THE COURT: Thank you. Got it.

15 Okay. Go ahead, Mr. Kaplan.

16 What else did you want to bring to the Court's
17 attention?

18 MR. KAPLAN: So I first wanted to clarify the
19 difference in interim suspension --

20 THE COURT: I read it.

21 MR. KAPLAN: Okay.

22 THE COURT: What else did you want to --

23 When I say, what else, that means new line,
24 what is it you want to argue next?

25 MR. KAPLAN: Understood, Your Honor.

1 THE COURT: You don't have to argue anything.
2 I'm just asking. I should have said, is there anything
3 you want to argue next, and then you can say, no,
4 there's not, or yes, there is.

5 MR. KAPLAN: Your Honor, I would submit that
6 the arguments we made in the papers first that you
7 pointed out we agreed that there is no urgency here, and
8 then the arguments, I think that the school reached a
9 more than reasonable decision on the interim suspension.

10 At this point a full investigation with more
11 than a dozen witnesses has taken place. It has been
12 substantiated, the serious allegations of misconduct and
13 found abuse -- found the Sexual Assault Policy was
14 violated.

15 There still will be a hearing on that, but
16 there's more than enough evidence to justify the
17 reasonable decision that there can't be any abuse of
18 discretion shown.

19 And with that, Your Honor, unless you have any
20 other questions, I would --

21 THE COURT: Your interim suspension paragraph
22 Appendix B, page 19 of Exhibit A talks about the student
23 being given the opportunity for a prompt hearing on the
24 interim suspension.

25 Was this student given the opportunity for a

1 prompt hearing on the interim suspension?

2 MR. KAPLAN: Yes, Your Honor.

3 THE COURT: When?

4 MR. KAPLAN: On June 5th, and then, again, more
5 recently there was a telephone meeting between
6 Mr. Hathaway and the University official, Mr. Dudley,
7 and there was also a statement provided, and this was
8 just a re-consideration offered several months later
9 after -- after these proceedings began.

10 THE COURT: So you said on June 5th.

11 June 5 was the date that Mr. Dudley signed the
12 interim suspension, so are you talking about the meeting
13 that occurred before or a hearing that occurred after?

14 MR. KAPLAN: So the hearing occurred the same
15 day. On the morning of June 5th, the interim suspension
16 was issued, and later that day, which is -- we would
17 submit is prompt. That same day the Petitioner and his
18 father met with the University.

19 THE COURT: And you consider that a hearing?

20 MR. KAPLAN: Yes, Your Honor.

21 We believe that that hearing more than
22 satisfies the standards of due process, and certainly
23 the continuing correspondence between Petitioner
24 represented by Counsel with the University and working
25 with Petitioner so he can take his final exams, we think

1 that in terms of the interim suspension itself, we think
2 there was more than adequate due process and more than
3 adequate opportunity for him to present his side.

4 THE COURT: So the prompt hearing was to sit
5 down with the person who had issued the interim
6 suspension.

7 Was there a chance to put on evidence to call a
8 witness, to do anything like that at that meeting?

9 MR. KAPLAN: Your Honor, for one, I think the
10 case law that we cited would demonstrate that
11 especially -- and the --

12 THE COURT: I was merely just asking if that
13 was the type of hearing it was. Sounds like you don't
14 know.

15 So thank you very much.

16 All right. Mr. Hathaway, anything else that
17 you wanted to argue regarding your request for the stay?

18 MR. HATHAWAY: Very brief.

19 The Exhibit A, page 19. Opportunity for a
20 prompt hearing, the next sentence says, if the student
21 is found to have been unjustly placed on interim
22 suspension, it certainly implies that there is a hearing
23 that follows the University's code. That there is a
24 finding by somebody independent or the person that made
25 the initial decision, in fact, even the --

1 So there's a finding. It's clearly --

2 And finally, on Exhibit J, I think the Court
3 had inquired when the hearing was regarding the June 6
4 further imposition of new sanctions. We've heard
5 nothing. There is no hearing, not even a meeting
6 regarding the June 6th that certainly occurred after the
7 June 5th hearing.

8 Aware of the -- the sanction was -- was -- was
9 enlarged to the entire city of Davis.

10 And I would submit.

11 Thank you, Your Honor, for your attention.

12 MR. KAPLAN: Your Honor, may I respond briefly
13 to that last point?

14 THE COURT: Yes.

15 MR. KAPLAN: So I would like to point out that
16 the -- the Exhibit J under the interim suspension that
17 was already in place, the student normally would not be
18 able to take his final exams.

19 So what was happening over this weekend,
20 correspondence was an effort to accommodate Petitioner
21 so he could take his final exams and complete his
22 classes.

23 There was not an attempt to engage in further
24 discipline by any means. It was just a means of working
25 with the student, as they had been discussing, to offer

1 a way for him to take his finals, and they agreed upon
2 that.

3 And Petitioner was going to go back home, and
4 he was going to work with the school to take his final
5 exams, and at no point during the summer did we hear
6 from Petitioner about doing that.

7 But the University is still working with
8 Petitioner and discussed with his instructors, and he
9 will be allowed to take his final exams from the spring
10 semester.

11 THE COURT: In response to Mr. Dudley's June 6
12 e-mail, the father sends a June 7 e-mail that says, once
13 we get feedback from the instructors, then they can
14 organize the finals.

15 So when did the University provide that
16 information to the Petitioner, the feedback from the
17 instructors?

18 MR. KAPLAN: I'm not sure, Your Honor. I do
19 note --

20 THE COURT: Because you were just saying, it's
21 Petitioner's fault he hasn't taken his final yet, but it
22 looks like the Petitioner put the ball in the
23 University's court saying, you're checking with the
24 instructors. Let us know what they say.

25 Did you ever let them know what the instructors

1 said?

2 MR. KAPLAN: I don't have knowledge about the
3 specific, you know, beyond that there was no further
4 contact from the Petitioner.

5 THE COURT: Okay.

6 Yes, go ahead. Anything else, Mr. Kaplan?

7 MR. KAPLAN: I would just add, Your Honor, that
8 the purpose of the interim suspension is to avoid a
9 situation where there's further trauma, for example, to
10 a victim and disorder on the school, and the --

11 There is ample evidence here I won't go into,
12 but just about how the incident has affected the
13 complainant here, and how it's impacted her, and of the
14 serious misconduct so --

15 I would just add that I think the decision was
16 entirely reasonable and still necessary to be in place.

17 THE COURT: Anything else, Mr. Kaplan?

18 MR. KAPLAN: No, Your Honor.

19 THE COURT: Submitted then, Mr. Kaplan?

20 MR. KAPLAN: Yes, Your Honor.

21 THE COURT: Submitted, Mr. Hathaway?

22 MR. HATHAWAY: Yes. Thank you, Your Honor.

23 THE COURT: Okay. I agree.

24 These circumstances that led to the interim
25 suspension are extremely serious, and the University has

1 completely dropped the ball, and if anyone has failed
2 the alleged victim in this case is the University.

3 If there had been a prompt hearing -- you had
4 all summer long to hold not only the interim suspension
5 hearing, but to do a complete adjudication of the
6 matter, and you haven't done that.

7 How is the victim in this case supposed to know
8 whether this person is ever going to be returning to
9 campus?

10 She could call the University daily, and all
11 the University is going to tell her is, we haven't had a
12 hearing yet, we haven't had a hearing yet, we haven't a
13 hearing yet.

14 And I'm sure she's wondering, well, this
15 happened last May, why haven't you got it done yet? I'm
16 starting a class on Thursday. I need to know whether
17 this guy is going to be on campus or not, and the
18 University is going to say, we just haven't gotten
19 around to it.

20 So it's not only a lack of due process to the
21 Petitioner, but it's a failure providing the process
22 that the victim is entitled to, and if anybody is
23 putting the victim at harm's way for failure to follow
24 due process, it's the University.

25 You may have John Doe debt to right, go for it,

1 hold the hearings, see what happens, but you can't just
2 say May 30th to June -- to September 22nd is a
3 completely reasonable period of time under due process.
4 You can't do it.

5 The motion to stay the interim suspension is
6 granted.

7 Now, the University obviously can turn around
8 right now and start a process that keeps him from
9 getting on campus, or if he is on campus, get him off
10 again pretty quick, and they have procedures in place.

11 This doesn't say anything about pursuing that,
12 but as far as what you did at that time, due process has
13 completely been obliterated by the University's failure
14 to get this case adjudicated. Complete failure to do
15 it.

16 If they do it right, and then there's a
17 challenge to it, that's different, but this is just a
18 procedural issue. It's not a ruling on the merits of
19 whether the person should or shouldn't be suspended
20 permanently.

21 It's a procedural issue of whether the
22 University has followed what they are supposed to do in
23 order get to this point, and they haven't.

24 So the stay is granted, and I suppose the next
25 thing will be if someone needs a hearing of some sort on

1 a more final ruling on the merits, you can set that.

2 At this point, I'm not setting any further
3 dates on the case.

4 Thank you.

5 MR. HATHAWAY: My understanding, Your Honor, is
6 that the stay being granted, this writ, that concludes
7 this writ, this particular writ actually?

8 THE COURT: If you submit something to that
9 effect, and it looks like it's in order, then that may
10 be the case.

11 MR. HATHAWAY: Thank you, Your Honor.

12 THE COURT: I don't know if that's the case.

13 MR. HATHAWAY: Thank you.

14 MR. KAPLAN: Thank you, Your Honor.

15 (Hearing concluded at 10:48 a.m.)

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REPORTER'S CERTIFICATE

I, CATHERINE D. LAPLANTE, a Certified Shorthand Reporter for the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, CATHERINE D. LAPLANTE, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting; that the foregoing is a true and correct record given.

IN WITNESS WHEREOF, I hereby certify this transcript at my office in the County of Placer, State of California, this 25th day of September, 2015.

Catherine D. Laplante



CATHERINE D. LAPLANTE, CSR #10140

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