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UNITED STATES DEPARTMENT OF LABOR  
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF LABOR,  
OFFICE OF APPRENTICESHIP TRAINING,  
EMPLOYER AND LABOR SERVICES,  
  
Prosecuting Party,  
  
v.  
  
CALIFORNIA DEPARTMENT OF INDUSTRIAL  
RELATIONS and CALIFORNIA APPRENTICESHIP  
COUNCIL,  
  
Respondents.

Case No. 2002 - CCP - 1  
  
CALIFORNIA APPRENTICESHIP  
COUNCIL'S MOTION TO  
COMPEL FURTHER RESPONSES  
TO INTERROGATORIES

Respondent California Apprenticeship Council moves to compel prosecuting party  
OATELS to provide further responses to interrogatories in the Council's first set of  
interrogatories.

1 The text below sets forth each interrogatory in dispute, OATELS' response and surreply  
2 and a discussion of the pertinent issues.

3  
4 **INTERROGATORY NO. 2**

5 **State whether prior to August 4, 2003 OATELS informed the SECRETARY,**  
6 **directly or indirectly, of OATELS' intention to issue the DECISION.**

7  
8 **OATELS' RESPONSE**

9 We object to this interrogatory on the following grounds:

10 (1) The interrogatory is irrelevant because OATELS' exercise of its authority to conduct  
11 concurrent registration is not at issue in this litigation, and the administrative law judge ("ALJ")  
12 has no jurisdiction over any challenge to OATELS' exercise of its registration authority.  
13 OATELS exercised concurrent authority to register apprentices in California for federal purposes  
14 to reduce the time to process a registration application from the one-and-a-half to three years  
15 California was taking to no more than a few months for federal registration. OATELS initiated  
16 derecognition proceedings, by contrast, to strip the California state apprenticeship council of its  
17 delegated federal registration authority because the State passed a restrictive apprenticeship law  
18 without prior OATELS approval. Derecognition would take away California's federal registration  
19 authority, whereas concurrent jurisdiction simply allows DOL to register apprentice programs for  
20 federal purposes alongside the State. Thus, the concurrent jurisdiction and derecognition decisions  
21 are based on unrelated grounds and provide different remedies to different problems. Accordingly,  
22 discussions about the concurrent jurisdiction have no bearing on the disputed derecognition decision  
23 here. Therefore, this interrogatory is not reasonably calculated to lead to discovery of admissible  
24 evidence.

25 (2) The interrogatory is also irrelevant because the Secretary is not the final agency decision-  
26 maker on the derecognition case, and therefore no communications with her on any topic, however  
27 related to derecognition, could have possibly been improper ex parte communications about this case.

1 Secretary's Order 2-96 (May 3, 1996) delegated the Secretary's authority to decide derecognition  
2 appeals under the National Apprenticeship Act to DOL's Administrative Review Board ("ARB").  
3 Id., § 4c(26), 61 Fed. Reg. 19,978, 19,978 (1996). Thus, the ARB, not the Secretary, will issue the  
4 final agency decision on any appeal of the ALJ's decision on the derecognition case, and any  
5 communications that OATELS or its attorneys had with the Secretary could not possibly have been ex  
6 parte contacts with the final agency decision-maker here. Accordingly, communications with the  
7 Secretary, on concurrent jurisdiction or any other subject, are completely irrelevant to this proceeding,  
8 and cannot taint the agency's prospective final decision on the derecognition case. Therefore, this  
9 interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

10 (3) The interrogatory is also objectionable because it attempts to probe DOL's deliberative  
11 processes for evidence of impropriety. Discovery of such internal deliberations and communications  
12 is not permitted absent a strong showing of agency bad faith or improper behavior. Overton Park  
13 v. Volpe, 401 U.S. 402, 420(1971); Community for Creative Non-Violence v. Lujan, 908 F.2d  
14 922, 997-98 (D.C. Cir. 1990). Merely alleging wrongdoing without making the required showing  
15 first does not entitle CAC to request discovery to see whether DOL's conduct really was  
16 improper. See Apex Constr. Co. v. United States, 719 F. Supp. 1144, 1147 (D. Mass. 1989);  
17 Warren Bank v. Saxon, 263 F. Supp. 34, 39 (E.D. Mich. 1966), aff'd sub nom. Warren v. Camp, 396  
18 F.2d 52 (6th Cir. 1968). CAC has made no such showing here, and we categorically deny that any  
19 improper ex parte communications, or any other misconduct, occurred.

#### 20 OATELS' SURREPLY

21 1. CAC's reply to the first objection misconceives OATELS' stated basis for the concurrent  
22 registration decision and OATELS' unrelated basis for requesting discovery into delays in CDIR's  
23 processing of registration applications. OATELS decided to exercise concurrent registration  
24 jurisdiction in California because the State's own regulations estimate that it takes one-and-a-half to  
25 three years to process a registration application, see Cal. Code Regs., tit. 8, § 212.2(j), a period that  
26 federal registration will reduce to no more than a few months. Unlike the derecognition decision, the  
27 concurrent registration decision has nothing to do with California's restrictive treatment of  
28

1 apprenticeship programs, but is based on the unacceptably long time the State was taking to process  
2 registration applications.

3 By contrast, OATELS' discovery into CDIR's processing delays is designed to determine  
4 whether there is a pattern or practice of delay in processing unilateral, but not joint, program  
5 registration applications. Such disparate treatment, if it has occurred, would be directly related to the  
6 restrictive apprenticeship statute, section 3075(b) of the California Labor Code, on which the  
7 derecognition decision was based, but would not further support the concurrent registration decision,  
8 which was based on processing time. Conversely, if CDIR's processing delays have affected  
9 unilateral and joint programs equally, or have resulted simply from lack of staff or heavy work loads,  
10 the delays would be irrelevant to the derecognition decision but would still support the concurrent  
11 registration decision.

12 Thus, CAC's reply is based on the erroneous premise that OATELS' discovery in the  
13 derecognition proceeding concerns the facts that support the concurrent registration decision.

14 2. As a threshold matter, CAC's first reply to the second objection lacks merit because the  
15 reply erroneously assumes that the APA restrictions on ex parte contacts in administrative  
16 adjudications apply here. In fact, these APA restrictions apply only to administrative adjudications  
17 "required by statute to be determined on the record after opportunity for an agency hearing . . . ." See  
18 5 U.S.C. § 554(a); see also § 554(d) (setting out restrictions on ex parte contacts). Since the hearing  
19 requirement here was established by regulation, see 29 C.F.R. § 29.13(c)(3), not by statute, the APA  
20 restrictions do not apply. Even if the APA restrictions did apply here, CAC's reply is still  
21 unwarranted because Secretary's Order 1-2002 delegated to the Administrative Review Board  
22 ("ARB") the Secretary's authority to issue final agency decisions on administrative appeals of  
23 ALJ decisions under the National Apprenticeship Act and its implementing regulations. See  
24 Secretary's Order 1-2002, § 4c(25), 67 Fed. Reg. 64,272, 64,272 (2002). Thus, under existing  
25 law, there is no possibility that the Secretary will make the final agency decision in this  
26 proceeding. CAC has not suggested any reason to think that the existing law will be changed in  
27 any way that would make this interrogatory relevant.

1 CAC's second reply to the second objection, that the Secretary is the ultimate decision-  
2 maker here because she will decide whether to defend an appeal of the ARB's decision to federal  
3 court, confuses what would be the agency's final action here, the ARB's final order, with the  
4 agency's post-adjudicative litigation response to an appeal of that final order. Even assuming that  
5 the APA's restrictions on ex parte contacts with the final agency decision-maker apply here, those  
6 restrictions apply to contacts with the ARB, which will make the final agency decision here, and  
7 not to the Secretary, whose only role here is that of a potential party in a prospective CDIR  
8 and/or CAC appeal of the ARB's final order to federal court. If such an appeal is filed, DOL  
9 would no longer be acting as an administrative adjudicator but as a respondent, defending its  
10 final agency action in federal court. Any decision about this case that the Secretary makes at the  
11 judicial review stage would not be a "final agency action" within the meaning of the  
12 Administrative Procedure Act, see 5 U.S.C. § 704,<sup>1/</sup> but only a litigation decision made in the  
13 course of a CDIR and/or CAC appeal of the final agency action. Thus, the theoretical possibility  
14 that the Secretary might decide, after an appeal of a future ARB decision on this case, not to  
15 defend the ARB's decision in federal court does not make her the final agency decision-maker  
16 here, or make her subject to the APA ban on ex parte contacts with that decision-maker.

17 Even if the Secretary's decision whether to defend the ARB's final order on appeal could  
18 be construed as being, in some sense, the agency's final action, the APA doctrine of no ex parte  
19 contacts with the final agency decision-maker would still not apply to the Secretary in this  
20 proceeding. The ban would not apply here because no contacts between OATELS and/or  
21 OATELS' lawyers and the Secretary here could taint a later Secretarial decision whether to  
22 defend the ARB's final order since the Secretary has every right to consult her lawyers and the  
23 program agency concerned in making that litigation decision. Indeed, making such a decision  
24 without such consultations would be irresponsible, if not nonfeasant. Furthermore, such  
25

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26 <sup>1</sup> See also Capital Network Sys. v. FCC, 3 F.3d 1526, 1530 (D.C. Cir. 1993) (agency action final  
27 if it represents a terminal, complete resolution of the case before the agency and determines  
28 rights or obligations, or has some legal consequence).

1 consultations, like any similar communications that might have occurred during this proceeding,  
2 would very likely be protected by the deliberative process and/or attorney-client privileges.

3 In any case, even if the APA ban on ex parte contacts did apply to the Secretary in this  
4 proceeding (on the theory that the Secretary would later decide whether to defend the ARB's final  
5 order on appeal), such contacts could not prejudice CAC because the Secretary cannot appeal  
6 DOL's final agency actions. Thus, the only ARB decision here that the Secretary could decide  
7 not to defend would be a decision in OATELS' favor, and such a Secretarial action would  
8 benefit, not harm, CAC.

9 3. CAC's reply to the third objection mistakenly assumes that the objection characterizes  
10 the Secretary's deliberations when, in fact, the objection neither admits nor denies that any such  
11 deliberations occurred, but characterizes only what the interrogatory seeks. CAC's reply is also  
12 based on the erroneous premise that any deliberations the Secretary might have made about the  
13 concurrent jurisdiction decision are relevant to this derecognition proceeding. As explained in  
14 surreply 1 above, however, this premise conflates the basis of the concurrent jurisdiction decision  
15 (that CDIR has taken an unacceptably long time to process registration applications) with the  
16 unrelated question that OATELS has sought to answer through discovery (whether CDIR has  
17 delayed processing unilateral, but not joint, program applications). In any event, CAC's reply  
18 also ignores the fact that CAC has not made the strong showing of agency misconduct that is the  
19 prerequisite for any discovery that seeks an agency's internal communications or other evidence  
20 of its deliberative processes. CAC has only speculated about the possibility of improper ex parte  
21 contacts with the Secretary, and discovery into the above matters is not permitted on speculation.

## 22 DISCUSSION

24 1. The first objection assumes the absence of any connection between this proceeding and  
25 OATELS' decision to register apprentices in California for federal purposes. However, the stated  
26 rationale for the registration decision is the alleged delays in CAC/DIR's registration of apprentices.  
27 These alleged delays have been the subject of extensive discovery by OATELS. It therefore appears

1 that the Secretary has prejudged one of the issues in this proceeding. CAC is entitled to know  
2 whether the Secretary was influenced by improper ex parte communications.

3 OATELS cannot argue that the registration decision is unrelated to this proceeding if  
4 OATELS' discovery in this proceeding is directed to the facts that justify the registration decision.

5 2. The second objection assumes that the Secretary is not the final decision maker on this  
6 proceeding because the Secretary has delegated her authority to decide derecognition appeals to the  
7 Administrative Review Board ("ARB"). However, as Judge Vittone indicated in the November  
8 telephone status conference, it is not certain that the delegation covers this proceeding, and it also is  
9 not certain that the revocation is non-revocable. If there is any possibility that the Secretary has or  
10 will assume decision making authority over this proceeding, OATELS' Response has no validity.

11 Furthermore, even if the Secretary has made an irrevocable delegation, the Secretary retains  
12 ultimate decision-making authority because it is the Secretary, and not ARB, who will decide whether  
13 to defend the decision if there is an appeal to the courts.

14 3. The third objection claims that the interrogatory seeks discovery into "DOL's deliberative  
15 processes". Since the Secretary of Labor is the head of the Department of Labor, the response is an  
16 admission that the Secretary already has deliberated about the issues raised in this proceeding. The  
17 APA prohibits the Secretary from deliberations about this proceeding based on ex parte  
18 communications. CAC therefore is entitled to know whether such improper ex parte communications  
19 exist.

20 It is surprising that OATELS would claim that the Secretary has no involvement in this  
21 proceeding and then make the additional claim that the discovery is improper because it seeks to  
22 disclose the Secretary's deliberations about this proceeding.

23 Lastly, OATELS claims that the registration decision was based solely on California's alleged  
24 delays in processing applications for new programs. However, CAC is not required to accept this  
25 claim on faith and instead is entitled to test its veracity through discovery.

1 **INTERROGATORY NO. 3**

2 **If your response to the previous interrogatory is anything other than an unqualified**  
3 **negative, explain the response.**

4  
5 **OATELS' RESPONSE**

6 Same as the objections to Interrogatory No. 2.

7 **OATELS' SURREPLY**

8 Same as the surreply to Interrogatory No. 2.

9  
10 **DISCUSSION**

11 See discussion of response to Interrogatory No. 2.

12  
13 **INTERROGATORY NO. 4**

14 **IDENTIFY each COMMUNICATION from OATELS to the SECRETARY**  
15 **RELATING TO apprenticeship in California that was made subsequent to May 11, 2002.**

16  
17 **OATELS' RESPONSE**

18 In addition to all of our objections to Interrogatory No. 2, which we incorporate by reference,  
19 we also object to the request for all communications on California apprenticeship after May 11, 2002  
20 as irrelevant. Since the derecognition decision was issued on May 10, 2002, no post-decisional  
21 communication could have had any possible influence on that decision or any conceivable bearing on  
22 this case. Accordingly, this interrogatory is not reasonably calculated to lead to the discovery of  
23 admissible evidence, and CAC has made no showing of any need to require DOL to search for and  
24 identify responsive communications.

25 **OATELS' SURREPLY**

26 Same as the surreply to Interrogatory No. 2.

27 CAC's reply to OATELS' additional objection is without merit because the Secretary lacks



1 authority to judge the issues here. Further, as discussed in our objection (3) to Interrogatory No. 2, an  
2 agency's internal communications are not discoverable merely because the requester thinks that they  
3 may have violated the APA, but only if the requester makes a strong showing that the alleged  
4 misconduct actually occurred. CAC has not made the required showing here.

5  
6 DISCUSSION

7 See discussion of response to Interrogatory No. 2.

8 OATELS' additional objection ignores the possibility that ex parte communications after May  
9 10, 2002 will lead the Secretary to prejudge the issues in this proceeding. Such communications are  
10 discoverable because they are prohibited by the APA.

11  
12 INTERROGATORY NO. 5

13 **IDENTIFY each DOCUMENT RELATING TO a COMMUNICATION identified in**  
14 **your response to the previous interrogatory.**

15  
16 OATELS' DISCUSSION

17 Same as the objections to Interrogatory No. 4.

18 OATELS' SURREPLY

19 Same as the surreply to Interrogatory No. 4.

20  
21 DISCUSSION

22 See discussion of response to Interrogatory No. 4.

23  
24 INTERROGATORY NO. 6

25 **IDENTIFY each COMMUNICATION from OATELS' ATTORNEYS to the**  
26 **SECRETARY RELATING TO apprenticeship in California that was made subsequent to May**  
27 **11, 2002.**

1 OATELS' RESPONSE

2 Same as the objections to Interrogatory No. 4.

3  
4 OATELS' SURREPLY

5 Same as the surreply to Interrogatory No. 4.

6  
7 DISCUSSION

8 See discussion of response to Interrogatory No. 4.

9  
10 INTERROGATORY No. 7

11 **IDENTIFY each DOCUMENT RELATING TO a COMMUNICATION identified in**  
12 **your response to the previous interrogatory.**

13  
14 OATELS' RESPONSE

15 Same as the objections to Interrogatory No. 4.

16 OATELS' SURREPLY

17 Same as the surreply to Interrogatory No. 4.

18  
19 DISCUSSION

20 See discussion of response to Interrogatory No. 4.

21  
22 INTERROGATORY NO. 8

23 **IDENTIFY each COMMUNICATION from the SECRETARY to OATELS**  
24 **RELATING TO apprenticeship in California that was made subsequent to May 11, 2002.**

25  
26 OATELS' RESPONSE

27 Same as the objections to Interrogatory No. 4.

1 OATELS' SURREPLY

2 Same as the surreply to Interrogatory No. 4.

3

4 DISCUSSION

5 See discussion of response to Interrogatory No. 4.

6

7 INTERROGATORY NO. 9

8 **IDENTIFY each DOCUMENT RELATING TO a COMMUNICATION identified in**  
9 **your response to the previous interrogatory.**

10

11 OATELS' RESPONSE

12 Same as the objections to Interrogatory No. 4.

13

14 OATELS' SURREPLY

15 Same as the surreply to Interrogatory No. 4.

16

17 DISCUSSION

18 See discussion of response to Interrogatory No. 4.

19

20 INTERROGATORY NO. 10

21 **IDENTIFY each COMMUNICATION from the SECRETARY to OATELS'**  
22 **ATTORNEYS RELATING TO apprenticeship in California that was made subsequent to**  
23 **May 11, 2002.**

24

25 OATELS' RESPONSE

26 Same as the objections to Interrogatory No. 4.

27

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1 OATELS' SURREPLY

2 Same as the surreply to Interrogatory No. 4.

3

4 DISCUSSION

5 See discussion of response to Interrogatory No. 4.

6

7 INTERROGATORY No. 11

8 **IDENTIFY each DOCUMENT RELATING TO a COMMUNICATION identified in**  
9 **your response to the previous interrogatory.**

10

11 OATELS' RESPONSE

12 Same as the objections to Interrogatory No. 4.

13

14 OATELS' SURREPLY

15 Same as the surreply to Interrogatory No. 4.

16

17 DISCUSSION

18 See discussion of response to Interrogatory No. 4.

19

20 INTERROGATORY No. 12

21 **Describe any involvement of the SECRETARY in the deliberations which resulted in**  
22 **the issuance of the DECISION.**

23

24 OATELS' RESPONSE

25 Same as the objections to Interrogatory No. 2.

26

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1 OATELS' SURREPLY

2 Same as the surreply to Interrogatory No. 24.

3

4 DISCUSSION

5 See discussion of response to Interrogatory No. 2.

6

7 INTERROGATORY NO. 13

8 **IDENTIFY each DOCUMENT that constitutes or discusses each fact stated in your**  
9 **response to the previous interrogatory.**

10

11 OATELS' RESPONSE

12 Same as the objections to Interrogatory No. 2.

13

14 OATELS' SURREPLY

15 Same as the surreply to Interrogatory No. 2.

16

17 DISCUSSION

18 See discussion of response to Interrogatory No. 2.

19

20 INTERROGATORY NO. 16

21 **IDENTIFY each "reason", as you have defined that word in your response to the**  
22 **previous interrogatory, that you contend warrants the derecognition of the Council and/or DIR**  
23 **pursuant to 29 C.F.R. 29.**

24

25 OATELS' RESPONSE

26 Not applicable.

27

28

1 OATELS' SURREPLY

2 The two reasons in question are stated in Administrator's Swoope's April 8, 2003 letter to Mr.  
3 Kay. See id. at 1, para. 2.

4  
5 DISCUSSION

6 See discussion of response to Interrogatory No. 15.

7  
8 INTERROGATORY NO. 17

9 **IDENTIFY each apprenticeship training program that you contend submitted an**  
10 **application for approval to train apprentices that was denied by the COUNCIL pursuant to**  
11 **California Labor Code section 3075.**

12  
13 OATELS' RESPONSE

14 We have asked CDIR and CAC this very question in discovery and have requested the  
15 material that would enable us to answer this interrogatory, but we cannot do so until we have  
16 received, and have had a chance to review, all of the requested material.

17  
18 OATELS' SURREPLY

19 OATELS does not know now whether any applications have been denied on the basis of  
20 section 3075, did not know the answer to this question before discovery in this proceeding, and will  
21 not know the answer until the thousands of pages of program files recently received from CDIR have  
22 been completely reviewed. Since one of the goals of our discovery is to learn the answer to this  
23 question, we cannot be required to answer it until our discovery is complete.

24  
25 DISCUSSION

26 The interrogatory asks whether OATELS has any knowledge as of the date of its responses of  
27 program applications that were denied pursuant to Labor Code section 3075. If OATELS does not

28

1 have any current knowledge of any such program, it must say so. CAC is entitled to know whether  
2 OATELS had any actual knowledge of such programs prior to discovery in this proceeding.  
3 OATELS may reserve the right to supplement its responses when it has completed its review of the  
4 discovery it has received from DIR.

5  
6 **INTERROGATORY NO. 18**

7 **IDENTIFY each apprenticeship training program that you contend submitted an**  
8 **application for approval to train apprentices that was denied by DIR pursuant to California**  
9 **Labor Code section 3075.**

10  
11 **OATELS' RESPONSE**

12 Same as response to Interrogatory No. 17.

13 **OATELS' SURREPLY**

14 Same as the surreply to Interrogatory No. 17.

15  
16 **DISCUSSION**

17 See DISCUSSION of response to Interrogatory No. 17.

18  
19 **INTERROGATORY NO. 19**

20 **IDENTIFY each apprenticeship training program that you contend submitted an**  
21 **application for approval to train apprentices that was denied by the COUNCIL on grounds**  
22 **that violate 29 C.F.R. part 29.**

23  
24 **OATELS' RESPONSE**

25 Same as response to Interrogatory No. 17.

1 DISCUSSION

2 The interrogatory asks whether OATELS has any knowledge as of the date of its responses of  
3 programs applications that were denied on grounds that violate 29 C.F.R. If OATELS does not have  
4 any current knowledge of any such program, it must say so. CAC is entitled to know whether  
5 OATELS had any actual knowledge of such programs prior to discovery in this proceeding.  
6 OATELS may reserve the right to supplement its responses when it has completed its review of the  
7 discovery it has received from DIR.

8  
9 OATELS' SURREPLY

10 OATELS does not know now whether any applications have been denied on grounds that  
11 violate 29 C.F.R., part 29, did not know the answer to this question before discovery in this  
12 proceeding, and will not know the answer until the thousands of pages of program files recently  
13 received from CDIR have been completely reviewed. Since one of the goals of our discovery is to  
14 learn the answer to this question, we cannot be required to answer it until our discovery is complete.

15 INTERROGATORY NO. 20

16 **IDENTIFY each apprenticeship training program that you contend submitted an**  
17 **application for approval to train apprentices that was denied by DIR on grounds that violate 29**  
18 **C.F.R. part 29.**

19  
20 OATELS' RESPONSE

21 Same as response to Interrogatory No. 17.

22  
23 DISCUSSION

24 See DISCUSSION of response to Interrogatory No.19

25 OATELS' SURREPLY

26 Same as the surreply to Interrogatory No. 19.

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CONCLUSION

For the reasons set forth above, OATELS should be ordered to provide further responses to the Council's interrogatories.

DATED: January 16, 2004

BILL LOCKYER  
Attorney General

  
\_\_\_\_\_  
JULIAN O. STANDEN  
Deputy Attorney General  
Attorneys for respondent  
California Apprenticeship Council

**DECLARATION OF SERVICE BY E-MAIL**

Case Name: ***UNITED STATES DEPARTMENT OF LABOR, OFFICE OF APPRENTICESHIP TRAINING, EMPLOYER AND LABOR SERVICES v. CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS AND CALIFORNIA APPRENTICESHIP COUNCIL***

United States Department of Labor, Washington, D.C., Case No.: **2002-CCP-1**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age and older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. My e-mail address is [emily.aquino@doj.ca.gov](mailto:emily.aquino@doj.ca.gov).

On January 20, 2004, I served the attached

**California Apprenticeship Council's Motion to Compel Further Responses to Interrogatories**

by e-mailing a true copy. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail system of the Office of the Attorney General addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 20, 2004, at San Francisco, California.

\_\_\_\_\_  
Emily Aquino  
Declarant

\_\_\_\_\_  
  
Signature