THELEN REID BROWN RAYSMAN & STEINER ; fka THELEN REID & PRIEST, LLP

v.

FRANCOIS MARLAND, et al.

Case No.
C-06-2071 VRW

Rebuttal Report of Ronald H. Clark, Ph.D., J.D.
06/07/07

SIGNATURE:_____

I. Introduction

I prepared this rebuttal expert report after having read the report filed on behalf of plaintiff Thelen Reid Brown Raysman & Steiner LLP ("Thelen") by Stephen Meagher, Esq. Mr. Meagher and I worked together many years ago, while I was Senior Trial Counsel in the Civil Division of the Department of Justice and he was an Assistant U.S. Attorney in the Northern District of California. Subsequently, Mr. Meagher left the U.S. Attorney and opened the San Francisco office of Phillips & Cohen, whose practice basically is affirmative *qui tam* cases under the federal False Claims Act ("FCA"). Recently, Mr. Meagher opened up his own practice in San Francisco.

The second focus of my retention involved evaluating whether Thelen appropriately represented Mr. Marland in his *qui tam* action (brought in the name of RoNo LLC), initiated under the California False Claims Act, Cal. Gov't Code §§ 12659 *et seq.* ("CFCA") . In my previous report (at 19-22), I identified several areas where I concluded that some problems existed in this regard, in Thelen's management of the case. Nothing in Mr. Meagher's report convinces me that my previous opinion was incorrect. In fact, his report raises several additional areas that bear discussion.

Generally speaking, my concerns fall into two categories. First, was the CFCA complaint which Thelen counseled Mr. Marland to file well justified and satisfactorily prepared? Second, once filed, did Thelen effectively manage the litigation thereafter? In addition, I disagree with other specific opinions expressed

in Mr. Meagher's report, specifically those relating to Mr. Marland's merits as a relator, and whether unacceptable delays resulted from the actions of the California Attorney General.

I have attached as "Exhibit A" to this document a list of the documents and other resources upon which I relied in preparing my rebuttal report.

II. Problems Involved in Filing the *Qui Tam* Action

Mr. Meagher asserts that "Thelen met the standard of care in filing the *qui tam* action on behalf of RoNo." Meagher Report at 11. In my opinion, there were some fundamental problems with Thelen's development of the case.

1. Approaching DOI prior to filing the CFCA action.

I previously opined that as a matter of strategy, to protect Mr. Marland, I was surprised that Thelen had first made disclosures of his information to the California Department of Insurance ("DOI") **prior to** filing the *qui tam* action. This is especially so because unlike the FCA [§ 3730(e)(4)(b)], there is no requirement under the CFCA that relators inform the government of their allegations prior to any public disclosure in order to qualify as an "original source." *United States ex rel. Zaretsky v. Johnson Controls, Inc.*, 457 F.3d 1009, 1020-22 (9th Cir. 2006). I suggested that such a course of action could well have jeopardized Marland's jurisdictional standing under the CFCA and resulted in his action (and the state's as well if it had later chosen not to intervene) being dismissed. This is because the CFCA contains a provision (modeled on its federal counterpart) that forecloses an action which is "based upon the public disclosure of allegations or

transactions" alleged in the complaint. See § 12652(d)(3)(A). Clark report at 10, note 5 & 19-20.

My views in this regard grew out of my concerns that armed with Mr. Marland's inside information, DOI might well have initiated an investigation and litigation of the very same allegations that would later be raised in the CFCA action. Unless Mr. Marland could demonstrate "original source" status under § 12652(e)(3)(B), any subsequent Marland CFCA action would be foreclosed.

I also indicated my concern also arose out of § 12652(d)(2). It reads: "In no event may a person bring [a qui tam action] that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party." There is no exemption for "original source" under this provision.

Mr. Meagher does not address this issue in his report, which only adds to my concerns. For example, in his deposition (hereafter "Fontana depo."), Gary L. Fontana, Esq., who led the Thelen team, testified (at 223; 335) about what he termed a "race to the courthouse" that ensued when Thelen was unable to finalize an agreement with DOI as to compensating Mr. Marland. As Mr. Fontana testified, he feared DOI would file its own action before Thelen could file an action on behalf of Mr. Marland, which could well have foreclosed the Marland action. His concerns were well justified because both DOI and Thelen eventually filed complaints on February 18, 1999. Had Thelen *first* filed the CFCA action and then disclosed information to DOI, this risk would never have arisen.

It appears to me that Mr. Fontana was generally, by his own admission, not particularly conversant with either the FCA or the CFCA. Fontana depo., 214-15. For example, he repeatedly testified that there was "no material difference" between the two statutes. Fontana depo., 215; 220. This lack of familiarity may explain why Thelen did not recognize the danger in disclosing information to DOI before filing the Marland complaint. For example, *id.* at 224,[1/] Mr. Fontana declares "it wouldn't technically matter whether we were the first to file or not, as long as we were the source of the information." Actually, as I pointed out in my prior report at 20, it makes a great deal of difference who files first under the CFCA. The Act contains a "first-to-file provision in § 12652(c)(10). Had DOI (or the Attorney General) filed under the Act prior to Thelen, it could have foreclosed Marland's CFCA action. Moreover, Mr. Fontana seems to have confused the original source provision of the act, which relates to jurisdictional standing, with the first-to-file provision. Demonstrating original source status has no effect if a qui tam plaintiff is not the first to file a complaint regarding the allegations.

Finally, in the documents I have reviewed, including Ex. 23, I see no consideration by Mr. Fontana of the stringent collateral estoppel provision [§ 12654(d)] contained in the CFCA. Since Thelen knew that the U.S. Attorney for the Central District of California was pursuing the same defendants criminally, the attractiveness of the CFCA action is enhanced, since any plea agreement or

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[1/] *See also* Fontana depo., 337.

conviction would make it virtually impossible for the defendants to avoid full and complete liability under the CFCA.

2. Thelen's CFCA complaints manifest several deficiencies.

Mr. Meagher does not offer comments as to the quality of the complaints filed by Thelen; I think this is an important point. My review disclosed several weak spots that conceivably could have led to dismissal, with or without leave to file a further amended complaint. For example, as is the case with the FCA, I believe complaints alleging violations of the CFCA must do so with particularity and specificity, similar to Rule 9(b) of the Federal Rules. While this is certainly true in diversity actions in federal court,[2/] I believe if presented with the issue a California court also would apply this requirement. The Thelen complaints lack the specificity necessary to satisfy this requirement. Cryptic references to "false claims and false documents," "false and fraudulent statements," and "fraudulent applications" would not in my opinion satisfy the "who, when, where" standard applied under Rule 9(b). One need only compare the Thelen complaints with that of the Attorney General, filed June19, 2001, to see how vague and imprecise they are.

Moreover, the complaints demonstrate additional problems The Thelen complaints are predicated in large measure on "information and belief" allegations,

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[2/]*See, e.g., In re Pharmaceutical Industry Average Wholesale Price Litigation*, 478 F. Supp.2d 164, 171 (D. Mass. 2007); *County of Santa Clara v. Astra United States Inc.*, 428 F. Supp.2d 1029, 1036 (N.D. Cal. 2006).

which generally are not acceptable in false claims act pleading.[3/] Moreover, the complaints never allege that the allegations are not based upon "publicly disclosed" information or that Mr. Marland is an "original source" of any publicly disclosed information. Had Mr. Marland's jurisdictional standing been attacked on this ground, the absence of these allegations, especially in dealing with motions to dismiss or demurrer, would have added an extra burden.

3. The Probable Absence of a viable CFCA cause of action.

Mr. Meagher fails to discuss one of the key elements of this case in his report. Namely, did Thelen meet the "standard of care" in recommending to Mr. Marland that it file a CFCA action. As discussed above, there can be no question that the CFCA is designed exclusively to protect the public fisc from fraudulent activities. From the outset, a dark cloud hung over Thelen's theory because it could not satisfy this element of a CFCA cause of action. This is why the California Supreme Court in *State of California ex rel. RoNo v. Altus Finance*, 36 Cal. 4th 1284 (2005), made short work of throwing the case out on this very ground. That court cited numerous California and federal precedents to demonstrate the validity of its conclusion. There is no case under the CFCA that even faintly suggests that funds held by the state as a trustee become "public funds" as specified in the CFCA.

The contention that these escrowed funds held by DOI could serve as the predicate for a false claims act cause of action is equally dubious under federal

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[3/] *See, County of Santa Clara, id.*

court holdings construing the FCA. The California Supreme Court in *Altus* (at 1299-1300) correctly pointed to *Hutchins v. Wilentz, Goldman & Spitzer* 253 F.3d 176 (3d Cir. 2001), as one such federal authority. I would add several additional authorities. A highly analogous case is *United States ex rel. DRC, Inc. v. Custer Battles, LLC*, 376 F.Supp.2d 617 (E.D. Va. 2005), a decision relating to claims for payment made in regard to Iraqi "vested funds." Noted the district court: "Significantly, no case has held ... that the FCA is so broad as to reach not only false claims presented for *government* property, but to claims for any property in the government's possession, even if the government is only a custodian, bailee, or administrator of the property." *Id.* at 636. The district court in that decision pointed to *United States v. Cohn*, 270 U.S. 339, 345-46 (1926), *Rainwater v. United States*, 356 U.S. 590, 592 (1958), and *Marcus v. Hess*, 317 U.S. 537, 551 (1943), as substantiating its holding. *Id.*

In my opinion, this long line of federal precedent under the FFCA, which is applicable to the CFCA as well, should have given pause to Thelen in persuading Mr. Marland to file a complaint solely predicated upon a violation of the CFCA in connection with DOI's sale of the Executive Life bonds.

I have similar concerns relative to the issue of the authority of the DOI when acting as a trustee for a failed corporation. A very meaningful issue presents itself in considering whether to file a CFCA action. As the Supreme Court's decision validated, *Insurance Code* Section 1037(f) presented the issue of whether DOI

possessed exclusive authority to litigate civil claims relating to the pertinent transactions under California law, thereby cutting off any action by a qui tam plaintiff or the AG under the CFCA.

Nonetheless, Thelen persuaded Mr. Marland to file a CFCA action despite these problems. Once again, Mr. Meagher does not address this point, and how it relates to the "standard of care," which I consider to be fundamental.

4. The complaints' core CFCA allegation may be without substance.

From the limited facts available in the Fontana deposition and some of the Thelen documents, it is not clear to me that, setting aside the "public funds" issue, the scenario spelled out in the Thelen CFCA complaints constitutes a violation of the Act. I am troubled by the damages allegations in the First Amended complaint. It seems to me that it makes no difference to whom the bond portfolio was sold. There is no allegation that DOI received less from the sale than it would have realized had it sold the bonds to another potential purchaser because of defendants' failure to disclose the French government involvement. Rather, the contention seems to be that DOI would not have sold the bonds to defendants in the first place had it known of the involvement of the French government, not that DOI received a lower price for the bonds as a result of defendants' misrepresentations. This clearly is not analogous to a rigged bid situation as far as I can see.

I am not aware of any situation where mere misrepresentation as to a "party's status as an appropriate bidder," without that misrepresentation causing the government a loss, is sufficient to state a claim under the FCA or the CFCA.

Therefore, I disagree with Mr. Meagher's opinion in that regard. Meagher report at 11. In short, the defendants' misrepresentations did not cause a "loss" to DOI, and such causation is required under the CFCA. *See*, §§ 12650(b)(1); 12651(a). Therefore, I doubt that the CFCA element of materiality has been established. *See, City of Pomona v. Superior Court*, 89 Cal.App.4th, 793, 802 (2001).

Moreover, I am unconvinced by Thelen's memo to the AG (M 000330-347) that a viable claim under the CFCA does not require a loss by the government. *See id.* at 000344-45. What is accurate to state is that there does not have to be a government loss in order for **penalties** to be imposed if false claims are submitted to the government. But for treble damages to be imposed, which would have been the bulk of Marland's recovery, there must be the loss of government funds.[4/] *See, e.g., Bly-Magee v. California*, 236 F.3d 1014, 1017 (9th Cir. 2001).

5. Failure to consider consequences of § 12652 (g)(9).

In the documents I have reviewed, including the Fontana deposition, I can find no consideration of another issue of high importance to Mr. Marland. Section 12652(g)(9) of the CFCA provides that should a defendant prevail in an action where the government has declined to intervene, "the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexations, or brought solely for purposes of harassment." Given

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[4/]I am also not impressed that Thelen placed reliance upon a criminal case in making its argument to the AG. *See* memo at M 000343, n. 36.

that Thelen recognizes the key problem of an arguable lack of "public funds" being involved, and considering that a reviewing court might conclude such a complaint was frivolous, careful consideration of this issue should have been undertaken before filing the *qui tam* complaint. Thelen does not appear to have done so; nor does Mr. Meagher address this point in reaching his conclusion that due care was exercised.

6. *Possible applicability of the "government knowledge" defense.*

In a January 21, 1999, memo to Steve O'Neal, Mr. Fontana reviews Thelen's proposal to represent the DOI. On page 7 of that memo (Ex. 17; TRP000312), Mr. Fontana raises the possibility that the DOI Commissioner and his senior staff may have known about the relationship between the defendants and the French government, yet nonetheless allowed the transaction to be consummated. One of the most important defenses under the FCA, and presumably the CFCA as well, is the so-called "government knowledge" defense.

The defense is based upon a straightforward reading of the statutory requisites specified by Congress in defining an offense under the FCA. "Since the crux of an FCA violation is intentionally deceiving the government, no violation exists where the government has not been deceived." *United States ex rel. Lamers v. City of Green Bay*, 998 F. Supp. 971, 987 (E.D. Wis. 1998), *aff'd*, 168 F.3d 1013 (7th Cir. 1999). "If the government knows and approves of the particulars of a claim for payment before that claim is presented, the presenter cannot be said to have knowingly present a fraudulent or false claim. In such a case, the

government's knowledge effectively negates the fraud or falsity required by the FCA." *United States ex rel. Durcholz v. FKW Inc.*, 189 F.3d 542, 545 (7th Cir. 1999).

If Thelen had suspicions that the Commissioner and his staff may have been aware of the true facts, when they approved the bond sale, then this raises an additional serious issue in my mind as to the wisdom of filing a *qui tam* complaint.

Conclusion re filing the RoNo qui tam.

Mr. Meagher asserts that "Thelen met the standard of care in filing the *qui tam* action on behalf of RoNo." I found some of the language in Mr. Meagher's report particularly pertinent on this issue. "In 1998 and 1999, it was *possible* that Marland's information and evidence, as originally represented to Thelen, would give rise to a claim under the California False Claims Act." Meagher report at 11 (emphasis supplied). While it may have been "possible" that this information could serve as the predicate for a viable CFCA cause of action, there were in my opinion substantial difficulties in Thelen recommending that Mr. Marland pursue this specific course of action.

Mr. Fontana himself, who was apparently aware of some of these problems, characterized the *qui tam* action as a "highly questionable vehicle." Fontana depo., 109. He testified he wrote memos or e-mails to Marland and Brunswick "which explained the ... numerous problems that were associated with the qui tam case and why, other than as a last resort, there wasn't anything much to recommend it." *Id.*, 120 & Ex. 127. In my opinion, given these considerations, I would find it very

problematic to conclude, as does Mr. Meagher, than Thelen met the "standard of care" in filing the *qui tam* complaint.

III. Problems Involved in Managing the CFCA Complaint

Once the complaint was filed, problems in my opinion are evident in Thelen's management of the litigation.

1. Relations with the California Attorney General.

A continuing problem I have detected in my review of the documents in this case is the deteriorating relationship between Thelen and the California Attorney General, in the person of Deputy Attorney General ("DAG") Brian Taugher. In my original report, I mentioned the importance for qui tam plaintiffs of maintaining as pleasant and constructive a relationship with the AG as possible. This is true for several reasons. As a relator, you want the government to take over your case and expend its resources, and not yours, in securing a settlement or judgment. The state has resources and sources of information that no private CFCA plaintiff can match. The AG must consent to any settlement or voluntary dismissal of an action. Also, in my experience, courts attach significant deference to the recommendations of the AG or DOJ as to where on the sliding scale of rewards the qui tam plaintiff/relator should be placed.

This is why I was surprised to see repeated comments in the Fontana deposition denigrating the AG. For example, without consulting the AG, Thelen negotiated an agreement with DOI requiring it to dismiss the CFCA action. Mr. Fontana notes that the AG may have seen this as "pulling the rug" out from

underneath it. Fontana depo., 116-17; 181. Mr. Fontana characterized DAG Taugher as a "thorn" in Thelen's side. *Id.* at 272. Thelen declined to provide information when requested by the AG. *Id.* at 282. In his deposition, DAG Taugher echoed these sentiments, characterizing his relationship with Thelen as reflecting "regular tension" and "significant conflict." Taugher depo., 47-48. A May 20, 1999, letter from DAG Taugher to Mr. Fontana reflects this "tension." *See* Ex. 30. Eventually, the Attorney General not only threatened to disqualify Thelen, but declined to approve the settlement Thelen had negotiated with the Executive Life defendants, apparently because it required dismissal of the CFCA action. *Id.* at 309.

Mr. Fontana's May 23, 2002, memo to the Partnership Committee characterizes the AG's actions as being "devastating" for the Marland case. Ex. 82 at TRP 004306, 307. At some point, Thelen attempted to negotiate a cooperation agreement between the AG and DOI. *See* E-mail from Gary Fontana to P. Brunswick dated April 1, 1999 (M 00776-7). This effort apparently was unsuccessful. The question is whether Thelen's persistent conflict with the AG frustrated Mr. Marland's objectives, including negotiation of a cooperation agreement.

2. Failure to file a Federal FCA action.

I am also surprised that Thelen did not give greater consideration to filing a parallel action under the federal FCA. Such joint actions are quite common and

there is no technical reason why Thelen could not have filed a federal action seeking multiple damages and penalties pertaining to federal losses. Mr. Fontana testified that his estimate of the face values of federal "annuities" ranged between 10 and 50 million dollars. It is not clear to me how he computed damages; but even using his 10% approach, if the federal action were successful, it could result in treble damages of $15 million and an unknown number of penalties of between $5,500 and $11,000 for each and every false claim and false or fraudulent document submitted by the defendants. Fontana depo., 213. As a successful relator, Mr. Marland would have benefitted substantially from his share of any federal recovery, separate and apart from any compensation generated in the state action. Federal intervention would also have enhanced the chances for settlement in the state action.

Particularly important in representing Mr. Marland would be a recognition that the FCA contains an alternative recovery provision which protects the relator from losing out in the very situation facing Mr. Marland–*i.e.*, the government securing recovery through a non-FCA mechanism. *See*, 31 U.S.C. § 3730(c)(5). The CFCA contains no such provision. Mr. Fontana testified that he could not answer whether he had considered this provision in reaching his decision against filing a FCA action. Fontana depo., 225. Moreover, the drastic collateral estoppel provision of the FCA [312 U.S.C. § 3731(d)] means the eventual federal plea agreement secured by the U.S. Attorney for the Central District of California would virtually guarantee recovery under the FCA, resulting in substantial monies flowing to Mr.

Marland in addition to any recovery from the California action. Even given the eventual decision by Thelen to throw its lot in with the DOI, this would not be any bar to filing a federal FCA action.

3. Delays stemming from the AG's consideration of the CFCA complaint.

In his report, Mr. Meagher accurately points to the fact that government prosecutors under both the CFCA and the FCA can take considerable amounts of time in evaluating *qui tam* cases before deciding whether to intervene or not in the action. Meagher report at 13-14. It appears Mr. Meagher is suggesting that because of the amount of time the AG had the ELIC matter under consideration, it was entirely appropriate for Thelen to enter into an agreement with DOI to represent it, with one condition being dismissal of the CFCA action. In my own mind, dismissal of the CFCA action at a point before the AG had decided whether to intervene, and of course before it had been unsealed and any discovery undertaken, would be something I would consider only in the most unusual circumstances.

Conclusion on management of the qui tam case.

In reviewing the course of the CFCA case, I am particularly concerned about the failure of Thelen to maintain a constructive and positive working relationship with DAG Taugher and his office.

IV. Mr. Marland as a Relator

At pages 12-13 of his report, Mr. Meagher asserts that Mr. Marland "presented serious limitations as a relator." I take it that Mr. Meagher's goal is to demonstrate that Mr. Marland was such a terrible relator, that even if Thelen did

not satisfy the "standard of care" in initiating and managing his case, its recommendation to dismiss the action was the best course open to Mr. Marland. I disagree with this assessment of Mr. Marland as a relator..

First of all, Mr. Meagher assumes that the case would have had to be tried for Mr. Marland to achieve success. In actuality, as Mr. Meagher is well aware, relatively few FCA cases are tried–the severity of potential damages and penalties usually forces a settlement. Also of importance in this matter was the on-going criminal investigation by the U.S. Attorney for the Central District of California. The eventual criminal plea which was achieved, coupled with the stringent collateral estoppel provision of the CFCA which I mentioned *supra*, would have virtually foreclosed any defense in the CFCA action had it still been viable.

Second, Mr. Meagher ignores that the Attorney General had faith in the case and had devoted substantial resources to prosecuting it, even though that office was aware of some of Marland's limitations as a relator. In fact, Mr. Fontana wrote an extensive memo to the AG (M 000330-347), which he testified he still stood by (Fontana depo., 221), arguing that the case was a viable one and urging continuation of the AG's involvement.

Third, while Mr. Marland apparently destroyed *his* copy of the *contrat de portage*, he expressed his confidence to Mr. Fontana and the U.S. Attorney that other copies would be produced by others involved in the litigation, and indicated whom he believed had copies.

Fourth, whether or not Mr. Marland would testify before the grand jury is irrelevant to his role as the relator in a civil CFCA case.

Finally, few relators in my experience are without limitations of some sort or the other. The more important issue is whether the potential FCA case demonstrates intrinsic viability when evaluated in terms of presenting a reasonable case in court, and whether the government has any other option to secure recovery As Mr. Fontana wrote in his memo to AG, "the state is the only 'person' capable of bringing an action against the defendants." *Id.* at M 000346.

All things considered, it is my opinion that the factors suggested by Mr. Meagher would most certainly have not foreclosed a successful result in the CFCA case, had it been predicated upon a viable theory.

Conclusion

There were serious problems inherent in Thelen's proposal to Mr. Marland to initiate a CFCA case against the ELIC defendants. As I indicate above, there are several elements of Thelen's advocacy of this course of action to Mr. Marland with which I have problems. However, once Mr. Marland had been persuaded to concur in Thelen's request, and the case was underway, there were aspects of Thelen's management of the on-going case about which I also have concerns. Particularly significant in this regard was Thelen's troubled relationship with the Attorney General. The question of whether or not Mr. Marland was a relator with "limitations" is irrelevant to the issue of whether the case was initiated and managed with the standard of care Mr. Meagher asserts.

EXHIBIT A

I consulted the following sources in preparing the attached rebuttal expert report:

1. Expert Report of Steven Meagher

2. Deposition of Gary L. Fontana, Esq., all four volumes

3. Deposition of Brian Taugher

Documents Produced in this Litigation

4. Memo, from Steven V. O'Neal to Gary Fontana, January 25, 1999 (Ex. 16)

5. Memo, from Christine C. Franklin to Gary L. Fontana, November 3, 1998 (TRP000329-348)

6. Memo, from Gary L. Fontana/Karl D. Belgum to DAG Brian Taugher, August 12, 1999 (M 000330-347)

7. Complaint (M 000634-646) and First Amended Complaint (M 000082-93) in CFCA action

8. Memo, from Gary L. Fontana/Karl D. Belgum to Partnership Committee, dated May 23, 2002 (Ex. 82)

9. E-mail, from Gary L. Fontana to F. Chateau and P. Brunswick, dated April 1, 1999, and attachments (M 000074-106)

10. E-mail from Gary Fontana to P. Brunswick April 1, 1999 (M 000776-7)

11. Memo from Gary Fontana to Phillippe Brunswick, May 22, 1999 (Ex. 100)

12. E-mail from Gary Fontana to Phillippe Brunswick, May 17, 1999 (M 000113-18)

13. E-mail from Gary Fontana to Phillippe Brunswick, May 14, 1999 (M 005039-43)

14. Memo from Karl D. Belgum to Stephen V. O'Neal, dated June 4, 1999, and attachments (Ex. 70-A)

15. E-mail from Gary Fontana to "Francois", dated 2/13/99 (Ex. 23)

16. Memo from Gary Fontana to Philippe Brunswick, dated May 25, 1999 (Ex. 127)

17. Amendment to RoNo Attorney-Client Agreement, dated June 2, 1999 (Ex. 5)

18. Letter from Brian Taugher to Gary L. Fontana, dated May 20, 1999 (Ex. 30)

Pleadings

19. "Complaint of Attorney General on Election to Intervene Under Gov. Code § 12652 for Violation of the False Claims Act...", dated June 19, 2001

20. Mr. Marland's *Notice of Motion for Summary Judgment; Memorandum of Points and Authorities in Support thereof*, in the present matter, dated April 5, 2007 (docket entry # 184)

21. Mr. Marland's *Counterclaim* in the present matter, dated October 3, 2006 (docket entry 65-1 at 30-54)

Miscellaneous

22. All the documents and sources cited in my original report in this matter.