



County of Santa Cruz

OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 95060-4068
(831) 454-2040 FAX: (831) 454-2115

SAMUEL TORRES, JR., COUNTY COUNSEL

CHIEF ASSISTANTS
RAHN GARCIA
DANA McRAE

Assistants

Deborah Steen	Pamela Fyfe
Harry A. Oberhelman III	Ellen Aldridge
Marie Costa	Kim Baskett
Jane M. Scott	Lee Gulliver
Tamya Rice	Kathleen Pacheco

GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda February 13, 2001

To: Board of Supervisors

Re: Claim of Milberg Weiss Bershad Hynes & Lerach LLP, No. 001-070A

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

- Milberg Weiss Bershad
Hynes & Lerach LLP, No. 001-070A
- 1 ☒ . Reject the claim of _____ and refer to County Counsel.
 - 2 . Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
 - 3 . Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
 - 4 . Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.
 - 5 . Reject the claim of _____ as insufficiently filed and refer to County Counsel.

cc: Rahn Garcia, County Counsel

RISK MANAGEMENT

By Janet McKinley

COUNTY COUNSEL

By Kim Elizabeth L Baskett

MILBERG WEISS BERSHAD HYNES & LERACH LLP

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MELVYN I. WEISS **
 WILLIAM S. LERACH
 DAVID J. BERSHAD **
 LEONARD B. SIMON *A
 STEVEN G. SCHULMAN *A
 PATRICK J. COUGHLIN A
 JOHN J. STOIA, JR.
 SOL SCHREIBER *
 JEROME M. CONGRESS *A
 KEITH F. PARK *
 ARNOLD N. BRESSLER *†
 JANNI ADLER
 MICHAEL C. SPENCER *
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 SANFORD P. DUMAIN **
 GEORGE A. BAUER III **
 DENNIS STEWART
 BARRY A. WEPRIN --
 HELEN J. HODGES
 RICHARD H. WEISS *
 ERIC A. ISAACSON
 ALAN M. MANSFELD
 REED R. KATHREIN 4
 JEFF S. WESTERMAN
 KEITH M. FLEISCHMAN **
 DEBORAH CLARK-WEINTRAUB **
 BP-43 N. FRIEDMAN *†
 PAMELA M. PARKER.

LAWRENCE MILBERG (1913.1989)

THEODORE J. PINTAR
 MARK SOLOMON
 JOSHUA H. VINIK *
 RANDI DAWN BANDMAN
 JOY ANN BULL
 WILLIAM S. DATO
 EDITH M. KALLAS **
 KENNETH J. VIANALE -♦♦
 PAUL D. YOUNG .
 KATHERINE L. BLANCK
 TRAVIS E. DOWNS, III
 WILLIAM C. FREDERICKS --
 REGINA L. LAPOLLA 'A'
 ALBERT H. MEYERHOFF
 JANINE L. POLLACK *†
 ABRAHAM RAPPAPORT *††
 DARREN J. ROBBINS
 BONNY E. SWEENEY
 TIMOTHY G. BLOOD
 SPENCER A. BURKHOLZ
 KIRK E. CHAPMAN *
 EDWARD P. DIETRICH
 SALVATORE J. GRAZIANO **
 G. PAUL HOWES A
 FRANK J. JANECEK, JR.
 ARTHUR C. LEAHY
 SAMUEL H. RUDMAN *††
 J. DOUGLAS RICHARDS **
 SANFORD SVETCOV

600 WEST BROADWAY
 1800 ONE AMERICA PLAZA
 SAN DIEGO, CA 92101-3311
 (619) 231-1058
 FAX: (619) 231-7423

OFFICES IN:

NEW YORK
 SAN FRANCISCO
 BOCA RATON
 LOS ANGELES
 SEATTLE

DIRECT LINE:

OF COUNSEL

PATRICIA M. HYNES **
 JARED SPECTHRIE **
 RICHARD M. MEYER **
 SHARON LEVINE MIRSKY *♦♦
 ANITA MELEY WNG
 ANITA B. KARTALOPOULOS *†
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 KATHLEEN A. HERKENHOFF
 MATTHEW H. HERSCH .
 LESLIE E. HURST
 ANDREW W. HUTTON
 JAMES L. JACONETTE

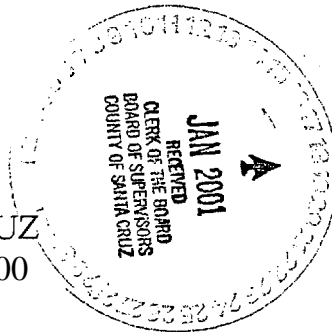
FRANCIS P. KARAM **
 BETH A. KASWAN **
 BENJAMIN Y. KAUFMAN *††
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 KAREN THOMAS
 DAVID C. WALTON
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 LEE A. WEISS .
 MICHELLE WILLIAMS COURT
 DEBRA J. WYMAN

- * ADMITTED IN NY
- A ADMITTED IN DC
- t ADMITTED IN NJ
- 4 ADMITTED IN FL
- ★ ADMITTED IN WA
- * NOT ADMITTED IN CA

January 17, 2001

VIA FEDERAL EXPRESS

Clerk
 Board of Supervisors
 COUNTY OF SANTA CRUZ
 70 1 Ocean Street, Room 500
 Santa Cruz, CA 95060



Re: Protective Claim Against the County of Santa Cruz
People v. Philip Morris, Inc.
 San Francisco County Superior Court Case No. 980864

City and County of San Francisco, et al. v. Philip Morris, Inc.
 N.D. Cal. Case No. C96-2090

Dear Sir/Madam:

This is a claim for money or damages presented in accordance with the provisions of California Government Code *\$900 et seq.* ***This is a protective claim only.*** This claim arises from Milberg Weiss Bershad Hynes & Lerach LLP's ("Milberg Weiss") joint representation of the County of Santa Cruz with Lieff Cabraser Heimann & Bernstein ("Lieff Cabraser"), in *People v. Philip Morris, Inc.*, San Francisco County Superior Court Case No. 980864 and *City and County of San Francisco, et al. v. Philip Morris, Inc.*, N.D. Cal. Case No. C96-2090. Milberg Weiss has asked Lieff Cabraser Heimann & Bernstein ("Lieff Cabraser") to stand with us in accepting the attorney fee arbitration award as full satisfaction of the Cities' and Counties' attorney fee obligations under our fee contracts. However, our co-counsel are



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not willing to waive claims to additional compensation under the contracts and have since filed a claim with each represented City and County. While we have no desire to seek to enforce the contracts for additional compensation, if our co-counsel receive additional compensation it would be inequitable for us not to be similarly compensated. This is especially true, when considering that our firm committed the most time, effort and resources to the successful conclusion of the litigation, as presented during the fee arbitration. Accordingly, we file this protective claim to cover the contingency that additional monies are paid by any City and County to Lieff Cabraser under the fee contracts. If additional compensation is paid to Lieff Cabraser under the fee contracts, either in settlement, by court order, or otherwise, Milberg Weiss is entitled to either one-half of such payout, or to an equal payment, to satisfy any contractual obligations (not to exceed, of course, the total contractual obligation). *If no additional amounts are paid to Lieff Cabraser in relation to their claim, Milberg Weiss will not seek additional compensation under the fee contracts.*

Accordingly, Milberg Weiss hereby files this claim for money or damages and presents it in accordance with the provisions of California Government Code §900 et seq. California Government Code §9 10 sets forth the required contents of a claim.¹ Each of these requirements, and the corresponding information is set forth separately below.

1. **The Name and Post Office Address of the Claimant**

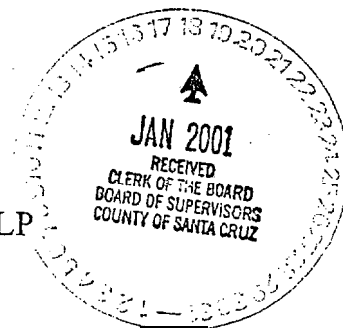
The name of the claimant is Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss"), the post office address is:

¹ We are aware that the County of Santa Cruz may make claim forms available. However, as we are simultaneously presenting our claim to our other City and County clients, we are presenting them by letter, in the interest of uniformity. See Cal. Gov. Code § 910.4 (the governing board "may provide forms specifying the information to be contained in claims against the public entity," but "the person presenting a claim need not use such form if he presents his claim in conformity with §§9 10 and 9 10.2"); *Blair v. Superior Court*, 218 Cal. App. 3d 221 (1990) (local public entity cannot require more information than required by statute).



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Milberg Weiss Bershad Hynes & Lerach LLP
100 Pine Street, Suite 2600
San Francisco, California 94 111



2. **The Post Office Address to Which the Person Presenting the Claim Desires Notice to Be Sent**

Notices concerning this claim should be sent to:

Patrick J. Coughlin
Milberg Weiss Bershad Hynes & Lerach LLP
100 Pine Street, Suite 2600
San Francisco, California 94 111

3. **The Date, Place and Other Circumstances of the Occurrence or Transaction Which Gave Rise to the Claim Asserted**

On or about June 4, 1998, the County of Santa Cruz entered into an engagement and contingency agreement with Milberg Weiss. Pursuant to that agreement, Milberg Weiss agreed to jointly represent the County of Santa Cruz in litigation against the major tobacco companies with Lieff Cabraser, and the County of Santa Cruz agreed to pay Milberg Weiss and Lieff Cabraser a specified contingent attorney fee on the amounts recovered by the County of Santa Cruz.

On or about June 4, 1998, the County of Santa Cruz entered into a second engagement and contingency agreement with Milberg Weiss. Pursuant to that agreement, Milberg Weiss agreed to jointly represent the County of Santa Cruz with Lieff Cabraser in additional litigation against the major tobacco companies, and the County of Santa Cruz agreed to pay Milberg Weiss and Lieff Cabraser a specified contingent attorney fee of amounts recovered by the County of Santa Cruz. Milberg Weiss has fully performed its obligations under the terms of the contracts, prosecuting the lawsuits against the tobacco companies to a successful conclusion on behalf of the County of Santa Cruz and its other City and County clients.

Under the terms of the contracts between the County of Santa Cruz and Milberg Weiss, Milberg Weiss is entitled to payment of the contingent attorneys' fees with credit to the County of Santa Cruz for a proportional share of any amounts actually received by Milberg Weiss pursuant to an arbitration award of attorneys' fees in favor of Milberg Weiss against the tobacco companies.



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4. **A General Description of the Indebtedness, Obligation, Injury, Damage or Loss Incurred So Far as it May Be Known at the Time of Presentation of the Claim**

See part 3, *supra*.

5. **The Name or Names of the Public Employee or Employees Causing the Injury, Damage, or Loss If Known**

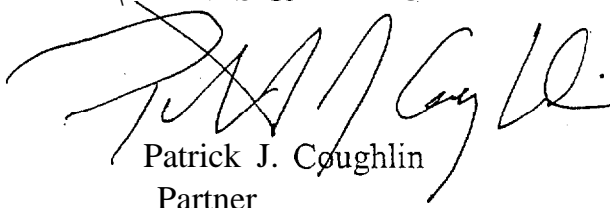
The engagement and contingency agreement and the second engagement and contingency agreement were executed on behalf of the County of Santa Cruz by Dwight L. Herr, County Counsel, County of Santa Cruz. Milberg Weiss does not know which public employee or employees of the County of Santa Cruz may be responsible for making the payments due to Milberg Weiss under the terms of these agreements.

6. **If the Amount Claimed Exceeds Ten Thousand Dollars (\$10,000), No Dollar Amount Shall Be Included in the Claim. However, it Shall Indicate Whether the Claim Would Be a Limited Civil Case**

The amount claimed exceeds ten thousand dollars (\$10,000). If litigation were instituted on the claim, it would not be a limited civil case.

Very truly yours,

MILBERG WEISS BERSHAD
HYNES & LERACH LLP



Patrick J. Coughlin
Partner

PJC/vr

cc: Rahn Garcia (via facsimile)