

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

and

KIRT WEST,
INSPECTOR GENERAL OF THE
LEGAL SERVICES CORPORATION,
3333 K STREET, NW, 3RD FLOOR,
WASHINGTON, D.C. 20007

Petitioners,

v.

CALIFORNIA RURAL LEGAL
ASSISTANCE, INC.,
631 HOWARD ST., #300
SAN FRANCISCO, CA 94105

Respondent.

Misc. No. 1:07-MC-00123-EGS

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DECLARATION OF WILLIAM G. HOERGER IN OPPOSITION TO PETITION
FOR SUMMARY ENFORCEMENT OF ADMINISTRATIVE SUPBOENA DUCES TECUM

I, WILLIAM G. HOERGER, declare as follows:

1. I am a member in good standing of the State Bar of California, and have so been since my admission in 1973. Except where otherwise indicated, I have personal knowledge of the facts stated in this declaration, and as to any facts of which I lack personal knowledge I am informed and believe they are true. If called upon as a witness I could and would competently testify to the facts stated herein.

2. I offer this declaration in support of California Rural Legal Assistance, Inc.'s ("CRLA") opposition to the Legal Service Corporation's Office of Inspector General's ("OIG's") Petition For Summary Enforcement Of Administrative Subpoena Duces Tecum.

My Background

3. I am currently employed by California Rural Legal Assistance, Inc. ("CRLA") as one of four Directors of Litigation, Advocacy and Training ("DLAT"), and have been so employed since CRLA created the position in 1996. I am based in CRLA's Central administrative office in San Francisco, California. I have been employed by CRLA since May 1982, initially as a special trial counsel for what was then believed to be the single largest lawsuit ever litigated by a legal services program in this nation. In 1987, following the completion of appeals in that case, I became one of CRLA's four Regional Counsel, a non-management position responsible for reviewing and providing senior-counsel oversight to CRLA advocacy among CRLA's multiple offices. I retained the Regional Counsel position until CRLA reorganized its management structure in 1996, and created the four DLAT positions.

4. As a DLAT, I have supervisory and oversight responsibilities at any one time for six or seven of CRLA's twenty-three office locations. During my tenure as a DLAT, my office

assignments have rotated from time to time so that I have at one time or another served as supervising DLAT for 13 of CRLA's offices. I report directly to CRLA's Executive Director, Jose R. Padilla.

5. CRLA's four DLATS jointly review and approve all affirmative judicial litigation undertaken by CRLA. This process at the trial level involves review of substantive, procedural and LSC-regulatory aspects of the proposed litigation as presented through written Litigation Assessment Plans ("LAP"s) prepared by CRLA staff, and generally includes review of the proposed initial pleading. The DLATs also undertake similar review of written applications for permission to undertake appellate litigation, and we pass on these recommendations to the Executive Director for final determination.

6. In my role as Regional Counsel prior to 1996, my primary responsibility was the full-time review of, preparation for and undertaking of litigation and other advocacy for one-fourth to one-third of the program's offices. In my final years in that role, I served as Regional Counsel for all of CRLA's Migrant Project offices, which served (and still serve) migrant and seasonal workers throughout California.

7. As a DLAT, I also have program-wide supervisory responsibilities over CRLA's advocacy on substantive issues involving labor and employment, and regarding certain aspects of health advocacy. I have since 2002 chaired CRLA's program-wide Labor Task Force, a position I also held a number of years earlier. (As explained further below, CRLA has assembled internal "task forces" composed of personnel from various CRLA offices across the state who regularly participate in CRLA's activities in a particular practice area, such as labor and employment, housing, education. These task forces analyze and respond to developments in the law, and develop training materials, practices and strategies regarding pending and anticipated cases in

their substantive areas, so as to more effectively serve CRLA's clients.) I previously developed and coordinated a program-wide litigation strategy known as "W.R.I.L." (Workforce-wide Rapid Injunction Litigation) focusing on occupational safety and health advocacy. I have developed program-wide training and advocacy materials over the years on several employment topics. I have been a trainer in a number of different areas of employment advocacy, including both wage-and-hour topics and occupational-health-and-safety topics. I have also been a trainer in litigation procedure—including injunction litigation—within CRLA, in regional and national trainings sponsored by the legal-services community, and for other professional associations and organizations within California and on greater regional levels.

8. As a DLAT, I also participate selectively in CRLA trial litigation, generally in the area of employment. I participate in substantial appellate litigation, largely in California's state-court system, and have done so numerous times both as representative of parties and of amici curiae at all levels of California's appellate courts.

9. Among my professional experiences prior to joining CRLA, I served four years as a Deputy in the Office of the Monterey County (California) Public Defender. During that period, I was counsel in approximately one hundred trials of both misdemeanors and felonies, nearly all before juries; I supervised the Misdemeanor Unit in the Salinas office, and was counsel in one of the first capital cases filed in California following reinstatement of this State's death penalty. I also served three years on the legal staff of the State of California Agricultural Labor Relations Board ("ALRB"): the first year as counsel in the ALRB's Salinas office assuming responsibility for all judicial proceedings arising out of a statewide strike by the principal farm workers union; then as a member of a 3-attorney unit within the ALRB General Counsel's office with responsibility for both developing litigation strategies and overseeing all General Counsel unfair-

labor practice litigation throughout the state. I eventually became the ALRB's Acting Deputy General Counsel before resigning to accept a position with CRLA.

10. Within CRLA, in addition to my other responsibilities I am generally involved in reviewing questions on issues of professional responsibility that arise within the program, and providing direction to the program on such issues. This involvement ranges from assuming primary responsibility for the drafting of currently-used form documents such as client retainers and co-counseling agreements to being consulted on, and directing, program response to circumstances such as CRLA professional staff being subpoenaed as witnesses in third-party civil and criminal trials and/or for third-party depositions; attempts by third parties in civil and criminal proceedings to obtain CRLA client records; attempts by law enforcement to obtain information about our clients, and complaints made to the State Bar by unhappy opposing parties or opposing counsel and/or by dissatisfied applicants to whom CRLA denied services. In these activities, I work directly with the concerned staff and report to the Executive Director. On occasion, I recommend and undertake the engaging of outside counsel to represent CRLA in these matters.

11. With respect to the current OIG investigation of CRLA that was announced in December 2005, I serve as CRLA's senior manager, reporting to the Executive Director, overseeing our substantive and procedural responses (with the exception of Accounting Department responses undertaken by CRLA's Controller). I write or review most of CRLA's correspondence with OIG, and participate in virtually all discussions and negotiations between CRLA and OIG, with respect to the investigation. I have similar responsibilities with respect to CRLA's communications and discussions with LSC management concerning the current OIG investigation. I serve as one of CRLA's representatives to our outside counsel in these matters.

I have supervised and directed CRLA's staff in locating, retrieving and reviewing documents and information responsive to OIG demands, including OIG's March 16, 2006 combined Data and Document Requests ("Administrative Request") and OIG's October 17, 2006 administrative subpoena duces tecum ("Subpoena") that is the subject of the instant enforcement proceeding. Pursuant to a request from LSC management in September 2006, I developed and oversaw the research and analysis, and prepared a report for LSC management, concerning CRLA program resources and time that would be required to analyze CRLA client files subject to the current OIG Administrative Request and Subpoena for application of the federal attorney-client privilege. Throughout the processes described in this paragraph, I regularly consulted with CRLA's Executive Director, Jose R. Padilla. and CRLA's Administrative Director of Training, Technology & Other Support, Karen Smith, regarding these matters.

12. With respect to a prior, 40-month OIG-conducted "program integrity audit" of CRLA, I also performed a similar role, monitoring, overseeing, and serving as CRLA's "liaison" with OIG with respect to programmatic and/or advocacy matters.

Overview of CRLA

13. California Rural Legal Assistance, Inc. ("CRLA") is a California not-for-profit corporation, founded in 1966 to provide a wide range of free legal assistance and representation to low-income communities throughout rural California. CRLA is a "qualified program" within the meaning of the federal Legal Services Corporation Act (42 U.S.C. §§ 2996 *et seq.*, 2996e(a)(1)(A)), and receives about 60% of its funding from LSC. CRLA is also a "qualified legal services provider" within the meaning of the California Business & Professions Code (Cal. Bus. & Prof. Code §6213). CRLA generally provides direct representation before judicial and

administrative forums to indigent persons eligible under governing statutes and regulations, legal advice and counsel to eligible persons, and legal-rights education to persons and communities.

14. As part of its Basic Program, CRLA provides legal services to the poor in 16 California counties. CRLA serves this population through 23 offices in 21 different locations scattered across a service area that extends some 750 miles from Marysville (Sutter County) in the northern Sacramento Valley to El Centro (Imperial County) at the Mexican border, across California's inland agricultural valleys and along California's coast. This is comparable to the distance between Boston, Massachusetts and Norfolk, Virginia. CRLA is also the exclusive provider of LSC-funded "migrant" legal services for the entire state of California. Our 23 local offices include 6 Migrant Project and 17 Basic Program facilities. Our central administrative offices are located at an additional location in San Francisco. Under our LSC grant, our Basic Program offices are responsible for serving a poverty population of approximately 555,000. CRLA also has the sole Migrant Project in the state, a project it began in 1978 with a grant from LSC. Most of the eligible clients served by the Migrant Project are seasonal and migrant agricultural workers.

15. CRLA's budget for Calendar Year 2006 totaled \$11,223,000, of which \$6,768,000 (or roughly 60%) consisted of the federal grant from the Legal Services Corporation; \$1,756,000 comprised California IOLTA (interest on legal trust fund monies distributed by the California State Bar) and Equal Access to Justice funding; \$297,000 was provided through Area Agency for Aging Seniors Grants; \$175,000 was provided through U.S. Dept. of Housing and Urban Development Fair Housing Initiative Program and Housing Counseling grants; \$1,329,000 comprised other private and public agency grants, including The California Endowment's Agricultural Worker Health Project, \$600,000 came from private donations; and the remaining

\$187,000 derived from miscellaneous sources such as rental and interest revenues. Some of our non-LSC funding and its requirements are accurately described in more detail in Exhibit LL to this Declaration (described at Paragraph 107, *infra*) at pages 16-18, 25-26, 30-31 and 33-35.

16. Our current office staff comprises about 50 attorneys (two of our four management-level Directors of Litigation, Advocacy and Training (“DLATs”) also work in field offices); slightly more than 30 full- and part-time Community Workers; and roughly 55 technology, back office and clerical positions. Senior management consists of the Executive and Deputy Directors. Annual salary expenditures are \$6,045,000; with taxes and benefits, personnel costs total \$7,848,000.

17. CRLA is governed by a 45-member Board of Directors, of which one-third are client-eligible persons from throughout the State. In addition, most local offices have their own advisory committees composed predominantly (at least two-thirds) of local clients or client-eligible community members who typically meet monthly to bring office personnel’s attention to events and legal needs arising in the communities the office serves, and consult on office priorities and initiatives.

18. Recognizing that the resources available are never adequate to serve the eligible poor’s legitimate legal needs, the LSC Act and Regulations require LSC-funded legal aid programs to determine and implement priorities for providing legal assistance, taking into account the relative needs of eligible clients with special legal problems or difficulties of access. The Regulations and other LSC guidance, including LSC’s formal Performance Criteria, further direct programs to effectively appraise the primary needs of eligible clients and to facilitate effective utilization of services by categories of people who traditionally have had difficulties in accessing the legal system such as those with limited English-speaking ability and migrants.

CRLA provided a document to Congress, LSC management and OIG during the course of this investigation that accurately describes CRLA's priority-setting process and our resulting priority choices. See Exhibit LL to this Declaration, *infra*, at pages 7-18 and 28-31.

CRLA Protects The Confidentiality Of Its Clients Identities Because Many CRLA Clients Fear The Consequences That Would Result From Disclosure Of Their Consultation With CRLA.

19. Agricultural employment in California is characterized by seasonal, short-term, low-wage employment, more than half of which currently is offered through intermediary farm-labor contractors rather than fixed-site growers or producers. Agricultural employment is also characterized by a wide-spread perception among workers that they are replaceable at the proverbial drop of a hat. Today, probably as many as one-half of California's nearly one-million seasonal agricultural workers are unauthorized immigrants; their fears about their employment and other security have been well-documented in recent times.

20. Perhaps less-well recognized is the virtually equal level of fear among authorized workers (that is, American citizens and legal aliens holding "green cards") who, although not at-risk with respect to deportation, view themselves as equally replaceable should they displease their employers. One result of this is that, absent extreme circumstances such as those described in subparagraphs (b)-(d) below, it is common for workers to approach and consult CRLA about conditions of employment only after they have lost or been terminated from the job in which they were mistreated. Workers' fears of losing an existing job will routinely motivate them to decline to take action after weeks of non-payment of wages or while being subjected to illegal life-threatening risks at their job sites so long as they continue to be employed at that job-site. I describe in this Paragraph a few specific experiences that I have encountered in my work with

CRLA. Based on my many years of experience working with and supervising many other attorneys working with these issues, these incidents are noteworthy not because they are unusual, but because they are typical, and reflect both the circumstances typically confronting the low-wage workers and tenants who comprise most of CRLA's client base, and the pervasive and nearly daily fears those circumstances engender.

(a) For several years, I worked closely with our Santa Maria office in developing advocacy strategies to address the recurring summer issue of strawberry-harvest workers not being paid wages for substantial portions of the season. In one four-year period, during the latter stages of harvest each season, hundreds or—in at least one season—thousands of workers came to our Santa Maria office, often in the evenings, to learn what might be done about their employers' failures to pay them several weeks, if not months, of wages. Our Santa Maria staff advised them of the various administrative-agency and judicial procedural options available and of their potential remedies including recovery of unpaid wages, 100% statutory damages, and various, often-substantial penalties for delayed payments upon termination and failure to provide appropriate wage statements. Workers who had been terminated or left their jobs at the end of the season generally were interested in pursuing remedies. To an overwhelming degree, however, workers—sometimes in crews exceeding 100 individuals—who were currently employed (albeit without pay) would decline to make any demands for fear of losing their current employment and often would express their hopes that “perhaps things will get better.”

(b) In 2000, along with a number of CRLA staff, I was involved in initial preparation of litigation seeking injunctive and monetary remedies for several hundred agricultural harvest workers. These workers lived in abysmally foul labor camps (no functioning toilets, showers or washing facilities) from which they were not permitted to leave once the

season began. These camps were operated by the farm labor contractor who hired them; the contractor also underfed the workers and withheld their first six weeks of wages as “reimbursement” for his “expenses” in bringing them to the worksite. The location of the camp, in California’s San Joaquin Delta, was no more than a dozen miles from the Stockton, a city of some 250,000 population, where CRLA has an office. CRLA became aware of the situation when one of the workers surreptitiously left camp in the middle of the night and contacted a charitable services organization who brought him to our office. Our experienced Community Workers and lawyers entered the camp and viewed the horrendous conditions, but none of the camp’s several hundred inhabitants would talk to them while in the camp.

Eventually, as a result of clandestine communications, several CRLA Community Workers and I traveled after midnight to an isolated, brush-covered riverbank area, devoid of structures, cultivation or any other improvements, about 2 miles from the labor camp. We left our vehicles parked in an unobservable area away from the road, and then moved on foot further into the brush. We were contacted by approximately a half-dozen workers who had left the camp surreptitiously. These workers explained that the contractor had repeatedly stated that anyone who left the camp during the season, or talked with anyone outside the camp during the season, would immediately lose his job, would receive no pay for the season, and that the workers’ relatives still in the Mexican community of origin would suffer substantial physical injuries to the point of possible death. They were obviously frightened.

Eventually some of these workers agreed to become plaintiffs under fictitious names in litigation that CRLA filed on their behalf in the United States District Court for the Eastern District of California. CRLA was successful in obtaining significant injunctive relief including a TRO, based upon declarations by workers all of whom were willing to proceed only with their

names redacted and their original, executed declarations placed under seal by the Court.

(c) Prior to 1996, when the LSC regulations then in effect did not limit LSC-funded recipients from engaging in legislative advocacy, I attended a hearing before a Committee of the California Legislature considering a bill to strengthen wage protections and wage enforcement for California farm workers. A group of key witnesses, who were experienced harvest workers from the southern Salinas Valley (often referred to as the “lettuce bowl” of America) testified that contractors employing them for harvesting chilies routinely withheld the first ten days of their wages, justifying this practice as a “learning period.” These witnesses came to and entered the State Capitol, and testified wearing ski masks and using fictitious names. They requested leave to do so based upon their fears that if their identities were to be learned, they would be “black-balled” from agricultural work throughout the entire Salinas Valley.

(d) Some two years ago, our staff in one office met with a group of workers away from the office, and ultimately accepted them as clients without these applicants ever entering the office. This occurred because when the workers had first approached our office, they recognized through the window that our office’s receptionist/intake-worker was the sister of the farm labor contractor for whom they worked, and about whose practices they wanted to consult with us. Although internally we were completely confident of the integrity of our experienced employee, and of her commitment to comply with professional-responsibility obligations to these applicants, and we communicated our opinion to these applicants, it would have been impossible to serve them had we required them to enter the office, and had we also not created—and so informed the workers—of a “firewall” preventing our employee from accessing their files.

(e) Another illustration of the extremely difficult conditions potential CRLA

clients face, and of their justified fear of retaliation, can found in declarations submitted by migrant agricultural workers who were CRLA clients in a case filed in the Eastern District of California, *Rafael Lopez Rivas, et al. v. Schmidl Farms, Inc.* (E.D.Cal., Case No. CIV-S-91-761 DFL/JFM). These workers' sworn declarations described their fears of losing existing employment and/or not securing employment if they complained about farm labor camp conditions. The housing conditions that they hesitated to complain about were not trivial but included: living in a burned-out house, shut-off electricity and gas, lack of refrigerator, moldy house trailers with leaking roofs and walls and crumbling floors, lack of door latches, lack of hot water, no window glass, no toilet or sink, no mattresses. In response to their requests for improved housing conditions, workers experienced a wide range of retributive measures. Some were run off the grower's property, others were thrown out of their housing, had electricity and gas service cut off, or had their furnishings seized. Some were threatened with being reported to law enforcement. Some were excluded from promised work and replaced in existing work. Labor camp operators also subjected complaining workers to yelling, physical assaults, and intimidation by discharging a shotgun within the camp.

21. Frequently, the result of an investigation or visit to a field by an official of the State Division of Labor Standards Enforcement or of the Division of Occupational Safety and Health (Cal-OSHA) is same-day termination of any worker observed by the employer to be responding to the investigator.

22. Applicants for CRLA's services not infrequently telephone staff at our offices to inquire if they can meet with our staff or apply for our services without coming to our office location, as they fear that their landlords or their employers will learn that they have "talked to CRLA." Applicants who do come to our offices to apply for services not infrequently ask during

the intake process whether it is possible for us to help them without recording their names.

23. Dairy-farm workers whose employers discover that they have consulted with CRLA are sometimes forcibly evicted, often along with their families, from their employer-supplied dwellings, assaulted, and on one occasion, with their minor children, were sprayed with liquid manure from a high-pressure waste hose held by the employer.

24. CRLA has had clients who have suffered summary employment terminations due simply to their employers having learned that their worker(s) had consulted CRLA, even though no demand had been made by the employee or by CRLA on the employee's behalf.

25. CRLA conducts extensive field-monitoring activities wherein our Community Workers "patrol" fields from the public highways observing for visible health and safety violations (e.g., absence of federally- and state-mandated field toilets, absence of federally- and state-mandated drinking water, use of state-prohibited short-handled hoes, operation of harvest machinery with driverless tractors). Our staff are trained to approach visible supervisory personnel to attempt to negotiate immediate voluntary compliance, but our staff do not attempt to talk to workers in these circumstances even if the latter are on rest break. due to the risk of endangering their continued employment.

26. CRLA has had clients who received eviction notices or in some cases were the victims of blatantly illegal forcible evictions due simply to their landlords having learned that their tenants had consulted CRLA, even though no action or demand had been made by the tenant or by CRLA on the tenant's behalf. It is not uncommon for landlords in many communities to call local law-enforcement to assist in these illegal "self-help" evictions by threatening the tenants with arrest for trespass if they do not immediately vacate the premises. During my years with CRLA, we have brought suit on several occasions against municipalities

to restrain their police departments from engaging in illegal forcible evictions, and have provided trainings to other police and sheriff's departments concerning tenant rights and California landlord-tenant law pertaining to evictions.

27. In one instance several years ago, CRLA brought suit in state court on behalf of farmworkers challenging housing conditions in their grower-operated labor camp near Fresno, California. Upon being served with summons, the grower and his foremen immediately commenced forcibly evicting the families from the camp. CRLA was able to secure an immediate Temporary Restraining Order from the state-court judge. Unfortunately for our clients, our litigation included not only state-law causes but claims under a federal statute—the Migrant and Seasonal Agricultural Worker Protection Act. The grower's counsel prepared a petition for removal to federal court while the grower brought in his bulldozers from the fields. Upon a telephone call from the courthouse that the removal petition had been filed (thus having the effect of vacating the state-court TRO), the bulldozers were throttled up and immediately demolished the camp before CRLA could pursue any further legal proceedings in federal court on behalf of the residents.

28. CRLA has developed and implemented various representational and litigation strategies both to deter the reality of retaliations and to assist workers who fear retaliation in preventing continuing violations of employment and housing conditions and obtaining remedies for past violations. Several years ago, CRLA's Salinas Migrant office perceived the issue of workers' fears of retaliation as so grave that the staff developed as a local priority the investigation and litigation of all retaliation claims for eligible clients regardless of the amount at issue. In early 2007, CRLA staff created a program-wide Anti-Retaliation Strike Force composed of a number of experienced CRLA attorneys and Community Workers who review

potential cases as they arise in our various offices. The Strike Force members work with local office staffs to evaluate and develop cases and to provide litigation support. Recent lawsuits filed by CRLA allege the following examples of employer retaliation: termination of a employee required to apply toxic pesticides to crops for complaining about inadequate protective equipment; termination of packing-shed workers for requesting statutorily-mandated rest periods; and termination of an employee for filing a police report concerning his being imprisoned (locked in a metal shed) by his supervisor.

29. CRLA has historically taken the position with respect to all third parties (including LSC and OIG) that the identities of CRLA's clients are confidential under California law unless and until CRLA's relationship with the client is disclosed through judicial litigation, administrative advocacy before those agencies where proceedings are matter of public record, and/or where the client has authorized CRLA to reveal her or his identity through advocacy such as a demand letter, etc. CRLA has also asserted this position where the client pursues remedies or claims before those administrative agencies and tribunals where state and/or federal statutes establish the confidentiality of those proceedings and/or of the claimants. During the 40-month "program integrity audit" the OIG conducted of CRLA that began in 2001 that is described further below, OIG demanded memoranda explaining the legal bases for these positions. True and correct copies of those memoranda are attached hereto as Exhibit A.

30. CRLA historically has vigorously sought to protect client confidences including non-public consultations and/or professional relationships with CRLA. I have personally been involved in developing CRLA's response to these situations. In one example, a state District Attorney pursuing a criminal prosecution of a corporation sought to learn the identities of all agricultural employees of a particular corporate grower who had over a period of time

approached a CRLA office to consult or apply for our services with respect to employment issues. CRLA declined to provide this information. When the District Attorney advised that he would serve a subpoena duces tecum upon our local Directing Attorney to testify and bring records, CRLA advised that we would move to quash. The District Attorney then threatened to obtain and execute a search warrant of our office for the appropriate records. CRLA obtained outside specialized counsel for this matter, and we reminded the District Attorney of California statutes applicable to execution of warrants on law offices (warrants may be executed only in the physical presence of Special Masters who are not law-enforcement officers, materials subject to the warrant may be seized only by the Special Master and, in the absence of consent, may not be possessed by law enforcement until after in-camera review by a court), and that we were prepared to immediately contest the warrant through appellate writ proceedings. Ultimately, the District Attorney abandoned efforts to obtain these client identities.

31. Even where client identities are not at issue but third parties seek information from CRLA staff (including under legal process) that may implicate attorney-client communications or other client confidences, CRLA carefully monitors and interposes objections as appropriate to protect privileges and confidences. In overseeing these situations, my practice is to provide CRLA counsel separate from the CRLA staff served or approached as the potential or actual witness, notwithstanding that the staff-“witness” may be a highly-experienced, capable attorney.

32. In one recent example of CRLA’s practice, during a state-court suit for damages between two private third parties (respectively the seller and buyer of a commercial residential property, neither of whom was represented by CRLA) one party issued a trial subpoena to the CRLA attorney who had previously represented a substantial number of tenants in the property, apparently to elicit information about the property that our attorney had learned from her clients.

CRLA filed a motion to specially appear on behalf of our clients together with a pre-trial brief addressing client confidences. Upon our attorney being called to the witness stand, CRLA specially appeared through experienced litigation counsel who successfully objected to any testimony by our attorney beyond her name and occupation.

Recent Investigations Of CRLA Instigated By California's Dairy Industry

33. OIG's current investigation of CRLA was instigated by Congressman Devin Nunes (R-Visalia). (OIG informed CRLA that Rep. Nunes provided the information upon which the investigation was based in a telephone call at the outset of the investigation). Congressman Nunes is Chair of the Congressional Dairy Caucus, and represents Tulare County, where many dairies against which CRLA has litigated are located.

34. This is the second large-scale OIG investigation of CRLA during the past 5 years. The previous one (classified as a "program integrity audit") lasted a record 40 months from notice to closure, and produced no finding of any significant violation of federal law or regulation. OIG concluded after over three years of effort that CRLA had "subsidized" one independent nonprofit not funded or regulated by LSC by our failure to charge penalties (amounting to slightly over \$500) for late rent payments on space CRLA subleased to that entity, an accommodation CRLA uniformly extended to all non-profit subtenants. (The rent was fully paid, and so eventually was the interest.) At a March 2004 oversight hearing before the House Subcommittee on Commercial and Administrative Law (which oversees LSC), a Subcommittee member noted that even if OIG's findings were true, the disputed funds amounted to \$511 and were *de minimis* from the perspective of the \$18 million in budget for the funding period reviewed by OIG. Nevertheless, in reliance on OIG's finding of some \$500 in uncharged

interest, Congressman Nunes requested LSC to permanently defund or debar CRLA, and representatives of the Western United Dairymen's Association requested the United States Attorney General to undertake criminal prosecution of CRLA and its officers. Neither occurred.

35. As part of OIG's 40-month "program integrity audit" that finally closed in 2004, OIG comprehensively reviewed CRLA's co-counseling practices and documentation—and found no improprieties of any kind.

36. When issues of client confidentiality arose during the audit, they were discussed between CRLA and OIG, and accommodations were worked out that allowed for appropriate protection of client confidentiality. For example, during the audit, OIG randomly selected 97 client files of closed litigated cases for examination. (The fact that OIG was willing to rely on a random sample comprising a tiny fraction of all similar files; that it was a random sample of litigated, and therefore likely public, cases; and that those cases were closed are all examples of ways in which OIG managed burden on CRLA and intrusiveness into potentially protected material during that audit. Their use in the prior audit is notable, especially in light of OIG's refusal even to consider any of those approaches in the current investigation.) CRLA's preliminary internal review of these files revealed that approximately 30 involved provision of legal assistance to clients in various administrative proceedings, the confidentiality of which was expressly provided by either California or federal statutory or regulatory authority. These confidentiality protections extended to any information that would reveal that the client had participated in the administrative procedure, including information such as whether the client filed a claim or application. CRLA declined to reveal the identities of these clients and we provided only copies of documents redacted to eliminate client-identifying information. Upon OIG's request, we drafted and provided memoranda showing the legal basis for confidentiality as

to each of the six administrative or regulatory schemes at issue. *See* Exhibit A. After discussions, a procedure was agreed upon whereby members of the OIG audit team were allowed to verify the completeness of the confidential client files while limiting risk of disclosure of confidential client identities and other confidential information.

37. The current investigation, requested by Rep. Nunes, is also the third investigation of CRLA (including both OIG inquiries) since 2000 prompted by complaints from members of Congress from California's Central Valley on behalf of the California dairy industry. In September 2000, Rep. William Thomas (R-Bakersfield) requested LSC's Office of Compliance and Enforcement ("OCE") to conduct a review of CRLA's use of federal funds and of CRLA's relationship with an independent third-party advocate, the Center on Race, Poverty and the Environment ("CRPE"), then engaged in litigation involving the dairy industry. OCE found no connection between CRLA and CRPE and also found that CRLA was compliant with applicable regulations. In May 2001—after OCE's conclusions were reported by LSC President John McKay—Rep. Cal Dooley (D-Fresno) resubmitted the same allegations that had been reviewed by OCE at the behest of Rep. Thomas and requested that OIG repeat the review. OIG vastly expanded the scope of its investigation beyond this request, but also found no connection between CRLA and CRPE.

38. According to governmental sources collected on the Internet, in the 2006 election cycle, Rep. Nunes had received \$132,250 from the dairy industry as of September 2006. (>www.opensecrets.org//Dairy.) In the 2004 election cycle, Rep. Nunes received \$150,442, the highest of any member of Congress. In the 2002 election cycle Rep. Nunes again led Congressional recipients with \$126,498 (with the next closest member receiving \$61,711). In the 2000 election cycle, Rep. Dooley was the fourth-highest recipient of dairy contributions with

\$38,788.

39. CRLA's advocacy focusing on the California dairy industry's widespread illegal treatment of its low-wage, immigrant work force has been increasing since 2000. In the past few years, CRLA singly or with co-counsel has recovered \$1.6 million in unpaid wages for hundreds of dairy workers whose employers, in violation of applicable laws, often failed to pay minimum wage, pay overtime-premium wages, provide required rest and meal breaks, maintain time and payroll records, and/or provide legally required work equipment. Additional amounts are at issue in pending claims and litigation. Some recent CRLA settlements include: Vander Eyk Dairy (Tulare County)—\$360,000 to 125 current or former employees; Paul Souza Dairy (Tulare County)—\$475,000 for 165 current and former employees; Jesse Silva Dairy (Fresno County)—\$234,000 to 29 employees; and Joaquin Toledo Dairy (Tulare County)—\$230,000 for between 18 and 33 current and former employees. Thus California's dairy industry, and the local members of Congress that it generously supports, have ample incentive to force CRLA to divert thousands of person-hours and hundreds of thousands of dollars from its mission of legal service to the poor in order to respond to protracted and repetitive administrative "investigations."

The Current OIG Investigation Begins

40. On December 14, 2005, LSC's Office of Inspector General ("OIG") notified CRLA that it was commencing an investigation of CRLA and that OIG staff would arrive at CRLA's Modesto office on December 20 to begin interviewing Modesto staff. Contrary to its practice in all of the many previous audits, investigations and other inquiries LSC and OIG had conducted during my tenure at CRLA, OIG did not tell CRLA what the purpose or substance of the investigation was, other than to assure CRLA that no allegations of criminal conduct were at issue. OIG also refused to explain the reason for the urgency of its request.

41. CRLA cooperated fully with OIG's request, and OIG staff conducted interviews of CRLA/Modesto staff during December 20-21. Given the unexplained purpose of the investigation, a number of staff members chose to have personal or union counsel present at these interviews. In late January, OIG told CRLA that it intended to conduct unscheduled "follow-up calls" directly with some of the individuals that had been interviewed in December. CRLA requested that a protocol be worked out to insure that CRLA personnel could cooperate fully with OIG while appropriately protecting their personal rights, as well as the rights of CRLA's clients to the confidentiality of their privileged communications with CRLA. OIG declined to consider measures to protect employee rights or to protect client confidences and declined to schedule the follow-up interviews through employees' counsel.

42. During the initial stages of OIG's investigation, CRLA advised OIG on several occasions that California attorneys have an obligation to maintain the confidentiality of lawyer-client relationships unless and until the relationships are publicly disclosed. For example, on January 24, 2006, CRLA Executive Director Jose Padilla wrote to both LSC Inspector General Kirt West (hereafter "IG West") and LSC Board Chair Frank Strickland expressing concern about the procedures employed by OIG in the current investigation, including OIG's seeming lack of respect for client confidentiality and privacy and seeming disregard of the Rules of Professional Responsibility concerning ex parte contacts with CRLA attorneys who were represented by counsel. A true and correct copy of Executive Director Padilla's letter is attached hereto as Exhibit B. Executive Director Padilla expressed his hope that OIG and CRLA could work together cooperatively, as they had in the past, to develop procedures that would allow CRLA to cooperate in the investigation while reducing risks to its clients' rights and its attorneys' duties of professional responsibility. On January 31, 2006, Executive Director Padilla

emailed IG West again urging him to discuss development of a protocol to protect client identities. A true and correct copy of Executive Director Padilla's January 31 e-mail and an attached memorandum is attached hereto as Exhibit C. These concerns were reiterated to OIG by CRLA senior management on numerous other occasions throughout January and February of 2006.

OIG's March 16, 2006 Administrative Data and Document Requests

43. On March 16, 2006, IG West sent CRLA a letter with an attached administrative "Data Request" and "Document Request" (together, the "Administrative Request"). A true and correct copy of IG West's March 16 letter and the Administrative Request is attached hereto as Exhibit D. IG West asked for documents related to one part of the Document Request—concerning a particular litigated case called *CCC v. Modesto*—to be produced within ten days. IG West asked for the remainder of the documents and data to be produced within thirty days.

CRLA's Response to the Administrative Request

44. OIG's Data Request asked CRLA to produce data from data "fields" in 19 "tables" in its "KEMPS" case management database for all client records that were open during all or part of the period January 1, 2003 to October 31, 2005. CRLA's case management database and the information encompassed in OIG's Data Request are described at length in the Declaration of Karen Smith filed concurrently with this Declaration.

45. On April 14, 2006, Karen Smith of CRLA at my instruction forwarded to OIG a computer disk identifying data fields for each of the 39,107 names or "records" in its KEMPS case management database for the relevant time period. CRLA produced intact data for the vast majority of the data fields that it actually used. CRLA did not produce data, however, in those fields CRLA considered to be specifically client-identifying and thus, in the many cases in which

clients and applicants consult CRLA in confidence, confidential and privileged. For example, CRLA did not produce information in the following fields responsive to OIG's request: client's first and last name; client's street address; client's phone number; client's Resident Alien Card (or "green card") number; spouse's first and last name; and adverse party name.

46. I explained some of the reasons CRLA was not producing to OIG the above-described client-identifying information from its case management database in an April 14, 2006 transmittal letter. Attached hereto as Exhibit E is a true and correct copy of my April 14, 2006 transmittal letter (inadvertently mis-dated "2005").

OIG's Document Request

47. OIG's March 16, 2006 Document Request asked CRLA to produce documents in twelve categories, many of which included further subcategories, for the period January 1, 2003 to the present. The documents requested included: (1) CRLA's internal written policies, procedures and or manuals with regard to timekeeping, case handling, document handing, compliance, client intake and case reporting (Request #1); (2) for CRLA's Modesto office, client intake logs and staff time and attendance records, performance related personnel records, and work plans (Requests 2-4 & 6); (3) CRLA Board meeting agendas, transcripts and/or minutes (Request 5); (4) expense records for CRLA's Modesto and Stockton offices (Request 7); (5) materials from CRLA's "Asilomar conferences" (Request 8); (6) agendas, minutes, reports and/or summaries from CRLA's "task force" activities (Request 9); and (7) client names, intake sheets, statements of facts, retainer agreements, waivers and timekeeping records for 12 different lawsuits and 24 matters in which CRLA provided comments on legislation or worked in connection with advocacy groups (Requests 10-12). *See* Ex. D.

CCC v. Modesto Production and OIG's Baseless Complaints

48. As described in Paragraph 43, *supra*, OIG asked for expedited production of documents related to the *CCC v. Modesto* case. On March 27, CRLA sent to Assistant Inspector General Laurie Tarantowicz (“AIG Tarantowicz”) documents related to the *CCC v. Modesto* litigation, but with identifying information for two former clients redacted from these documents. Consistent with the concerns that CRLA had been expressing to OIG since the investigation was initiated, CRLA redacted these client names because its attorney-client relationships with the clients had not been publicly revealed. The two clients in question had not become parties to the litigation, and thus their identities or consultation with CRLA in connection with what became the *CCC v. Modesto* case had not been publicly disclosed. In that production, CRLA inadvertently neglected to include an explanation for our redactions.

49. On April 6, 2006, CRLA Executive Director Jose Padilla and I participated in a one hour and forty minute telephone conversation with LSC management. During this conversation, LSC management informed CRLA that on March 31—four days after our submission of the *CCC v. Modesto* documents—OIG had referred CRLA to LSC management and asked LSC to impose sanctions against CRLA for its alleged “refusal” to provide information related to *CCC v. Modesto*. LSC management further advised us that among the information that CRLA had allegedly refused to provide was information concerning one additional (unidentified) CRLA client related to the *CCC v. Modesto* case; and information concerning at least one additional (unidentified) CRLA employee. We advised LSC management that OIG had not inquired of CRLA regarding the information it had claimed to LSC had been withheld, nor had OIG communicated its belief or suspicion to CRLA that any materials had been improperly withheld, let alone provided CRLA any notice of this referral to LSC for administrative sanctions.

50. In response to this telephone conversation with LSC management, CRLA management immediately directed our Modesto staff to again painstakingly review every possible record to determine if CRLA had indeed entered a relationship with another *CCC v. Modesto* client as OIG presumed, and whether any record existed of another CRLA employee's involvement in the case. We were subsequently advised by Modesto staff that no records existed of another *CCC v. Modesto* client nor of another CRLA employee's involvement in that case.

51. On April 10, 2006, IG West sent CRLA a letter concerning our purported failures to adequately produce documents with respect to the *CCC v. Modesto* case. A true and correct copy of the April 10 letter is attached hereto as Exhibit F. With respect to the *CCC v. Modesto* case, OIG accused CRLA of the following: failure to provide information on one additional CRLA client advised in connection with the case, lack of client statements and retainer agreements for four file numbers; lack of a complete response for at least one CRLA employee; lack of client names for two file numbers, and; failure to discuss redactions with AIG Tarantowicz. This letter was the first communication to CRLA from OIG concerning production with respect to *CCC v. Modesto* and, as just noted, occurred after OIG had referred the matter to LSC management for administrative sanction without ever having raised the issues with CRLA.

52. Most of the inadequacies alleged in IG West's letter involved CRLA's purported failure to produce records which simply did not exist, and never had. As far as CRLA then was—and continues to be—aware, there was no “additional CRLA client” for whom information had not been provided because the purported additional client did not exist. No client statements of fact had ever existed for the referenced four file numbers because those clients had never become plaintiffs in litigation—the condition precedent for obtaining client fact statements under LSC regulations. (CRLA had consulted with those clients regarding their rights in connection

with the issues raised in the litigation, but they had not become parties in the case.) No client retainer agreements had ever been executed with respect to the four file numbers. As far as CRLA then was—and continues to be—aware, no records with respect to any other CRLA employee involved with the *CCC v. Modesto* case exist beyond those produced on March 27, 2006. However, in response to IG West’s April 10 letter, CRLA management again reiterated our previous directions to our Modesto staff to again painstakingly review every possible record to determine if CRLA had indeed entered a relationship with another *CCC v. Modesto* client as OIG presumed, and whether any record existed of another CRLA employee’s involvement in the case as, again, OIG presumed.

53. With respect to the remaining two inadequacies alleged in IG West’s letter, CRLA had redacted the client identifying information from documents provided from the two referenced files, and had failed to include with our March 27 production an explanation concerning those redactions. However, the issue of OIG’s interest in *CCC v. Modesto* client- and former-client identities had arisen well before OIG’s formal Data/Document Requests of March 16. In February, CRLA had commenced efforts to locate these two former clients to ask their consent for release of their identities to OIG. Indeed on April 4, CRLA management had obtained one of the two former clients’ oral consent to release his name to OIG. We were advised by our Modesto staff that that the other former client was still traveling and unavailable.

54. On April 17, 2006, CRLA Executive Director Padilla responded to IG West’s April 10 letter concerning CRLA’s production for the *CCC v. Modesto* case. A true and correct copy of Mr. Padilla’s April 17 letter is attached hereto as Exhibit G. In the letter, Executive Director Padilla advised OIG of CRLA’s reasons for not producing the records anticipated by OIG and apologized for CRLA’s oversight in failing to provide an explanation for redaction of the client

names. Executive Director Padilla informed OIG that one of the two clients whose identity had been withheld to that point had executed a written waiver on April 11 of his right to confidentiality, and provided OIG with that client's name.

55. On April 20, 2006, CRLA Executive Director Padilla sent a letter to IG West advising that the second *CCC v. Modesto* client had provided CRLA with a written waiver of his right to maintain the confidentiality of his relationship with CRLA and providing that client's identity. A true and correct copy of Executive Director Padilla's letter is attached hereto as Exhibit H.

CRLA's Document Production and Assertion Of Privilege, Work-Product and Client Confidentiality As To Some Documents

56. Executive Director Jose Padilla and I assembled five cartons—approximately 5000 pages—of documents responsive to OIG's March 16 Document Request, organized and labeled by individual request. On April 14, 2006, CRLA forwarded the five cartons of responsive documents to OIG along with a transmittal letter (Ex. E) and explanatory caption pages corresponding to each request for production. Attached hereto as Exhibit I are true and correct copies of the "label" or caption pages accompanying the production. As explained in the caption pages, certain information was redacted or withheld as privileged or confidential under CRLA's employee collective-bargaining agreement, the attorney work-product doctrine, the attorney-client privilege, and/or California's statutory confidentiality obligations. As a general matter, CRLA redacted client-identifying information from documents related to specific case and non-litigation matters, where there was no evidence that the clients' names or the fact of the representation had been publicly manifested. For some of OIG's requests, CRLA did not provide documents simply because it had not yet completed its review or needed further clarification as to what OIG was seeking.

57. On April 16, 2006, CRLA produced 593 pages of Modesto “intake logs.” These intake logs contain client names and other information for approximately 8,100 applicants for CRLA services in the Modesto office for the period from January 1, 2003 to March 31, 2006. CRLA redacted the client names from the intake forms, but not other information.

58. On April 17 and 21, 2006, I forwarded to OIG additional documents responsive to the March 16 Document Requests. As done previously, these productions were organized and labeled by document requests. True and correct copies of my cover letters accompanying the April 17 and 21 productions—with their corresponding label or caption pages—are attached hereto as Exhibits J & K respectively. In providing these productions, CRLA redacted certain client financial and identifying information, as noted on the respective caption pages.

59. On May 5 and 10, 2006, I sent OIG additional documents responsive to portions of OIG Document Request No. 11, and advised OIG that CRLA was continuing to assemble and prepare responses to certain additional items. True and correct copies of my May 5 and May 10 transmittal letters are attached hereto as Exhibits L and M respectively. As noted in the letters, CRLA redacted certain client-identifying information from the productions.

60. On June 1, 2006, I sent OIG additional documents responsive to Document Request No. 11, Item C and advised that CRLA had redacted certain client-identifying information. I further advised OIG that CRLA was continuing to assemble and prepare responses to three other document categories in the Request. A true and correct copy of my June 1 letter is attached hereto as Exhibit N.

CRLA’s Production of Documents With Portions Containing Attorney Work Product Redacted

61. As part of its rolling production of documents responsive to the Document Request, and later to the OIG’s Subpoena, CRLA produced some documents in redacted form. Most of

these redactions were effected to protect material under the work-product doctrine. When documents were produced in redacted form, the ground for each specific redaction was handwritten on the face of the document on or near the space left by the redacted text. The review and redaction of the documents was intricate and time-consuming; production of redacted documents began in the summer of 2006 and continued into 2007. In the following paragraphs, I will describe the categories of documents redacted for work-product and the basis for the redactions.

Modesto staff “work plans”

62. CRLA has historically required its attorneys and Community Workers to prepare written “work plans” describing their current and anticipated advocacy activities. During the relevant period, CRLA’s work plans were usually produced on a semi-annual basis and were reviewed by CRLA management as part of their evaluation and supervision of employee work performance. The work plans are prepared on a CRLA form that requires the staff member to provide information including (1) client name, (2) goal/object of case/project, (3) brief description of case/project, (4) procedural history of action taken to date and in the previous six months, and (5) specific future actions to be taken.

63. On August 22, 2006, CRLA produced to OIG 143 pages of redacted Modesto office work plans responsive to Request No. 4 of the March 16 Document Request. The production also included a 9-page memorandum I prepared entitled “OIG Document Request of March 16, 2006 - - Item # 4: Employee Work Plans for CRLA/Modesto Response.” A true and correct copy of this memorandum is attached hereto as Exhibit O. The memorandum describes CRLA’s employee work-plan practice and format, describes which items in the contemporaneously produced work plans were redacted, and explains the authorities and reasoning on which CRLA

relied in making the redactions. As the memorandum explains, due to technical problems, CRLA offices, including Modesto, only produced two sets of work plans in the relevant time period.

64. I personally reviewed the work plans prior to production and redacted certain material as protected. As my memorandum explained, there were three basic types of redactions, the grounds for which are marked directly on the redacted documents, with a reference to the specific ground for each specific redaction written in or near the space left by the redacted text. *First*, CRLA redacted, on the basis of the federal and California work-product privileges, advocates' descriptions of cases, case objectives and actions to be taken going forward. *See* Ex. O at 3-4 (describing work product redactions). *Second*, in a very few cases, entries in work plans were redacted on the basis of attorney-client privilege where they reflected communications with a client. *Id.* at 4. *Third*, on approximately 17 work plans, CRLA redacted the client's name because the client's identity and the fact of CRLA's representation had not been made public or because representation of the client occurred within an administrative proceeding pursuant to which the party's identity and participation in the proceeding is confidential under applicable federal or state statutory law. *Id.* at 4-5. To facilitate the Court's understanding of the work plans produced, and the nature of CRLA's redactions, I attach hereto as Exhibit P is a true and correct copy of an example of one of the redacted work plans that was produced.

CRLA internal "task force" documents

65. CRLA policy provides for the establishment of a Task Force in each of CRLA's priority areas for the provision of legal assistance. The Task Forces—in such areas as Civil Rights, Education, Labor, and Housing—are comprised of attorneys and community workers from throughout CRLA's network of offices who practice in a particular subject area. Each Task

Force is chaired by a DLAT or senior-level advocate with experience in the respective priority area. Task force activities allow CRLA advocates from different locations and with different levels of experience to share strategies, tactics and ideas to advance the interests of CRLA's clients in litigation, administrative proceedings and other advocacy areas. As part of CRLA's initial response to OIG's March 16 Document Request, I provided OIG with a memorandum explaining how task forces were organized and the nature of their work, as well as the reasons why CRLA considered some of the information contained in the task force documents to be confidential and protected by the work-product doctrine. *See* Ex. I at 14-17. *See also* Ex. LL at 14-15.

66. On November 17, 2006, CRLA produced more than 500 pages of documents from its Civil Rights, Education, Labor and Housing Task Forces. CRLA redacted portions of a number of these documents on the basis of the federal and/or California work-product doctrines because the documents contain discussions of strategy and tactics for existing and prospective litigation and other advocacy activity. For all of the Task Forces except Education, I performed the review of the records, the selection of information to be redacted and the preparation of the redacted versions of the documents; Cynthia Rice followed the same process for the Education Task Force. Our review and redaction took many hours. To facilitate the Court's understanding of the nature of the documents produced and the redaction, I attach hereto true and correct copies of a representative sample of Task Force documents produced to OIG as, respectively, Exhibit Q (documents produced as pages 6, 8, 10, 13-20 and 106 of CRLA's November 17 Civil Rights Task Force production), Exhibit R (documents produced as pages 21-24 of CRLA's November 17 Education Task Force production), Exhibit S (documents produced as pages 25, 31, 35-36 and 45-46 of CRLA's November 17 Labor Task Force production), Exhibit T (documents produced

as pages 16-25 and 145-152 of CRLA's November 17 Housing Task Force production).

67. To exemplify the kinds of material redacted on work-product grounds, I will briefly describe the basis for CRLA's specific redactions to the sample Civil Rights Task Force documents. All of the redactions described were made on the basis of both the federal and California work product privilege. CRLA redacted (1) references to specific areas of litigation that the task force was planning to focus on in CRLA's ongoing and anticipated representation of its clients from a set of meeting minutes (Ex. Q at 6); (2) a more detailed description of target areas of litigation in which CRLA was and would be representing its clients for the task force from another set of meeting minutes (*id.* at 8); (3) a description of pending litigation from an email sent to the task force (*id.* at 10); (4) summaries of decisional law and briefs—including excerpts—on several topics for use in current and future litigation (*id.* at 13-20, 106).

68. Similarly, I will briefly describe the basis for CRLA's specific redactions to the sample Education Task Force documents. All the redactions described were made on the basis of both the federal and California work product privilege. CRLA redacted an attorney's description of an ongoing investigation—with an eye towards potential litigation—of a particular group that appeared to be violating state law. Ex. R at 21-22. CRLA also redacted notes from a staff conference call describing four areas where CRLA was likely to bring litigation, or assist in investigations by the Attorney General, and discussing how best to proceed in each of those areas. *Id.* at 23-24.

69. I also briefly describe the basis for CRLA's specific redactions to the sample Labor Task Force documents. From meeting agendas, CRLA redacted references to litigation priorities and strategies on the basis of both the federal and California work product protections, and references to attorney's thoughts about proposed advocacy activities related to legislation on the

basis of the California work product. Ex. S at 25, 35. From other task force documents, CRLA redacted on the basis of both the federal and California work product protections a discussion of how to use a particular statute in litigation (*Id.* at 31) and an attorney analysis of how changes to a particular law would effect CRLA's litigation strategy in pending and future litigation. *Id.* at 45-46.

70. Finally, I will briefly describe the basis for CRLA's specific redactions to the sample Housing Task Force documents. From PowerPoint agenda and training materials prepared by CRLA attorneys describing housing task force priorities, CRLA redacted descriptions of litigation strategies in pending and future housing cases on the basis of the federal and California work product privilege. Ex. T at 16-25. CRLA also redacted from those same materials descriptions of strategies for training, community education and organizing and the provision of comments to housing legislation and regulation, where appropriate, on the basis of the California work product privilege only. *Id.* From the minutes of a Housing task force meeting, CRLA redacted discussions of litigation priorities and specific litigation pending or under consideration on the basis of both the federal and California work product privilege. *Id.* at 145-52. From that same document, CRLA redacted an attorney's analysis of budgetary and legislative issues of interest to the task force on the basis of the California work product privilege only. *Id.*

California Affordable Housing Law Project documents

71. California Affordable Housing Law Project ("CAHLP") is a project of the Public Interest Law Project, a non-profit support center for California legal services and other public interest law programs. CAHLP provides litigation support through both co-counseling in the representation of clients and through consultation with legal services attorneys to provide technical assistance and other expertise in development of litigation and advocacy strategies on

issues related to California and federal housing laws, community development laws and fair-housing laws. CRLA frequently co-counsels, and also frequently consults, with CAHLP in the development of litigation and pre-litigation advocacy such as housing-element comments.

72. On January 12, 2007, CRLA submitted documents responsive to the Administrative Request's and the Subpoena's requests for documents relating to CRLA's work in conjunction with the CAHLP. This production totaled 522 pages and included documents that were redacted under various applications of attorney work-product protection and/or attorney-client privilege and/or California's confidentiality obligation, including redactions of client identities. Due to an internal CRLA oversight, the legal basis for each redaction was not at that time noted on the face of the document nor provided in a privilege log. I advised OIG that CRLA intended to prepare a new copy of these documents with the redaction bases appropriately identified. On March 28, 2007, CRLA re-submitted the documents initially produced on January 12, 2007 with the legal basis for each redaction now noted thereon. I attach hereto true and correct copies of my cover letter of March 28 and of the title-sheet to the production as Exhibit U. The documents produced consist almost exclusively of retainer and co-counseling agreements. On these agreements, the clients' names have been redacted because CRLA does not believe that the names of the clients had become public. The case summary section of the documents is also redacted—on the basis of the attorney-client privilege, California confidentiality obligation and the federal and state work product doctrine—because information about the engagement might reveal the clients' specific motive for seeking legal representation and/or might reflect attorney thoughts about legal strategy.

OIG Again Requests that CRLA Be Sanctioned; CRLA Attempts to Meet and Confer

73. On information and belief, on April 27, 2006 IG West sent LSC President Helaine

Barnett a letter again asking LSC to impose sanctions on CRLA for not providing information that OIG had requested. CRLA was not notified that this letter was being sent or that a request for sanctions was being made. CRLA first learned of OIG's request on May 11, when AIG Tarantowicz mentioned in a letter to CRLA that OIG had asked LSC to impose sanctions. See Paragraph 75 & Ex. W, *infra*. During a May 15 teleconference with CRLA management, LSC management confirmed that OIG had again requested that LSC sanction CRLA.

74. On May 3, 2006, unaware of IG West's April 27 letter to LSC's President, CRLA Executive Director Padilla wrote IG West and AIG Tarantowicz renewing CRLA's request to develop procedures that would meet the IG's needs for information and permit CRLA to comply with its obligations to its clients. A true and correct copy of Executive Director Padilla's May 3 letter is attached hereto as Exhibit V.

75. On May 11, CRLA received a letter from AIG Tarantowicz responding to Executive Director Padilla's May 3 letter described in Paragraph 74, above. A true and correct copy of AIG Tarantowicz' May 11 letter is attached hereto as Exhibit W. In the letter, AIG Tarantowicz told Executive Director Padilla that OIG considered CRLA to be non-compliant and had referred the matter to LSC management. AIG Tarantowicz stated in the letter that OIG thought it was inappropriate to discuss the concerns raised in CRLA's May 3 letter directly with CRLA since the matter of CRLA's compliance had been referred to LSC management. Nonetheless, AIG Tarantowicz also stated (1) that CRLA was legally obligated to provide all client identity information unless it made a specific claim of attorney-client privilege as to a particular client identity, (2) that any reference to California law was inapposite to an OIG investigation, and (3) that OIG would "not agree to any procedure that would provide [fewer client names] than we requested."

76. On May 15, Executive Director Padilla and I participated on behalf of CRLA in a telephone conference with LSC management. During this conversation, LSC management advised CRLA that IG West's April 27 letter to LSC President Barnett (which CRLA has never seen) contained some nine specific allegations against CRLA. Other than AIG Tarantowicz' reference to the issue of client identities in her May 11 letter to CRLA, described in Paragraph 75, *supra*, OIG had not brought any of those deficiencies to CRLA's attention directly. Several of the alleged deficiencies that LSC management told us OIG was concerned about related to OIG requests as to which CRLA had requested further clarification from OIG but received no response.

77. CRLA and LSC management had another telephone conference on May 17. During this conversation, LSC management took issue with the portion of Ms. Tarantowicz' May 11 letter stating that OIG did not intend to engage in substantive discussions with CRLA, and advised CRLA that LSC management would urge OIG to discuss the issues with CRLA and attempt to reach agreement.

78. On June 2, 2006, CRLA Executive Director Padilla and I participated in another telephone conference with LSC management. With respect to production of client identities, LSC management explained to us that OIG still had not provided any information to them about its investigation and again advised us that LSC management had "a real problem" taking suspension action (*vis a vis* CRLA) based on what the Inspector General has told them.

79. On June 14, 2006, CRLA Executive Director Padilla sent a letter to LSC Vice President Karen Sarjeant, following up on recent telephone conferences between LSC management and CRLA, and reviewing the course of the investigation to date and CRLA's difficulties in responding to various requests. In his June 14, letter, Executive Director Padilla

explained that CRLA believed OIG's discovery requests were unreasonably broad and unduly burdensome—especially in light of OIG's refusal to specify what it was investigating—and intruded on CRLA attorneys' duties of confidentiality and on the work product privilege. A true and copy of Executive Director Padilla's June 14 letter is attached hereto as Exhibit X.

80. Additional discussions between LSC management and OIG on one hand, and LSC management and CRLA on the other, took place through the rest of June. OIG continued not to communicate directly with CRLA on these issues during this time.

81. On July 5, 2006, AIG Tarantowicz sent an email to CRLA Executive Director Padilla. A true and correct copy of AIG Tarantowicz' July 5 e-mail is attached hereto as Exhibit Y. Among other things, AIG Tarantowicz wrote that "Karen [Sarjeant, LSC's Vice President for Programs and Compliance] and I have discussed some of the concerns that CRLA has raised and I am happy to work through them with you, *keeping in mind that we are going to need the information requested*" (emphasis added).

82. On July 17, AIG Tarantowicz e-mailed CRLA Executive Director Padilla an agenda for a telephone conference to occur on July 19. A true and correct copy of AIG Tarantowicz' July 17 e-mail is attached hereto as Exhibit Z. The email contained a proposed discussion agenda, but at the same time reiterated that OIG had no plans to change its request in any significant way:

We have and will continue to act in good faith regarding this investigation, including requesting materials necessary to sufficiently and fairly complete the investigation. My indication in my [July 5] email that we are going to need the information requested was in furtherance of that. *I thought it only fair to inform you from the outset that although we are happy to work with CRLA to discuss and hopefully resolve concerns about the requested documents (including, for example, those implicating burdensomeness and privilege) as well as to clarify any request that have caused confusion, we continue to require the documents requested. I did not want to leave the impression that we would be discussing wholesale modification to our document request, for example, in the area of client names. (Id. Ex. Z)*

(emphasis added)

83. The anticipated July 19 teleconference was rescheduled to July 25. Executive Director Padilla and I participated for CRLA; CRLA's outside counsel were also present. AIG Tarantowicz and Assistant Counsel Karena Dees participated for OIG. The discussion extended over 2 hours. With respect to CRLA's disclosure of client names, AIG Tarantowicz advised CRLA during the July 25 teleconference that OIG "cannot narrow or reduce the list of requested names." We again asked the purpose of the pending investigation and the reason for OIG's need for such a large volume of names, AIG Tarantowicz declined to say. We asked how OIG's demand for the names of thousands of CRLA's clients' spouses could relate to its investigation, and AIG Tarantowicz declined to say. With respect to CRLA's assertion of the work product doctrine, AIG Tarantowicz advised CRLA that OIG had not intended to seek information qualifying as attorney work-product under federal law.

84. During the July 25 telephone conference, CRLA specifically asked what assurances OIG could give CRLA that the information it obtained from CRLA would be kept confidential. AIG Tarantowicz categorically refused to assure CRLA that OIG would not turn over the information it obtained to third parties, in particular to members of Congress. AIG Tarantowicz further advised that if CRLA continued to decline to disclose the requested client names, OIG might request LSC management to impose sanctions, or OIG might opt to issue its own subpoena. Finally, AIG Tarantowicz insisted that CRLA advise OIG not later than August 4, 2006, whether it would immediately and unconditionally comply with OIG demands for client identities.

85. Shortly after July 18, CRLA received a copy of a letter dated July 18 on the letterhead of the American Bar Association, over the signature of its President, Michael Greco, addressed to Inspector General West, LSC's President and LSC's Board Chairman. Mr. Greco

expressed concern, based on the work of the ABA’s Presidential Task Force on Attorney-Client Privilege, about OIG’s request for confidential client names and information. The letter urged OIG to use well-established protocols that involve use of unique identifiers to avoid the problem of disclosing confidential information. A true copy of the letter dated July 18 received by CRLA is attached hereto as Exhibit AA. Subsequently, CRLA received a copy of a letter dated July 27 on OIG letterhead, over the signature of IG West, addressed to Mr. Greco. A true copy of the letter dated July 27 received by CRLA is attached hereto as Exhibit BB. IG West’s letter to ABA President Greco closes as follows:

Finally, I wish to assure you that before exercising its authority to request access to client names, the OIG carefully considered the wisdom of doing so with respect to applicable law, the co-equal rights of the poorest among us, and a desire to approach the situation constructively and responsibly. Aware of the sensitivity of certain grantee information and the potential demands on the grantee’s time and resources, my office undertook a critical review to determine precisely what information was required for us to conduct our congressionally mandated work and whether alternative means of obtaining the information would suffice. I assure you that I am ever mindful of the responsibility that come with the authority entrusted to me as Inspector General, and carefully consider all relevant factors before determining its appropriate exercise.

To this day, OIG has never explained to CRLA (or to our knowledge anyone else)—including in its moving papers in this case—how the names, addresses and telephone numbers of at least 39,000 individuals *and their spouses* are “precisely what information was required to conduct” its investigation, why *no* “alternative means of obtaining the information would suffice,” or what “relevant factors” OIG “carefully consider[ed]” in proceeding as it has.

86. On August 4, Executive Director Padilla wrote to AIG Tarantowicz to inform her that CRLA could not provide the requested client-identifying information. A true and correct copy of Executive Director Padilla’s August 4 letter is attached hereto as Exhibit CC. Executive Director Padilla’s letter explained that OIG’s request invaded the attorney-client privilege and conflicted with CRLA attorneys’ duties to preserve client confidentiality and privacy. Executive

Director Padilla's letter also noted that the breadth and magnitude of OIG's requests created grave concerns for CRLA, especially given that CRLA's clients experienced legitimate fears that they would be persecuted if their identities were made public. Finally, Executive Director Padilla's letter reiterated CRLA's willingness to work with OIG to provide any information truly necessary to OIG's investigation, but again expressed frustration that OIG would not provide any insight into the nature of its investigation:

We have asked you in the course of our discussions what creates the need in OIG's inquiry for so much information about so many people. You have refused to say. We have requested an understanding of the thrust and basis for OIG's investigation so that we could explore whether the number of clients, the amount or type of information or the manner in which it was produced could be adjusted to reduce the burden on CRLA or preserve any of its' clients privacy. You have refused to discuss this in any respect. You even insisted in a recent call that the information concerning clients *spouses* OIG has demanded was an important part of your investigation, but declined to explain how that could possibly be the case.

87. On information and belief, on August 9, OIG sent a memorandum to LSC President Barnett asking her to take action against CRLA for its alleged failure to comply with LSC regulations by refusing to provide OIG access to the tens of thousands of client names it had requested. CRLA did not receive a copy of this memorandum, and only learned of its existence because it was mentioned in a letter that OIG sent to Hon. Chris Cannon, Chair of the House Subcommittee on Administrative and Commercial Law (described in Paragraph 88, *infra*).

88. On August 25, 2006, CRLA received from a third party a copy of a letter dated August 17, 2006, from IG West to Hon. Chris Cannon, Chair of the House Subcommittee on Administrative and Commercial Law. I attach hereto a true and correct copy of that letter as Exhibit DD. The letter alleged that, "CRLA has failed to comply with the law and its legal obligations to LSC by refusing to provide OIG access to client names as requested by OIG and required to complete our investigation." IG West's letter also noted that OIG had made at least

three requests to LSC management—on March 31, April 27 and August 9—to take “appropriate action” against CRLA. OIG never provided CRLA notice or service of this letter.

89. On September 5, 2006, CRLA Executive Director Padilla sent a letter to Chairman Cannon responding to IG West’s letter of August 17. A true and correct copy of Executive Director Padilla’s September 5 letter is attached hereto as Exhibit EE. Executive Director Padilla’s letter noted the breadth of OIG’s request, the extreme burden of complying with the request, and the legal authority supporting CRLA’s decision to withhold identifying information for its clients. Executive Director Padilla’s letter also noted that CRLA had provided OIG with most of the information and documents it had requested, and had offered on numerous occasions to work cooperatively with OIG to develop a means to narrow the request consistent with OIG’s legitimate investigative needs, or produce the nonprivileged client identity information in a manner consistent with CRLA’s professional responsibilities, but that OIG had refused to discuss any possible accommodations.

At LSC’s Request, CRLA Conducts a Pilot Program to Determine the Burden of Privilege Review of the Client-Identifying Information OIG Has Demanded

90. On September 6, 2006, CRLA Executive Director Padilla and I participated in a telephone conversation with LSC management. During this conversation, LSC Vice President Karen Sarjeant asked CRLA to undertake a pilot project to conduct a privilege review of a sample of files within the parameters of OIG’s Data Request for client-identifying information in order to estimate: (a) the percentage of consultations for which disclosure of client-identifying information would be precluded by the federal attorney-client privilege; and (b) the time and financial resources that would be required of CRLA to undertake a privilege review of the entire “universe” of files for clients whose identifying information was requested in OIG Data Request. CRLA agreed but requested that the pilot project also include a review for California’s

confidentiality obligation under Business & Professions Code Section 6068(e)(1). LSC and CRLA agreed that the protocol for the sampling process would be further developed through discussions between LSC Assistant General Counsel Mark Freedman and me.

91. On September 7, Vice President Sarjeant forwarded a confirming letter to CRLA setting forth the parameters for the process. A true and correct copy of Ms. Sarjeant's September 7 letter is attached hereto as Exhibit FF. On September 7, LSC Assistant General Counsel Freedman and I further discussed development of CRLA's privilege-review protocol. Pursuant to these discussions, CRLA ultimately determined to undertake client-file review at three of our twenty-three offices: the Marysville (Yuba County - northern Sacramento Valley) Basic Program office; the San Luis Obispo (San Luis Obispo County - central coast) Basic Program office; and the Coachella (Riverside County - southern desert) Migrant Project office.

92. To undertake the Marysville and San Luis Obispo reviews, CRLA contracted with two local, experienced private attorneys who had substantial litigation experience, including in federal court. CRLA provided copies of both the contracts and the respective attorney's resumes to LSC management. The two contract attorneys offered to undertake this work at less than half of prevailing local hourly rates and were paid, respectively, \$60 and \$70 hourly. Our Coachella Migrant Project office files were reviewed by a CRLA Staff Attorney with approximately 22 years of litigation experience (including federal litigation).

93. In an effort to secure a uniform approach by the reviewers consistent with CRLA's understanding of applicability of the federal attorney-client privilege and California's client-confidentiality obligations, I prepared a "*Protocol For Reviewing Sample Client Files to Determine Whether Revealing Client Identity to LSC/OIG Will Violate Federal Attorney-Client Privilege and/or California Client-Confidentiality Obligation*" (the "Protocol"). The Protocol—

totaling 33 pages (plus attachments)—was distributed on September 13, 2006 to the private contract attorneys and CRLA employees participating in the pilot study. A true and correct copy of the Protocol is attached hereto as Exhibit GG. CRLA also provided a copy of the Protocol to LSC management.

94. LSC management asked that CRLA’s efforts to track its review for the applicability of the federal privilege be tracked separately (for the purposes of timekeeping) from its review for applicability of California’s confidentiality obligation under Business & Professions Code Section 6068(e)(1). The analysis procedures for determining privilege and confidentiality would depend on how each case or file was disposed of (e.g. analysis of a file for a judicially litigated case would obviously be different than of a file in which only brief service was rendered). To promote a uniform procedure for reviewing files and tracking the respective amounts of time spent on analysis of federal attorney client privilege and California’s confidentiality obligation, I adopted the classification of files incorporated in LSC’s mandated “closing codes.” CRLA assigns one of these closing codes to each closed file, describing the ending status of the engagement. These closing codes include: court decision, administrative agency decision, negotiated settlement with litigation, negotiated settlement without litigation, client withdrew or did not return, insufficient merit to proceed, external referral after accepting and providing some service, brief service, and advice and counsel. For each closing code, I set forth a multiple-step process for a reviewing attorney to follow to determine whether revealing a particular client’s identifying information was subject to the attorney-client privilege. *See* Ex. GG at 14-33. Each process included additional steps for a reviewing attorney to follow after determining applicability of the federal privilege, to then determine whether disclosure would violate California’s duty to preserve client confidences. *Id.*

95. I incorporated the multiple-step process described in Paragraph 94, above, into a series of tables or “flow charts” for each of the different closing codes or postures to be used by the reviewing attorneys in analyzing the filed and recording both their conclusions and the time required for analysis. True and correct copies of these tables are attached hereto as Exhibit HH. CRLA provided copies of these tables to LSC management.

96. The file review for the pilot study took place during September 2006. The two contract attorneys and one CRLA staff attorney reviewed over 500 files according to the Protocol. Although CRLA transfers certain case data into our electronic case management database, we maintain traditional paper-document case files that contain a much broader range of engagement-specific documents and information. Information in the electronic database alone is usually insufficient to determine whether a particular applicant’s or client’s identity is attorney-client privileged. Therefore, it was necessary during the pilot study, as it would be for any privilege review of the entire range of material OIG has demanded, to retrieve and inspect the physical files for each case. Although many offices store files from the relevant time period off-site, the three offices that comprise the sample for the pilot study had all of their physical files on-site.

97. On September 15, 2006, following consultation with LSC management, CRLA delegated my role of overseeing the pilot privilege-review project to one of CRLA’s most experienced regional-office Directing Attorneys, Lee Pliscou of our Marysville office. Mr. Pliscou brought to this assignment some 21 years of experience as a CRLA attorney including prior positions as CRLA’s Directing Attorney in our El Centro Basic Program and Oxnard Migrant Project offices.

98. On September 21, 2006, Mr. Pliscou submitted CRLA’s initial report, entitled

“CRLA ‘Privilege Review’ of Client Files” to LSC management. A true and correct copy of the September 21 report is attached hereto as Exhibit II. The September 21 report summarized the resources involved in designing and conducting the review, described the results of the survey with respect to the federal attorney-client privilege and state-law confidentiality obligations, and discussed the costs and obstacles related to conducting a review similar to the pilot project of all CRLA files subject to OIG’s Request. Among the findings of the September 21 report were that substantial staff time was expended retrieving files for review; that reviewing attorneys were required to spend significant time preparing for the review, that the time to conduct the review itself—while varying a great deal from file to file—averaged at least 4 minutes per file. Ex. II at 2-8. The September 21 report also noted that the reviewers found that a significant portion of the cases reviewed had client identities subject to the attorney-client privilege. *Id.* at 8-11. The report provides several examples of situations where the privilege would apply. *Id.*

99. The September 21 report estimated that if contract attorneys were hired to review all 39,000 records encompassed by OIG’s Data Request—assuming they would work for the same low hourly rates as the contract attorneys who participated in the pilot study (less than half of prevailing hourly rates in the areas where the offices were located)—the review portion alone would cost almost \$170,000, not counting the contract attorneys’ preparation time, staff time for file retrieval and copying and CRLA attorney time for training and supervision of the review. Ex. II at 16. The report further noted that in many CRLA offices it would be difficult if not impossible to locate suitable contract attorneys. *Id.* Finally, the report noted that if CRLA attorneys performed the review themselves, many offices would have to close, or stop offering some critical services, while the review was conducted. *Id.* at 17.

100. On October 2, 2006, I submitted CRLA’s follow-up report, entitled “Privilege

Review of a Sample of CRLA Client Files–Part II: Projections of Time and Program Resources to Complete Program-Wide Review.” A true and correct copy of the October 2 report is attached hereto as Exhibit JJ. The October 2 report explained that, given CRLA’s limited financial resources, it would be impractical or impossible to locate contract attorneys with sufficient experience and availability to undertake the privilege review. Ex. JJ at 4. Therefore, the report assumed that most of the file review would have to be undertaken by CRLA management and staff attorneys who were already working long hours to provide legal services to the poor. *Id.*

101. Taking into account the number of CRLA’s offices, the distribution of its files and staff among the offices, the need to physically review files, the off-site storage of closed files in some offices, and the absence of staff in a number of offices with personal familiarity with the files during the OIG-designated period, CRLA projected that the program-wide review by CRLA senior-level attorneys of the more than 39,000 records subject to OIG’s Data Request would require over 2,600 hours of their time at a salary expense of over \$107,000. Exhibit JJ at 4-5. Training time, oversight, monitoring and quality-control, and time for travel to offices to review files remaining open would add another estimated 600 hours of attorney time, for a total attorney salary expense of \$136,000. *Id.* at 5-6. To reduce disruption to ongoing program advocacy, closed files would often have to be shipped to the assigned offices of senior, reviewing attorneys. This process would also entail logging and photocopying of the files’ contents to ensure compliance with professional-responsibility obligations for file maintenance. These processes would demand between 4,800 and 7,800 hours of support-staff time at a salary expense of between \$136,000 and \$220,000, plus additional shipping expenses of about \$11,700. *Id.* at 7-9.

102. The October 2 report estimated that, in all, the review would require more than 3,200 hours of senior-level attorney time, plus between 4,800 and 7,800 hours of support staff time, for

a total cost to CRLA of between \$270,000 and \$360,000 if CRLA attorneys performed the review, and more than \$1 million if outside attorneys and support staff performed the review. *Id.* at 9. The October 2 report also noted that the CRLA attorneys performing the review would in many cases be the only staff attorneys in their respective offices, meaning that review would need to be performed on a part-time basis to allow the attorneys to provide critical legal services. Given these constraints, CRLA estimated that it would take somewhere between 58 and 70 weeks to complete the review. *Id.* at 4-5. Even under those circumstances, the time diverted to privilege review would significantly or drastically curtail those offices' ability to serve eligible indigent clients. Numerous offices would need to shut down entirely for weeks at a time to accommodate the review.

103. Unlike OIG's March 2006 Data Request, which limited the client names demanded to those with records open at any time between January 1, 2003 and October 31, 2005 (as noted above, about 39,000 in number), OIG's Subpoena of October 17, 2006 at Appendix A, No. 1 has no explicit time period limiting the number of client identity records demanded. OIG has not clarified to date whether this was inadvertent, and not intended to expand the number of client identities demanded, or whether it was deliberately intended to do just that. The total number of records within CRLA's case-management system and subject to the subpoena currently exceeds 111,000. If OIG is now demanding all of those clients' identifying information, that would significantly multiply the time and dollar costs projected in my October 2, 2006 report. Exhibit JJ.

104. I am informed and believe that LSC management spoke with AIG Tarantowicz about the sample privilege review described above and its conclusions. I am informed and believe that OIG told LSC management that, while it did not fundamentally disagree with the review

protocol applied, it believed that CRLA had not properly applied the attorney-client privilege to the materials in question. I am informed and believe that LSC management asked OIG if, regardless of disagreements about how many client identities out of those requested might be privileged, the showing CRLA had made regarding the cost and burden on its operations a full privilege review would cause might induce OIG to narrow its demand or consider other protocols to address the issues. I am informed and believe that OIG responded that it would not address that question until CRLA had “properly” applied the attorney-client privilege. I am informed and believe that LSC asked OIG whether it was willing to provide *LSC* guidance as to proper application of the attorney-client privilege, and that OIG declined to do so.

OIG’s Report To Congress And CRLA’s Response

105. On September 14, 2006, OIG issued a “Report to Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary Regarding Activities of California Rural Legal Assistance, Inc.” (the “OIG Report”). A copy of this document is attached as Exhibit 3 to the Declaration of Laurie Tarantowicz in support of OIG’s Petition For Enforcement. In a departure from CRLA’s experience with all prior LSC and OIG reviews, OIG chose not to provide CRLA with an advance draft of the Report nor any opportunity to review or comment upon its contents before its issuance. Our receipt of the Report on September 14 provided CRLA the first information we had ever received concerning either the subject matter of, or the reasons for, OIG’s investigation. The OIG Report is riddled with misconstructions of LSC regulations, ungrounded speculation and outright factual errors, often contradicted by materials already in OIG’s possession, all of which could have been corrected had OIG only taken the time to inquire as well-considered custom had always dictated.

106. On October 19, 2006, CRLA received a letter from LSC's Office of Compliance and Enforcement ("OCE") with respect to OIG's September 14 Report described in Paragraph 105, above. A true and correct copy of OCE's October 19, 2006 letter is attached hereto as Exhibit KK. In the letter, OCE noted that it had reviewed the allegations in the OIG Report, and asked CRLA to respond to three allegations, concerning just two specific cases out of the thousands of cases and matters that CRLA handles every year.

107. On November 8, 2006, CRLA issued a 69-page document entitled, "Response of CRLA to the Report of the Legal Services Corporation Inspector General . . . Dated September 14, 2006 and to The Letter Inquiry of the Office of Compliance and Enforcement of the Legal Services Corporation Dated October 19, 2006" (the "Response"). A true and correct copy of CRLA's "Response" is attached hereto as Exhibit LL. CRLA Executive Director Jose Padilla and I oversaw the preparation of the Response, including gathering, and then reviewing, the factual information and documents used in the Response. Executive Director Padilla and I also reviewed the Response to insure that it accurately explained CRLA's obligations and activities. All of the factual statements in the Response are, to the best of my personal knowledge, information and belief, true and correct.

108. On March 22, 2007, I attended two workshops in Denver, Colorado, conducted by LSC concerning recipient use and implementation of LSC's Performance Criteria augmented by the ABA Standards for Provision of Civil Legal Aid. The workshops were attended largely by recipient program directors, directors of litigation and other senior-level advocates. During the first workshop, Michael Genz, Director of LSC's Office of Program Performance, accompanied by LSC President Helaine Barnett, stated during his presentation that LSC was "not interested merely in case-by-case" advocacy, but wanted to see "impact advocacy" accomplished by LSC

recipients. During the second workshop, John A. Tull, who served as Consultant to LSC in preparation of its earlier (2006) version of the Criteria, again in the company of LSC President Barnett, stated during his presentation that the Performance Criteria were intended to promote "systemic advocacy" and that LSC fully supported their implementation by recipients. On information and belief, on March 29, 2007, LSC President Helaine Barnett testified at a hearing before the House Appropriations Subcommittee on Commerce, Justice, Science and Related Agencies regarding the fiscal 2008 LSC budget. In the course of her testimony, Ms. Barnett answered several questions from committee members concerning OIG's investigation of CRLA and OIG's Report. A true and correct copy of excerpts of a transcript of Ms. Barnett's testimony from an electronic version of the Congressional Quarterly is attached hereto as Exhibit MM.

OIG's Administrative Subpoena To CRLA

109. On October 17, 2006, CRLA was served with OIG's subpoena duces tecum at issue in these proceedings (the "Subpoena"). The Subpoena sought (1) the client-identifying information from CRLA's KEMPS case management database that CRLA had previously declined to provide (Items 1 & 2); (2) unredacted copies of all documents previously provided to OIG in redacted form to the extent not protected by the federal attorney-client privilege or work product doctrine (Item 3); (3) client names, intake sheets, statements of facts, retainer agreements, waivers and timekeeping records for CRLA's activities in conjunction with 8 organizations and/or regulatory bodies (Items 4 & 5); (4) a list of all conference attendees at CRLA's Asilomar and/or annual conferences, and copies of all materials from those conferences (Items 6 & 7); (5) copies of CRLA Board of Director meeting packets (Item 8); and (6) agendas, minutes, meeting summaries and reports from CRLA's Task Forces (Item 9). The OIG's

October 17 Subpoena is attached as Exhibit A to OIG's Petition For Enforcement.

110. As noted above, while the March 16 Data Request for information from CRLA's KEMPS case management database was restricted to matters that were open at some time between January 1, 2003 and October 31, 2005, the Subpoena's request for client-identifying information from CRLA's case management database is not limited as to time, and thus on its face asks for this information for all records residing in CRLA's case management database. The total number of records within CRLA's case-management system and subject to the Subpoena currently exceeds 111,000.

CRLA's Response To OIG's Subpoena And Continued Production

111. On November 17, 2006, CRLA responded in writing to the Subpoena and produced certain documents responsive thereto. A true and correct copy of CRLA's formal response—including the title sheets to Exhibits A and B thereto—is attached hereto as Exhibit NN.

[remainder of page intentionally left blank]

112. On November 17, CRLA produced documents plus a diskette in response to the Subpoena, organized and identified corresponding to Subpoena's requests. The title-sheets identifying each item of production are attached hereto, collectively, as Exhibit OO. With respect to issues of disclosing client identities, CRLA continued to redact client-identifying information, consistent with our responses to OIG's March 16 Administrative Request for data and documents. CRLA also declined to produce any previously redacted documents in unredacted form.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Declaration was executed at San Francisco, California on September __, 2007.

WILLIAM G. HOERGER