Nos. 07-17370, 07-17372

Decision: September 30, 2008
Panel Members: Goodwin, Reinhardt, and W. Fletcher

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GOLDEN GATE RESTAURANT ASSOCIATION, ET AL.,
Plaintiff-Appellee,

v.

CITY AND COUNTY OF SAN FRANCISCO, ET AL.,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
No. C06-6997 JSW

BRIEF FOR THE RETAIL INDUSTRY LEADERS ASSOCIATION AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF REHEARING *EN BANC*

Robin S. Conrad
Shane Brennan
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

Eugene Scalia
Counsel of Record
William J. Kilberg
Paul Blankenstein
Thomas M. Johnson, Jr.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., NW
Washington, DC 20036
(202) 955-8500

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, *amici* state as follows:

The Retail Industry Leaders Association has no parent corporation, and no subsidiary corporation. No publicly held company owns 10% or more of its stock.

The Chamber of Commerce of the United States of America has no parent corporation, and no subsidiary corporation. No publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (continued)

Page(s)

Statutes

Other Authorities

TABLE OF AUTHORITIES (continued)

Page(s)

Rules

INTEREST OF *AMICI CURIAE*

Amici file this brief with the consent of all parties.

The Retail Industry Leaders Association ("RILA") is an international alliance of employers, including retailers, product manufacturers, and service providers, that promotes consumer choice and economic freedom through government advocacy and industry leadership. Its members, which include the largest and fastest-growing retail companies in the industry, account for over $1.5 trillion in annual sales, provide millions of jobs, and operate more than 100,000 stores, manufacturing facilities, and distribution centers both domestically and globally.

The Chamber of Commerce of the United States of America (the "Chamber") is a nonprofit corporation and the world's largest business federation. The Chamber represents an underlying membership of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases raising issues of vital concern to the Nation's business community.

RILA and the Chamber are both committed to protecting their members' ability to establish and administer health plans on a uniform, company-wide basis, and therefore oppose laws such as the San Francisco Health Care Security Ordi-

nance which conflict with the federal policy embodied in the Employee Retirement Income Security Act ("ERISA"). RILA was the plaintiff in two previous cases involving similar laws that were struck down by the courts. *Retail Indus. Leaders Ass'n v. Fielder*, 475 F.3d 180 (4th Cir. 2007); *Retail Indus. Leaders Ass'n v. Suffolk County*, 497 F. Supp. 2d 403 (E.D.N.Y. 2007). The Chamber filed *amicus* briefs in the *Fielder* case before both the district court and the court of appeals. RILA and the Chamber jointly filed an *amicus* brief before the panel in this case.

SUMMARY OF ARGUMENT

In the past four years, at least thirty states, counties, and cities have considered or adopted some version of compulsory employee health coverage.[1] Because these laws impose different minimum amounts of health care, different monitoring and record-keeping requirements, and different penalties for non-compliance, they significantly threaten the regime of uniform, nationwide administration of employer health plans that Congress intended to establish when it enacted ERISA. Prior to the panel's decision in this case, the only two "fair share" laws challenged

---

[1] *See* Julia Contreras & Orly Lobel, *Wal-Martization and the Fair Share Health Care Acts*, 19 St. Thomas L. Rev. 105, 136 (2006) (summarizing recent bills and proposals); National Conference of State Legislatures, http://www.ncsl.org/programs/health/payorplay2006.htm (last visited Oct. 27, 2008).

in the courts—in Maryland and Suffolk County, NY—were found to be preempted by ERISA.

In direct conflict with those decisions, the panel concluded that ERISA does not preempt the San Francisco Health Care Security Ordinance ("the Ordinance"), which requires employers to spend a certain fixed amount on employee health care or pay an equivalent amount to the City. Although the panel claimed its task was a "narrow one" and that it would not "evaluate the wisdom" of the Ordinance, slip op. 13949, it upheld the law in the face of substantial contrary authority, directly on point. That purportedly "narrow" task created a circuit split with the Fourth Circuit's decision in *Fielder*, which struck down a similar Maryland law; created an intra-circuit split with previous Ninth Circuit opinions that found mandatory health care payments preempted; sidestepped longstanding Supreme Court case law; and rejected the views of the Secretary of Labor, including on technical issues at the core of her expertise, e.g., what constitutes a "plan" under ERISA.

The panel opinion creates "'a road map for state and local governments'"[2] seeking to regulate employee health plans despite ERISA's preemptive mandate, thereby opening the way to precisely the regulatory "balkanization" that ERISA

---

[2] Jason Dearen, *Federal Court Upholds San Francisco Healthcare Program*, L.A. Times, Sept. 30, 2008 (quoting City Attorney Dennis Herrera).

was designed to prevent, *Fielder*, 475 F.3d at 194. *En banc* review is necessary to address the conflict between the panel's decision and *Fielder*, the intra-circuit conflicts it creates, and the opinion's effect on the uniform administration of benefit plans. *See* Fed. R. App. P. 35; Circuit Rule 35-1.

ARGUMENT

En banc review is appropriate when a panel decision conflicts with decisions from another circuit, conflicts with prior decisions from the same circuit, or "substantially affects a rule of national application in which there is an overriding need for national uniformity." Circuit Rule 35-1; *see also* Fed. R. App. P. 35. All three criteria weigh in favor of *en banc* review here.

I. The Panel Decision Conflicts With The Fourth Circuit's Decision In *Retail Industry Leaders Association v. Fielder*.

In *Fielder*, the Fourth Circuit found that ERISA preempted the Maryland Fair Share Health Care Fund Act, popularly known as the "Wal-Mart law," which required employers with over 10,000 employees to spend at least eight percent of total payroll on employee health care or pay the difference to the State. 475 F.3d at 183. Like the Ordinance, the Act required covered employers to make minimum health care expenditures for employees or to pay the difference to the government, and required covered employers to track expenditures with respect to those employees. *See id.* at 186-87. The panel in this case nonetheless concluded that upholding the Ordinance would not create a circuit split, primarily because the Mary-

land Act did not provide employers with any genuine alternative to modifying their benefit plans. *See* slip op. 13946-47. In particular, the panel reasoned, employers in Maryland received no benefit from electing to make payments to the State, whereas employers who elect the City-payment option under the Ordinance can enroll employees in the newly created Health Access Program ("HAP"), which provides government-operated health care. *See id.*

The Fourth Circuit's analysis in *Fielder*, however, ventured well beyond the observation that the alternative payments to the State presented a punitive "Hobson's choice" that no rational employer would accept.[3] *Fielder* held that "fair share" laws, such as the Ordinance, have an impermissible "connection with" ER-

[3] The "Hobson's choice" framework, which the panel heavily relied upon, derives from one of a "trilogy" of Supreme Court cases holding that ERISA does not preempt laws that regulate third parties or otherwise have only an indirect economic effect on a plan. The Fourth Circuit in *Fielder* correctly observed that the "trilogy" cases were not controlling with regard to "fair share" laws, because those laws *directly* affect the structure of a plan by mandating a minimum level of employee health care. *See Fielder*, 475 F.3d at 196, *and compare N.Y.S. Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 664 (1995) (taxes on health insurance *purchasers* who did not contract with Blue Cross/Blue Shield were not preempted unless the taxes were so "prohibitive" as to effectively require ERISA plans to provide insurance through the Blues); *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 809-10 (1997) (tax on gross receipts for patient services at hospitals and other health care providers not preempted by ERISA); *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 332-33 (1997) (no preemption of wage break incentive for employers to participate in a state-approved apprenticeship program).

ISA plans because locality-specific health care mandates interfere with uniform, nationwide plan administration. 475 F.3d at 196, 197. Large employers typically administer their health plans on a company-wide basis to diversify risk and minimize costs, and the Maryland Act would have "force[d] Wal-Mart to alter its internal accounting practices" to "specifically track its expenditures for Maryland employees." *Id.* at 187. The Act's minimum spending provisions, by dictating the appropriate level of benefits that an employer must provide in a single state, would also have "hamper[ed] Wal-Mart's ability to administer its employee benefit plans in a uniform manner across the nation." *Id.*

So, too, the San Francisco Ordinance. By ruling in the City's favor, the panel ensured that large employers, like *amici*'s members, who administer their health plans on a company-wide basis, will have to comply with specific, idiosyncratic health care requirements for San Francisco employees. For example, employers with at least 100 employees will have to spend at least $1.76 per hour per covered employee, or else make equivalent quarterly payments to the HAP. S.F. Admin. Code §§ 1.1(A); 14.1(b)(7). Employers must also determine each employee's eligibility for the HAP, monitor that employee's total hours worked, calculate the total health care expenditures required by the HAP for that employee, and maintain records establishing that the required payments were made. *See id.* § 7.2(A)(1)-(3).

As a result of the panel's decision, this administrative burden will multiply as other jurisdictions, emboldened by the panel opinion, enact their own locale-specific requirements. For example, Suffolk County, New York previously enacted a similar ordinance—found preempted by a federal court—that required covered employers to pay health care costs of at least $3.00 per hour for each employee. *See Suffolk County*, 497 F. Supp. 2d at 406. As the court in *Fielder* observed, "a proliferation of similar laws in other jurisdictions would force Wal-Mart or any employer like it to monitor these varying laws and manipulate its healthcare spending to comply with them." 475 F.3d at 197.[4]

Ironically, the panel relied heavily on *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), but that decision—in explaining why this Court's decision in *Standard Oil Co. v. Agsalud*, 633 F.2d 760 (9th Cir. 1980), had been summarily affirmed, 454 U.S. 801 (1981)—described precisely the dilemma that ERISA was meant to preclude but which the panel's decision permits:

> First, the employer in [*Agsalud*] already had in place a health care plan governed by ERISA, which did not comply in all respects with the Hawaii Act [at issue in that case]. If the employer sought to achieve administrative effi-

---

[4] *Accord Egelhoff v. Egelhoff*, 532 U.S. 141, 149-50 (2001) ("Requiring ERISA administrators to master the relevant laws of 50 states . . . would undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators—burdens ultimately borne by the beneficiaries.") (internal citation omitted and alterations in original).

> ciencies by integrating the Hawaii plan into its existing plan, different components of its single plan would be subject to different requirements. If it established a separate plan to administer the program directed by Hawaii, it would lose the benefits of maintaining a single administrative scheme. Second, if Hawaii could demand the operation of a particular benefit plan, so could other States, which would require that the employer coordinate perhaps dozens of programs.

Fort Halifax, 482 U.S. at 13. This goal under ERISA of uniform plan administration, *see Egelhoff v. Egelhoff*, 532 U.S. 141, 149-50 (2001)—rather than the existence *vel non* of non-ERISA alternatives for satisfying statutory minima—animated the decision in *Fielder*, and should have dictated the panel's decision in this case. Unlike the panel, the Fourth Circuit recognized that "the categories of ERISA and non-ERISA healthcare spending [are not] isolated, unrelated costs." 475 F.3d at 197. Even assuming, then, that the Ordinance's City-payment option is a non-ERISA alternative, it is still preempted because it requires employers to "'maintain a familiarity with the laws of all 50 States so that they can update their plans as necessary to satisfy the opt-out requirements of other, similar statutes.'" *Id.* (quoting *Egelhoff*, 532 U.S. at 147-48).

Because uniformity of plan administration is a central goal of ERISA, *see Egelhoff*, 532 U.S. at 149-50, and because the panel's decision undermines that key

statutory objective, *en banc* review is appropriate to resolve the inter-circuit conflict with the Fourth Circuit.[5]

II. The Panel Decision Conflicts With Prior Ninth Circuit Decisions Holding That ERISA Preempts Laws That Mandate Employer Funding Of Employee Benefits.

The panel decision also conflicts with longstanding precedent from the Ninth Circuit holding that ERISA preempts laws, like the Ordinance, that regulate employer funding of health care.

The panel conceded, as it must, that laws mandating a particular level of employee benefits are preempted by ERISA. *See, e.g.*, *District of Columbia v. Washington Bd. of Trade*, 506 U.S. 125 (1992) (finding preempted a law requiring employer to provide employees eligible for workers' compensation with same benefits available under employer's health plan); *Agsalud*, 633 F.2d at 764 (law mandating specific benefits, under pain of civil penalty, preempted). The panel nonetheless held that the Ordinance was saved from preemption because it regulated employer *payments* rather than employee *benefits*. *See* slip. op. 13944.

---

[5] The panel's decision also acknowledges a potential conflict with the Eleventh Circuit, by suggesting, without deciding, that that court's widely cited *en banc* decision in *Donovan v. Dillingham*, 688 F.2d 1367 (11th Cir. 1982), may no longer be good law. Slip op. 13934.

This distinction is spurious. To provide health care "benefits" to employees, an employer must make "payments" (expenditures) either to an insurance company in the case of an insured plan, or directly to providers or employees in the case of a self-insured plan. Previously, the distinction had been explicitly rejected by this Court. *En banc* review is now required to clarify the law within this circuit.

This Court has identified four categories of state laws that are preempted because they "relate to" an ERISA plan. *See Martori Bros. Distribs. v. James-Massengale*, 781 F.2d 1349, 1356-57 (9th Cir. 1986). Among these are "laws that create reporting, disclosure, *funding*, or vesting requirements for ERISA plans." *Id.* at 1357 (emphasis added). Funding requirements, therefore, fall squarely within the ambit of ERISA preemption. For example, this Court found preempted a Washington "prevailing wage" law that required employers to make a specific contribution to employee welfare benefit plans. *Local Union 598, Plumbers & Pipefitters Indus. Journeymen & Apprentices Training Fund v. J.A. Jones Constr. Co.*, 846 F.2d 1213 (9th Cir. 1988), *aff'd* 488 U.S. 881 (1988). Labor union plaintiffs argued that the law survived ERISA preemption because it regulated only "contributions rather than the composition or administration of benefits." *Id.* at 1218 (emphasis omitted). This Court squarely rejected that argument, holding that "[the] 'contribution/benefit' dichotomy, while perhaps superficially appealing, is unsupported by the law." *Id.* at 1219. As the Court explained, "[e]mployer contri-

butions are the fuel for benefit plans[.] . . . Without employer contributions, there can be no functioning ERISA plans." *Id.* Put differently, what to an employer is a payment is to an employee a benefit, and laws that "effectively dictate the level at which required contributions must be made" have a "direct connection" to ERISA plans and cannot stand. *Id.* The Ordinance, which also dictates a certain minimum level of employer health care expenditures, must fail for the same reason.[6]

The panel's reliance on the distinction between "payments" and "benefits" fails for another reason. In *every* case involving health care mandates that the Supreme Court found preempted by ERISA, the employer had an "alternative" to altering the level of "benefits" in its health care plans—it could pay the civil penalty. For example, in *Agsalud*, 633 F.2d 760, the State of Hawaii passed a law requiring employers to maintain health care plans. An employer that failed to comply would be liable for $1 per employee for each day of non-compliance. *See* Haw. Rev. Stat.

---

[6] The panel's reliance on *WSB Electric, Inc. v. Curry*, 88 F.3d 788 (9th Cir. 1996), another prevailing wage case, is misplaced. In *Curry*, this Court upheld a law that gave employers a credit against the prevailing wage requirement for health benefits provided to employees, up to a certain maximum amount. As in the "trilogy" cases, the law in *Curry* was primarily concerned with a subject of traditional state regulation—prevailing wages—and had only an incidental economic effect on benefit plans. The Ordinance, by contrast, directly regulates employee health care, mandating that employers make designated health care expenditures under threat of civil penalties and the revocation of their permits, certificates, and licenses. *See* S.F. Admin. Code §§ 8.1(B), 9.2.

§ 393-33(a). This Court found the law preempted by ERISA and the Supreme Court summarily affirmed. Under the panel's reasoning, however, *Agsalud* would have been decided differently if the State had characterized its penalties as a health care "payment." If the panel decision is allowed to stand, States could, through the clever expediency of relabeling a penalty a health care "payment," end-run the large body of decisions of the Supreme Court and courts of appeals holding state health care mandates preempted. But "ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the pre-emption provision." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 525 (1981).

The panel's decision also rejects the reasoning of other Ninth Circuit cases that found preemption with respect to similar regular payments made by employers. In *Scott v. Gulf Oil Corp.*, 754 F.2d 1499 (9th Cir. 1985), for example, this Court found employees' claims for severance payments preempted, since such payments (which if anything required less administrative oversight than the Ordinance) constituted a plan. *Id.* at 1503-04. Though the panel asserts that *Scott* is no longer good law, slip op. 13932, that is a question for the *en banc* court.

Likewise, in *Modzelewski v. Resolution Trust Corp.*, 14 F.3d 1374 (9th Cir. 1994), this Court held that an employer's promise of monthly installment payments to retirees amounted to an ERISA plan, and was therefore preempted. The panel found *Modzelewski* inapplicable because ERISA's definition of an "employee pen-

sion benefit plan" is "distinct" from its definition of an "employee welfare benefit plan." Slip op. 13933.

That "distinction" fails as well. In *J.A. Jones*, this Court concluded that "it is not necessary to identify a specific ERISA provision that conflicts with a challenged State law" in order to find preemption. 846 F.2d at 1220. Rather, ERISA "'was meant to clear away all state laws bearing on benefit plans . . . [even though] many aspects of benefit plans generally, and of welfare plans in particular,' remain unregulated by ERISA." *Id.* (internal citation omitted and alterations in original). In other words, ERISA provides for comprehensive federal regulation of *both* pension plans and welfare plans, and state laws interfering with either are preempted.

For all these reasons, *en banc* review is necessary to resolve the conflict between the panel decision and previous decisions of this circuit.

III. The Panel Decision Conflicts With ERISA's Definition Of A Plan.

The panel also disregarded Supreme Court and Ninth Circuit precedent, and the views of the Secretary of Labor, concerning what constitutes an ERISA plan. The requirements are simple: Whenever an employer "assumes . . . responsibility to pay benefits on a regular basis," and "faces . . . periodic demands on its assets that create a need for financial coordination and control," the employer operates an ERISA plan. *Fort Halifax*, 482 U.S. at 12; *see also Fielder*, 475 F.3d at 190 ("a grant of a benefit that occurs periodically and requires the employer to maintain

some ongoing administrative support generally constitutes a 'plan'"). In short, periodic payments plus monitoring of payments equals a plan. *See id.* at 190-91.

The panel implicitly acknowledged, as it must, that the HAP would establish a plan, and be preempted by ERISA, if it forced employers to meet their minimum-payment obligations by making alterations to their existing ERISA plans. *See* slip op. 13923. But the panel reasoned that the option by which employers make quarterly payments to the City does *not* constitute a plan, citing the Supreme Court in *Fort Halifax*. *See id.* at 13929.

Fort Halifax, however, demonstrates that the HAP's mandatory-payment provisions constitute a plan. Under *Fort Halifax*, "periodic demands on [an employer's] assets that create a need for financial coordination and control" constitute a "plan." 482 U.S. at 12. The requirement of a "one-time, lump-sum payment triggered by a single event" at issue in *Fort Halifax* did not satisfy the definition of an ERISA plan because it did not require administrative oversight or periodic demands. *Id.* In contrast to the statute in *Fort Halifax*, the Ordinance in this case requires employers to make regular *quarterly* payments to the HAP, and also requires that employers maintain records to determine employee eligibility for the HAP, calculate per-employee health care expenditures, and prove that the required payments were made. *See* S.F. Admin. Code §§ 1.1(A), 7.2(A)(1)-(3). This ar-

rangement requires periodic demands on an employer's assets and creates the need for administrative oversight, thus satisfying *Fort Halifax*'s definition of a plan.

The panel also erred in its reliance on *Massachusetts v. Morash*, 490 U.S. 107 (1989), which held that a Massachusetts statute requiring employers to pay employees their "full wages," including "vacation benefits," was not preempted by ERISA. Wage laws, however, have traditionally been regulated by the states, and the Court in *Morash* was "reluctant to so significantly interfere with 'the separate spheres of governmental authority preserved in our federalist system.'" *Id.* at 119 (citing *Fort Halifax*, 482 U.S. at 19). Moreover, relying on the views of the Secretary of Labor (which the panel in this case dismissed), the Court recognized that "ordinary vacation payments" fell outside ERISA's core and were not covered by the Act. *Id.* at 115, 117-18. *Morash*'s discussion of unique "vacation benefit funds" is not, as the panel supposed, license to construct a radically new definition of what constitutes an ERISA health plan (or pension plan) at the Act's core.

Finally, were there any doubt as to whether the HAP's mandatory-payment provisions constitute a plan, the panel should have deferred to the Secretary of Labor's reasoned view that "the City-payment option . . . requires an employer to establish and maintain an ERISA plan." DOL Br. 6. The Secretary is responsible for interpreting and implementing ERISA, and her interpretation of the statute, even one contained in an *amicus* brief, is entitled to deferential consideration where, as

here, it presents a coherent view that accords with the outcome in other cases. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997). The panel's conclusion that the Secretary's argument was not entitled to deference because it was presented in an *amicus* brief directly conflicts with a host of Ninth Circuit decisions.[7]

CONCLUSION

The Court should grant *en banc* rehearing of the panel decision.

Date: October 31, 2008

Respectfully submitted,

Robin S. Conrad
Shane Brennan
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

Eugene Scalia
Counsel of Record
William J. Kilberg
Paul Blankenstein
Thomas M. Johnson, Jr.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., NW
Washington, DC 20036
(202) 955-8500

[7] *See Or. Paralyzed Veterans of Am. v. Regal Cinemas, Inc.*, 339 F.3d 1126, 1131 n.6 (9th Cir. 2003) ("Insofar as the district court suggested that an agency interpretation first advanced in an amicus brief is somehow less valid or less entitled to deference than one promulgated elsewhere, this is a position without legal support."); *Bank of Am. v. City & County of S.F.*, 309 F.3d 551, 563 n.7 (9th Cir. 2002); *Hertzberg v. Dignity Partners, Inc.*, 191 F.3d 1076, 1082 (9th Cir. 1999).

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 32(a)(7)

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached *amicus* brief is proportionately spaced, has a typeface of 14 points, and contains 3,777 words, excluding the table of contents, table of authorities, and signatures and certificates of counsel.

Eugene Scalia
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave.
Washington, DC 20036
(202) 955-8500

October 31, 2008

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st day of October 2008, I caused two copies of the foregoing brief to be served by overnight commercial carrier on:

Dennis J. Herrera
City Attorney
City Hall, Room 234
One Dr. Carlton B. Goodlet Place
San Francisco, CA 94102

Stephen P. Berzon
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

Richard C. Rybicki
Dickenson, Peatman & Fogarty
809 Coombs Street
Napa, CA 94559

Brandon R. Blevans
Dickinson, Peatman & Fogarty
50 Old Courthouse Square
Suite 200
Santa Rosa, CA 95404

_____
Eugene Scalia