

EXHIBITS PART 5 of 5

EXHIBIT 10

EDMUND G. BROWN JR.
Attorney General

ate of California
DEPARTMENT OF JUSTICE



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March 7, 2007

Via Overnight Delivery

Magistrate Judge Howard R. Lloyd
United States District Court for the Northern District
280 South First St., Room 2112
San Jose, CA 951113

RE: *Suever, et al. v. Connell, et al.*
U.S. District Court Northern District Case No. C03-0156RS

Dear Judge Lloyd:

The Attorney General's Office has discovered that the plaintiffs in this action, represented by attorney William W. Palmer, have submitted to you a confidential internal memorandum generated within this office. The confidential memorandum, dated November 29, 1999, is from deputies in this office to then-Chief Deputy Attorney General Peter Siggins (now an Associate Justice of the California Court of Appeal).

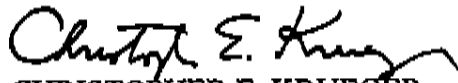
The document contains confidential attorney work product about an investigation that was conducted by this office. Mr. Palmer has known since at least March 1, 2006 that the Attorney General's Office considers the document to be privileged and that the office has not waived that privilege. Nevertheless, Mr. Palmer subsequently submitted the document to the California Court of Appeal for the Second Appellate District in *Harris v. Verizon Communications, Inc.*, Court of Appeal Case No. B179370, and to the United States Court of Appeal for the Ninth Circuit in *Taylor v. Westly*, Ninth Circuit Case No. 05-16763. Each of these submissions caused me to write a letter to each court, with a copy to Mr. Palmer, explaining that Mr. Palmer is wrongfully distributing a document that he knows to be privileged. (See *State Compensation Ins. Fund v. WPS, Inc.*, 70 Cal.App.4th 644 [holding that a lawyer who receives an obviously privileged document should refrain from examining it, immediately notify whoever sent the document that it appears to be privileged, and then attempt to resolve the matter].) Mr. Palmer's campaign of publicly releasing the document constitutes a continuing violation of his ethical duties.

We respectfully request that the Court order the memorandum destroyed. We further request that the Court enter an order directing Mr. Palmer to cease distribution of the document and to destroy all copies of the document in his possession.

Magistrate Judge Howard K. Lloyd
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Thank you for your attention to this matter. If the Court has any questions, please feel free to contact me.

Sincerely,



CHRISTOPHER E. KRUEGER
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: All Counsel (attached proof of service)

EXHIBIT 11

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 26, 2006

Via Overnight Delivery
Presiding Justice Vaino Spencer
Associate Justice Miriam A. Vogel
Associate Justice Robert M. Mallano
Associate Justice Frances Rothschild
California Court of Appeal, Second App. Dist., Div. One
Ronald Reagan State Building
300 So. Spring St. 2nd Floor
Los Angeles, CA 90013

RE: Harris, et al. v. Verizon Communications, et al.
Second Appellate District, Division One Case No. B179370

Dear Presiding Justice Spencer and Associate Justices Vogel, Mallano and Rothschild:

The California Attorney General's Office has discovered that the appellants in this action, represented by attorney William W. Palmer, filed a Request For Judicial Notice on May 23, 2006 that sought judicial notice of two documents. Exhibit B to the request is a memorandum dated November 29, 1999 from deputies in this office to then-Chief Deputy Attorney General Peter Siggins (now an Associate Justice of the First Appellate District). That document constitutes a protected attorney-client privileged communication and contains attorney work product. Mr. Palmer has known for several months, at least since he received a letter dated March 1, 2006 from Deputy Attorney General Zackery P. Morazzini in the case of *Enerlex, Inc. v. Westly*, Sacramento Superior Court Case No. 02CS01106, that the Attorney General's Office considered the document to be privileged and that the Attorney General's Office did not waive those privileges. (See Letter from Z. Morazzini to W. Palmer, 3/1/06, pp. 4-5, attached hereto as Exhibit A.) We demanded that Mr. Palmer destroy all copies of the document in his possession and cease its distribution.

Since the Attorney General's Office does not represent any party to this action, we will not comment on the document's relevance or lack thereof to the issues raised by this appeal. Nonetheless, we would respectfully suggest that Mr. Palmer's continued distribution of this document, even after being informed that it is privileged, is contrary to the direction provided by this Court in *State Compensation Insurance Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644 ("*SCIF*"). In that case, this Court held that a lawyer who receives an obviously privileged document should refrain from examining it, immediately notify whoever sent the documents to him or her that the document appears to be privileged, and then attempt to resolve the matter.

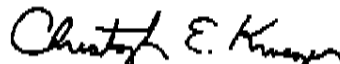
Presiding Justice Vaino Spencer
Associate Justice Miriam A. Vogel
Associate Justice Robert M. Mallano
Associate Justice Frances Rothschild
May 26, 2006
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(*Id.* at p. 656.) Instead, Mr. Palmer has embarked on a campaign of publicly releasing the document, in violation of this Court's guidance in *SCIF*. For this reason, we respectfully request that the Court deny the Request For Judicial Notice and order exhibit B to that request purged from the Court's files and destroyed. We would further respectfully request that the Court enter an order against Mr. Palmer directing him to cease distribution of this document and to destroy all copies of the document in his possession.

We would like to further advise the Court that exhibit A to the Request For Judicial Notice is an interlocutory order of the Sacramento County Superior Court in *Trust Realty Partners v. Westly*, Sacramento County Superior Court Case No. 04AS02522. On behalf of the defendants in that case, we will soon ask the Superior Court to vacate or reconsider that order.

If the Court has any questions, please feel free to contact me.

Sincerely,



CHRISTOPHER E. KRUEGER
Supervising Deputy Attorney General

For BILL LOCKYER
Attorney General

Enclosure

cc: Attached Proof of Service

Trust Realty Partners v. Westly, et al
Court of Appeal, Second Appellate District Court No.: B179370

EXHIBIT A

BILL LOCKYER
 Attorney General

State of California
 DEPARTMENT OF JUSTICE



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March 1, 2006

William W. Palmer
 Attorney at Law
 1241 Carter Road
 Sacramento, CA 95864-5327

RE: Enerlex v. Westly, Sacramento County Superior Court Case No. 02CS01106

Dear Mr. Palmer:

I write in response to your correspondence dated February 27, 2006, regarding the discovery responses served by the State Controller's Office in connection with the above-referenced lawsuit. Initially, please be informed that the State Controller's Office will not agree to any extension of time for the possible filing of a motion to compel further responses should you feel it necessary to so file. The State Controller's Office is, however, agreeable to a hearing date to be scheduled for a time when you are available upon your return from your out-of-country trip. Please contact my office for available dates should you determine that a motion to compel is necessary to resolve our discovery issues.

The State Controller's Office has provided all relevant, discoverable information responsive to your discovery requests and does not believe any possible motion to compel further responses would be meritorious. In an attempt to confer regarding the issues you have raised in your prior correspondence, the State Controller's Office provides the following in response to the issues you have raised, in the format in which you have raised them:

DOCUMENT PRODUCTION

Code of Civil Procedure section 2031.280 expressly provides for documents to be produced "as they are kept in the usual course of business." All documents produced in response to your client's request for production were produced as they are kept in the ordinary course of business by the State Controller's Office. The objection to the manner of production is meritless.

Nothing in California's Civil Discovery Act requires the production and/or service of a privilege log in connection with the service of responses. See *Best Products, Inc. v. Superior Court* (2004) 119 Cal. App. 4th 1181, 1187-88. Moreover, privileged information is expressly beyond the scope of permissible discovery. See Code Civ. Proc., § 2017.010. Therefore, to the extent your discovery demands seek privileged information, such demands are not authorized.

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under California's Civil Discovery Act. Your objection in this regard is meritless.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. As explained above, nothing in California's Civil Discovery Act requires the production and/or service of a privilege log in connection with the service of responses. See *Best Products, Inc. v. Superior Court* (2004) 119 Cal. App. 4th 1181, 1187-88. Moreover, privileged information is expressly beyond the scope of permissible discovery. See Code Civ. Proc., § 2017.010. Therefore, to the extent your discovery demands seek privileged information, such demands are not authorized under California's Civil Discovery Act. Your objection in this regard is meritless.

2. As explained above, nothing in California's Civil Discovery Act requires the production and/or service of a privilege log in connection with the service of responses. See *Best Products, Inc. v. Superior Court* (2004) 119 Cal. App. 4th 1181, 1187-88. Moreover, privileged information is expressly beyond the scope of permissible discovery. See Code Civ. Proc., § 2017.010. Therefore, to the extent your discovery demands seek privileged information, such demands are not authorized under California's Civil Discovery Act. Your objection in this regard is meritless.

3. As explained above, nothing in California's Civil Discovery Act requires the production and/or service of a privilege log in connection with the service of responses. See *Best Products, Inc. v. Superior Court* (2004) 119 Cal. App. 4th 1181, 1187-88. Moreover, privileged information is expressly beyond the scope of permissible discovery. See Code Civ. Proc., § 2017.010. Therefore, to the extent your discovery demands seek privileged information, such demands are not authorized under California's Civil Discovery Act. Your objection in this regard is meritless.

4. Your discovery demands repeatedly included the definition of California's Unclaimed Property Law, a term of art defined by statute, as including Code of Civil Procedure sections 1300 et seq. As explained in detail in the State Controller's responses, your definition is statutorily incorrect. This objection speaks for itself. However, the State Controller's main objection to this request is that it has nothing whatsoever to do with the litigation at hand. None of the factual allegations or causes of action set forth within your client's first amended complaint, answer to the State Controller's cross-complaint, or the State Controller's cross-complaint relate in any possible manner to, as you phrase it, a "lack of funding for carrying out the UPL from 1990 to the present." The factual and legal issues deal exclusively with whether your client has any legal claim to the property at issue in the first amended complaint and/or cross-complaint. Your discussion of the "notice" requirements of California's Unclaimed Property Law has no possible bearing on this litigation. Nowhere does your client allege that the Controller failed to provide any notice required by California's Unclaimed Property Law. The pleadings plainly disclose that your client was not the legal owner of any of the property at issue when the state of Oklahoma and various private entities reported and remitted the unclaimed property to the State of California. Obviously, no notice to your client would have been required

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not relevant to the litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Your objection in this regard is meritless.

8. The State Controller's main objection to this request is that it has nothing whatsoever to do with the litigation at hand. None of the factual allegations or causes of action set forth within your client's first amended complaint, answer to the State Controller's cross-complaint, or the State Controller's cross-complaint relate in any possible manner to the existence or content of any reciprocity agreements between California and any other state. As you are of course aware, none of the property at issue in the first amended complaint or cross-complaint was reported or remitted by any state other than Oklahoma. The factual and legal issues here deal exclusively with whether your client has any legal claim to the property at issue in the first amended complaint and/or cross-complaint. Nowhere does your client allege that the Controller or the any other state failed to provide any required notice to your client. Therefore, your request is not relevant to the litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Your objection in this regard is meritless.

9. As explained above, nothing in California's Civil Discovery Act requires the production and/or service of a privilege log in connection with the service of responses. See *Best Products, Inc. v. Superior Court* (2004) 119 Cal. App. 4th 1181, 1187-88. Moreover, privileged information is expressly beyond the scope of permissible discovery. See Code Civ. Proc., § 2017.010. Therefore, to the extent your discovery demands seek privileged information, such demands are not authorized under California's Civil Discovery Act. Your objection in this regard is meritless.

10. The State Controller's main objection to this request is that it has nothing whatsoever to do with the litigation at hand. None of the factual allegations or causes of action set forth within your client's first amended complaint, answer to the State Controller's cross-complaint, or the State Controller's cross-complaint relate in any possible manner to "any agreement or arrangement with any person pursuant to which such person is paid a percentage of any unclaimed property they deliver to YOU at any time from 1990 to the present." This is simply not at issue in this litigation. The factual and legal issues deal exclusively with whether your client has any legal claim to the property at issue in the first amended complaint and/or cross-complaint. The pleadings plainly disclose that your client was not the legal owner of any of the property at issue when the state of Oklahoma and various private entities reported and remitted the unclaimed property to the State of California. Therefore, whether such "agreements or arrangements" even existed could not possibly have any bearing on the litigation at hand. Your client has no legal standing to even raise the issue in this litigation. Therefore, your request is not relevant to the litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Your objection in this regard is meritless.

Additionally, attached as exhibit B to your correspondence is a memorandum dated November 29, 1999, addressed to Peter Siggins, Chief Deputy Attorney General, from Larry G. Raskin, Supervising Deputy Attorney General. The memorandum indicates that carbon copies were provided to a Chief Assistant Attorney General and a Senior Assistant Attorney General.

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9. Responding to this interrogatory would require the State Controller's Office to hypothesize all possible circumstances where the State Controller's Office would contend that once the State of California takes possession of unspecified property, only the unspecified owner whose name appears in the State Controller's records may make a claim for such unspecified property. Again, the overbreadth, ambiguity, and vagueness of this interrogatory is patent. Attempting to require the State Controller's Office to engage in such a guessing game is an abuse of the discovery process. Moreover, this interrogatory is completely irrelevant to the litigation, as it is not reasonably calculated to lead to the discovery of admissible evidence. Only the specific facts surrounding your client's specific claims for the specific unclaimed property at issue in this litigation are relevant. Your objection in this regard is meritless.

11. Responding to this interrogatory would require the State Controller's Office to hypothesize "any set of circumstances under which Plaintiff Enerlex, Inc. would be entitled to make a claim for THE CAMERON PROPERTY." Again, the overbreadth, ambiguity, and vagueness of this interrogatory is patent. Attempting to require the State Controller's Office to engage in such a guessing game is an abuse of the discovery process. Moreover, this interrogatory is completely irrelevant to the litigation, as it is not reasonably calculated to lead to the discovery of admissible evidence. Only the specific facts surrounding your client's specific claims for the Cameron property are relevant. Your objection in this regard is meritless.

15. Responding to this interrogatory would require the State Controller's Office to hypothesize "any set of circumstances under which Plaintiff Enerlex, Inc. would be entitled to make claims for THE COUNTERCLAIM PROPERTY." Again, the overbreadth, ambiguity, and vagueness of this interrogatory is patent. Attempting to require the State Controller's Office to engage in such a guessing game is an abuse of the discovery process. Moreover, this interrogatory is completely irrelevant to the litigation, as it is not reasonably calculated to lead to the discovery of admissible evidence. Only the specific facts surrounding your client's claims for the counterclaim property are relevant. Your objection in this regard is meritless.

16. The State Controller's main objection to this interrogatory is that it has nothing whatsoever to do with the litigation at hand. None of the factual allegations or causes of action set forth within your client's first amended complaint, answer to the State Controller's cross-complaint, or the State Controller's cross-complaint relate in any possible manner to the State Controller's compliance "with the literal requirements of Section 1531." The factual and legal issues here deal exclusively with whether your client has any legal claim to the property at issue in the first amended complaint and/or cross-complaint. Nowhere does your client allege that the Controller failed to provide any required notice to your client. Therefore, this interrogatory is not relevant to the litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Your objection in this regard is meritless.

RESPONSES TO REQUESTS FOR ADMISSIONS

Your discovery demands repeatedly included the definition of California's Unclaimed Property Law, a term of art defined by statute, as including Code of Civil Procedure sections

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1300 et seq. As explained in detail in the State Controller's responses, your definition is statutorily incorrect. This objection speaks for itself. The remainder of your objections to the State Controller's responses to requests for admissions do not specifically address any individual response. Therefore, State Controller is unable to effectively meet and confer with you on these responses. Your failure in this regard will be treated as though you refused to meet and confer on any of the State Controller's responses. The State Controller's responses and objections to your requests for admissions are justified and made in good faith, and I would be willing to discuss any of the specific objections you may have to any specific response or objection provided.

RESPONSES TO REQUESTS FOR ADMISSIONS

No. 17.1: The State Controller has provided a full and complete explanation for each and every response and objection to each request for admission required by Judicial Council form interrogatory 17.1. We are unaware of any legal authority defining "unqualified admission" in this context which would require the State Controller to further explain the basis for the legal objections stated in connection with an admission. Please advise me if you have any such authority. Moreover, the State Controller's objections at issue are all made on legal grounds as to form and content of the request, not on substantive factual grounds, and are fully explained in each individual response to each request. No further information is required by 17.1.

I remain, of course, willing to discuss the matter further in order to resolve the issues you have raised in your prior correspondence.

Sincerely,


ZACKERY P. MORAZZINI
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

ZPM:wt

1022296.0004

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Trust Realty Partners v. Westly, et al.**

No.: **B179370**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age and older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 26, 2006, I served the attached **LETTER TO COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

William W. Palmer, Esq.
Law Offices of William W. Palmer
1241 Carter Road
Sacramento, CA 95864

James Christopher Rutten
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Stuart N. Senator
Munger, Tolles & Olson
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 26, 2006, at Sacramento, California.

Cynthia Fulkerson
Declarant


Signature