

1 ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
2 ROBERT D. WYATT (BAR NO. 73240)  
JAMES L. MEEDER (BAR NO. 62114)  
3 Three Embarcadero Center, 12th Floor  
San Francisco, CA 94111-4074  
4 Telephone: (415) 837-1515  
Facsimile: (415) 837-1516  
5 E-Mail: rwyatt@allenmatkins.com  
jmeeder@allenmatkins.com

6 Attorneys for EMHART INDUSTRIES, INC.,  
7 KWIKSET LOCKS, INC., KWIKSET CORPORATION,  
and BLACK & DECKER INC. (U.S.) INC.  
8

9 BEFORE THE CALIFORNIA  
10 STATE WATER RESOURCES CONTROL BOARD

11 IN THE MATTER OF PERCHLORATE  
12 CONTAMINATION AT A 160-ACRE SITE  
IN THE RIALTO AREA

SWRCB/OCC File A-1824

**MOTION AND OBJECTION NO. 4:**

**STAY ALL PROCEEDINGS PENDING  
DISCOVERY AND DETERMINATION OF  
COMPLIANCE WITH (1) THE  
SEPARATION OF PROSECUTORIAL AND  
ADJUDICATORY FUNCTION  
REQUIREMENTS IN GOV. CODE  
§ 11425.10(a)(4); AND (2) THE  
PROHIBITION AGAINST EX PARTE  
COMMUNICATIONS IN GOV. CODE  
§ 11425.10(a)(8)**

Hearing Dates: March 28-30, 2007 and April  
4-5, 2007

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20  
21 This Motion and Objection No. 4 are submitted by Emhart Industries, Inc.  
22 ("Emhart"), Kwikset Locks, Inc. ("KLI"), Kwikset Corporation ("Kwikset"), and Black &  
23 Decker (U.S.) Inc. ("BD(US)I").

24 **I. The Motion and Objection**

25 All proceedings noticed in the Notice of Public Hearing in State Board proceeding  
26 A-1824, dated February 23, 2007, ("Notice") should be stayed pending discovery and a  
27 determination by the State Board that the Hearing Officer and her Advisory Team have  
28 complied with: (1) the separation of prosecutorial and adjudicatory functions set forth in

1 Gov. Code § 11425(a)(4); (2) the prohibition against direct and indirect *ex parte*  
2 communications set forth in Gov. Code §§ 11425.10(a)(8) and 11430; and (3) the Office  
3 of Chief Counsel Guidance "Transmittal of Ex Parte Communications Questions and  
4 Answers Document" dated July 25, 2006 ("Chief Counsel's Guidance").

5 If the requested stay and determination are denied, Emhart, KLI, Kwikset, and  
6 BD(US)I hereby object to the Hearing Officer and her designated Advisory Team<sup>1</sup>  
7 proceeding with the adjudicatory hearing as set forth in the Notice and the Hearing Team  
8 memorandum of the Chief Counsel dated February 13, 2007, for the reasons set forth  
9 below.

## 10 II. The Law

11 "The protections of procedural due process apply to administrative proceedings."  
12 (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.) Due  
13 process "always requires . . . [the] 'constitutional floor' of a 'fair trial in a fair tribunal,' in  
14 other words, a fair hearing before a neutral or unbiased decision-maker." (*Id.*, quoting  
15 *Bracy v. Gramley* (1997) 520 U.S. 899, 904-905, and *Withrow v. Larkin* (1975) 421 U.S.  
16 35, 43.) Chapter 4.5 of the California Administrative Procedure Act ("APA"), Gov. Code  
17 §§ 11400 *et seq.*, sets forth "the minimum due process and public interest requirements  
18 that must be satisfied in a[n administrative] hearing that is subject to this chapter." (Law  
19 Rev. Comm. Comments, Gov. Code § 11425.10.)<sup>2</sup>

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22  
23 <sup>1</sup> On February 13, 2007, the Chief Counsel to the State Board advised the Hearing Officer that  
24 the following employees of the State Board will be part of her Advisory Team: "Attorneys:  
25 Michael Lauffer, Andrew Sawyer, Elizabeth Jennings, Karen O'Haire, James Herink[.]  
26 Support staff: Deolores White, Gabby Durio." (*Id.*, at 2.)

27 <sup>2</sup> The Notice confirms the application of Chapter 4.5 of the APA to this proceeding. It expressly  
28 provides that the adjudicatory hearing, set for March 28-30 and April 4-5, 2007, shall be  
conducted "in accordance with the State Water Board's regulations governing adjudicative  
proceedings and incorporated provisions of Chapter 4.5 of the Administrative Procedure Act."  
(Notice, at 7.) State Board regulation 23 CCR § 648(b) provides: "all adjudicatory  
proceedings before the State Board . . . shall be governed by these regulations, chapter 4.5 of  
the [APA] (commencing with section 11400 of the Government Code), section 801-805 of the  
Evidence Code, and section 11513 of the Government Code."

1           **A.     Strict Separation of Agency Prosecutorial and Adjudicatory Functions**  
2           **Is Required**

3           Gov. Code § 11425.40 provides that "the presiding officer" or any "other person or  
4 body to which power to hear or decide in the [administrative] proceeding is delegated" "is  
5 subject to disqualification for bias, prejudice or interest in the proceeding." As one  
6 safeguard against biased decision-makers, section 11425.10(4)<sup>3</sup> requires that "[t]he  
7 adjudicative function shall be separated from the investigative, prosecutorial, and  
8 advocacy functions within the agency. . . ." This mandatory separation of functions is  
9 "[o]ne of the basic tenets of the APA [because it] promotes both the appearance of  
10 fairness and the absence of even a probability of outside influence on administrative  
11 hearings." (*Nightlife Partners, Ltd., supra*, 108 Cal.App.4th at 91.)

12           Thus, "an employee engaged in prosecuting functions before an agency in a case  
13 may not, in the same or a factually related case, *participate* or *advise* in either the  
14 decision, or the agency's review of that decision." (*Id.*, at 92.) As the Second Appellate  
15 District in *Nightlife* explained:

16           [A] prosecutor by definition is a partisan advocate for a particular position or  
17 point of view. [Citation.] Such a role is inconsistent with the objectivity  
18 expected of administrative decision makers. [Citation.] Accordingly, to  
19 permit an advocate for one party to act as the legal adviser for the decision  
20 maker creates a substantial risk that the advice given to the decision maker  
21 will be skewed [citation], particularly when the prosecutor serves as the  
22 decision maker's adviser in the same or a related proceeding.

23 (*Id.*, at 93.) More recently, *Quintero v. City of Santa Ana, et al.* (2003) 114 Cal.App.4th  
24 810, 817, clarified that due process was violated by the Santa Ana Personnel Board  
25 because it allowed its legal adviser to act as the prosecution in the proceeding before it  
26 while he simultaneously provided advice to the board in other unrelated matters. There,  
27 assistant city attorney Halford, who had acted in various unrelated proceedings as legal  
28 counsel to the personnel board, appeared before the same board as counsel for the party  
adverse to Quintero. Based on these facts, the Court held:

          Here, there is no evidence that Halford acted as both the Board's legal  
adviser and in a prosecutory function in *this* case. However, Halford's other

<sup>3</sup> All references to "section" or "§" means a section of the Gov. Code.

1 interactions with the Board [as its legal adviser] give the appearance of bias  
2 and unfairness and suggest the probability of his influence on the Board.

3 \* \* \*

4 Halford clearly had an ongoing relationship with the Board beyond just  
5 appearing as counsel for a party.

6 This is enough to show the probability of actual bias. It would be natural for  
7 the Board members, who have looked to Halford for advice and guidance,  
8 to give more credence to his arguments when deciding plaintiff's case.  
9 Whether or not they actually did is irrelevant; the appearance of unfairness  
10 is sufficient to invalidate the hearing. (*Nightlife, supra*, 108 Cal.App.4th at  
11 94.)

12 In reaching our decision, we are not attributing bad faith to . . . the Board, or  
13 Halford. But given the frequent contact between Halford and members of  
14 the Board, it is only natural for them to have developed a relationship. This  
15 is precisely the reason [the Board] must exercise vigilance and caution, to  
16 ensure not only fairness, but the appearance of fairness. . . .

17 For the Board to allow its legal adviser to also act as an advocate before it  
18 creates a substantial risk that the Board's judgment in the case before it will  
19 be skewed in favor of the prosecution. The chance that the Board will show  
20 a preference toward Halford, even "perhaps unconsciously" is present and  
21 unacceptable.

22 (114 Cal.App.4th at 814 and 816-817.)

23 **B. Direct and Indirect Ex Parte Communications Are Prohibited**

24 Section 11425.10(a)(8) restricts both direct and indirect *ex parte* communications  
25 with the Hearing Officer as set forth in § 11430.10(a), which provides:

26 While the proceeding is pending there shall be no communication, direct or  
27 indirect, regarding any issue in the proceeding, to the presiding officer from  
28 any employees or representative of an agency that is a party or from an  
interested person outside the agency, without notice and opportunity for all  
parties to participate in the communication.

For the same due process reasons, section 11430.60 provides that receipt of *ex parte*  
communications in violation of these prohibitions "may be grounds for disqualification of  
the presiding officer." Sections 11430.40 and 11430.50 require the presiding officer to  
disclose the content of all prohibited written *ex parte* communications and prepare a  
memorandum describing all prohibited direct and indirect oral *ex parte* communications  
received regarding any issue in the proceeding. Section 11430.60 provides that receipt

1 of prohibited *ex parte* communications "may be grounds for disqualification of the  
2 presiding officer."

3 In connection with these requirements, the Chief Counsel's Guidance makes the  
4 following crystal clear: "If an adjudicatory proceeding is pending or impending before a  
5 water board, *ex parte* communications with that water board's members regarding an  
6 issue in that proceeding are prohibited." (Chief Counsel's Guidance, at 2.) "The [APA]  
7 prohibition on *ex parte* communications is very broad. It extends to 'direct and indirect'  
8 communications." (*Id.*, at 7.) "Board members must be mindful that persons who  
9 ordinarily would not be subject to the prohibition (e.g., secretaries, staff assigned to  
10 advise the board) should not be used as a conduit for prohibited *ex parte* communication,  
11 and thereby a source of an indirect communication." (*Id.*) "The fairness and  
12 transparency of the process are no less compromised if an *ex parte* communication takes  
13 place a few days before the issuance of a notice of hearing. . . ." (*Id.*, at 5.) "Where a  
14 proceeding is clearly impending, water board members should consider *ex parte*  
15 communications to be prohibited based on due process considerations." (*Id.*) "The  
16 prohibition on communications with the State Water Board members concerning a  
17 petition [challenging a regional board action or inaction] begins when the State Water  
18 Board receives the petition." (*Id.*, at 6.) "The *ex parte* communication prohibition . .  
19 extends to 'any issue in the proceeding'. With limited exceptions . . . , if the  
20 communication involves any issue in the proceeding, be it a factual issue, a legal issue,  
21 or a policy issue, it is subject to the *ex parte* communications prohibition." (*Id.*, at 7.)

### 22 III. Argument

23 The following facts compel the granting of this motion.

#### 24 A. The Hearing Officer's Comments And Actions On February 22 and 23, 25 2007

26 At the outset of the Pre-Hearing Conference held on February 22, 2007, the  
27 Hearing Officer stated:  
28

1 I don't have any specific particular knowledge about the level of the source  
2 of the contamination in the Rialto area. I understand it's been an ongoing  
investigation of the perchlorate contamination in the Rialto area.

3 I have seen various documents that have been submitted to various  
4 agencies, including various state agencies, the county D.A., the Governor  
requesting action on this matter.

5 (2/22/07 Tr., at 6.) The next day a comprehensive pre-hearing and five-day hearing  
6 schedule, which will conclude on April 5, 2007, was ordered over the objection of a  
7 number of parties, without regard to the history of the perchlorate investigation and  
8 proceedings (ongoing since 2002), the complexity of the issues involved, the number of  
9 suspected dischargers, or the necessary and potentially massive scope of evidence and  
10 number of witnesses which would need examination at the adjudicatory hearing.

11 Accordingly, Emhart, KLI, Kwikset, and BD(US)I request, as required by  
12 § 11430.50 and the Chief Counsel's Guidance, disclosure of all ex parte written and oral  
13 communications, if any, received by the Hearing Officer and her Advisory Team, on the  
14 one hand, from members of the Advocacy Team, employees and members of the Santa  
15 Ana Regional Board, other government employees and officials, and/or any other third  
16 party, on the other, in connection with State Board proceeding A-1824 and related prior  
17 proceedings.

18 **B. Ex Parte Communications With the Advisory Team in Earlier Related**  
19 **Proceedings**

20 As the Office of Chief Counsel and a number of members of the Hearing Officer's  
21 Advisory Team are aware, the Advocacy Team and members of the Santa Ana Regional  
22 Board were charged in May and June 2006 with violation of their minimum due process  
23 obligations to keep the prosecutorial and adjudicatory functions separate. They were  
24 also charged with violation of the prohibition against *ex parte* communications with  
25 members of the Regional Board and its Advisory Team during ongoing adjudicatory  
26 proceedings regarding perchlorate in the Rialto/Colton Groundwater Basin, while publicly  
27 stating that no such communications had or were occurring.

28

1 The detailed evidence supporting these allegations is set forth in Emhart's  
2 Amended Joint Petition filed with the State Board on June 2, 2006, in SWRCB/OCC Nos.  
3 A-1732, A-1732(a), A-1732(b), A-1732(c), and A-1732(d) ("Disqualification Petition").  
4 The Disqualification Petition sought the disqualification of the Santa Ana Regional Board  
5 from further adjudicatory proceedings in this matter. That evidence has never been  
6 rebutted, nor have the allegations ever been heard or acted on by the Office of Chief  
7 Counsel or the State Board.

8 In connection with the Disqualification Petition, on May 26, June 2, June 23, and  
9 August 2, 2006, Emhart made the following request of the State Board. Emhart  
10 requested that the State Board, sitting in its adjudicatory capacity, direct:

11 [I]ts Office of Chief Counsel to demonstrate that its employees assigned to  
12 advise the Regional Board and State Board have at all pertinent times kept  
13 their advisory and prosecutory and investigatory roles separate within the  
14 Office of Chief Counsel in connection with the following orders and  
15 complaints issued by the Regional Board's Executive Officer and related  
appeals to the State Board: CAO R8-2002-0051, dated June 6, 2002; Water  
Code Section 13267 order issued to Emhart, dated October 23, 2002;  
Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-  
0096, dated October 23, 2003; and the 2005 CAO.

16 (Emhart's May 26, 2006 Letter, at 2; June 2 Letter, at 5, June 23 Letter, at 5, and Aug. 2  
17 Letter, at 9 in State Board Proceeding A-1732 *et al.*) Emhart further asked the State  
18 Board to order the Executive Officer of the Santa Ana Regional Board to prepare:

19 [A] separate compilation of all communications between, on the one hand,  
20 the members of the 2005 CAO "Advocacy Team" as designated on October  
21 17, 2005, by the Chair of the Regional Board and, on the other, the  
22 members of the Regional Board, its "Advisory Team" for the 2005 CAO,  
23 and third-parties regarding Petitioners since June 6, 2002, commencing  
24 with the issuance by the Regional Board of CAO R8-2002-0051.

25 (*Id.*, at 3, 5, 5, and 9.) Because the Santa Ana Regional Board withdrew its 2005 CAO  
26 adjudicatory hearing notice, these requests were not heard or acted on by the State  
27 Board.

28 Given the commencement of State Board proceeding A-1824, and the  
appointment of an Advisory Team which includes a number of employees of the Office of

1 Chief Counsel who participated in the earlier perchlorate proceedings, it is now  
2 necessary to renew these requests.

3 Accordingly, Emhart, KLI, Kwikset, and BD(US)I request, pursuant to § 11430.50  
4 and the Chief Counsel's Guidance, the disclosure of all written and oral *ex parte*  
5 communications, if any, with the members of the Hearing Officer's Advisory Team, on the  
6 one hand, and the members of the Advocacy Team, employees and members of the  
7 Santa Ana Regional Board, other government employees and officials, and/or any other  
8 third party, on the other, in connection with the following orders and complaints issued by  
9 the Santa Ana Regional Board's Executive Officer and related petitions (appeals) to the  
10 State Board: CAO R8-2002-0051, dated June 6, 2002; Water Code Section 13267 order  
11 issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16,  
12 2003; ACL Complaint R8-2003-0096, dated October 23, 2003; CAO R8-2005-0053,  
13 dated February 28, 2005, as amended, in December 2005, and October 2006; and  
14 Resolution R8-2006-0079 dated October 23, 2006.

15 **C. Two Examples of Improper Actions Taken By The Advocacy Team and**  
16 **State Board Advisory Team**

17 On September 18, 2002, Gerry Thibeault, Executive Officer of the Regional Board,  
18 advised Carole Beswick, Chairperson, and Fred Ameri, Board member, by e-mail as  
19 follows with regard to a telephone conversation Mr. Thibeault, the chief prosecutor on the  
20 Advocacy Team then and now, had with then State Board member Peter Silva regarding  
21 the September 13, 2002 adjudicatory hearing before the Regional Board; the Regional  
22 Board adjudicatory hearing ended with the Regional Board's decision to rescind the 2002  
23 CAO because Mr. Thibeault's Advocacy Team failed to prove its case:

24 Mr. Thibeault: Carole and Fred, Just received a call from State Board  
25 Member Pete Silva. You will recall that he was at the hearing last Friday,  
but left before the end. He called to find out what happened.

26 He said that [Senator] Nell [Soto's] son called him and told him that Nell had  
27 gone ballistic when she heard what happened. Pete said that he will be  
trying to do some of what he called "damage control" with her. He said that  
he wouldn't be surprised that we will have Senate hearing being scheduled.

28 . . .



1 I explained to Pete about the concerns of the Board, both with respect to  
2 the Kwikset Corporate veil, and with the well-founded thought that we would  
3 spend the next two years fighting Kwikset and Goodrich at the State Board  
4 and in court, if the Order was upheld, instead of making any progress and  
5 getting wells in the ground. Told him that the Board felt that it would be  
6 better to bring more of the PRPs into the investigation process.

7 Pete seemed to understand [what] the decision was all about. He just  
8 seemed to dread having to deal with Nell, when she called him.

9 (Ex. 52 to Emhart's Amended Joint Petition filed on June 2, 2006 in SWRCB/OCC Nos.  
10 A-1732, *et al.*)

11 Mr. Silva is no longer a member of the State Board. Nevertheless, this e-mail  
12 exchange and the detailed evidence set forth in the Disqualification Petition establish  
13 that, commencing in 2002, there have been numerous improper direct and indirect written  
14 and oral *ex parte* communications between members of the Regional Board's Advocacy  
15 Team, members of the Regional Board sitting in its adjudicatory role, members of the  
16 State Board, the Executive Director of the State Board, and other government officials  
17 regarding the issues in these ongoing adjudicatory proceedings.

18 Second, on June 27, 2003, Ms. O'Haire, an attorney and one of the current  
19 members of the Hearing Officer's Advisory Team, appears to have authored a  
20 memorandum which suggests that she has prejudged allegations against Emhart which  
21 are now before the Hearing Officer for adjudication ("Memorandum"). The Memorandum,  
22 issued under the signature of then Chief Counsel Craig Wilson, advised the Executive  
23 Director of the State Board to deny Emhart's State Board Petition SWRCB/OCC No. A-  
24 1527. That petition sought to overturn an order of the Regional Board to compel Emhart  
25 to perform extensive investigative work under Water Code § 13267 without any hearing.  
26 (Ex. A to Emhart's Aug 2, 2006 Letter to State Board in State Board Proceeding A-1732,  
27 *et al.*)<sup>4</sup>

28 <sup>4</sup> The Memorandum was discovered attached to a declaration of Kurt Berchtold dated October 7,  
29 2003, filed by the Attorney General's office in the Riverside County Superior Court in the then  
30 pending action entitled *Emhart Industries, Inc. v. The Santa Ana Regional Board, et al.*, Case  
31 No. 397528. The Memorandum was not attached to the State Board's formal denial of  
32 Emhart's petition in State Board Proceeding A-1527.

1 The Memorandum stated that its author determined in 2003 that Emhart's petition  
2 did not raise significant issues of fact or law appropriate for State Board review because  
3 the "facts" establish that Emhart is liable as a "successor" for the actions of the West  
4 Coast Loading Corporation ("WCLC") and that WCLC discharged perchlorate to the  
5 groundwater in the Rialto/Colton Groundwater Basin, two issues now before the Hearing  
6 Officer for adjudication. Specifically, the Memorandum "found:"

7 Based on the evidence in the record it [sic], a reasonable person would  
8 suspect that WCLC discharged perchlorate waste at the site and or the  
9 storage bunkers in north Rialto that could affect the waters of the state and  
10 a Water Code section 13267 directive is appropriate.

11 \* \* \*

12 Since Petitioners' predecessor, AHC, assumed all liabilities and continued  
13 the business and benefited from KLI's goodwill, AHC assumed all liabilities  
14 including those of environmental harm of KLI and WCLC. Since Petitioners  
15 later merged with AHC, Petitioners are appropriately named in the Water  
16 Code section 13267 directive issued by the Regional Board.

17 (*Id.*, Ex. A, at 3-4.) Extraordinarily, the author of the Memorandum made these "factual  
18 and legal findings" without any opportunity for Emhart to present evidence or adjudicate  
19 at an evidentiary hearing the allegations in the 13267 order. Two days after the  
20 Memorandum, Emhart was advised that its petition had been denied by the State Board.  
21 Subsequently, on November 8, 2004, the Riverside County Superior Court declared the  
22 Regional Board's actions unconstitutional, and ordered the Regional Board to rescind its  
23 13267 order. (Ex. 21 to Emhart's Amended Joint Petition filed on June 2, 2006 in  
24 SWRCB/OCC Nos. A-1732, *et al.*)

25 Accordingly, Emhart requests that the State Board determine whether Ms. O'Haire  
26 authored or participated in the preparation of the Memorandum. If not, who in the Office  
27 of Chief Counsel did, are they still there, and what interaction, if any, have they had with  
28 the Hearing Officer, any member of her Advisory Team, any member of the Advocacy  
Team, and/or members of the State Board regarding the issues in these ongoing  
proceedings. If Ms. O'Haire was the author or participated in its preparation, Emhart  
requests that the State Board advise whether she will be disqualified from further

1 participating in A-1824 as part of the Hearing Officer's Advisory Team, and whether the  
2 memorandum or any similar memoranda from earlier proceedings authored by members  
3 of the Hearing Officer's Advisory Team will be excluded from the record and not  
4 considered in this proceeding in any way.

#### 5 **IV. Requested Order**

6 For all the foregoing reasons, Emhart, KLI, Kwikset, and BD(US)I respectfully  
7 request that the State Board:

8 1. Stay all proceedings in this matter.

9 2. Require the disclosure, pursuant to § 11430.50 and the Chief Counsel's  
10 Guidance, of all ex parte written and oral communications received by the Hearing Officer  
11 and her Advisory Team, on the one hand, from members of the Advocacy Team,  
12 employees and members of the Santa Ana Regional Board, other government  
13 employees and officials, and/or any other third party, on the other, in connection with  
14 State Board proceeding A-1824 and related prior proceedings.

15 3. Require the disclosure, pursuant to § 11430.50 and the Chief Counsel's  
16 Guidance, of all written and oral ex parte communications with the members of the  
17 Hearing Officer's Advisory Team, on the one hand, from members of the Advocacy  
18 Team, employees and members of the Santa Ana Regional Board, other government  
19 employees and officials, and/or any other third party, on the other, in connection with the  
20 following orders and complaints issued by the Santa Ana Regional Board's Executive  
21 Officer and related petitions (appeals) to the State Board: CAO R8-2002-0051, dated  
22 June 6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23,  
23 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096,  
24 dated October 23, 2003; CAO R8-2005-0053, dated February 28, 2005, as amended, in  
25 December 2005, and October 2006, and Resolution R8-2006-0079 dated October 23,  
26 2006.

27 4. Determine whether Ms. O'Haire authored or participated in the preparation of  
28 the Memorandum. If not, who in the Office of Chief Counsel did, are they still there, and


1 what interaction, if any, have they had with the Hearing Officer, any member of her  
2 Advisory Team, any member of the Advocacy Team, and/or members of the State Board  
3 regarding the issues in these ongoing proceedings. If it is determined that Ms. O'Haire  
4 was the author of the Memorandum, or participated in its preparation, the State Board  
5 shall advise the parties whether she will be disqualified from further participating in A-  
6 1824 as part of the Hearing Officer's Advisory Team, and whether the memorandum or  
7 any similar memoranda from earlier proceedings authored by members of the Hearing  
8 Officer's Advisory Team will be excluded from the record and not considered in this  
9 proceeding in any way.

10 5, Give the parties 30 days to review and comment on the above-requested  
11 evidence as provided for in § 11430.50.

12 Dated: March 5, 2007

Respectfully Submitted,

13 ALLEN MATKINS LECK GAMBLE  
14 MALLORY & NATSIS LLP

15 By:   
16 James L. Meeder  
17 Attorneys for Emhart, KLI, Kwikset, and  
18 BD(US)I  
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