

1 ROB BONTA
Attorney General of California
2 CHRIS A. KNUDSEN
Senior Assistant Attorney General
3 GABRIELLE H. BRUMBACH
Supervising Deputy Attorney General
4 ARANG CHUN
Deputy Attorney General
5 State Bar No. 309587
300 South Spring Street, Suite 1702
6 Los Angeles, CA 90013-1230
Telephone: (213) 269-6713
7 Fax: (916) 731-2117
E-mail: Gabrielle.Brumbach@doj.ca.gov
8 Arang.Chun@doj.ca.gov
Attorneys for Respondent California Department of
9 *Justice*

10 BEFORE THE STATE PERSONNEL BOARD
11
12

13 **IN THE MATTER OF:**

14 **CALIFORNIA ATTORNEYS, ADMINISTRATIVE**
15 **LAW JUDGES, AND HEARING OFFICERS IN THE**
16 **STATE EMPLOYMENT, STATE BARGAINING UNIT**
2 (CASE)

17 **APPELLANT,**

18 **v.**

19 **CALIFORNIA DEPARTMENT OF JUSTICE**

20 **RESPONDENT**

21 **REQUEST FOR REVIEW OF PERSONAL SERVICE**
22 **CONTRACT BY CALIFORNIA DEPARTMENT OF**
23 **JUSTICE AND LIEFF, CABRASER, HEIMANN &**
BERNSTEIN, LLP

24 **CONTRACT NO. 23-0279U**
25
26
27
28

Case No. 23-0052(b)-PSC

**RESPONDENT CALIFORNIA
DEPARTMENT OF JUSTICE'S
OPPOSITION TO CASE'S OPENING
BRIEF RE: APPEAL OF REQUEST FOR
REVIEW OF PERSONAL SERVICE
CONTRACT**

Date: November 4, 2024

TABLE OF CONTENTS

	Page
MEMORANDUM OF POINTS AND AUTHORITIES	4
INTRODUCTION	4
FACTUAL AND PROCEDURAL BACKGROUND.....	5
I. California Files an Historic Lawsuit Alleging Oil Companies Misled the Public to Increase Profits and Delay Climate Action.....	5
II. The DOJ Determined that It Needed Support Not Available Through the Civil Service to Litigate a Case of This Historic Magnitude and Importance.....	8
III. The DOJ Contracted With Lieff Cabraser Because It Brings to the Case Specialized Knowledge, Experience, and Resources Critical to Effectively Litigating This Historic Lawsuit.	9
IV. The DOJ Presented Extensive Evidence Establishing that Its Contract with Lief Cabraser was Authorized Under Section 19130 of the Government Code.	11
V. The Executive Officer Found that the DOJ Contract with Lieff Cabraser is Permitted Under Section 19130.	12
ARGUMENT	14
STATUTORY FRAMEWORK AND SCOPE OF REVIEW	14
I. The Contract Requires Highly Specialized Knowledge and Expertise Not Available Within the Civil Service and Therefore Meets the Criteria Under Section 19130(b)(3).	14
A. The DOJ Established that Lieff Cabraser Provides Specialized Knowledge, Experience, and Technical Know-How and Resources Unavailable Through the Civil Service.....	15
B. The DOJ Established that Lieff Cabraser Has the Unique Ability to Handle Litigation Surges of the Magnitude Anticipated in the Lawsuit.....	16
C. SPB Precedent Allows State Agencies to Contract with Private Law Firms to Effectively Litigate Large, Complex, and Important Matters.....	19
II. The Contract Requires an Independent, Outside Perspective, and Therefore Meets The Criteria Under Section 19130(b)(5)	21
III. The Services Requires Are of an Urgent, Temporary, and Occasional Nature and the Contract Therefore Meets the Criteria Under Section 19130(b)(10).	21
CONCLUSION	23

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>California Correctional Peace Officers Assn. v. Schwarzenegger</i> (2008) 163 Cal.App.4th 840	18
<i>CASE v. Department of Health Services (DHS)</i> (2005) PSC No. 05-01	19
<i>CASE v. Department of Health Services</i> PSC No. 05-01	20
<i>In re CDFA</i> (2003) PSC No. 03-01	20
<i>In the Matter of International Union of Operation Engineers</i> (2002) PSC 02-02	19
<i>People ex rel. Department of Fish and Game v. Attranco, Inc.</i> (1996) 50 Cal.App.4th 1926	18, 23
<i>Professional Engineers in California Government v. Department of Transportation</i> (1997) 15 Cal.4th 543	16
<i>Professional Engineers v. Department of Transportation</i> (1993) 13 Cal.App.4th 585	22
<i>State Compensation Ins. Fund v. Riley</i> (1987) 9 Cal.2d 126	14
STATUTES	
Gov. Code	
§ 11040, subd. (a)	18
§ 11256	18
§ 19130	<i>passim</i>
§ 19130, subd. (b)(3)	<i>passim</i>
§ 19130, subd. (b)(5)	14, 21
§ 19130, subd. (b)(10)	14, 21
Safe Drinking Water and Toxic Enforcement Act	22
CONSTITUTIONAL PROVISIONS	
California Constitution Article VII	14

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This case involves a once-in-a-generation lawsuit filed by Respondent Department of Justice (“DOJ”) to hold the fossil fuel industry accountable for their decades-long campaign of deception regarding climate change. In 2023, the DOJ filed *People of the State of California ex rel. Rob Bonta, Attorney General of California v. Exxon Mobil Corporation et al.* (the “Lawsuit”), a lawsuit targeting five of the largest oil companies in the world, Exxon Mobil, Shell, BP, ConocoPhillips, and Chevron, and their powerful trade group, the American Petroleum Institute. The Lawsuit seeks abatement of the devastating impacts of climate change on California and injunctive relief to protect Californians into the future. It is a lawsuit that will impact all residents of California, as well as the State’s natural resources and wildlife, and it is of crucial importance that the DOJ do all it can to ensure the best possible result for all Californians.

State law explicitly authorizes the DOJ to contract with private law firms where, as here, it provides specific and detailed information demonstrating that the contract falls within one or more of the exceptions specified in Government Code section 19130. Based on these exceptions, DOJ appropriately entered into a contract with Lieff, Cabraser, Heimann, & Bernstein, LLP (“Lieff Cabraser”) to assist it in prosecuting the Lawsuit. Lieff Cabraser adds specialized knowledge, skill, and experience to the DOJ’s litigation team that is not available in the civil service. Specifically, the firm has unparalleled experience representing plaintiffs in massive cases against entire industries, including Big Tobacco, the generic drug industry, Silicon Valley social media companies, and the opioids industry. Litigation against entire industries is rare, and Lieff Cabraser has a unique skill set that is invaluable for the prosecution of this action against Big Oil.

Lieff Cabraser has the expertise and resources to manage wide-ranging discovery and the tens of millions of documents that will be produced by all sides in this litigation. And it has the ability to surge attorneys and staff as necessary to meet the challenges of this unique litigation. It is also experienced at resolving these types of cases both prior to and after trial. It will bring both

1 an outside perspective and deep experience essential to litigating and potentially resolving this
2 lawsuit.

3 The State Personnel Board (“SPB”) should therefore uphold the SPB Executive Officer’s
4 decision finding that the DOJ’s contract with Lieff Cabraser is authorized under Government
5 Code section 19130, subdivision (b)(3). As the Executive Officer correctly found, Lieff Cabraser
6 brings to the case specialized experience, skill, and knowledge in dealing with this sort of mass
7 environmental and tort litigation that are not found in the civil service. This includes its ability to
8 quickly code, organize, and pull noteworthy documents out of a production of millions, and to
9 surge as many as 40 attorneys as the litigation dictates.

10 Although not found by the Executive Officer, the contract with Lieff Cabraser is also
11 authorized by subdivisions (b)(5) and (b)(10) of section 19130. In the context of this
12 unprecedented lawsuit where it is imperative that the DOJ get it right, there is also a clear need
13 for a different and outside perspective, as contemplated by subdivision (b)(5). Subdivision
14 (b)(10) also applies because this is a unique case that is temporary and will not recur. There is no
15 need for the DOJ to attempt to recreate within the civil service the capabilities of Lieff Cabraser
16 because there will be no need for the firm’s specialized skill when the litigation ends. Moreover,
17 attempting to do so is not possible and would frustrate the very purpose of the contract. The time
18 to hold the oil industry accountable is now, and Lieff Cabraser provides the specialized
19 knowledge, expertise, and resources the DOJ requires to aggressively litigate this groundbreaking
20 Lawsuit in the best interest of all Californians.

21 **FACTUAL AND PROCEDURAL BACKGROUND**

22 **I. CALIFORNIA FILES AN HISTORIC LAWSUIT ALLEGING OIL COMPANIES** 23 **MISLED THE PUBLIC TO INCREASE PROFITS AND DELAY CLIMATE** 24 **ACTION.**

25 The California Attorney General filed the Lawsuit on September 15, 2023 alleging decades
26 of misconduct, beginning as early as the 1950s, by oil companies that are household names. Oil
27 companies knew that climate change would lead to catastrophic climate impacts. (See Ex. 2,
28

1 Complaint, ¶ 3.)¹ They were aware that their products produce carbon dioxide and other
2 greenhouse gases that would lead to climate change, and that there was only a narrow window of
3 time in which they and communities and governments could take action. (See *ibid.*)

4 The Lawsuit alleges that instead of warning consumers, the public, and governments,
5 Exxon Mobil and the other defendants campaigned to discredit the burgeoning scientific
6 consensus on climate change. (See *id.*, at ¶ 4.) That campaign was designed to create doubt in the
7 minds of consumers, the media, policymakers, and the public about the reality and consequences
8 of the impacts of burning fossil fuels, and to delay the necessary transition to a lower-carbon
9 future. (See *id.*, at ¶ 5.) This climate deception campaign by oil companies and their trade
10 organization unduly and substantially inflated and sustained the market for fossil fuels while
11 misrepresenting and concealing the hazards of the industry's products. (See *ibid.*)

12 Fossil fuels have caused enormous, foreseeable, and avoidable increases in greenhouse gas
13 emissions, accelerating global warming. (See *ibid.*) The defendant fossil fuel companies' products
14 have caused California to experience extreme heat, droughts, severe wildfires, intense storms,
15 agricultural damage, sea level rise, habitat and species loss, and degradation of its air and water.
16 (See *id.*, at ¶ 6.) California will need billions of dollars to, inter alia, (1) address climate change-
17 induced superstorms and wildfires; (2) allocate and manage dwindling water supplies; (3) fortify
18 state infrastructure against sea level rise; and (4) protect California's people, infrastructure, and
19 natural resources from extreme heat and other climate change hazards. (See *id.*, at ¶ 5.)

20 As a result, the Lawsuit is potentially worth many billions of dollars. The State seeks
21 damages for past harm caused by climate change as well as an abatement fund to pay for the
22 infrastructure necessary to reduce climate impacts on the lives of Californians. (See *id.* at ¶ 8.)
23 Specifically, then, the State seeks the creation of a fund to help the State address future extreme
24 weather and other climate-related events, and thereby lessen the amount for which taxpayers will
25 ultimately be on the hook. (See *ibid.*)

26
27
28 ¹ All exhibits and declarations are attached to DOJ's Compendium of Evidence previously
submitted to the SPB for the Executive Officer's review.

1 Both Attorney General Rob Bonta and Governor Gavin Newsom have issued statements
2 highlighting the importance of the Lawsuit. (See Cal. Office of the Attorney General, Press
3 Release *Attorney General Bonta Announces Lawsuit Against Oil and Gas Companies for*
4 *Misleading Public About Climate Change - California becomes the largest geographic area and*
5 *the largest economy to sue giant oil companies* (Sept. 16, 2023), available at
6 [https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-](https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-gas-companies)
7 [gas-companies](https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-lawsuit-against-oil-and-gas-companies).) According to Attorney General Bonta, with this Lawsuit, “California becomes
8 the largest geographic area and the largest economy to take these giant oil companies to court.”
9 (*Id.*) According to Governor Newsom, “With this lawsuit, California is taking action to hold big
10 polluters accountable and deliver the justice our people deserve.” (*Id.*)

11 It is not merely the DOJ’s opinion that this is an enormously important and massive
12 undertaking. The New York Times describes the Lawsuit as the “most significant lawsuit to
13 target oil, gas and coal companies over their role in causing climate change.” (Gelles, California
14 Sues Giant Oil Companies, Citing Decades of Deception, N.Y. Times (Sept. 15, 2023), available
15 at <https://www.nytimes.com/2023/09/15/business/california-oil-lawsuit-newsom.html>.) The
16 Center for Climate Integrity agrees, stating, “California’s case is the most significant, decisive,
17 and powerful climate action directed against the oil and gas industry in U.S. history.” (*Ibid.*)
18 Outside commentators describe this litigation as a “monster” of a case, and applaud the DOJ for
19 “showing some guts by taking on the biggest oil companies.” (Office of the Governor, “‘This is a
20 Big Big Deal’: Climate Leaders Praise California’s Lawsuit to Hold Big Oil Accountable (Sept.
21 19, 2023) available at [https://www.gov.ca.gov/2023/09/18/this-is-a-big-big-deal-climate-leaders-](https://www.gov.ca.gov/2023/09/18/this-is-a-big-big-deal-climate-leaders-praise-californias-lawsuit-to-hold-big-oil-accountable)
22 [praise-californias-lawsuit-to-hold-big-oil-accountable](https://www.gov.ca.gov/2023/09/18/this-is-a-big-big-deal-climate-leaders-praise-californias-lawsuit-to-hold-big-oil-accountable).) The fossil fuel companies will bring in an
23 armada of large law firms with nearly unlimited resources, and the DOJ needs assistance from its
24 own expert support team.

25 //

26 //

27 //

28 //

1 **II. THE DOJ DETERMINED THAT IT NEEDED SUPPORT NOT AVAILABLE**
2 **THROUGH THE CIVIL SERVICE TO LITIGATE A CASE OF THIS HISTORIC**
3 **MAGNITUDE AND IMPORTANCE.**

4 The DOJ determined that it needed to retain outside counsel to assist with the Lawsuit. (See
5 Declaration of Edward Ochoa [“Ochoa Decl.”], at ¶ 6.) DOJ attorneys are taking the lead in
6 litigating the Lawsuit. (Id., at ¶ 9.) And the DOJ’s Environment Section has appropriately
7 staffed this Lawsuit with highly experienced and skilled environmental litigators. (See *id.*, at ¶ 4;
8 Declaration of Mari Mayeda [“Mayeda Decl.”], at ¶¶ 3, 4.) However, the DOJ does not have the
9 specialized expertise to fight a lawsuit of this magnitude on its own. (Ochoa Decl., at ¶ 9.)

10 The DOJ determined that neither the Environment Section nor the DOJ as a whole has the
11 ability to effectively litigate the Lawsuit. (Ochoa Decl., at ¶¶ 9, 13.) This is because the DOJ
12 needs assistance to manage the complexities of a lawsuit of this magnitude, to handle multiple
13 motions from multiple defendants filed in a short time span, to timely manage and process tens of
14 millions of documents, and to effectively handle litigation surges. (See Ochoa Decl., at ¶¶ 9, 13;
15 Mayeda Decl., at ¶¶ 5, 7.) This is a massive case and will involve discovery occurring in many
16 locations simultaneously, tens of millions of documents, and multiple simultaneous motions
17 necessitating quick synthesis of the contents of those millions of documents. (See Ochoa Decl., at
18 ¶ 7; Mayeda Decl., at ¶ 7.) The size of the Lawsuit is unique, covering harms from many decades
19 of the defendants’ deceit and seeking redress for harms reaching every ecosystem, geographical
20 area, and community in California, amounting to many billions of dollars. (See Ochoa Decl., at ¶
21 7.) As one Environment Section deputy assigned to the Lawsuit noted, “document production in
22 this case will far exceed anything I have faced in my career.” (Mayeda Decl., ¶ 7.) Litigation
23 surges will occur suddenly and sometimes unexpectedly and will require enormous levels of
24 resources. (See *ibid.*) At times, the Lawsuit may require as many as 40 additional attorneys, if not
25 more—representing more than the entire budgeted strength of the rank-and-file attorneys in the
26 Environment Section. (See Ochoa Decl., at ¶¶ 9, 11.) To handle these surges will require
27 immediate attention by attorneys familiar with the complex factual and legal issues at play in this
28 Lawsuit. (See Ochoa Decl., at ¶¶ 9, 11; Mayeda Decl., at ¶ 7.) It would take years for the

1 Environment Section to recruit, develop, and train the necessary support team, by which time the
2 surges will be over and the support no longer needed. (See Ochoa Decl., at ¶ 11.)

3 Other sections within the DOJ will not be able to adequately assist the Environment Section
4 during surges. (See Ochoa Decl., at ¶¶ 9, 13.) The DOJ will not have time or the resources to
5 rapidly train attorneys from other sections—who maintain their own active caseloads, many in
6 fulfillment of client-agency mandates—to meet sudden surges in need in the midst of a lawsuit of
7 this historical size and significance. (See *ibid.*) Instead, to be effective, the DOJ requires a pool of
8 attorneys available at a moment’s notice who have deep knowledge of the facts of this case,
9 environmental law, and complex plaintiffs’-side litigation. (See *id.*, at ¶ 8-9; Mayeda Decl., at ¶¶
10 5-6.) It is notable that where other public entities have filed similar lawsuits against fossil fuel
11 companies, those public entities have similarly determined that they needed help from private law
12 firms to effectively handle those lawsuits. (Ochoa Decl., at ¶ 5.)

13 **III. THE DOJ CONTRACTED WITH LIEFF CABRASER BECAUSE IT BRINGS TO THE CASE**
14 **SPECIALIZED KNOWLEDGE, EXPERIENCE, AND RESOURCES CRITICAL TO**
EFFECTIVELY LITIGATING THIS HISTORIC LAWSUIT.

15 The DOJ contracted with Lieff Cabraser because the firm possesses the necessary
16 specialized skills and resources not available within the civil service to effectively prosecute the
17 Lawsuit. (Ochoa Decl., at ¶¶ 6, 7.) Lieff Cabraser is one of very few law firms with experience
18 handling this type of mammoth plaintiffs’-side litigation. (See Ochoa Decl., at ¶ 8; Mayeda Decl.,
19 at ¶¶ 5-6; Declaration of Robert J. Nelson [“Nelson Decl.”], at ¶ 8.) The firm has successfully
20 obtained tens of billions of dollars in litigation relating to the following, among others: (1) the BP
21 oil spill, (2) the opioid epidemic, (3) false advertising in the tobacco industry, (4) environmental
22 losses due to massive wildfires, and (5) false claims that Volkswagen’s diesel vehicles qualified
23 as “clean.” (See Ochoa Decl., at ¶ 8.) Twenty-five of Lieff Cabraser’s lawsuits have been
24 resolved for more than \$1 billion, and 55 for more than \$100 million—all the result of the firm’s
25 experience in handling extremely large and complex cases. (See Nelson Decl., at ¶ 6.) For
26 example, Lieff Cabraser effectively led what was described as “the most significant antitrust
27 employment case in recent history,” alleging that the major Silicon Valley firms, including
28 Adobe, Apple, Google, Intel, Intuit, Lucasfilm, and Pixar, conspired to suppress employee

1 salaries. (See *id.*, at ¶ 8.) That lawsuit was settled for hundreds of millions of dollars. (See *ibid.*)
2 The firm has had similar success in high-stakes environmental litigation. (See *id.*, at ¶ 9.) Lieff
3 Cabraser brings to the case important experience from its handling of the Tobacco litigation, in
4 which it successfully argued that the tobacco industry had early knowledge about the dangers of
5 smoking, yet repeatedly deceived the public about the health impacts of smoking—a parallel to
6 the DOJ’s climate case that the fossil fuel industry has sought to avoid. (See Complaint, ¶¶ 69,
7 95, 133 [“Defendants’ marketing of fossil fuel products as environmentally beneficial follows in
8 the footsteps of the tobacco industry’s advertising campaigns to de-emphasize, and confuse the
9 public about, the deadly effects of smoking cigarettes.”])

10 This is a unique case for the DOJ, but not for Lieff Cabraser, which has handled many
11 lawsuits of this scale and has won. (See Nelson Decl., at ¶¶ 6-9.) The contract will provide the
12 DOJ with the benefit of Lieff Cabraser’s extensive expertise in handling large, complex litigation
13 as the DOJ shapes and reshapes its litigation strategy throughout the Lawsuit. (See Ochoa Decl.,
14 at ¶ 10; see also Nelson Decl., at ¶¶ 10-24.)

15 Further, Lieff Cabraser can make instantly available the dozens of attorneys trained in the
16 type of complex litigation that the Lawsuit will require. (See Ochoa Decl., at ¶¶ 9, 11; Nelson
17 Decl., at ¶ 5.) As such, Lieff Cabraser has the resources to immediately scale up DOJ’s litigation
18 arsenal in response to the surges anticipated in this type of enormous lawsuit. (See Ochoa Decl.,
19 at ¶ 11; Mayeda Decl., at ¶ 7.)

20 Lieff Cabraser also has specialized discovery and document management capabilities that
21 exceed the DOJ’s current resources. The firm has the ability to manage, absorb, and synthesize
22 tens of millions of documents in time to meet tight litigation deadlines. (See Ochoa Decl., at ¶¶ 9,
23 11; Nelson Decl., at ¶¶ 26-27; Mayeda Decl., at ¶ 7.) This includes technological capabilities and
24 coding techniques currently unavailable within the State. (See Nelson Decl., at ¶¶ 26-27.) Further,
25 the firm has the resources to conduct multiple simultaneous depositions across the country. (See
26 Nelson Decl., at ¶ 25.) This level of discovery resources will be necessary to contend with the
27 legion of major defense firms and their attorneys that the DOJ will face. (See Ochoa Decl., at ¶¶
28 11, 13.) Lieff Cabraser also has experience resolving this type of massive litigation short of trial,

1 and brings a specialized outside perspective to both the litigation and resolution of the litigation
2 that is not available in the civil service. (See Ochoa Decl., ¶ 10; Nelson Decl., ¶ 29.)

3 **IV. THE DOJ PRESENTED EXTENSIVE EVIDENCE ESTABLISHING THAT ITS CONTRACT**
4 **WITH LIEFF CABRASER WAS AUTHORIZED UNDER SECTION 19130 OF THE**
5 **GOVERNMENT CODE.**

6 CASE challenged the DOJ's contract with Lieff Cabraser relating to the Lawsuit. In
7 response, the DOJ produced declarations and other evidence which demonstrated in a detailed
8 and specific manner why the contract was authorized under various subdivisions of Section
9 19130. Environment Section SAAG Ochoa explained the unique nature of the Lawsuit, its
10 massive scope, and the fact that it seeks billions of dollars of damages from some of the largest
11 corporations on the planet. (See Ochoa Decl., at ¶ 4.) Although the Environment Section has
12 assigned a team of capable litigators to the Lawsuit, at times the Lawsuit will require the efforts
13 of more attorneys than the entire budgeted strength of the Environment Section. (Ochoa Decl., at
14 ¶¶ 11, 13.) Lieff Cabraser has the ability to immediately respond to litigation surges with
15 attorneys who are part of a team with knowledge of the factual and legal issues raised by the
16 Lawsuit. (Ochoa Decl., at ¶¶ 9, 12; Nelson Decl., at ¶¶ 26-28.) This is not merely a matter of
17 numbers. Lieff Cabraser possesses specialized skill and expertise not found in the civil service.
18 Lieff Cabraser specializes in massive litigation against large companies. (Ochoa Decl., at ¶¶ 8, 9;
19 Mayeda Decl., at ¶¶ 5-7.) It has significant experience litigating against entire industries,
20 including in environmental matters. (Nelson Decl., at ¶¶ 8, 9.) It has sophisticated information
21 technology software and staff and is experienced in handling document productions in the
22 millions of pages. (Nelson Decl., at ¶¶ 25-26.) Its lawyers have specialized training in complex
23 search and coding techniques allowing them to review, organize, and so locate the documents
24 within those millions that are most relevant for deposition and trial. (Nelson Decl., at ¶ 27.)
25 Without the specialized expertise provided by Lieff Cabraser, the DOJ does not have the ability to
26 effectively litigate the Lawsuit. (Ochoa Decl., at ¶ 9.)

27 The DOJ also showed that Lieff Cabraser provides an important outside perspective to the
28 Lawsuit. This is a truly unprecedented lawsuit that will raise novel factual and legal issues with
billions of dollars at stake. A narrow, provincial approach raises the twin dangers of a too-

1 aggressive approach, on the one hand, and, on the other hand, entering into a settlement for too
2 little that does not adequately protect California’s resources and residents. Lieff Cabraser will
3 provide a useful outside perspective to the DOJ on litigation strategy, the conduct of the litigation,
4 and settlement negotiations. (Ochoa Decl., at ¶ 10; Nelson Decl., at ¶ 29.) As Deputy Mayeda
5 noted, “our strategy and approach are improved by having Lieff Cabraser as a thought partner,
6 providing our office with an outside perspective . . .” (Mayeda Decl., at ¶ 8.)

7 The DOJ also demonstrated that Lieff Cabraser’s services were of an urgent and temporary
8 nature. The Lawsuit will soon tip over into a stage where there will be a cascading series of
9 deadlines, including for discovery and motion practice. (Ochoa Decl., at ¶ 11.) To develop a
10 team with the specialized skills of Lieff Cabraser would take years. (*Id.*) More importantly,
11 doing so would be unnecessary. This is a temporary need, and the DOJ will have no need for the
12 skills Lieff Cabraser is bringing once the Lawsuit is concluded. (*Id.*)

13 In sum, the DOJ’s efforts to litigate this case would be severely compromised if Lieff
14 Cabraser does not work alongside the Environment Section. (Nelson Decl., at ¶ 4.) As former
15 SAAG Ochoa observed: “we have rarely had a need to co-counsel with a law firm to bring an
16 action on behalf of the People of the State of California, and in no case has the need been as great
17 as in this one.” (Ochoa Decl., at ¶ 13.)

18 **V. THE EXECUTIVE OFFICER FOUND THAT THE DOJ CONTRACT**
19 **WITH LIEFF CABRASER IS PERMITTED UNDER SECTION 19130.**

20 On or about June 27, 2024, the Executive Officer determined that the DOJ had established
21 that its contract with Lieff Cabraser is permitted under Government Code section 19130,
22 subdivision (b)(3). This was because the contract is for services of such a highly specialized
23 nature that the necessary knowledge, experience, and ability are not readily available through the
24 civil service system. (Executive Officer Opinion, at p. 11.) The Executive Officer recognized
25 that [t]he issues in this lawsuit are of a highly specialized nature with anticipated surges in
26 activities during the litigation.” (*Id.* at p. 12.) The Executive Officer determined that the DOJ
27 “has sufficiently laid out the novelty of its high-stakes litigation and the sheer magnitude of an
28 experienced legal team needed to achieve a successful outcome.” (*Id.*) In addition, the DOJ had

1 established that Lieff Cabraser possessed the needed specialized expertise. The Executive Officer
2 observed that Lieff Cabraser is one of the few firms that has a history of handling massive
3 litigation against large industries and has done so successfully, including against the oil industry.
4 (*Id.*, at p. 10.) Many of the theories in the suits that Lieff Cabraser has handled may also be
5 employed in the Lawsuit. (*Id.*) While the DOJ has attorneys with complex litigation experience,
6 it lacks Lieff Cabraser’s experience in handling a case of this magnitude. (*Id.*) For example,
7 Lieff Cabraser can provide the necessary help managing and synthesizing the enormous numbers
8 of documents that the Lawsuit will generate. (*Id.*, at pp. 10, 11, 12.) And “[w]hile the DOJ has
9 experienced attorneys, it does not have the sheer number of experienced attorneys needed for this
10 litigation.” (*Id.* at p. 12.)

11 The Executive Officer rejected CASE’s assertion that the DOJ could handle the Lawsuit
12 without outside help by assigning DAGs from other sections. (Executive Officer Opinion, at pp.
13 11-12.) The Executive Officer observed that “DOJ’s submitted declarations show that the office
14 and its attorneys have not been structured in a manner that they can immediately coalesce into a
15 functioning team that can handle the demands of this lawsuit.” (*Id.* at p. 11.) And even if it
16 could, it would still lack the resources that Lieff Cabraser provides including its specialization in
17 handling large databases of documents and other evidence. (*Id.*) The Executive Officer observed
18 that the litigated issues are not of the kind that DAGs from other section could be expected to
19 readily handle. For example, DAGs handling death penalty cases may be very skilled at what
20 they do, “but they do not have experience handling the complex issues in this arena.” (*Id.*, at p.
21 12.)

22 The Executive Officer Opinion concludes with a recognition that “the DOJ is preparing for
23 a litigation war.” (Executive Officer Opinion, at p. 15.) The Executive Officer determined that
24 the contract is permitted under subdivision (b)(3) of Section 19130 because the state civil service
25 does not have the resources to match the resources of the oil industry defendants. (*Id.*) The
26 Opinion further concludes that the DOJ showed that it was unable to dedicate a team of the
27 experienced attorneys and support needed for the case, and it does not have the technology or
28

1 attorney resources to absorb the content of tens of millions of documents and quickly craft briefs
2 that highlight the most relevant evidence within those millions of pages. (*Id.*)

3 **ARGUMENT**

4 **STATUTORY FRAMEWORK AND SCOPE OF REVIEW**

5 Article VII of the California Constitution provides for an implied civil service mandate that
6 prohibits state agencies from contracting with private entities to perform work that customarily
7 can be performed adequately and competently by the civil service workforce. (*Professional*
8 *Engineers in California Government v. Department of Transportation* (1997) 15 Cal.4th 543,
9 547.) This prohibition is subject to exceptions set forth in section 19130 of the Government
10 Code. These include when the services cannot be performed satisfactorily by civil service
11 employees or are of such a highly specialized or technical nature that the necessary expert
12 knowledge, experience, and ability are not available through the civil service system. (Gov't
13 Code § 19130, subd. (b)(3).) Contracts are also permissible when the purpose of the task cannot
14 be accomplished through the regular civil service system, including when there is a need for a
15 different, outside perspective. (Gov. Code, § 19130, subd. (b)(5).) And contracts are also
16 permitted when they are of such an urgent, temporary, or occasional nature that the delay
17 incumbent in their implementation under civil service would frustrate their purpose. (Gov. Code,
18 § 19130, subd. (b)(10).) The state agency bears the burden of establishing through specific and
19 detailed facts that a personal services contract is justified under one of the exceptions in
20 Government Code section 19130. (*State Compensation Ins. Fund v. Riley* (1987) 9 Cal.2d 126,
21 134-135.)

22 **I. THE CONTRACT REQUIRES HIGHLY SPECIALIZED KNOWLEDGE AND EXPERTISE** 23 **NOT AVAILABLE WITHIN THE CIVIL SERVICE AND THEREFORE MEETS THE** 24 **CRITERIA UNDER SECTION 19130(B)(3).**

25 The Executive Officer correctly determined that the DOJ established that its contract with
26 Lieff Cabraser is permitted under Government Code section 19130, subdivision (b)(3).
27 Government Code section 19130, subdivision (b)(3), authorizes personal services contracts where
28 the contracted services are (1) not available within the civil service; (2) cannot be performed
satisfactorily by civil service employees; **or** (3) are of such a highly specialized or technical

1 nature that the necessary expert knowledge, experience, and ability are not available through the
2 civil service system. Here, the contract is justified under all three bases, any of which would
3 support affirmance of the Executive Officer's decision.

4 **A. The DOJ Established that Lieff Cabraser Provides Specialized Knowledge,**
5 **Experience, and Technical Know-How and Resources Unavailable**
6 **Through the Civil Service.**

7 The first reason this contract fits within the exception of subdivision (b)(3) is that the DOJ
8 established that Lieff Cabraser brings something unique to the table that is not found within the
9 civil service system. The DOJ is staffing the Lawsuit with a team of highly competent
10 environmental litigators, but it has never handled a case of this once-in-a-generation magnitude
11 against an entire industry. The Lawsuit names five of the largest oil companies operating in the
12 world. (See Ex. 2, Complaint, at p. 1.) Because of the Lawsuit's massive size and unprecedented
13 significance to the State of California, the DOJ needs support in the form of expert knowledge,
14 experience, and ability unavailable within the civil service to enable it to prevail. (See Ochoa
15 Decl., at ¶¶ 6-7; Mayeda Decl., at ¶¶ 5-8.). This includes a unique skill set amongst Lieff
16 Cabraser attorneys who have litigated similar industry-wide challenges and come out on top.
17 This also includes expertise in handling discovery occurring in many places simultaneously and
18 managing and synthesizing tens of millions of documents. (Ochoa Decl., at ¶ 9.) The number of
19 documents involved in this Lawsuit will be more substantial and "far exceeding anything" than
20 DAG Mayeda ever encountered in her nearly 40-year career. (Mayeda Decl., at ¶¶ 2 and 7.)

21 As the Executive Officer found, Lieff Cabraser has the specialized knowledge, experience,
22 and resources to provide the DOJ with the abilities it lacks in-house. (Executive Officer Opinion,
23 at pp. 11-12.) Lieff Cabraser specializes in handling massive lawsuits against powerful
24 industries. The Lawsuit has been described as "the most significant, decisive, and powerful
25 climate action directed against the oil and gas industry in U.S. history." (See Gelles, *California*
26 *Sues Giant Oil Companies, Citing Decades of Deception*, *supra* [online]; see also Nelson Decl., at
27 ¶¶ 5-9.) Lieff Cabraser has experience handling these types of industry-wide lawsuits; this was
28 well documented in the record. (Nelson Decl., at ¶¶ 5, 8, 9.) It has a specialized IT staff trained
in managing large document databases and coordinating reviews. (Nelson Decl., at ¶ 26.) The

1 DOJ also needs Lieff Cabraser’s 40 staff attorneys who “specialize in reviewing, coding, and
2 organizing documents and pulling noteworthy documents for depositions and trial.’ (Mayeda
3 Decl., at ¶ 7; Nelson Decl., at ¶ 27.) Lieff Cabraser also is unique in that it has specialized
4 experience—gained over decades of litigation against large companies—in achieving highly
5 complex and high-value settlements that maximize the recovery for its clients. (See Nelson Decl.,
6 at ¶ 29.)

7 The Executive Officer recognized that the DOJ established that Lieff Cabraser brings
8 knowledge and experience unique to mass litigation which the DOJ does not fully have. (See
9 Executive Officer Decision, at p. 10.) In particular, “the DOJ contracted services of Lieff
10 Cabraser, ‘one of the few firms that has a history of handling massive litigation against large
11 industries. The firm has successfully litigated against the tobacco industry on its deception
12 regarding the addictive nature of nicotine, the opioid manufacturers and distributors for their
13 contribution to the opioid epidemic, the oil industry for the devastating effects from oil spills, and
14 Southern California Edison for its role in failing to mitigate against wildfires.” (Executive
15 Officer Decision, at p. 10.)

16 **B. The DOJ Established that Lieff Cabraser Has the Unique Ability to**
17 **Handle Litigation Surges of the Magnitude Anticipated in the Lawsuit**

18 The second reason the contract meets the requirements of subdivision (b)(3) is that the DOJ
19 established Lieff Cabraser has the ability to handle litigation surges that the DOJ cannot handle
20 with its civil service environmental litigators. The pace of the Lawsuit will ebb and flow and
21 there will be times when the litigation team will need to deal with litigation surges. (Ochoa Decl.,
22 at ¶¶ 9, 11.) This could involve a need for up to an additional 40 attorneys to temporarily handle
23 a litigation task. (Ochoa Decl., at ¶ 9.) The DOJ does not have the ability to expand and contract
24 its litigation team and to surge resources to meet the requirements of the Lawsuit. (*Id.*) The DOJ
25 Environmental DAG Mayeda, who has been assigned to this case and has nearly 40 years of
26 complex civil litigation experience stated that “[s]he does not believe the lawsuit can be handled
27 by the current team of DAGS assigned to the case alone, even if it were ‘significantly
28 expanded.’” (Mayeda Decl., at ¶4.) Indeed, at times the Lawsuit will require the efforts of many

1 more attorneys than the entire budgeted strength of the Environment Section. (Ochoa Decl., at ¶
2 11.). The Executive Officer found that the DOJ established that it does not have sufficient
3 attorneys with experience dealing with mass environmental and tort litigation. (Executive Officer
4 Decision, at pp. 11, 15.)

5 In contrast, Lieff Cabraser does have the ability to handle litigation surges. Lieff Cabraser
6 is no stranger to this type of massive, high stakes litigation against an entire industry—it has
7 experience that the DOJ lacks. (Nelson Decl., at ¶¶ 8, 9, 30; Ochoa Decl., at ¶¶ 8, 9.) It has a
8 roster of experienced attorneys and its “large number of staff attorneys will provide the litigation
9 team the ability to expand and contract to meet the surges which will occur as documents are
10 produced in the litigation and are needed to be readied for use in depositions and trial.” (Nelson
11 Decl., at ¶ 27.)

12 CASE is simply incorrect when it argues that the DOJ did not explain why it cannot handle
13 litigation surges with other attorneys within the DOJ, including in other sections. (See CASE’s
14 Opening Brief, at p. 5.) In fact, the DOJ presented specific evidence explaining why it could not
15 do so. Despite CASE’s protestations to the contrary, attorneys from other sections would not
16 possess the specialized experience in handling this sort of massive litigation that Lieff Cabraser
17 possesses. (Ochoa Decl., at ¶ 13.) Attorneys from the sections most likely to have relevant
18 experience, the Natural Resources Law Section and the Land Use and Conservation Section, will
19 be fully occupied with their own important work as well as responding to third party discovery
20 requests arising out of the Lawsuit. (Ochoa Decl., at ¶13.) Rounding up DAGs who happen to
21 be available when a litigation surge hits is not a substitute for what Lieff Cabraser brings to this
22 case. This is because this Lawsuit will not be a compilation of discrete tasks—rather, it requires a
23 dedicated team of attorneys with experience in handling this sort of complex litigation and the
24 factual and legal complexities of the Lawsuit. (Ochoa Decl., at ¶ 12.) This level of resource
25 commitment and expertise is what the DOJ needs to effectively litigate this “monster” of a
26 lawsuit, and this is what Lieff Cabraser brings to the case. It is not something that is available
27 within the civil service system. The Executive Officer rightly concluded that the DOJ showed
28

1 that the office and its attorneys are not structured in a way that allows for them to immediately
2 coalesce in a functioning team to handle the Lawsuit. (Executive Officer Decision, at p. 11.)

3 CASE's other argument is that a shortage of attorneys does not suffice to justify a contract
4 under subdivision (b)(3). (CASE's Opening Brief, at pp. 3-5.) This argument fails because, as
5 described above, the contract is not justified by a shortage of attorneys but by the fact that the
6 specialized skill, experience, and knowledge that Lieff Cabraser brings and that is not available
7 within the civil service. (See Ochoa Decl., at ¶¶ 7-9, 13; Nelson Decl., at ¶¶ 4-6, 25-29.)

8 However, it should be noted that courts have also considered lack of staffing as a consideration
9 under section 19130. (Cf. *People ex rel. Department of Fish and Game v. Attransco, Inc.* (1996)
10 50 Cal.App.4th 1926, 1936, 1938 ["As a policy matter, it is unthinkable that state agencies
11 statutorily charged with recovering costs of cleaning up pollution should be deterred from their
12 purpose because they can be outmanned in a paper war."]; *California Correctional Peace*
13 *Officers Assn. v. Schwarzenegger* (2008) 163 Cal.App.4th 840, 859.)

14 More importantly, the DOJ cannot simply re-create the many decades of experience that
15 Lieff Cabraser lawyers have in prosecuting cases against entire industries with unlimited budgets.
16 In this active litigation, the DOJ has already benefited from Lieff Cabraser's experience and
17 expertise in the Judicial Council Coordination Proceedings, which resulted in coordination of the
18 Lawsuit with cases filed by eight local government entities and assignment of the coordinated
19 cases to the DOJ's requested venue, San Francisco Superior Court.²

21 ² CASE is not familiar with the DOJ's litigation. CASE inaccurately describes the
22 litigation as "stalled." (CASE brief at 2). However, since filing the complaint, the coordinated
23 cases were assigned to the DOJ's requested venue. On June 10, 2024, the DOJ filed and served an
24 amended complaint that added additional facts and disgorgement of profits as a requested
25 remedy, based on the recently-enacted AB 1366, which enables the Attorney General exclusively
26 to be awarded disgorgement for violations of the Unfair Competition Law and the False
27 Advertising Law. On June 17, 2024, the court held an initial case management conference, at
28 which the parties discussed the schedule and sequencing of initial motions. The parties are
currently litigating two sets of initial motions: (1) motions to quash for lack of personal
jurisdiction, and (2) an anti-SLAPP motion. Motion hearings are set for October 7, 2024 and
October 10, 2024. The case number is CJC-24-005310, and the docket can be found online at
<https://webapps.sftc.org/ci/CaseInfo.dll?CaseNum=CJC24005310&SessionID=1B77801B244CF4E60AAD40451CEE16A79333EA9E>.

1 Lastly, CASE also argues that other civil service attorneys working in various departments
2 under the California Environmental Protection Agency could lend their skills to and expertise to
3 this case when necessary. (CASE’s Opening Brief, at p. 4.) This argument lacks merit as
4 attorneys from state agencies owe no duty to litigate OAG matters. (Gov. Code, § 11040, subd.
5 (a).) They are already employed full-time in their respective positions. (Gov. Code, § 11256.)
6 Nothing in the statutory scheme contemplates such a requirement. As such, OAG has no
7 obligation to request that an agency other than the OAG provide legal representation. (*In the*
8 *Matter of International Union of Operation Engineers* (2002) PSC 02-02 at p. 9.) Nor is there
9 any indication that any attorneys employed by such agencies have the specialized skills and
10 experience of Lieff Cabraser.

11 As the Executive Officer found, Lieff Cabraser’s expertise will help ensure that the DOJ
12 obtains the best possible result for the People of the State of California.

13 **C. SPB Precedent Allows State Agencies to Contract with Private Law Firms**
14 **to Effectively Litigate Large, Complex, and Important Matters.**

15 The Executive Officer was also correct in concluding that SPB precedent supports allowing
16 the contract with Lieff Cabraser. The DOJ, like other public law offices around the country, will
17 inevitably be confronted with situations where the most cost-effective and best solution for the
18 residents of its jurisdiction is to pair up with an experienced private law firm. This is naturally
19 true of climate litigation. Those public entities that have filed lawsuits similar to the Lawsuit
20 have typically contracted with private law firms to either handle the lawsuit or serve as co-
21 counsel with the state, county, or city attorneys. (Ochoa Decl., at ¶ 5.)

22 This Board’s precedent explicitly allows such contracts, as the Executive Officer
23 recognized. For example, in *CASE v. Department of Health Services (DHS)* (2005) PSC No. 05-
24 01, the Department of Health Services contracted with an outside law firm to assist DHS in the
25 development and implementation of a demonstration Medicaid waiver pursuant to Section 1115
26 of the Social Security Act. This effort required changes in state law, changes to California’s state
27 Medi-Cal program, and approval from the federal government to operate Medi-Cal under the
28 demonstration waiver. The contract between DHS and the law firm was authorized under

1 Government Code section 19130, subdivision (b)(3), because the law firm brought with it unique
2 experience derived from assisting other states developing similar systems, and it had specialized
3 expertise negotiating with the federal government which would help California's development of
4 its own waiver. The law firm had knowledge of Medicaid rules from different states and waivers
5 submitted by other states, including which types had been approved, and expertise in obtaining
6 the waivers which was lacking in the state civil service. (*CASE v. Department of Health Services*,
7 PSC No. 05-01, at pp. 6-7.)

8 Additionally, this Board authorized the California Department of Food and Agriculture to
9 hire outside counsel to act as co-counsel with the DOJ in its defense of CDFA against a claim that
10 its regulations violated the U.S. Constitution's Commerce, Equal Protection, and Privileges and
11 Immunities clauses. (See *In re CDFA*, (2003) PSC No. 03-01.) The Board rejected argument by
12 CASE that the DOJ's attorneys did not need support from private law firms to defend itself in a
13 case involving complex constitutional issues. (*Id.* at p. 6.) Instead, the Board held that "expert
14 knowledge, experience, and ability that [is] 'useful' to the OAG in order for it to effectively and
15 thoroughly prosecute [] ongoing, highly technical and complex litigation" satisfies Government
16 Code section 19130, subdivision (b)(3). (*Id.* at p. 7.)

17 The instant representation by Lieff Cabraser presents a far easier justification for private
18 counsel than the authorities described above. Lieff Cabraser possesses the expertise and
19 resources that civil services employees simply do not have. Lieff Cabraser is one of the few firms
20 in the United States that has a history of handling massive litigation against large industries
21 including the tobacco industry, opioid manufacturers and distributors, the oil industry, and
22 Southern California Edison, and winning--repeatedly. (See Ochoa Decl., at ¶ 8(a)-(d).)
23 Moreover, Lieff Cabraser specializes in reviewing, coding, and organizing the enormous
24 databases of documentary evidence that the lawsuit will require. (Mayeda Decl., at ¶ 7 and Ochoa
25 Decl., at ¶13.)

26 The Lawsuit is enormous in scope and has the potential to bring many billions of dollars to
27 the State to address the catastrophic effects of climate change. The DOJ cannot effectively
28 pursue this lawsuit alone. (See Ochoa Decl., at ¶¶ 9, 11, 13.) The Executive Officer appropriately

determined that the contract with Lieff Cabraser is authorized under Government Code section 19130, subdivision (b)(3) in accordance with SPB precedent.

II. THE CONTRACT REQUIRES AN INDEPENDENT, OUTSIDE PERSPECTIVE, AND THEREFORE MEETS THE CRITERIA UNDER SECTION 19130(B)(5)

The contract with Lieff Cabraser is also authorized under subdivision (b)(5) of Government Code Section 19130. Subdivision (b)(5) authorizes contracts where the State’s legal goals cannot be accomplished through the regular civil service system, including where there is a need “to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective.” (Gov. Code, § 19130, subd. (b)(5).) In its evidentiary submission, the DOJ presented declarations stating that because the Lawsuit is so unique, an outside perspective is valuable. (Ochoa Decl., at ¶ 10; Mayeda Decl., at ¶ 8.) This is a truly historic and unprecedented case for the DOJ. (Mayeda Decl, at ¶ 6.) In contrast, Lieff Cabraser has handled these types of industry-wide cases before, and will therefore have an invaluable outside perspective on the case. (Nelson Decl, at ¶ 29.) The Executive Officer agreed that “Lieff Cabraser’s strategy and insight (outside perspective) makes it an ideal partner to the DOJ in this litigation.” (Executive Officer Decision, p. 13.) However, the Executive Officer concluded that because the purpose of the retention was not to ensure independent or unbiased findings, subdivision (b)(5) did not apply. This was mistaken in the unique context of the Lawsuit. This is a case which will quite literally impact the quality of life of every Californian for years to come. And retention of Lieff Cabraser best ensures a resolution that fully protects the People of the State of California. Lieff Cabraser has experience achieving multi-billion-dollar settlements the maximize recoveries for their clients. (Nelson Decl, at ¶ 29.) Considering the immense stakes involved in the Lawsuit, this is a case “where there is a clear need for a different, outside perspective.”

III. THE SERVICES REQUIRES ARE OF AN URGENT, TEMPORARY, AND OCCASIONAL NATURE AND THE CONTRACT THEREFORE MEETS THE CRITERIA UNDER SECTION 19130(B)(10).

Finally, the contract with Lieff Cabraser is also authorized under Government Code section 19130, subdivision (b)(10). This subdivision allows urgent, temporary, and occasional contracts when the delay incumbent in their implementation would frustrate their very purpose. (Gov.

1 Code, § 19130, subd. (b)(10).) The Executive Officer found that subdivision (b)(10) did not
2 apply, reasoning that the services were not “urgent” because the DOJ anticipated the Lawsuit, and
3 not “temporary” because the Lawsuit could last a long time. (Executive Officer Decision, at p.
4 14.) Again, considering the unique nature of the Lawsuit, this reasoning was erroneous.

5 This is truly a one-of-a-kind lawsuit, and it would neither be efficient nor economical for
6 the DOJ to attempt to recreate within its organization the specialized skills, expertise, and
7 knowledge possessed by Lieff Cabraser. Indeed, it simply would not be possible to re-create the
8 many decades of experience that Lieff Cabraser possesses that is necessary for this litigation. The
9 purpose of the state civil service mandate is to encourage efficiency and economy in state
10 government. (*Professional Engineers v. Department of Transportation* (1993) 13 Cal.App.4th
11 585, 592.) As set forth in the DOJ’s declarations, this type of lawsuit is not “occasional,” it is a
12 once-in-a-generation lawsuit resulting from decades of burning carbon fuels and alleged
13 deception by an entire industry. (See Ochoa Decl., at ¶¶ 4, 7.) The DOJ must necessarily handle
14 all sorts of matters involving the entire spectrum of legal matters that may impact the State of
15 California and its agencies. Even the Environment Section itself handles a wide range of matters
16 ranging from enforcing the Safe Drinking Water and Toxic Enforcement Act to representing the
17 Department of Toxic Substances Control. (Ochoa Decl., at ¶ 2.) In contrast, Lieff Cabraser
18 specializes in just this type of massive litigation against an entire industry. (Ochoa Decl., at ¶ 8;
19 Nelson Decl., at ¶¶ 8, 9.) Attempting to build an in-house capability for this one lawsuit would
20 likely fail, and would cause undue delay and expense that would frustrate its very purpose.

21 The Executive Officer also erred in determining that the contract with Lieff Cabraser was
22 not urgent within the meaning of the statute. It is certainly true that the DOJ prepared the
23 complaint in the Lawsuit and so its specific timing was a matter within the DOJ’s control. But
24 the complaint showed that what it needed from Lieff Cabraser was not something that could be
25 obtained merely by hiring a few attorneys; the Lawsuit could not be indefinitely delayed.
26 Commentators have observed that this is a “pivotal time” for climate accountability, and the DOJ
27 presented evidence that other public entities are bringing similar lawsuits, all with the help of
28 outside counsel. (See Mark, *California’s Fossil Fuel Lawsuit Could Mark a Turning Point in the*

1 *Effort for Climate Change Accountability, Sierra Magazine* (October 26, 2023); Ochoa Decl., at ¶
2 5.) This is the time for these types of climate change lawsuits, and the DOJ did not have the
3 luxury of trying to replicate Lieff Cabraser’s expertise from scratch. As described above, the
4 Lawsuit will often involve tight deadlines and litigation surges. (See *Attransco, supra*, 50
5 Cal.App.4th at p. 1936 [noting the tight deadlines inherent in active litigation].)

6 Finally, because this is a one-time matter, it is temporary. It is possible, as the Executive
7 Officer posits, that the litigation of the Lawsuit could be lengthy. It is also possible that after a
8 relatively short period of hard litigation the matter resolves. And once the Lawsuit resolves, there
9 will be no need for attorneys with Lieff Cabraser’s unique skill set. (Ochoa Decl., at ¶ 11.) The
10 Environment Section has never seen a lawsuit of this size in recent history. (See Ochoa Decl., at
11 ¶¶ 4, 7, 13.) It does not make sense for the DOJ to spend years recruiting and training permanent
12 civil service attorneys who know how to respond to lawsuits involving tens of millions of
13 documents and involving entire industries on the off chance that they will see a lawsuit of this
14 size again in their careers at the DOJ.

15 CONCLUSION

16 California filed the Lawsuit against five of the largest oil companies in the world to hold
17 them accountable for their deception and misconduct relating to fossil fuel’s role in exacerbating
18 climate change. This is a once-in-a-generation lawsuit that has the potential to create a massive
19 fund to address the multiple impacts of climate change on California. The Attorney General is
20 committed to ensuring that the oil industry—as opposed to California taxpayers--pay for the
21 damage their deception has wrought upon the State, and the best way to ensure that outcome is to
22 hire outside counsel with the unique and unparalleled skills required to help ensure a successful
23 outcome. The DOJ is leading the charge, and devoting a substantial number of lawyers to the
24 case. But in order to effectively litigate against the fossil fuel industry, it needs the expert support
25 and resources that Lieff Cabraser is uniquely qualified to provide and that the DOJ simply does
26 not have. The Executive Officer aptly described what the DOJ is embarking on as a litigation
27 war. In order to best prosecute that war, and in order to protect the People of the State of
28 California, the DOJ needs Lieff Cabraser’s specialized knowledge, skill, and experience.

1 Therefore, the DOJ respectfully requests that the Executive Officer's decision approving of the
2 contract be upheld.

3
4
5
6 Dated: September 20, 2024

Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 GABRIELLE H. BRUMBACH
Supervising Deputy Attorney General

10 

11 GABRIELLE H. BRUMBACH
12 Supervising Deputy Attorney General
13 *Attorneys for Respondent California*
Department of Justice

14 LA2024600194
15 THE NEW FINAL DRAFT BRIEF.docx
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **Review of Personal Services Contract (Environment Section)**
No.: **23-0052(b)-PSC**

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 or 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 with postage thereon fully prepaid that same day in the ordinary course of business.

On September 20, 2024, I served the attached **Respondent California DOJ's Opposition to CASE's Opening Brief Re: Appeal of Request for Review of Personal Service Contract** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Patrick J. Whalen, Attorney
CASE General Counsel
1231 I Street, Suite 300
Sacramento, CA 95814

State Personnel Board
Legal Division
801 Capitol Mall, MS 53
Sacramento CA 95814

E-mail Address:
patrick@patrickjwhalenlaw.com

Email addresses:
Alvin.Gittisriboongul@spb.ca.gov
Caroline.Molumby@spb.ca.gov

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 20, 2024, at Los Angeles, California.

Yvette Carr
Declarant

Yvette Carr
Signature