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LAWYERS

402 WEST BROADWAY, SUITE 1800

SAN DIEGO, CALIFORNIA 92101

(619) 231-4844 • FAX (619) 231-6710

WWW.WLELAW.COM

December 13, 2018

Writer's e-mail address:  
aschouten@wlelaw.com

**VIA E-MAIL and HAND DELIVERY**

Board of Directors,  
Solano Emergency Medical Services Cooperative  
355 Toulomne St., MS 20-240  
Vallejo, CA 94590  
[HSSSolanoResponds@solanocounty.com](mailto:HSSSolanoResponds@solanocounty.com)

Birgitta Corsello, Chair  
Josh Chadwick  
Caesar Djavaheerian, MD  
Thea Giboney, MHA  
Lillian Pan, MD, MS  
Richard Watson  
David White

Re: Draft RFP regarding Emergency Ambulance Services

Dear Members of the SEMSC Board:

We write on behalf of the California Fire Chiefs Association ("CalChiefs") and the Solano County Fire Chiefs Association ("SCFCA") in connection with a draft request for proposals regarding emergency ambulance services ("RFP") currently before the Solano County Emergency Medical Services Cooperative's ("SEMSC's") Board of Directors ("Board"). The RFP is the provision of emergency ambulance services in Solano County's Exclusive Operating Area ("EOA") under California Health and Safety Code Section 1797.2224 ("Section 224").

As more fully explained below, the RFP for requires the selected contractor to operate centralized dispatch, which would unlawfully displace the statutory rights and obligations of the Cities of Fairfield, Vallejo, Suisun City, and Benicia to continue administration of their own dispatch centers and other fire service agencies' dispatch functions related to prehospital EMS first response resources pursuant to California Health and Safety Code Section 1797.201 ("Section 201"). In addition, fire service agency members of SEMSC were afforded insufficient time to review and provide meaningful input on the RFP prior to the instant meeting, and the RFP's existing provisions may result in unnecessary and unforeseeable disruptions to those fire service agencies' EMS and non-EMS functions. Finally, members of SEMSC's Physician's Forum flagrantly violated the Ralph M. Brown Act, Cal. Gov. Code §§ 54950 *et seq.*, and likely breached SEMSC's joint powers agreement ("JP Agreement") by holding a "physician's only" meeting to discuss the RFP to the exclusion of the representatives of SEMSC's fire service members.

To resolve these issues and cure any potential Brown Act violation or breach of the JP Agreement, CalChiefs and SCFCA demand that the Board postpone consideration of the RFP for one month or until its next, regular meeting in January, 2019, whichever is longer.

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**A. The RFP Must Be Amended To Recognize Cities' Section 201 Dispatch Rights And Obligations.**

There are currently six dispatch centers in Solano County, including the primary public-safety answering points ("PSAPs") in the Cities of Fairfield, Vallejo, Suisun City, and Benicia (see RFP § III.C, at p. 26). SEMSC's incumbent ambulance contractor dispatches ambulances based on dispatch requests from the various PSAPs as well as emergency calls that it receives directly through its own PSAP (*id.*).

The RFP states that a centralized dispatch center with full EMD and pre-arrival instructions ("PAI") capabilities is a cornerstone of an effective EMS system (RFP § V.A.1, at p. 47). To that end, the RFP requires the selected contractor:

[O]perate on a 24/7/365 basis a centralized secondary Public Safety Answering Point (PSAP) and shall, with the exception of calls for emergency ambulance service within the primary territory served by the City of Vacaville Fire Department, accept the transfer of all incoming 911 and seven-digit calls received from primary PSAPs in Solano County (and calls received directly by Contractor) that request or require EMS response and/or emergency medical care, as further determined by SEMSC policies.

(*Id.* § V.A.1.a, at p. 47).

Furthermore, the contractor would also be tasked with dispatching the ALS first response resources for all fire service agencies within Solano County (with the exception of the City of Vacaville) (*id.* § V.A.1.i, at p. 49).

The Cities of Fairfield, Vallejo, Suisun City, and Benicia have maintained their own primary PSAPs and dispatched ambulances and prehospital EMS first response within their own service areas since 1977. They have never relinquished these dispatching functions. Other Solano County fire service agencies have also dispatched their own pre-hospital EMS first response since 1977 and have not relinquished those functions, either.

SEMSC cannot unilaterally displace these fire service agencies' administrations of their own PSAPs and/or dispatch functions, which are protected by Section 201.

As construed by the California Supreme Court, "[Section 201] gives cities and fire districts that administered prehospital EMS on June 1, 1980, the right to continue to do so." Valley Med. Transp., Inc. v. Apple Valley Fire Prot. Dist., 17 Cal.4th 747, 761 (1998).

While it is "not 'a broad recognition or authorization of autonomy in the administration of [EMS] for cities and fire districts,'" Section 201 "is essentially a grandfathering of existing [EMS] operations until such time as these services are integrated into the larger EMS system." *Id.*, at 758.

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Thus, to the extent that they “controlled a certain domain of prehospital [EMS],” cities and fire districts “retain administrative control of those services” under Section 201. Id. at 756.

More precisely, Section 201 provides “that cities and fire districts have not only the right but the *obligation* to continue to provide [EMS] until an agreement is reached with [SEMSC].” Id. at 758 (emphasis in original). Thus, a city’s or fire district’s “rights and obligations under [Section 201] are inextricably conjoined, and the statute does not appear to contemplate that [it] would forego the latter without surrendering the former.” Id. at 758-59.

Section 201 also serves to limit SEMSC’s authority in that SEMSC “may not contravene the authority of eligible cities and fire districts to continue the administration of their prehospital EMS without the latter’s consent, either through acquiescence or through formal agreement.” Cnty. of San Bernardino v. City of San Bernardino, 15 Cal.4th 909, 924 (1997). SEMSC’s “ability to create EOA’s in [Section 224] is made expressly subject to [Section 201], and therefore would not permit [SEMSC] to unilaterally displace a city or fire district continuing to operate emergency medical services.” Apple Valley, 17 Cal.4th at 759. Thus, SEMSC’s “ability to create EOA’s may not supplant the cities’ or fire districts’ ability to continue to control EMS operations *over which [it has] historically exercised control.*” San Bernardino, 15 Cal.4th at 932 (emphasis added).

The California Supreme Court recognizes that “dispatch functions” are a domain of prehospital EMS subject to Section 201. Apple Valley, 17 Cal.4th at 762 n.5. The Cities of Fairfield, Vallejo, Suisun City, and Benicia therefore have continuing Section 201 rights and obligations to administer their own PSAPs and dispatch functions and those may not be displaced by SEMSC assigning those functions to the selected contractor as part of the Section 224 EOA-creation process.

Furthermore, to the extent that Solano County fire service agencies, including the Cities of Fairfield, Vallejo, Suisun City, and Benicia, have dispatched their own prehospital EMS first response resources, Section 201 would similarly apply to such dispatch functions and protect against their unilateral displacement by SEMSC.

CalChiefs and SCFCA understand and appreciate SEMSC’s commitment to improving EMS dispatch throughout the county and implementing standardized protocols for EMD and PAI. However, unlawfully transferring county fire service agencies’ rights and obligations regarding dispatch functions to the county’s private contractor is not the only means to achieve these goals. CalChiefs and SCFCA believe that a postponement of the Board’s consideration of the draft RFP is appropriate to permit a dialogue between SEMSC and Solano County’s fire service agencies on how to best achieve SEMSC’s goals and to amend the RFP accordingly.

**B. County Fire Service Agencies Were Given Insufficient Time To Review And Comment On The RFP.**

SEMSC released the RFP one week prior to the Board’s special meeting. This gave SCFCA and fire service agencies insufficient time to review and comment on the RFP.

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SEMSC's decision to provide its members insufficient time to review the RFP is particularly troubling because some elements of the RFP were not addressed in the draft EMS system blueprint published by SEMSC's consultant. For example, the RFP calls for the selected contractor to dispatch all fire service agencies' "ALS first response resources" (RFP § V.A.1.1, at p. 49). Empowering SEMSC's contractor to dispatch fire service agencies' "ALS first response resources" could have significant, negative effects on those agencies' ability to carry out their fire prevention, rescue, and other emergency response duties.

SEMSC failed to afford its fire service agency members with sufficient notice and opportunity to address this proposed change. The draft EMS system blueprint did not address this point, as it focused on the need to prioritize EMS calls for purposes of ambulance dispatching. For example, in discussing the tiered EMS response concept, SEMSC's consultant observed that "[t]he costs of employing paramedics and deploying ALS *ambulances* are greater than the costs of employing EMTs and deploying BLS *ambulances*." (EMS System Blueprint at 30 (emphasis added); see also id. at 4-5, 30-32).

Additional provisions of the RFP may similarly impact fire service agencies' ability to discharge their fire prevention, rescue, and other emergency response duties. As such, a postponement of the Board's consideration of the draft RFP is warranted for Solano County's fire service agencies to assess whether, and to what extent, the RFP's provisions may inadvertently impair their EMS and non-EMS functions and to engage in constructive dialogue with SEMSC on potential revisions or amendments to the RFP.

**C. SEMSC's Physicians Forum Violated The Brown Act And May Have Breached The JP Agreement In Excluding Fire Service Representatives From A Meeting To Evaluate The RFP.**

SEMSC's Physician's Forum is an advisory committee comprised of emergency room physicians, system Medical Directors, and representatives from EMS providers. Its ostensible purpose is to review and evaluate the adequacy, appropriateness and effectiveness of emergency medical care provided in Solano County's EMS system.

SEMSC recently produced an October 17, 2018 email exchange among Dr. Bryn Mumma, Keith Erickson, Ted Selby, and Doug Wolfberg in response to a Public Records Act request made by Solano County IAFF Locals. A copy of the October 17, 2018 email exchange is enclosed as Attachment A.

In the exchange, Dr. Mumma proposed convening "a special meeting of the voting members of Physicians' Forum to provide advice to the SEMSC Board regarding the medical aspects of the items in the RFP blueprint report." (Attach. A at 4). Dr. Mumma believed that such advice would be useful to the Board, as some members lack medical training (*id.*). Despite recognizing that "some of us have inherent conflicts of interest due to the position that brings us to Physicians' Forum," Dr. Mumma nevertheless recommended excluding representatives from fire service agencies and the incumbent ambulance contractor because she wanted the medical

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doctors to be able “to discuss the evidence for the RFP items from a patient-centered perspective, without interruptions and influence from potential bidders (aside the inherent conflicts that exist as being the medical director for a potential bidder).” (Id. at 3-4).

SEMSC Coordinator Erickson responded by providing or confirming contact information for the physician members of the Physician’s Forum and SEMSC staff’s availability for such a meeting. He closed his email by asking Dr. Mumma and SEMSC Administrator Selby to “Confirm Physician members only?” (Id. at 3).

Dr. Mumma then addressed the following to SEMSC Consultant Wolfberg and Administrator Selby:

Any concerns with inviting physician members only to the special meeting? If we make it open, I’m afraid everyone from fire and Medic will show up, try to insert their special interests, and detract from the medical discussion. May also appear biased because other potential bidders would not be invited. Having 10 voting members keeps the group to a manageable size, too.

(Id. at 2).

Wolfberg responded: “I am not aware offhand of any requirement that all LEMSA committee meetings must be open to the public.” (Id.).

Dr. Mumma then instructed Erikson to send out the invitation for the physicians-only meeting to the physician members of the Physicians’ Forum (id. at 1).

Our understanding is that no public notice of the physicians-only meeting was given. Furthermore, we understand that the physicians-only meeting did occur and that Physicians’ Forum representatives from fire service agencies and the incumbent ambulance provider were not invited and did not attend such meeting.

SEMSC is a joint powers authority (“JPA”) organized pursuant to Government Code section 6500, *et seq.* It is therefore a “local agency” subject to the Brown Act. Cal. Gov. Code § 54951; McKee v. L.A. Interagency Metro. Police Apprehension Crime Task Force, 134 Cal.App.4th 354, 359 (2005). As an advisory committee of SEMSC created by SEMSC Policy 1960, the Physician’s Forum is an “advisory committee” subject to the Brown Act. Cal. Gov. Code § 54952(b); Joiner v. City of Sebastopol, 125 Cal.App.3d 799, 805 (1981).

Because it was not conducted in public with appropriate notice, the “physicians-only” meeting was an informal gathering of some of Physicians’ Forum members wherein official business was discussed and transacted in violation of the Brown Act. Cal. Gov. Code § 54952.2; 43 Ops.Cal.Atty.Gen. 36, 37-38 (1964). And, the exclusion of fire service agency representatives amounts to unlawful discrimination against them in violation of Government Code section 6252.7.

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Furthermore, JP Agreement sections VIII.B and D provide that SEMSC members are committed to "maximum public access and input" and shall have "free and thorough access" to the Board and that the Board "shall encourage questions, suggestions, comments and concerns about the decisions of the SEMSC."

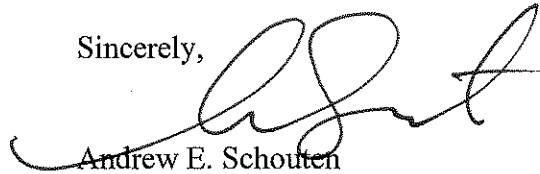
The decision by Dr. Mumma, Administrator Selby, and Coordinator Erickson to exclude representatives of SEMSC's fire service agency members and the incumbent contractor from commenting, advising, and recommendations on the RFP through the Physicians' Forum amounts to a breach of sections VIII.B and D of the JP Agreement. Such breach is particularly egregious given Dr. Mumma's admissions that some invitees to the "physicians-only" meeting were under conflicts of interest, including the medical director of a potential bidder. See Quantification Settlement Agreement Cases, 201 Cal. App. 4th 758, 797 (2011) (state's breach of joint powers agreement's provisions requiring payment of excess mitigation costs would give rise to breach of contract claim by other JPA members).

SEMSC must cure its Brown Act violation and apparent breach of the JP Agreement. CalChiefs and SCFCA believe that a postponement of the Board's consideration of the RFP to afford SEMSC fire service agency members sufficient time to analyze and respond to its contents is therefore necessary.

**D. Conclusion.**

Based on the foregoing, the Board should postpone consideration of the RFP until such time as SEMSC's fire service agency members have an opportunity to review and provide feedback on the RFP. CalChiefs and SCFCA believe that a one-month postponement will be sufficient to accomplish this purpose. If the Board chooses to go forward by approving the RFP in the face of the substantive and procedural deficiencies highlighted in this letter, CalChiefs, SCFCA, and/or one or more of its members shall pursue litigation to have the RFP set aside.

Sincerely,



Andrew E. Schouten  
Counsel for CalChiefs and SCFCA

Enclosure

cc: Clients (email only)

# **ATTACHMENT “A”**

**Erickson, Keith D.**

---

**From:** Bryn E Mumma <bemumma@ucdavis.edu>  
**Sent:** Wednesday, October 17, 2018 2:52 PM  
**To:** Doug Wolfberg; Erickson, Keith D.; Selby, Ted  
**Subject:** Re: Physicians' Forum

Great, thank you both. Keith, could you please distribute the email below with Doodle poll link to the 9 voting members of Physicians' Forum and CC me?

Physicians' Forum Physicians -

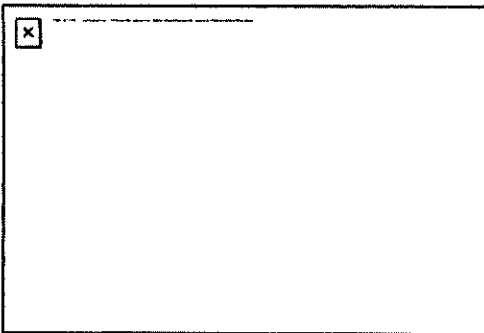
I would like to convene a special meeting of the voting members of Physicians' Forum to provide advice to the SEMSC Board regarding the medical aspects of the items in the RFP blueprint report. (For example, we support As some board members do not have medical training, I think it would be helpful for us to critically review the literature and provide recommendations to the Board on these items.

While I realize that some of us have inherent conflicts of interest due to the position that brings us to Physicians' Forum, I hope we can be as objective as possible in our recommendations to the Board.

Please use the link below to indicate your availability by Sunday, 10/21. If you are available in between the times listed (ex. 10-12 but not 8-11 or 11-2), please indicate that in the comments. I am hoping we can finish in 2 hours but am allowing 3 hours if we need it. I Please let me know if you have any questions.

Thanks, Bryn

<https://doodle.com/poll/ughy3ecxvzd55t7a>



[Doodle: Physicians' Forum Special Meeting](https://doodle.com/poll/ughy3ecxvzd55t7a)

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Bryn E. Mumma, MD, MAS  
Assistant Professor, UC Davis Department of Emergency Medicine  
Solano County EMS Medical Director  
bemumma@ucdavis.edu



Contents of this email protected by Evidence Codes 1156 and 1157

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**From:** Doug Wolfberg <dwolfberg@pwwemslaw.com>  
**Sent:** Wednesday, October 17, 2018 2:34:46 PM  
**To:** Bryn E Mumma; Erickson, Keith D.; Selby, Ted  
**Cc:** Selby, Ted  
**Subject:** RE: Physicians' Forum

I am not aware offhand of any requirement that all LEMSA committee meetings must be open to the public.

**From:** Bryn E Mumma <bemumma@ucdavis.edu>  
**Sent:** Wednesday, October 17, 2018 5:25 PM  
**To:** Erickson, Keith D. <KDErickson@SolanoCounty.com>; Selby, Ted <TSelby@SolanoCounty.com>  
**Cc:** Doug Wolfberg <dwolfberg@pwwemslaw.com>; Selby, Ted <TSelby@SolanoCounty.com>  
**Subject:** Re: Physicians' Forum

Ted and Doug,

Any concerns with inviting physician members only to the special meeting? If we make it open, I'm afraid everyone from fire and Medic will show up, try to insert their special interests, and detract from the medical discussion. May also appear biased because other potential bidders would not be invited. Having 10 voting members keeps the group to a manageable size, too.

Thanks, Bryn

Bryn E. Mumma, MD, MAS  
Assistant Professor, UC Davis Department of Emergency Medicine  
Solano County EMS Medical Director  
[bemumma@ucdavis.edu](mailto:bemumma@ucdavis.edu)

Contents of this email protected by Evidence Codes 1156 and 1157

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**From:** Erickson, Keith D. <KDErickson@SolanoCounty.com>  
**Sent:** Wednesday, October 17, 2018 2:11:26 PM  
**To:** Bryn E Mumma; Selby, Ted  
**Subject:** RE: Physicians' Forum

Dr. Kohli is totally out of the system now. Lillian Pan was appointed his replacement for the board for sure but unsure of MD Forum. Traditionally it is the same person for both.

Dr. Pam's email is [lillianypam@gmail.com](mailto:lillianypam@gmail.com). For the North County Fire Departments it is Christopher Scharenbrock. His email is [Christopher.G.Scharenbrock@kp.org](mailto:Christopher.G.Scharenbrock@kp.org).

All the other physicians are correct.

As for the representatives, most of those are not around anymore. Here's the current list.

Current Representatives

Jason Fein, Benicia Fire  
Billy Untalan, Cordelia Fire  
Zach Glankler, Dixon Fire

Robb Herrick, Fairfield Fire  
John Ha, Vallejo Fire  
Paula Russel, Vallejo Fire  
Alex Nourot, Vacaville Fire  
Brandon Wilson, Rio Vista Fire  
Jimmy, Cindy, Sandy, Brian, Chantale Pakosz , Ryan Sack, all from Medic  
Heather, NBMC/VacaValley  
Gary Cole, SSMC,  
Monica and Dan Freeman, Kaiser Vacaville  
Ray Dodson, Kaisers  
Daphne Morris, Kaiser Vallejo

For the survey, all staff will not be available on November 16 due to the debriefing for the Statewide Medical and Health Exercise. All other dates look ok. Personally I'll be at the NorCal EMS Coordinator meeting on November 29<sup>th</sup> all day (San Leandro).

I will send the link out. Confirm Physician members only? I'll book the room once we have a date/time.

Keith Erickson, EMT-P  
EMS Coordinator  
Solano County EMS Agency  
355 Tuolumne Street MS 20-240  
Suite 2400  
Vallejo, CA 94590  
W: 707-553-5020  
C: 707-639-2025  
[kderickson@solanocounty.com](mailto:kderickson@solanocounty.com)  
This is a nonproprietary email.

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**From:** Bryn E Mumma [<mailto:bemumma@ucdavis.edu>]

**Sent:** Wednesday, October 17, 2018 1:28 PM

**To:** Erickson, Keith D.; Selby, Ted

**Subject:** Physicians' Forum

The attachments are .eml files that I'm not able to open. I'm looking for the list of designated, voting members of physicians forum. The list is have is attached - dated 1/19/18 and is indicated "as of December 2017." I believe most of the members are accurate, but I need to know the members from:

Fairfield Fire and Dixon Fire (formerly Neil Markus)  
Sutter Solano (formerly Satjiv Kohli - Is he still in this position, or did Lillian Pan take over when she took the SEMSC board rep position?)  
Also, should Dana Vierra be invited? She almost always attends, but I do not see her name on the list.

For the special MD forum meeting, I am leaning toward only the designated reps to be invited. I am still against closed meetings for general discussion, but I want us to be able to discuss the evidence for the RFP items from a patient-centered perspective, without interruptions and influence from potential bidders (aside the inherent conflicts that exist as being the medical director for a potential bidder).

**Ted**, what are your thoughts on a physician-only meeting?

**Keith**, could you please send the email below to the members with Doodle poll link below for scheduling? Also, could you please help with finding a room?

Physicians' Forum Physicians -

I would like to convene a special meeting of the voting member of Physicians' Forum to provide advice to the SEMSC Board regarding the medical aspects of the items in the RFP blueprint report. (For example, we support As some board members do not have medical training, I think it would be helpful for us to critically review the literature and provide recommendations to the Board on these items. While I realize that some of us have inherent conflicts of interest due to the position that brings us to Physicians' Forum, I hope we can be as objective as possible in our recommendations to the Board. Please let me know if you have any questions.

Thanks, Bryn

<https://doodle.com/poll/uqhy3ecxvzd55t7a>



## Doodle: Physicians' Forum Special Meeting

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Doodle radically simplifies the process of scheduling events, meetings, appointments, etc. Herding cats gets 2x faster with Doodle. For free!

Bryn E. Mumma, MD, MAS  
Assistant Professor, UC Davis Department of Emergency Medicine  
Solano County EMS Medical Director  
[bemumma@ucdavis.edu](mailto:bemumma@ucdavis.edu)

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**From:** Erickson, Keith D. <[KDErickson@SolanoCounty.com](mailto:KDErickson@SolanoCounty.com)>  
**Sent:** Wednesday, October 17, 2018 12:31:13 PM  
**To:** Selby, Ted  
**Cc:** Bryn E Mumma  
**Subject:** RE: Physicians' Forum

Here is the current mailing groups that usually are invited to MD Forum. Let me know if I'm missing any.

Keith Erickson, EMT-P  
EMS Coordinator  
Solano County EMS Agency  
355 Tuolumne Street MS 20-240  
Suite 2400  
Vallejo, CA 94590  
W: 707-553-5020  
C: 707-639-2025  
[kderickson@solanocounty.com](mailto:kderickson@solanocounty.com)  
This is a nonproprietary email.

**From:** Selby, Ted  
**Sent:** Wednesday, October 17, 2018 12:27 PM  
**To:** Erickson, Keith D.  
**Cc:** Bryn E Mumma  
**Subject:** Physicians' Forum

Can you please send the most recent list of members to Dr. Mumma?

Thanks so much!

Ted

Ted Selby, Administrator  
Health & Social Services Department  
Medical Services Division  
355 Tuolumne St., MS 20-240  
Vallejo, CA 94590  
Phone: (707) 784-8608