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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 CITY OF BERKELEY; MAYOR AND  
18 MEMBERS OF THE CITY COUNCIL  
19 OF THE CITY OF BERKELEY,  
Plaintiffs,

20 v.

21 UNITED STATES POSTAL  
22 SERVICE; PATRICK R. DONOHOE AS  
POSTMASTER GENERAL OF THE UNITED )  
23 STATES POSTAL SERVICE; TOM A. )  
SAMRA, VICE PRESIDENT- )  
24 FACILITIES OF THE UNITED STATES )  
25 POSTAL SERVICE; DIANA ALVARADO, )  
DIRECTOR, REAL ESTATE, USPS PACIFIC )  
26 REGION, )

Defendants. )

) Case No.: 3:14-cv-04916-WHA

) **NOTICE OF THE STATUS OF THE UNITED**  
) **STATES POSTAL SERVICE'S 2013 FINAL**  
) **DETERMINATION**

1 This Court requested that, “[w]ithin one week defendant shall advise the Court if it rescinds the  
2 final determination regarding relocation of retail services in Berkeley, CA.” ECF No. 53. The answer is  
3 yes. The 2013 Final Determination was superseded—now having no further force an effect—by the  
4 September 2014 decision to maintain services in the Berkeley Main Post Office. Should the Postal  
5 Service at some future time decide again that it would be in the best interest of its operations to relocate  
6 retail services, the Postal Service will reinitiate the process pursuant to 39 C.F.R. § 241.4.

7 The 2013 Final Determination Regarding Relocation, issued pursuant to 39 C.F.R. § 241.4,  
8 provides that the Postal Service may relocate retail services. ECF No. 24-1. Under the Postal Service’s  
9 regulations, there is no formal procedure for withdrawal of these types of determinations, as any further  
10 action following the determination would require additional regulatory and internal approvals. Although  
11 the Postal Service does not have a formal procedure for withdrawal of the 2013 Final Determination, the  
12 Postal Service retains the discretion not to proceed with such a decision. The Postal Service has  
13 exercised this discretion as set forth in our briefs that are currently before the Court. *See* ECF No. 47 at  
14 2-3, 14; ECF No. 51 at 4; *see also* Alvarado Decl. 24, ¶ 7; Lowe Decl. ECF No. 25, ¶ 3.

15 The Postal Service has indicated on a number of occasions that it would explore potential sales  
16 transactions that would include a lease-back provision, thereby allowing the Postal Service to lease a  
17 portion of the Berkeley Main Post Office for continued retail services. *See* ECF No. 24-1 at 2. The  
18 Postal Service clarified in two declarations, dated November 24, 2014, that the Postal Service had  
19 finalized a plan in September of 2014 in which the Postal Service would maintain retail operations at the  
20 Berkeley Post Office. *See* Alvarado Decl., ECF No. 24, ¶ 7; Lowe Decl., ECF No. 25, ¶ 3. The Postal  
21 Service therefore considers the Final Determination Regarding Relocation to have been rendered  
22 obsolete as of September 2014.

23 Should the re-initiated process culminate in a closure or consolidation of retail postal services  
24 from the Berkeley Post Office, Plaintiffs can seek to challenge that decision in the venue that has  
25 exclusive jurisdiction over such a claim: the Postal Regulatory Commission. In 39 U.S.C. § 404(d)(5),  
26 Congress provided that the Postal Regulatory Commission was the *exclusive* avenue for the limited  
27 review of closure and consolidation of post offices. *Mittleman v. Postal Regulatory Comm’n*, 757 F.3d  
28 300, 302, (D.C. Cir. 2014) (emphasis added). When review under 404(d) is triggered, the Commission

1 may set aside the Postal Service's determination and remand it for further consideration if the  
2 Commission finds the determination to be "(A) arbitrary, capricious, an abuse of discretion, or otherwise  
3 not in accordance with the law; (B) without observance of procedure required by law; or (C)  
4 unsupported by substantial evidence on the record." *Id.*

5 DATED: April 2, 2015

Respectfully submitted,

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21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on April 2, 2015, I filed the above pleading and its attachments with the  
23 Court's CMS/ECF system, which will send notice of such to each party.

24 /s/ Kenneth Rooney  
25 KENNETH D. ROONEY