

September 2, 2021

State Bar of California Closing the Justice Gap Working Group
Scope Subcommittee
Via Email to ctjg@calbar.ca.gov

Subcommittee Members:

I am writing on behalf of Responsive Law—a national, nonprofit organization that works to make the legal system more accessible, affordable and accountable to ordinary Americans—to ask that you not limit the scope of participation in a regulatory sandbox based on the economic status of the customers that participants would serve.

I have attached our June 17 comments to the entire Working Group on this topic, which cover this topic in more detail. In addition, I'd like to emphasize three points.

First, as David Engstrom points out in his memo, there is nothing in the Working Group's charter that requires it to focus exclusively on the neediest Californians. In fact, the charter charges the Working Group with "exploring the development of a regulatory sandbox to evaluate possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems such as consumer facing technology that provides legal advice and services directly to clients *at all income levels.*" (emphasis added)

Second, the justice gap referred to in the Working Group's name extends way beyond the poorest Californians. Our previous comments detail how few Californians can afford legal help. The short version, though, is that when most lawyers can't even afford their own services, then nearly everyone is a victim of the justice gap.

Third, any attempt to prematurely limit the scope of sandbox participation would have a chilling effect on innovative companies that might serve customers throughout the economic spectrum. For example, the auto assembly line didn't make cars instantly accessible to the masses. About five years after the introduction of the assembly line, only about 25% of US households had a car, but within 15 years that figure was close to 50%, and today is over 90%. However, an early mandate to

make cars affordable to everyone might have stopped Ford from launching the assembly line.

In summary, a decision on the appropriate scope of the Working Group need not pit the neediest Californians against the vast numbers with more resources who are still unable to get legal help. Allowing a broad range of sandbox participants will help both groups, and is the course the Working Group should take.

Sincerely,

A handwritten signature in purple ink, appearing to read "Tom Gordon", with a long, sweeping horizontal line extending to the right.

Tom Gordon
Executive Director

Comments on: Scope of Services for Regulatory Sandbox Participants

Tom Gordon
Executive Director,
Responsive Law

Responsive Law thanks the Closing the Justice Gap Working Group for the opportunity to present these comments. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its consumers. We urge the Working Group to refrain from putting in place requirements for the customer base of sandbox applicants that could adversely impact the ability of the vast majority of Californians to benefit from more affordable legal help.

Submitted to the
State Bar of California
Closing the Justice Gap
Working Group
June 17, 2021

The Working Group is Charged with Helping Consumers of Legal Services at All Income Levels

Under its charter, the Working Group is charged with “exploring the development of a regulatory sandbox to evaluate possible changes to existing laws and rules that otherwise inhibit the development of innovative legal service delivery systems such as consumer facing technology that provides legal advice and services directly to clients *at all income levels.*” (emphasis added)

It is entirely appropriate that the Working Group explore solutions to the lack of legal access across the economic spectrum. The eponymous justice gap that the Working Group is trying to close extends nearly up to the highest economic strata. At the 25th percentile of California incomes, an individual needs to work over three days to pay for just one hour of a consumer lawyer’s time. At the median California income, an hour of that lawyer’s time costs over two days of work. Even a person in the top 20% of California earners would still have to work over a full day to pay for one hour of a consumer lawyer’s services.¹ Of course, most legal matters

¹ US Census Bureau (2019). *Earnings in the Past Twelve Months (In 2019 Inflation Adjusted Dollars)*. Retrieved from

<https://data.census.gov/cedsci/table?t=Earnings%20%28Individuals%29%3AIncome%20and%20>

require more than an hour of work, so the justice gap likely extends up to the richest 5-10% of Californians.

Addressing the justice gap need not—and should not—come at the expense of improving legal services for the indigent. There is an urgent need for greater resources for legal services organizations. But the needs of those eligible for legal aid and the needs of those who make more than the legal aid maximum of \$16,100 should not be in opposition to each other.

Government should be able to serve both of these populations, and efforts to improve legal access for one should not lessen the need to do so for the other. Funding meaningful access to lawyers for the neediest should not require funding the same level of access for the entire economic spectrum. Similarly, we should be able to implement a regulatory solution to reduce the cost of legal help for teachers (1.25 days of work to pay for an hour of a consumer lawyer's work)², firefighters (nearly 1.5 days of work)³, factory workers (over 3 days)⁴, and farm laborers (over 4 days)⁵, even if that regulatory solution may not help those unable to pay even the reduced rate for legal assistance that innovative businesses could make possible.

[Earnings&g=0400000US06&tid=ACSST1Y2019.S2001](#). Calculations for this and subsequent similar figures were made by dividing annual salaries by 50 work weeks per year with a 40-hour work week to find hourly pay, then dividing the median California consumer attorney fee of \$430/hr (from Burdge, R. L. (2019, September 10). United States Consumer Law Attorney Fee Survey Report 2017-2018.) by this hourly pay. Salaries are actually for the 28th percentile (\$35,000/yr, 24.6 hrs of work), 46th percentile (\$50,000/yr, 17.2 hrs of work), and 77th percentile (\$100,000/yr, 8.6 hrs of work) of single-earner households, which were the nearest data points available.

² The average annual salary of a public-school teacher in CA is \$83,059. *Average Salaries & Expenditure Percentage - CalEdFacts*. (CA Dept of Education). (2020, October 28). <https://www.cde.ca.gov/fg/fr/sa/cefavgssalaries.asp>.

³ The average annual salary of a firefighter in CA is \$74,700. CareerExplorer. (2019, November 14). *Firefighter salary* - <https://www.careerexplorer.com/careers/firefighter/salary/california/>.

⁴ The average annual salary of a factory worker in CA is \$35,073. Institute, E. R. I. E. R. (n.d.). *Factory Worker Salary California, United States*. Salary Expert. <https://www.salaryexpert.com/salary/job/factory-worker/united-states/california>.

⁵ The average annual salary of a farm laborer in CA is \$25,658. *Farm Labor Salary in California*. ZipRecruiter. (n.d.). <https://www.ziprecruiter.com/Salaries/Farm-Labor-Salary--in-California>.

Traditional Law Firms, Not Startups, Could More Easily Bear the Cost of Providing Legal Services to the Indigent

If the Working Group is considering how to best improve access to legal services to the bottom 10% of the economic spectrum, it is unreasonable to place the burden solely on innovative startups whose customers will primarily be from the middle 80%. These businesses would already be contributing to closing the justice gap by serving this vast underserved segment.

On the other hand, large traditional law firms have no existing obligation to provide services to the underserved. Pro bono “requirements” for the bar are largely aspirational, and apply to individual lawyers, not firms. There is no requirement that a law firm serving global corporations and the ultra-wealthy provide any support to affordable legal services for anyone outside the 1%.

If the Working Group were to recommend, for example, a requirement that sandbox participants devote a percentage of their revenue or a percentage of their services toward free legal services, then it should also recommend that law firms operating under the existing model also be required to do so.

Conclusion

The justice gap in California, as in the rest of the country, is enormous. Everyone but large corporations and the ultra-rich are underserved by the current legal system. The companies that are participating in the sandbox will close a large portion of the justice gap. However, asking sandbox participants to be responsible for meeting the legal needs of the very poorest Californians is an unreasonable burden, when traditional law firms, with far greater resources, have failed to meet this need for decades.