Case No. S271483

IN THE SUPREME COURT OF CALIFORNIA

BRIANNA McKEE HAGGERTY,

Petitioner,

v.

NANCY F. THORNTON, et al.

Respondents.

After a Decision of the Court of Appeal of the State of California,
Fourth Appellate District, Division One, Case No. D078049

The Superior Court of San Diego County,
Case No. 37-2019-00028694-PR-TR-CTL
The Honorable Julia Craig Kelety, Presiding

ANSWER TO PETITION FOR REVIEW

Howard A. Kipnis, State Bar No. 118537
Steven Barnes, State Bar No. 188347
Paul V. Carelli, State Bar No. 190773
ARTIANO SHINOFF
3636 Fourth Avenue, Suite 200
San Diego, California 92103
Telephone: (619) 232-3122
E-mail: hkipnis@as7law.com;
sbarnes@as7law.com
pcarelli@as7law.com
Attorneys for Respondent Patricia Galligan

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Respondent, Patricia Galligan ("Galligan"), hereby respectfully submits her answer to the Petition for Review of the Court of Appeal's published opinion, *Haggerty v. Thornton* (2021) 68 Cal.App.5th 1003, 284 Cal.Rprt.3d 32 (the "Opinion"), filed by Petitioner/Appellant, BRIANNA HAGGERTY ("Haggerty"), pursuant to California Rule of Court 8.500(e)(4).

INTRODUCTION

Haggerty's request for review should be denied because it fails to demonstrate a requisite basis for grant of review set forth in California Rule of Court 8.500(b)(1). Although Haggerty maintains that "review is necessary 'to secure uniformity of decision,'" her Petition fails to point to any *unsettled* important question of law and fails to establish a conflict in the case law giving rise to any need "to secure uniformity of decision."

Haggerty's claim that the Opinion is in direct conflict with the Fifth District Court of Appeals decision of *King v. Lynch* (2012) 204 Cal.App.4th 1186, and the Third District Court of Appeal decision of *Pena v. Dey* (2019) 39 Cal.App.5th 546, is an overstatement of the dicta contained in the Opinion. The three cases can be easily reconciled on their particular facts. In essence, the gist of Haggerty's argument is that the decisions of the courts below are wrong. But legal error is not a valid ground for review specified in Rule 8.500(b) and, in any event, the Court of Appeal did not err.

Rather, in its detailed and well-reasoned Opinion, the Court of Appeal recognized the Legislature's intention in enacting Probate Code section 15402 was to give persons greater flexibility over the methods they may employ to modify their existing revocable trusts "unless the trust instrument provides otherwise". Consistent with the plain meaning of the applicable statutes, the legislative history and this Court's repeated and consistent pronouncement that a court's "primary duty . . . in construing a trust is to give effect to the settlor's intentions" (*see Barefoot v. Jennings* (2020) 8 Cal.5th 822, 826 (citing *Brock v. Hall* (1949) 33 Cal.2d 885)), the Court of Appeal affirmed the probate

court's finding that a grantor's clear and unambiguous intent - - expressed in a handwritten instrument she signed that makes specific reference to her trust and contains specific "beneficiary instructions" concerning the disposition of the trust estate directed to "the person serving as [trustee] of this trust", which she mailed to her former estate planning attorney with instructions "to place this document with her copy of the Trust" - - was to amend the dispositive provisions of her trust, exercising rights she expressly reserved to herself thereunder. In this regard, the Opinion is unremarkable, and as set forth therein, *King v. Lynch* and *Pena v. Day* are easily distinguishable on their facts.

Since 1987 the method of modifying or amending an express trust in California has been governed by Probate Code section 15402. Section 15402 provides that if the trust instrument is revocable, the trust may be modified "by the procedure for revocation" "unless the trust instrument provides otherwise". Section 15401, which among other things governs the procedure for revocation of a trust, authorizes revocation of a trust by the method of revocation set forth in the trust instrument, or by a statutory method that is set forth in section 15401(a)(2), which may also be used unless the trust instrument "explicitly makes" the trust's method of revocation "the exclusive method".

In the 2012 case of *King v. Lynch*, the court was faced with a trust instrument created by two settlors, a husband and wife, that with respect to jointly owned property distinguished between revocation and modification - - specifying a more restrictive method for modifying the trust than its method of revocation. Under those circumstances, the court in *King* found that the trust "provides otherwise" within the meaning of Section 15402, and thus the statutory method for revocation in Section 15401(a)(2) was held not to be available to modify the trust. Significantly, had the court held otherwise and allowed the trust to be modified by applying the statutory method for revocation, the trust's more restrictive method of modification would have been rendered a nullity. Nevertheless, in a sweeping statement unnecessary to its ruling, the *King* court declared broadly that where a trust instrument sets forth "*any* modification method," "that

method must be used to amend the trust." (*King, supra,* 204 Cal.App.4th 1186, 1193 (emphasis added).)

Pena v. Day considered a purported amendment to a one-settlor trust and concluded the amendment was not valid because the settlor had not complied with the signature requirement of the amendment provision in the trust instrument. (*Pena,* 39 Cal.App.5th 546, 553.) Although *Pena* referenced the *King* dicta that "[w]here . . . the trust instrument does specify how the trust is to be modified, as in this case, 'that method must be used to amend the trust'" (*Pena,* 39 Cal.App.5th 546, 552, quoting *King,* 204 Cal.App.4th at 1193), it was not necessary in *Pena* to determine whether the trust instrument "provide[d] otherwise" under Section 15402 because the *Pena* court expressly found the purported amendment invalid simply because it was not signed by the settlor (*id.,* at 555). In other words, the purported amendment would have been invalid under both the method of amendment set forth in the trust instrument and the statutory method.

In this case, the trust at issue was created by a single grantor. The trust instrument expressly reserved to the settlor the power to modify or revoke her trust by utilizing the same method. The trust instrument also did not explicitly state that this method was the exclusive method for revocation/amendment of the trust. In short, nothing in the trust instrument suggested that the settlor intended its method of amendment to be more restrictive than the method of revocation, and there was no express statement the method of amendment and revocation was the exclusive method. Indeed, the Court of Appeal noted that the language of the trust "differed significantly" from the trust in *King*. Under these circumstances, both the probate court and the Court of Appeal found that because the trust instrument did not distinguish between the method of revocation and amendment, it did not "provide[ ] otherwise" within the meaning of Section 15402. And because the trust's method of amendment/revocation was not expressly exclusive, both the probate court and Court of Appeal held that the grantor could modify her trust by

employing any available method of revocation, including the statutory method of revocation set forth in Section 15401(a)(2).

As established below, whatever the legislature may have meant by Section 15402's phrase, "unless the trust instrument provides otherwise", it clearly must mean that under these circumstances – where a trust provides the same method for both revocation and amendment – the trust simply does not "provide[ ] otherwise" within the meaning of Section 15402. Accordingly, because the trust also does not explicitly make its method of revocation/modification the exclusive method which must be followed in order to revoke/modify the trust, the lower courts' determination that the trust could be amended by the statutory method of revocation is beyond any serious dispute. Neither *King* nor *Pena* holds otherwise.

THERE IS NO DIRECT CONFLICT REQUIRING REVIEW OF THE COURT OF APPEAL'S OPINION

California Supreme Court review of a decision of the Court of Appeal is discretionary. *People v. Davis* (1905) 147 Cal. 346, 347-349. Rule of Court 8.500(b) sets forth the exclusive grounds for such review. Here, Haggerty purports to invoke only the grounds set forth in Rule 8.500(b)(1), asserting that review is necessary "to secure uniformity of decision." As explained herein, review by this Court is unnecessary because the Court of Appeal's decision in this case does not inherently conflict with prior decisions.

A. The Petition Attempts to Create a Conflict by Muddling the Question Presented.

The Petition first poses as the "question presented" for review, as follows: "Does the same law govern trust revocations and trust modifications, so that the settlor must make the trust's prescribed method of modification explicitly exclusive to preclude the default alternative (Prob. Code, § 15401, subd. (a)(2)), or does prescribing any modification method preclude the default option?" (Petition, p. 5.)

However, the Petition thereafter poses and attempts to resolve a different question - - stating that the "question here" (later characterized as the "disputed question") requiring resolution by this Court is whether Section 15402's authorization allowing for modification of a trust "by the procedure for revocation" means that it may only be modified by the trust's procedure for revocation or whether it also includes the statutory procedure for revocation. (Petition, at pp. 6, 11, 19)[1]

As discussed below, the Court of Appeal's decision does not apply the same law to trust revocations and trust modifications. Nor does it address the circumstance where the trust's prescribed method of modification is explicitly exclusive so as to preclude modification by some or all of the available procedures for revocation. Moreover, the Court of Appeal did not – nor was it asked to[2] – construe the phrase "the procedure for revocation" in Section 15402. Rather, as in *King,* the Court of Appeal below construed the statutory phrase "unless the trust instrument provides otherwise." *(Haggerty, supra,* 68 Cal.App.5th 1003, _, 284 Cal.Rprt.3d 32, 36-39*; King, supra,* 204 Cal.App.4th 1186,

[1] At page 6, the Petition states: "The question here is whether 'the procedure' refers to the trust's prescribed procedure, or also includes the statutory method described in subdivision (a)(2) of the other statute." Similarly, at page 11, the Petition repeats: "The disputed issue is whether the 'procedure for revocation' indicates the procedure for revocation prescribed by the trust agreement, or also encompasses the subdivision (a)(2) method?" Finally, in its conclusion, at page 19, the Petition states: "The case also presents an internal textual question regarding section 15402. As it holds "the settlor may modify the trust by the procedure for revocation," does "the procedure for revocation" refer to the procedure prescribed in the trust instrument, or also to the statutory method provided in section 15401, subdivision (a)(2)?"

[2] Petitioner's brief in the Court of Appeal argued that, under *King*, the statutory phrase "'unless the trust instrument provides otherwise' requires that the method specified in a trust for an amendment must be followed." (Appellant's Opening Brief (AOB) in Court of Appeal Case No. D078049, at p. 9.). Indeed, notably, Petitioner expressly conceded in the Court of Appeal that the statutory phrase "procedure for revocation" includes the statutory procedure for revocation: "Probate Code section 15402 states that *'[u]nless the trust instrument provides otherwise*, if a trust is revocable by the settlor, the settlor may modify the trust by the procedure for revocation [in Probate Code section 15401].' (Emphasis added.)" (AOB, at p. 20.)

1192-1193.) Nonetheless, as established below, it did so based on factual circumstances that were materially different from *King* - - with each case's unique facts being outcome determinative.

B. The Trust Instrument in King v. Lynch Differs Substantially from the Trust Instrument in this Case, which the Opinion Expressly Noted as "Significant".

As contemplated by the Legislature in enacting Sections 15401 and 15402, both the *King* case and this case turn on the particular language in each trust that governs the method of modification and revocation. In *King*, unlike here, the trust was a two-settlor trust and its procedure for modification was substantially different from, *and more restrictive than*, its procedure for revocation. As to jointly owned property, the modification provision in *King* required the signatures of both settlors to amend the trust (*King, supra,* 204 Cal.App.4th at 1188), whereas the procedure for revocation required the signature of only one settlor to revoke it (*id.*, at 1189). In other words, as to jointly owned property, although either settlor could revoke the trust unilaterally, they both had to agree to amend the trust - - just as they both had to agree to establish the trust in the first place. Under these circumstances, the Fifth District Court of Appeal construed the separate modification provision of the trust instrument as "providing otherwise" under Section 15402, such that the trust could not be amended using *any* procedure available for revocation. (*Id.,* at 1193-1194.)

The Court of Appeal's decision below expressly distinguished *King* as involving a trust instrument with language that "differs significantly from the language of the trust agreement here" in that, unlike here, the trust instrument in *King* "did distinguish between methods for revocation and modification and imposed an arguably more stringent requirement on modification." (*Haggerty, supra,* 68 Cal.App.5th 1003, _, 284 Cal.Rprt.3d 32, 38, 39 n.2.)

Although the *King* decision did mention that the prefatory phrase of Section 15402, "unless the trust instrument provides otherwise", "indicates that if any modification method is specified in the trust, that method must be used to amend the trust" (*King, supra,* 204 Cal.App.4th at 1193), based on its actual facts *King* can be read more narrowly to hold that a trust instrument "provides otherwise" within the meaning of Section 15402 when it specifies a method of revocation that differs from its method of amendment. *King* further states that because the settlors "bound themselves to a specific method of modification" in the trust instrument, their intent would be thwarted if the court were to allow an amendment using the method for revocation, "especially where, as here, the amendment provision is more restrictive than the revocation provision." (*King, supra,* 204 Cal.App.4th at 1192.) In other words, according to *King,* where a trust provides a method of amendment that is more restrictive than its method of revocation, it "provides otherwise" within the meaning of Section 15402, such that its method of amendment becomes the exclusive method by which the trust may be modified. *King* also noted that if the court had found that a less restrictive method of revocation was available to amend the trust, that would have made the trust's more restrictive method of amendment "superfluous". (*King, supra*, 204 Cal.App.4th at 1194.)

Unlike the trust instrument in *King,* here the Court of Appeal noted in the Opinion that "[t]he language of Bertsch's [single-settlor] trust agreement does not distinguish between revocation and modification. Rather, it reserves the following right to the settlor: 'The right by an acknowledged instrument in writing *to revoke or amend* this Agreement or any trust hereunder.'" *(Haggerty, supra,* 68 Cal.App.5th 1003, ___, 284 Cal.Rptr.3d 32, 38 (Emphasis added).) The Court of Appeal held that "[b]ecause the trust does not distinguish between revocation and modification, it does not 'provide otherwise' than the general rule, and under section 15402 the trust may be modified by any valid method of revocation." *(Id.,* at 39.) The Court of Appeal then looked to the revocation statute, Section 15401, and found that the statutory method of revocation was

available to the settlor because the trust agreement's identical method of revocation and modification was not "explicitly exclusive" (i.e., because the trust's method of amendment/revocation "is not explicitly exclusive . . ., the statutory method of revocation was available under section 15401."). *(Ibid.)*

Contrary to Petitioner's characterization, the Court of Appeal did not hold that the statutory method of revocation could be used to modify the trust unless the trust instrument's method of *amendment* was explicitly exclusive. Instead, the Court of Appeal held that where the trust instrument did not distinguish between the methods of amendment and revocation, it did not "provide otherwise," so under Section 15402 the method of revocation could be used to modify the trust. And since the method of revocation specified in the trust instrument – which here was the same as the method of amendment – was not explicitly exclusive, the statutory alternative of Section 15401(a)(2) was available for both revocation and amendment.

Thus, *King* is distinguishable and its essential holding based on its facts – *i.e.*, a two- settlor trust that sets forth a method of amendment different from and more restrictive than its method of revocation – is not in direct conflict with the decision by the Court of Appeal in this case, where the trust is a one-settlor trust setting forth a non-explicitly exclusive, single method for both revocation and amendment.

C. Nor Did Pena v. Dey Determine the Issue Presented in this Case.

Petitioner's attempt to portray the Opinion as in conflict with *Pena v. Dey* is even less persuasive because in *Pena* there was no need to decide which method of modification was applicable. Both methods – the method of modification specified in the trust instrument and the alternative statutory method of revocation set forth in Section 15401(a)(2) – required that an amendment be signed (*Pena, supra,* 39 Cal.App.5th at 549, 552), and the *Pena* court held the purported amendment was invalid because it was not signed. (*Pena, supra,* 39 Cal.App.5th at 555.) So, once again, *Pena* stands for the

unremarkable point of law that where the trust requires amendments be executed by the settlor, such instruments must be signed to be valid.

Indeed, the disputed issue in *Pena* was whether the settlor had signed the handwritten interlineations comprising the alleged amendment, either by adoption of his pre-existing signature on the underlying instrument or by his signature on a post-it note to his attorney attached to the interlineated instrument, which the settlor sent to his attorney for the purpose of preparing a formal amendment. The *Pena* court ruled the alleged amendment had not been signed under either factual theory, and therefore, the purported amendment was invalid because the trust instrument required that amendments be signed by the settlor. (*Pena, supra,* 39 Cal.App.5th at 553-554.) Although *Pena* references the discussion in *King* and states that "[w]here . . . the trust instrument does specify how the trust is to be modified . . ., 'that method must be used to amend the trust. . . .'" (*Pena, supra,* 39 Cal.App.5th 546, 552 (quoting *King, supra,* 204 Cal.App.4th at 1193)), that statement was unnecessary to the ruling because the alternative, statutory method of revocation set forth in Section 15401(a)(2) ("a writing, other than a will, signed by the settlor or person holding the power of revocation") would not have saved the *unsigned* purported amendment. Nor was there any contention in *Pena* that the statutory method would apply, so the opinion does not indicate that the court ever confronted the issue.[3]

[3] Further, the trust instrument in *Pena* provided that any amendment that "substantially affect[ed] the duties, rights, and liabilities of the trustee *shall be effective only if* agreed to by the trustee in writing". (*Pena,* at 549.) The *Pena* court did not discuss the import of this language, mentioning only that it sufficed to note the purported amendment added a provision to the trust "dividing the remainder of the trust estate into shares of various percentages for 15 named beneficiaries." (*Ibid.*) Arguably, the contested amendment did "substantially affect the duties and liabilities of the trustee", and this explicit, added requirement of trustee acceptance rendered the trust instrument's method of modification the exclusive method, so the statutory method would not have been available in any event. In short, unlike the facts in the present case, *Pena* is not a case where both (1) the prescribed method of amendment is identical to the method of revocation; and (2) that method is not explicitly exclusive.

”It is axiomatic that cases are not authority for propositions not considered.” (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.) For this reason, the Court below distinguished *Pena,* noting that “[t]he method of amendment described in the [*Pena*] trust instrument was the same as the statutory method under the circumstances, so the issue was not clearly presented.” (*Haggerty, supra,* 68 Cal.App.5th 1003, __, 284 Cal.Rptr.3d 32, 39 n.2.)

D. The Petition's Policy Insinuations Are Illusory.

Petitioner also cites to *King* for the proposition that if the statutory method of revocation set forth in subdivision 15401(a)(2) was made available to modify the trust even where the trust instrument sets forth a method of amendment, Section 15402 would become surplusage. (Petition, pp. 13-14.) This is an overstatement, as well. Consistent with the plain reading of the two statutes, the only time the methods of revocation (including the statutory method set forth in Section 150401(a)(2)) would not be available to modify a trust is where either: (1) “the trust instrument provides otherwise”, as set forth in Section 15402; or (2) the trust instrument “explicitly makes the method . . . provided in the trust instrument the exclusive method” of revocation, as set forth in Section 15401(a)(2). Where, as in *King*, the trust instrument provides a specific method of amendment that is more restrictive than its specified method of revocation, the trust instrument would “provide otherwise” under Section 15402, rendering the method of amendment specified in the trust instrument the sole means for a settlor to modify the trust (except with the consent of the beneficiaries as provided in Section 15404).[4]

Indeed, the Court of Appeal addressed this concern directly, pointing out that under its interpretation (that “the method of modification is . . . the same as the method of revocation, ‘[u]nless the trust instrument provides otherwise,’ i.e., unless the trust instrument distinguishes between revocation and modification”), “section 15402 is not

[4] Similarly, as in *Pena*, where the trust instrument contains language that makes its method of amendment “explicitly exclusive”, that method must be followed.

mere surplusage . . . [because] it codifies the existing rule that the power of revocation includes the power of modification, thus an available method of revocation is also an available method of modification – unless the trust instrument provides otherwise." (*Haggerty, supra,* 68 Cal.App.5th 1003__, 284 Cal.Rptr.3d 32, 38, citing Cal. Law Revision Com. Com., West's Ann. Prob. Code (2021 ed.) foll. § 15402.)

Nor does the Court of Appeal's decision in this case, as the Petition would characterize it, "present[ ] a choice between the text-based position of the *King* majority . . . and the history-based position of the *King* dissent . . .". (Petition, p. 19.) The Court of Appeal based its decision below on the language of Section 15402 *as informed by its historical context,* noting that "Section 15402 cannot be read in a vacuum." (*Haggerty, supra,* 68 Cal.App.5th 1003__, 284 Cal.Rptr.3d 32, 38.)

Finally, the Petition's reference to the specter of "improvident modification" is curious because the courts below determined that the settlor indeed intended to reserve to herself the rights to amend and revoke the trust by the very same method. To paraphrase *King,* a holding that she could not accomplish what she so clearly intended would thwart the settlor's intent. Doing so would present a conflict with decades of precedent established by this very Court. (*See Barefoot v. Jennings, supra*.) Lastly, it bears mentioning that Petitioner's assertion that there is some policy that justifies making it more difficult for a settlor to modify than to revoke a trust where the trust itself contains no such language is completely unsupported by any caselaw or legislative history, and in fact is contrary to the general rule, codified in Section 15402, that "the power of revocation implies the power of modification". (*Haggerty, supra,* 68 Cal.App.5th 1003, 284 Cal.Rptr.3d 32, 38, *quoting* the California Law Revision Comment to Section 15402.)

CONCLUSION

Haggerty's Petition for Review wholly fails to demonstrate the necessity for Supreme Court review to secure uniformity of decision, nor does it invoke any of the

other exclusive grounds for review set forth in California Rule of Court 8.500(b). The Court of Appeal's detailed Opinion is well-reasoned and does not conflict with the holdings of prior Court of Appeal decisions, including *King* and *Pena*, which are distinguishable on their facts. Probate Code § 15402's preface that governs whether a trust may be modified by the procedure for revocation, "unless the trust instrument provides otherwise", was found to have been triggered by the language in the trust in *King*, precluding modification by the statutory method of revocation set forth in Section 15401(a)(2), but not in the trust at issue. Instead, the Court of Appeal held that a trust that provides a single method for both revocation and amendment does not "provide otherwise" under Section 15402, so it can be modified by the procedure for revocation.

Further, Probate Code § 15401 sets forth a statutory method of revocation that can be used unless the trust instrument explicitly makes the method of revocation set forth in the trust the exclusive method. Because the trust instrument here did not make its method of revocation explicitly exclusive, the Court of Appeal held that the statutory method of revocation was, likewise, available to the settlor for amending the trust. *Pena* does not hold otherwise, as it requires a modification provision in a trust stating that "[a]ny amendment . . . shall be . . . signed by the settlor" and "shall be effective only if agreed to by the trustee in writing" to be strictly followed.

The instrument that is the subject of Petitioner's challenge in this case is entirely in the settlor's own hand, signed by the settlor, and mailed by the settlor to her former estate planning attorney with instructions to put it in the settlor's trust file. It specifically references the settlor's trust, states it contains "beneficiary instructions" and, in fact, provides detailed instructions as to how the trust estate is to be disposed of. It is directed to "the person serving as [trustee] of my Trust". The settlor's clear intent to amend her trust by way of the challenged instrument is beyond any serious dispute. It is the "primary duty" of this Court to carry out the settlor's expressed intent. (*See Barefoot v.*

Jennings, supra.) Accordingly, Galligan respectfully requests that this Court deny Haggerty's Petition for Review in its entirety.

Dated: November 12, 2021

By: Howard A. Kipnis, SBN. 118537
Steven J. Barnes, SBN. 188347
Paul V. Carelli, State Bar No. 190773
ARTIANO SHINOFF
3636 Fourth Avenue, Suite 200
San Diego, California 92103
Telephone: (619) 232-3122
Attorneys for Respondent PATRICIA GALLIGAN

CERTIFICATE OF WORD COUNT

I, Steven J. Barnes, hereby certify pursuant to California Rule of Court 8.504(d) that the foregoing Answer to Petition for Review contains 4,269 words, exclusive of the tables, the cover information required by Rule 8.204(b)(10), and this Certificate, according to the word count of the computer program used to prepare it.

Signed under the penalties of perjury of the State of California this 12th day of November 2021 at San Diego, California

/s/
STEVEN J. BARNES

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Artiano Shinoff, 3636 Fourth Avenue, Suite 200, San Diego, CA 92103. My email address is cwilson@as7law.com.

On November 12, 2021, I served the foregoing ANSWER TO PETITION FOR REVIEW as follows:

1. By EMAIL: I electronically filed the aforementioned document with the Clerk of the Court for the Supreme Court of California, through the designated E-File Service Provider ImageSoft Inc.'s TrueFiling system. TrueFiling's Service Notification system will forward a copy to all parties registered to receive such service. Participants in the case are:

Mitchell Keiter, Esq. Keiter Appellate Law The Beverly Hills Law Building 424 South Beverly Drive Beverly Hills, CA 90212 Email: Mitchell.keiter@gmail.com	Attorneys for Appellant and Petitioner, Brianna McKee Haggerty
Roland H. Achtel, Esq. Scott J. Ingold, Esq. Higgs Fletcher & Mack LLP 401 West A Street, Suite 2600 San Diego, CA 92101-7913 Email: achtelr@higgslaw.com Email: ingolds@higgslaw.com	Attorneys for Union of Concerned Scientists
Oleg Cross, Esq. Cross Law APC 5190 Governor Drive, Suite 108 San Diego, CA 92122 Email: oleg@caltrustlaw.com	Attorneys for Racquel Kolsrud
Kristen E. Caverly, Esq. Henderson Caverly Pum Trytten LLP 12760 High Bluff Drive, Suite 150 San Diego, CA 92130 Email: kcaverly@hcesq.com	Attorneys for Nancy F. Thornton, successor trustee
Andrew E. Swan, Esq. Leventhal Lewis Kuhn Taylor Swan PC 620 North Tejon Street, Suite 101 Colorado Springs, CO 80903 Email: aswan@ll.law	Attorneys, *Pro Hac Vice,* for Brianna McKee Haggarty

2. By MAIL: I served the aforementioned document by enclosing it in an envelope with postage fully prepaid for first-class mail, and deposited the sealed envelope with the United States Postal Service, addressed to:

Honorable Julia C. Kelety
c/o Clerk of the Court
San Diego County Superior Court
1100 Union Street
San Diego, CA 92101

Office of the Clerk of Court
Court of Appeal
Fourth Appellate District
Division One
750 B Street, Suite 300
San Diego, CA 92101

Supreme Court of California (unbound per Rule 5(a)(1)
350 McAllister Street
San Francisco, CA 94102-4797

Signed under penalty of perjury under the laws of the State of California this 12th day of November 2021 at San Diego, California

/s/ Cynthia A. Wilson

Cynthia A. Wilson

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **HAGGERTY v. THORNTON**
Case Number: **S271483**
Lower Court Case Number: **D078049**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **pcarelli@as7law.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW (WITH ONE TIME RESPONSIVE FILING FEE)	Answer to Petition for Review.PDF

Service Recipients:

Person Served	Email Address	Type	Date / Time
Mara Allard The Law Office of Mara Smith Allard 159294	mara@allardsmith.com	e-Serve	11/12/2021 2:41:00 PM
Elliot S. Blut Blut Law Group 162188	eblut@blutlaw.com	e-Serve	11/12/2021 2:41:00 PM
Howard Kipnis Artiano Shinoff 118537	hkipnis@as7law.com	e-Serve	11/12/2021 2:41:00 PM
Mitchell Keiter Keiter Appellate Law 156755	Mitchell.Keiter@gmail.com	e-Serve	11/12/2021 2:41:00 PM
Kristen Caverly Henderson Caverly Pum & Trytten LLP 175070	kcaverly@hcesq.com	e-Serve	11/12/2021 2:41:00 PM
Steven Barnes Artiano Shinoff 188347	sbarnes@as7law.com	e-Serve	11/12/2021 2:41:00 PM
Roland Achtel Higgs Fletcher & Mack LLP	achtelr@higgslaw.com	e-Serve	11/12/2021 2:41:00 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/12/2021

Date

/s/Paul Carelli

Signature

Carelli, Paul (190773)

Last Name, First Name (PNum)

Artiano Shinoff

Law Firm