IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

EMILY WHEELER, Defendant, Respondent and Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Real Party in Interest.	No. S272850 (Court of Appeal No. B310024, Second Appellate District, Division Three) (Los Angeles Superior Court Appellate Div. No. BR054851) (Los Angeles Superior Court Case No. 9CJ00315)

On A Petition For Review Of A Court Of Appeal Decision
After Denial Of A Petition For Writ Of Mandate

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The Petition for Review ("PFR" or "Petition") purports to seek review of the Court of Appeal's opinion ("Opinion") (*Wheeler v. Appellate Division of Superior Court* (2021) 72 Cal.App.5th 824) issued in response to Petitioner Emily Wheeler's Petition for Writ of Mandate. The instant Petition is flawed for many reasons and ultimately fails to state any legal issue that is appropriate for this Court's review. The first purported basis for review concerns whether a trial court may consider lack of knowledge when dismissing a strict liability offense pursuant to Penal Code section 1385. There are no grounds for review because the Opinion overturning the Penal Code section 1385 dismissal does not conflict with the unpublished *People v. Tam* (Case No. B310738) opinion nor is it contrary to established law.

The second purported basis for review is Petitioner's assertion that state law preempts sections of the Los Angeles Municipal Code ["LAMC"] governing cannabis regulation under the theories of contradiction and duplication preemption. Petitioner's primary basis for claiming preemption is her assertion the Opinion conflicts with *In Re Portnoy* (1942) 21 Cal.2d 137. However Petitioner misreads and conflates *Portnoy* – as she has been consistently doing throughout these proceedings; *Portnoy* simply has no bearing on this case. Moreover, there is no preemption because there is no duplication or contradiction between state law and the LAMC.

Neither asserted basis for review provides an actual reason for this Court to grant review pursuant to California Rules of

Court, rule 8.500(b)(1) as the Opinion does not result in conflicting authority or leave unsettled an important question of law. The only true conflict that Petitioner raises is the conflict between the outcome Petitioner desired and the actual outcome of the case as set forth in the Opinion. If this level of disagreement amounted to a basis for review, this Court would be obliged to sit in review of every single decision made by the lower courts. For these reasons, this Court should deny the Petition.

RELEVANT PROCEEDINGS

On June 12, 2019, officers of the Los Angeles Police Department executed a search warrant on the unlicensed commercial cannabis activity, an illegal storefront, operating at 720 W. Imperial Highway. (Petition for Writ of Mandate ["PWM"], Exh. A, p. 25.)[1] On June 26, 2019, the People charged Emily Wheeler ("Petitioner") with a violation of Los Angeles Municipal Code ("LAMC") sections 104.15, subdivision (a)(1) [establish, operate or participate … in any unlicensed commercial cannabis activity in the City], 104.15, subdivision (b)(4) [leasing to, renting to or otherwise allowing an unlawful establishment to wit: unlicensed commercial cannabis activity] and 12.21, subdivision (A)(1)(a) [land use zoning violation] by way of a criminal complaint arising from the June 12, 2019 search warrant in Los Angeles Superior Court case number 9CJ00315. (PWM, Exh. A, p. 1.) On November 19, 2019, the trial court dismissed the case against Petitioner pursuant to Penal Code

[1] All references to exhibits are to the exhibits lodged by the Petitioner with the Petition for Writ of Mandate filed in the Court of Appeal.

section 1385 citing Petitioner's age, lack of criminal history, and lack of knowledge that criminal activity was occurring at the location as reasons for dismissal. (PWM, Exh. A, p. 41; Exh. B, p. 309, lns. 6-13.) On November 22, 2019, the People filed a timely notice of appeal (BR054851). (PWM, Exh. A, p. 42.) Both parties presented oral argument on September 17, 2020. (PWM, Exh. C, p. 118.) The Appellate Division of the Los Angeles Superior Court issued its opinion on November 20, 2020, reversing the trial court's order of dismissal and remanding for further proceedings. (PWM, Exh. I.) On December 3, 2020, Petitioner filed a Petition for Rehearing and Application for Certification for Transfer in the Appellate Division. (PWM, Exh. J.) The Appellate Division denied both requests on December 9, 2020. (PWM, Exh. C, p. 117.) On December 23, 2020, Petitioner filed a Petition for Transfer in the Court of Appeal (B309498). (PWM, Exh. K.) The Court of Appeal denied the request on January 14, 2021. (PWM, Exh. L.) On January 25, 2021, Petitioner filed a Petition for Writ of Mandate in the Court of Appeal (B310024). The Court of Appeal denied the petition on February 11, 2021. (PFR, Appendix, p. 33.) On February 16, 2021, Petitioner filed a Petition for Review with this Court. After requesting that the People file an Answer, this Court granted review and transferred the matter back to the Court of Appeal. (Case S267083.) The People filed a Return and Petitioner filed a Reply. (Case B310024). After hearing oral argument, the Court of Appeal issued a published written opinion on December 15, 2021.

(Exhibit A to PFR.) Petitioner then filed the instant Petition for Review.

REASONS TO DENY REVIEW

I. It is Not Necessary to Review The Court of Appeal Opinion Regarding Penal Code Section 1385

A. The Court of Appeal Opinion is Not Contrary to Years of Established Case Law

Petitioner presents the Penal Code section 1385 dismissal as her first ground for review despite the Court of Appeal devoting a scant one and a half pages to discussing issue. The Court cited the applicable law governing Penal Code section 1385 dismissals and noted the People's strong interest in prosecuting the ordinances at issue, which includes enforcing the City's commercial cannabis licensing scheme and minimizing incentives to undercut the scheme by imposing criminal penalties on landlords who rent to illegal cannabis businesses. (Opinion, pp. 25-26.) With those interests in mind, the Court of Appeal found that the Appellate Division did not err in concluding that the trial court's dismissal of the matter was the improper result of the trial court's disagreement with the law or disapproval of the impact that a conviction would have on Petitioner. (Opinion, p. 26.) The Opinion did not alter or amend existing law regarding Penal Code section 1385 and, contrary to Petitioner's urging, there is nothing for this Court to review.

In suggesting that the Court of Appeal's conclusion that the trial court abused its discretion when dismissing the matter pursuant to Penal Code section 1385 is contrary to years of case

law, Petitioner herself turns a blind eye to years of case law that the Court of Appeal relied on in making its decision. Penal Code Section 1385 actions are reviewed under an abuse of discretion standard which, as noted in the Opinion, "is deferential […] but it is not empty." (*People v. Williams* (1998) 17 Cal.4th 148m 162.) The Court of Appeal clearly articulated that the basis for its holding was the well-established principle that dismissals under this section must be in the furtherance of justice. The furtherance of justice requires the court to consider both the constitutional rights of the defendant and the interests of society as represented by the People. The Court of Appeal determined that in this instance, the trial court had not properly undertaken this consideration because the trial court was motivated to dismiss the matter based on a personal antipathy for the law.[2] This is not a proper basis to dismiss. (*People v. Mcglothin* (1998) 7 Cal.App.4th 768, 476.)

That Penal Code section 1385 dismissals must be in the furtherance of justice is a core principle of that legal process. The Opinion in no way flies in the face of prior caselaw. The Opinion simply re-affirms that the furtherance of justice is "paramount" in the application of Penal Code section 1385. (*People v. Williams, supra,* 17 Cal.4th at p. 159.) There is no unsettled important question of law here that needs to be resolved simply

[2] Petitioner's argument that the trial court never expressed antipathy toward the law is belied by both the Appellate Division and the Court of Appeal, which sit as courts of review, finding that the trial court did express such antipathy.

because the Court of Appeal applied existing caselaw that supports an outcome other than that desired by Petitioner.

B. The Court of Appeal Opinion Regarding Penal Code Section 1385 Does Not Create a Conflict of Law

In arguing that the Court of Appeal created a conflict in law with its holding on the Penal Code Section 1385 issue, Petitioner both misinterprets the holding in *People v. Tam* (B310738) and glosses over the fact that it is an unpublished opinion. The Court of Appeal's opinion in *Tam* was not certified for publication, nor was the Appellate Division's opinion in *Tam* that preceded the Court of Appeal's review in that matter. Therefore, the *Tam* decision cannot be cited as authority (Cal. Rule of Court, rule 8.115(a).) and has *no effect* on the law. The entirety of the *Tam* case is limited in effect exclusively to the outcome in the *Tam* case. This reason alone renders the Court's review unnecessary to settle important questions of law and does not support a request to this Court for review pursuant to rule 8.500(b)(1).

But even if the Court of Appeal's opinion in *Tam* was published, Petitioner misinterprets the holding in *Tam* to urge a conflict where none exists. The Court of Appeal's holding on Penal Code section 1385 in the instant case turned on the trial court's decision making based on a personal antipathy for the law. In the *Tam* decision, the Court of Appeal found an abuse of discretion because there was no evidence before the court when the case was dismissed pursuant to Penal Code section 1385. As

to whether the trial court could consider knowledge, or lack thereof, the opinions both suggest that *knowledge* could be an appropriate consideration given the facts of the case. Where the opinions both set out adequate legal reasoning and come to the same conclusion, there is no conflict that necessitates review by this Court to ensure uniformity of decision pursuant to rule 8.500(b)(1).

II. It is Not Necessary to Review the Court of Appeal Opinion Because State Law Does Not Preempt the Los Angeles Municipal Code Sections In this Case

The California Constitution states that "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) Local government authority is broad and "preemption by state law is not lightly presumed." (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc*. (2013) 56 Cal.4th 729, 738 (*Inland Empire*).) Under the Constitution, a local ordinance "'in conflict with'" a state statute is void. (*Id*. at p. 742.) For purposes of California's preemption doctrine, a "conflict" exists if the local ordinance (1) duplicates the state statute, (2) contradicts the statute, or (3) enters an area fully occupied by general law. (*Id*. at p. 743.) With respect to duplication, "[l]ocal ordinances are said to be duplicative of general law when they are 'coextensive' with the state statute." (*Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 954.) With respect to contradiction, "[c]onflict of the contradictory type exists for purposes of preemption when the local ordinance is 'inimical' to the state statute, which means the

local 'ordinance directly requires what the state statute forbids or prohibits what the state enactment demands.'" (*Id.* at p. 955 citing *Inland Empire, supra*, 56 Cal.4th at p. 743; see also *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 ["A local ordinance contradicts state law when it is inimical to or cannot be reconciled with state law."].) "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) Petitioner does not argue that state law occupies the field of cannabis regulation; her only theories of alleged preemption are contradiction and duplication. Merely because Petitioner disagrees with the Court of Appeal's holding on the issue of preemption does not create an unsettled important question of law to warrant review of this Court under rule 8.500(b)(1).

A. LAMC Section 104.15, Subdivision (b)(4), Which is a Licensing Ordinance, Is Not Duplicative of Nor Does It Contradict Health and Safety Code Section 11366.5

Petitioner claims that Health and Safety Code section 11366.5 and LAMC section 104.15, subdivision (b)(4), are duplicative because they both prohibit a person from renting, leasing or allowing illegal cannabis conduct on real property. In the context of preemption, duplication means that the statutes are "coextensive" i.e., they are the same. Here, the statutes are not the same because they do not cover the same conduct.

Health and Safety Code section 11366.5, subdivision (a) states:

> Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

Cannabis qualifies as a controlled substance under this code section. (See Health & Saf. Code, § 11007 [controlled substance includes substances in Health and Safety Code section 11054]; Health & Saf. Code, § 11054, subd. (d)(13) [cannabis is a Schedule I controlled substance].) As such, Health and Safety Code section 11366.5 regulates cannabis as a controlled substance.

LAMC section 104.15, on the other, hand regulates commercial cannabis activities. LAMC section 104.15, subdivision (b)(4), states that it is "unlawful to…Lease, rent to, or otherwise allow an Unlawful Establishment to occupy any portion of parcel of land." An "Unlawful Establishment" is defined as "any Person engaged in Commercial Cannabis Activity if the Person does not have a City issued Temporary Approval or License." (LAMC, § 104.01, subd. (a)(29).) Commercial Cannabis Activity "includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packing, labeling, transportation, delivery or sale of Cannabis or Cannabis products in the City…." (LAMC, § 104.01, subd. (a)(7).

The state statute prohibits renting structures for the purpose of unlawfully manufacturing, storing, or distributing *any* controlled substance for sale or distribution. This includes cannabis, but it also includes *hundreds* of other controlled substances. (See Health & Saf. Code, §§ 11054 – 11058.)

LAMC section 104.15, on the other hand, regulates only commercial cannabis activities in the City of Los Angeles. LAMC section 104.15, subdivision (b)(4), specifically prohibits renting to, leasing to, or otherwise allowing commercial cannabis activity that the City of Los Angeles has not licensed. (See LAMC, § 104.15, subd. (b)(4).) Additionally, LAMC section 104.15, subdivision (b)(4) prohibits the use of any portion of the land itself, not just the structures on the land. (*C.f.* Health & Saf. Code, § 11366.5 [prohibiting renting buildings, rooms, spaces, and enclosures).) The elements of the two crimes are not the same. Therefore, the statutes do not cover the same subject matter and are not coextensive with each other or duplicative.

Petitioner also claims that Health and Safety Code section 11366.5 and LAMC section 104.15, subdivision (b)(4) contradict each other because Health and Safety Code section 11366.5 requires the person to knowingly rent structures for the purpose of unlawfully storing a controlled substance while LAMC section 104.15, subdivision (b)(4), simply prohibits renting property to unlicensed cannabis activities without any knowledge requirement. This does equate to contradiction preemption which only occurs when "the local 'ordinance directly requires what the state statute forbids or prohibits what the state

enactment demands.'" (*Kirby v. County of Fresno*, *supra*, 242 Cal.App.4th at p. 955 citing *Inland Empire, supra*, 56 Cal.4th at p. 743.) "Thus, no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (*Inland Empire, supra*, 56 Cal.4th at p. 743.)

Here, LAMC section 104.15 does not require what the state statute forbids nor does it prohibit what the state enactment demands. It does not, for example, purport to legalize renting buildings or rooms for the purpose of manufacturing, etc., unlawful controlled substances, including cannabis. In that case, it would be completely inimical to Health and Safety Code section 11366.5. Rather, LAMC section 104.15 solely concerns the regulation of unlicensed commercial cannabis activity in the City of Los Angeles and subdivision (b)(4) specifically concerns renting or leasing land for such activity.

Moreover, it is reasonably possible to comply with both statutes: do not illegally rent property for the purpose of storing cannabis. While Petitioner emphasizes that Health and Safety Code section 11366.5 is a specific intent offense and LAMC section 104.15 is a strict liability offense, this does not make the two contradictory. Simply because knowledge is not an element of LAMC section 104.15 does not mean that the renter or lessor did not have knowledge. The LAMC does not preclude knowledge; it merely does not require it. Therefore, there is no contradiction between the two statutes.

1. *In Re Portnoy* Does Not Control This Case

Petitioner's contradiction and duplication preemption arguments rely primarily on *In Re Portnoy* (1942) 21 Cal.2d 237 (*Portnoy*). Petitioner claims that in *Portnoy* "this Court held that when a local ordinance purports to even partially regulate acts which are already made criminal by state statute but conflicts with them by omitting a *mens rea* requirement, the ordinances are preempted and invalid as conflicting with the state statutes that they duplicate." (PFR, p. 21.) This reading of *Portnoy* is so strained that it boarders as disingenuous; it is certainly not the holding of that case.

In *Portnoy*, the County of Riverside had two ordinances that prohibited certain gambling activities which the Supreme Court determined duplicated California Penal Code sections 330a and 331. (*Portnoy, supra*, 21 Cal.2d at pp. 241-242.) Petitioner claims that the state statutes invalidated the local ordinances because the state laws had a *mens rea* requirement while the local laws did not.[3] Petitioner misapprehends the holding of *Portnoy* because the reason for duplication preemption had nothing to do with various states of *mens rea*. Instead, the basis for duplication was that substantially the entire text of the county ordinances were subsumed within the state statutes so the duplication was obvious. (*Id*. at p. 240.) *In fact, there was no*

[3] The People note that while Penal Code section 331 requires a person to "knowingly" permit the conduct, Penal Code section 330a contains no mention of any *mens rea*.

discussion of mental state in Portnoy whatsoever. "[I]t is well established that cases do not stand for propositions not addressed therein[.]" (*Thomas v. Stenberg* (2012) 206 Cal.App.4th 654, 664.)

The statutes in *Portnoy* were duplicative of each other because the state already had specific statutes which made illegal the same gambling offenses covered by the Riverside ordinance. (See *People v. Williams* (1962) 207 Cal.App.2d Supp. 912, 916 [*Portnoy* "involves an attempt by the County of Riverside to make possession of a slot machine a misdemeanor. Such was already declared by the state to be a misdemeanor under section 330a of the Penal Code."].)

In the context of cannabis regulation, the state has a statutory scheme found in the Business and Professions Code called the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") which regulates all medical and commercial cannabis. However within this scheme, MAUCRSA itself specifically preserves local control over cannabis activities:

> (1) This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.
>
> (2) This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or

> local ordinances, or enforcement of local license, permit, or other authorization requirements.

(Bus. & Prof. Code, § 26200, subd. (a).) Business and Professions Code section 26200 makes it clear that a local jurisdiction can even create an outright ban on commercial cannabis activities not withstanding a state law licensing system for such activities. Therefore, unlike in *Portnoy*, where the state had already regulated the gambling activities at issue in that case, the state has not purported to regulate cannabis on a local level. Therefore, *Portnoy* does not control this case.

The Court of Appeal also addressed *Portnoy* in its Opinion and found there was no contradiction or duplication preemption. The Court noted that *Portnoy* belongs to a line of cases "holding that local ordinances imposing harsher penalties for the same conduct covered by state criminal laws, or criminalizing additional conduct in an area where the state has enacted comprehensive criminal laws, are preempted." (Opinion p. 18.) The Court of Appeal found no preemption under the rationale of *Portnoy*:

> Los Angeles Municipal Code section 104.15 and section 11366.5 of the Health and Safety Code are also not duplicative or contradictory in the broader sense discussed in *O'Connell*, *Portnoy*, and similar cases, where local criminal or quasi-criminal ordinances were held to be preempted because they imposed different, broader, or harsher penalties for the same conduct addressed in state criminal laws. Cannabis, unlike other controlled substances such as methamphetamine, cocaine, and heroin, is not unlawful in all contexts. Through successive

> enactments of state and local legislation, cannabis has gradually come to be regulated in a manner more similar to alcohol, prescription medications, or firearms than to these other controlled substances. There is no such thing as a licensed methamphetamine lab or heroin dealership. Any manufacture, distribution, or commercial activity involving these other controlled substances is necessarily clandestine, so it would violate basic principles of fairness to impose strict liability on a landlord from whom such activity has been successfully concealed. But cannabis shops are businesses, operating openly in public, and so it is not unfair to impose on landlords the responsibility to ensure that they are licensed, especially because cannabis businesses are required to display their licenses prominently, and the City maintains a publicly accessible website listing all licensed cannabis businesses.

(Opinion, pp. 22-23.)

B. Health and Safety Code Section 11366.5 and Penal Code Section 373a Do Not Contradict or Duplicate LAMC section 12.21, Subdivision (A)(1)(a), Which is a General Zoning Ordinance

Petitioner also argues Health and Safety Code 11366.5 preempts LAMC section 12.21, subdivision (A)(1)(a). However, Petitioner makes a faulty comparison as the language and purpose of the two laws are very different. One deals with the unpermitted use of land while the other prohibits renting or making available a building or room for the purpose of unlawfully manufacturing or distributing controlled substances.

At the outset, it is important to note that regulation of land uses has traditionally been reserved for local governments, such as the City of Los Angeles. As this Court stated in *Big Creek Lumber Co. v. County of Santa Cruz, supra*, 38 Cal.4th at pp. 1149-1150, "when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (Emphasis in original). Land use and zoning regulation in California have "historically…been a function of local government under the grant of police power contained in article XI, section 7 of the California Constitution." (*Id*. at p. 1151; see also *City of Claremont v. Kruse* (2009) 177 Cal. App. 4th 1153, 1169 [local government's land use regulation is one area over which such government has exercised control and thus is not preempted]; *Inland Empire, supra*, 56 Cal.4th at p. 749 [the CUA and MMPA do not preempt local land use regulations].) "Thus, '[t]he power of cities and counties to zone land use in accordance with local conditions is well entrenched.' 'In enacting zoning ordinances, the municipality performs a legislative function, and every intendment is in favor of the validity of such ordinances.'" (*Big Creek Lumber Co. v. County of Santa Cruz, supra*, 38 Cal.4th at p. 1152, internal citations omitted.)

LAMC section 12.21, subdivision (A)(1)(a) is a general zoning law that does not specifically apply to commercial cannabis activities or to any controlled substance operation for

that matter. Rather, it deals with unpermitted uses in the City of Los Angeles. LAMC section 12.21, subdivision (A)(1)(a) provides that, "No building or structure shall be erected, reconstructed, structurally altered, enlarged, moved, or maintained, nor shall any building, structure or land be used or designed to be used for any use other than is permitted in the zone in which such building, structure or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances." Simply put, one can only use a building, structure or land in the City of Los Angeles in a zone that the use is permitted for and only then after one obtains the necessary permits.

LAMC section 12.21, subdivision (A)(1)(a) does not duplicate Health and Safety Code section 11366.5 because it does not cover the same subject matter. LAMC section 12.21, subdivision (A)(1)(a) prohibits using land for any unpermitted purpose while Health and Safety Code section 11366.5 prohibits leasing a building for the purposes of "manufacturing, storing or distributing" controlled substances. LAMC section 12.21, subdivision (A)(1)(a) does not contain any language regarding operating or leasing a building for the purposes of "manufacturing, storing or distributing" controlled substances. Health and Safety Code section 11366.5, on the other hand, makes no mention of permits, licenses, or zoning restrictions. For those same reasons, they do not contradict each other.

Petitioner further argues that Penal Code section 373a preempts LAMC section 12.21, subdivision (A)(1)(a). Penal Code

section 373a criminalizes allowing public nuisances to exist on property, if after receiving notice, the nuisance is allowed to continue. As discussed above, LAMC section 12.21, subdivision (A)(1)(a) is a general zoning law; it does not specifically apply to public nuisances nor is it in any way limited to public nuisances. A person could easily use a building for an unpermitted purpose without that use amounting to a nuisance. These statutes quite simply are not duplicative or coextensive of each other nor do they contradict each other. Accordingly, there is no preemption.

C. The Court of Appeal Opinion Did Not Ignore Issues that Petitioner Raised

Petitioner argues that the Opinion ignored certain issues that she argued in her briefing. Specifically, Petitioner argues that the Court of Appeal failed to address the existence of LAMC section 105.07 and failed to apply the preemption standard proposed in Justice Liu's concurrence in *Inland Empire.*

This is inaccurate on multiple grounds. First, Petitioner has the burden to prove that the Court of Appeal ignored issues set forth in the record and she has failed to make any showing that this occurred. Simply because the Opinion does not mention LAMC section 105.07 or Justice Liu's concurrence does not mean that the Court of Appeal did not consider them. Second, the Court of Appeal is not obliged to address every issue set forth by the involved parties.

There is a presumption that bench officers ruling upon a record are aware of and have considered that record. "It is presumed that an official duty has been regularly performed." (Evid. Code, §664.) "[S]cores of appellate decisions, relying on

this provision, have held that 'in the absence of any contrary evidence, we are entitled to presume that the trial court … properly followed established law.' " (*People v. Abdelsalam* (2022) 73 Cal.App.5th 654, 662-663 quoting *Ross v. Superior Court of Sacramento County* (1977) 19 Cal.3d 899, 913; see also *People v. Ramirez* (2021) 10 Cal.5th 983, 1042 ["Absent evidence to the contrary, we presume that the trial court knew the law and followed it"]; *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1390; *People v. Thomas* (2011) 52 Cal.4th 336, 361.) Petitioner has the burden of proof of overcoming this presumption. (See *People v. Valdez* (2012) 55 Cal.4th 82, 176; *People v. Martinez* (2000) 22 Cal.4th 106, 125; Evid. Code, § 606.)

Petitioner cannot meet this burden. Nothing indicates that the Court of Appeal failed to review and consider the record, in which Petitioner's arguments were contained. Nor is there any indication that the Court of Appeal failed to consider any additional arguments that were presented during oral argument. Appellant's briefing below contained the same bare recitation of the code section and expressed the same misguided sentiment that the existence of LAMC section 105.07 is somehow a concession that LAMC section 104.15 is preempted by state law. The same plea by Petitioner for the Court of Appeal to abandon the law for a different standard proposed in a concurring opinion was contained in her briefing to the Court of Appeal. This concept was discussed at length by both Petitioner and Real Party in Interest during Oral Argument. There could be no way for the Court of Appeal to have not considered this; they read it

with their own eyes and heard it multiple times with their own ears. The fact that the Court of Appeal did not discuss Justice Liu's concurrence specifically in their opinion is much more likely to stem from the fact that they applied the actual law as opposed to a world in which they completely ignored an argument both read and heard.

Further, the Court of Appeal is not obliged to take up every issue posed by Petitioner. The Supreme Court summarily stated that "[a]n opinion is not a controversial tract, much less a brief in reply to the counsel against whose views we decide. It is merely a statement of conclusions, and of the principal reasons which have led us to them." (*Holmes v. Rogers* (1859) 13 Cal. 191, 202.) Courts need not address in their opinions every argument that they do not accept as this could only lead to nonsensical and excessively verbose case law. The California Court of Appeal concurred and expounded on this point in *People v. Rojas*:

> We are cognizant of the fact that conscientious lawyers, in both civil and criminal cases, often feel obligated to present every imaginable issue. … Oftentimes nonmeritorious contentions are included in briefs as "make weight" to the main issues involved and the same point is often stated in differing ways and given separate headings in the appellant's brief. Whatever the motivation for employing these techniques, we do not believe that article VI, section 14, requires that we must set forth and dispose of, seriatim, each and every item which appellant's counsel chooses to characterize as an "issue" in the case. In an era in which there is concern that the quality of justice is being diminished by appellate backlog with its attendant delay, which in turn contributes to a lack of finality of judgment, it

> behooves us as an appellate court to "get to the heart" of cases presented and dispose of them expeditiously. Unnecessary verbiage and redundant literary exercises are counterproductive. We regret the length of this order but hopefully it will not have to be repeated.

(*People v. Rojas* (1981) 118 Cal.App.3d 278.)

The case at hand is exactly as discussed in *Rojas*. Both "issues" Petitioner claims were ignored by the Court of Appeal, are in fact only ancillary points of the same core issue – whether or not state law preempts the LAMC. This issue was comprehensively addressed in the Opinion. (Opinion pp. 7-24 [18 pages total].) The Court of Appeal clearly addressed the issue of preemption;[4] the justices simply did not agree with Petitioner's arguments.

[4] Even in light of the above, had the Court of Appeal truly not addressed an issue that Petitioner raised, the proper procedure would be to request a rehearing pursuant to California Rules of Court, rule 8.268.

III. CONCLUSION

For the above reasons, the Petition for Review should be denied.

DATED: February 14, 2022

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CERTIFICATE OF COMPLIANCE

Counsel of record for plaintiff, and real party in interest, People of the State of California, hereby certifies that this Answer to the Petition for Review contains 5439 words, excluding the cover sheet, tables, and signature block. Counsel relies on the word count of the Word 2018 program used to prepare this brief.

/s/SydneyM.Mehringer

Sydney M. Mehringer

PROOF OF SERVICE

Case Name*:* *People v. Wheeler*; No S272850, B310024, BR054851, 0CJ00315

I declare as follows: I am over the age of 18, and not a party to this action. My business address is 200 N. Main Street, Suite 966, Los Angeles, California 90012, telephone (213) 978-4090, which is located in the County of Los Angeles.

On **February 14, 2022**, I served the within **ANSWER TO PETITION FOR REVIEW** on each of the following persons named by serving a true copy thereof, via the TrueFiling e-filing system as follows**:**

ROB BONTA
ATTORNEY GENERAL
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
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[X] VIA MAIL-CCP Section 1013a(3) Business Practice to Entrust Deposit to Others: In accordance with the regular mailing collection and processing of documents for mailing, I deposited the document set forth above in a sealed envelope, addressed as set forth below, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service following ordinary business practices. I am readily familiar with the practice at my place of business for collection and processing of documents for mailing with the United States Postal Service. Documents so collected and processed are deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business.

Court of Appeal
State of California
Second Appellate District
Division Three
300 South Spring Street
Los Angeles, CA 90013

Clara Shortridge Foltz Criminal
Justice Center
Attn: Comm. Elizabeth Harris
210 W. Temple St., Dept. 47
Los Angeles, CA 90012

Laurel Mend
LA County Public Defender
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320 W. Temple Street
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Erika C. Anzoatequi
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Los Angeles, CA 90012

Los Angeles Superior Court
Appellate Division
111 N. Hill Street, Room 607
Los Angeles, CA 90012

LA Superior Court Clerk
111 N. Hill Street, RM 105E
Los Angeles, CA 90012

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

Executed on **February 14, 2022**, at Los Angeles, California.

jreyes

Julieta Reyes

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **WHEELER v. APPELLATE DIVISION (PEOPLE)**
Case Number: **S272850**
Lower Court Case Number: **B310024**

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: **sydney.mehringer@lacity.org**

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	S272850 Answer to Petition for Review, final

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

2/14/2022
Date

/s/Julieta Reyes
Signature

Mehringer, Sydney (245282)

Last Name, First Name (PNum)

Office of the Los Angeles City Attorney

Law Firm