IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JANE NUCKLES,

Defendant and Appellant.

S200612

Fifth Appellate District, No. F061562
Kings County Superior Court No. 09CM3022
Honorable Donna Tarter, Judge

APPELLANT'S OPENING BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. JANE NUCKLES, Defendant and Appellant.	S200612

ISSUE PRESENTED

The Court has granted review of the following question: Was defendant properly convicted of being an accessory to a felony for assisting another person to abscond from his parole term after serving his sentence for that felony? The answer is no. The elements of Penal Code section 32[1] do not include aiding someone who has absconded from parole.

The necessary logical, temporal and facilitative nexus does not stretch between the principal's commission of a felony and the assistance provided to that person after his punishment, a state prison sentence, has been completed. The legislative intent, as expressed in the plain,

[1] Hereinafter all section references are to the Penal Code unless otherwise noted.

commonsense language of the statute does not support such a conviction. Application of other rules of statutory construction lead to the same conclusion. The conviction in this case exceeds the limits of a criminal sanction and requires reversal.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Underlying Facts.

Adam Gray, the father of Jane Nuckles' grandchild, was convicted and sentenced to prison for a violation of Penal Code section 136.1, subdivision (a)(1), intimidating a witness, in 2007. (5RT 634, 641.) He was released on parole on July 9, 2008. (5RT 634.)

In 2009, Mr. Gray visited Ms. Nuckles' home that she shared with John Amaral in Kings County. At the time, he was "wanted for a parole violation for absconding from his parole in Kern County." (6 RT 910-911.) Mr. Amaral called Crime Stoppers to inform the police of Mr. Gray's whereabouts. (5RT 650, 671-672, 679-680.) He testified that Ms. Nuckles knew that the police were looking for Mr. Gray and that she nevertheless allowed him and his girlfriend to stay at her house and that she showed them a hiding place if the police should search for them. (5RT 648, 654-658, 661, 665-666, 671, 678-679.)

On September 3, 2009, Mr. Gray was arrested at the Nuckles/Amaral

home. (5RT 640; 6RT 910.) He was found hiding in the garage and his girlfriend was found coming out of the crawl space beneath a closet. (6RT 906-908, 910.) As punishment for the parole violation, Mr. Gray was incarcerated for a six month term. (5 RT 637-638.)

Ms. Nuckles testified that Mr. Gray came to visit her a couple times in August, 2009, after he was released from prison to find out how to contact his daughter. (6 RT 914-915, 920.) She allowed him to store some duffel bags in her garage. (6RT 918-920.) Mr. Amaral called the police when Mr. Gray was picking up his belongings. (6RT 935-936, 945.) Ms. Nuckles did not allow Mr. Gray and his girlfriend to spend the night and she did not know about the crawl space or give advice about hiding from the police. (6RT 923, 937.) She testified that Mr. Amaral was motivated by self-interest when he contacted the police and testified that she harbored Mr. Gray. (6RT 929, 935-936, 945.)

B. Procedural Facts.

The amended information charged that Jane Nuckles violated Penal Code section 32, having knowledge that Adam Gray had been convicted of a felony, she unlawfully did harbor, conceal, or aid said Adam Gray, with the intent that he might avoid or escape from arrest, trial, conviction, or punishment for said felony. (CT 6, 75.) A jury convicted her, of one count

of being an accessory to a felony. (Pen. Code, § 32, count one). (CT 6, 80; 6RT 993.) She admitted a further allegation that she had suffered one prior prison term. (Pen. Code § 667.5, subd (b).) (CT 80; 6RT 991.)

She was sentenced to the upper term of three years, and a consecutive one year for the prior prison term, for an aggregate sentence of four years in state prison. (CT 137-138; 9RT 1401.) She timely appealed. (CT 141.) The Court of Appeal affirmed and a petition for review was granted.

C. The Opinion of the Court of Appeal.

On February 1, 2012, the Court of Appeal affirmed the conviction in an unpublished opinion. (Opinion, p. 18.) Appellant claimed her conviction for being an accessory to a felony was not supported by substantial evidence because the person she allowed to remain in her home was only wanted for absconding from parole. (Opinion, p. 2.) The opinion, as part of the sufficiency review, considered the nature of a section 32 violation. The court reasoned that a violator of parole terms and conditions, through a technical violation, such as absconding from parole supervision, is a fleeing felon such that aid to him qualifies as a violation of section 32. (Opinion p. 10.) The decision flowed from an analysis that the mandatory parole period is considered a "penal consequence" of a guilty plea.

(Opinion, p. 10.) Penal Code section 3000 provides that an inmate continues in the custody of the department during the release on parole following incarceration. (Opinion, p. 10.) Since the parolee remains in custody, the Parole Board has power to revoke parole and return him to prison. (Opinion, p. 11.)

Appellant filed a petition for review on or about March 8, 2012, which this court granted on April 18, 2012.

ARGUMENT

THE PLAIN, COMMONSENSE MEANING AND INTENDED EFFECT OF PENAL CODE SECTION 32 DOES NOT PERMIT CONVICTION OF A DEFENDANT WHO MERELY HELPS A PERSON WHO HAS ABSCONDED FROM PAROLE.

A. Summary of Argument

One aids a principal in a felony offense and becomes an accessory after the fact by aiding that person to avoid or escape prosecution or punishment. There must be some logical, temporal, and facilitative nexus between the act of the asserted accessory and the felony committed by the principal. The punishment for a felony does not include punishment for a violation of parole following release after the completion of a prison sentence. The plain, commonsense meaning of the statute, or the legislative intent, or rules of statutory construction, do not support a conviction for accessory after the fact in violation of section 32 in this case.

The Court of Appeal incorrectly concluded, through an analysis of the nature of parole, the power of the Board to revoke parole, and the possibility of return to custody, that someone who aids an absconding parolee is liable as an accessory to a felony. A violation of parole, by absconding, is not the commission of a felony. The violation of parole conditions is subject to administrative sanctions. The punishment for a

violation of parole is not punishment for the underlying felony, but a sanction imposed only after there has been a revocation of parole. The act of aiding an absconding parolee does not satisfy the elements of section 32.

While upholding the current conviction, the Court of Appeal's decision suggests that "the Legislature might consider a concise statute to specifically address such misconduct, i.e., the act of purposely harboring and concealing the whereabouts of a parolee who is known to have violated parole and is subject to arrest, even if that parolee has not committed a separate felony offense." (Opinion, p. 12, fn. 2.) The suggestion reflects the justifiable discomfort the Court of Appeal felt in applying section 32 in this case. The conviction of Jane Nuckles must be reversed.

B. <u>The Statute.</u>

Section 32 provides:

> Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.

The undisputed facts in this case show that Mr. Gray was not trying to avoid or escape from arrest for the felony of witness intimidation, but that he was trying to avoid or escape from arrest for the violation of his

parole supervision terms based on absconding from parole. This is a technical parole violation for failing to report to his parole agent and is administratively punished separate from his completed prison term.

C. Standard of Review.

A pure question of law is reviewed de novo. (See *People v. Harrison* (1989) 48 Cal. 3d 321, 335 [application of statute to conceded facts is a question of law reviewed independently].)

D. The Plain and Common Sense Meaning.

The plain meaning of the statute requires that Jane Nuckles aided Adam Gray to avoid punishment for the felony in which he was a principal. The ordinary interpretation of the terms in section 32 is to require that she was helping him to avoid the sentence that was imposed as punishment for the felony, to wit: the prison sentence which he had completed prior to his release on parole. Ms. Nuckles did not violate section 32 under the plain and common sense meaning of the statute.

Any analysis begins by examining the statutory language because the words of a statute are the most reliable indicator of legislative intent. (*People v. Watson* (2007) 42 Cal.4th 822, 828.) If the most natural reading of the statute evinces an unmistakable plain meaning, then there is no need for further investigation into legislative intent. (*Beal Bank, SSB v. Arter &*

Hadden, LLP (2007) 42 Cal.4th 503, 507-508.)

As in the *Watson* case, the facts are not in dispute and the case turns on an understanding of the statute which resulted in a conviction. It is a question of whether, under the terms of the statute, it was legally possible for the defendant's conduct to qualify as an offense. (*Watson, supra,* 42 Cal.4th at p. 825.) The plain meaning of the terms in section 32 does not encompass aiding one who has served his punishment for the substantive offense and is subject to a warrant for a violation of parole.

The context of the statute is helpful to its common sense meaning. Section 32 makes reference to aiding a "felon" to avoid punishment. Section 31 and section 32 are interrelated in that they are both constituent elements of a single legislative scheme--that portion of the Penal Code which defines the status of various parties to crime (Pen. Code, tit. 2, pt. 1, "Parties to Crime").

"The requirement that the principal felony shall actually have been committed has existed from common law days (1 Hale, Pleas of the Crown, p. 621; 4 Blackstone's Commentaries, p. 38)." (*People v. Hardin* (1962) 207 Cal.App.2d 336, 341.) In the *Hardin* case, it was a matter of a lack of pleading, and as an example of how the charge of being accessory is one of considerable intricacy, it was pointed out that the principal offense could

not have been a misdemeanor. (*People v. Hardin, supra,* 207 Cal.App.2d at p. 342.) It goes without saying that if one cannot be an accessory to a misdemeanor, then the principal's commitment of an infraction, or a violation of parole, would not meet the elements of the offense. As a matter of law, the principal must be a felon who is aided in avoiding punishment for the felony.

"Words and phrases must be construed according to the context and the approved usage of the language. . . ." (Pen. Code, § 7, subd. (16).) "A conviction under section 32 requires proof that a principal committed a specified felony, the defendant knew that the principal had committed a felony, the defendant did something to help the principal get away with the crime, and that as a result of this action the defendant intended to *help the principal get away with the crime*." (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 536, emphasis added, citing: *People v. Prado* (1977) 67 Cal.App.3d 267, 271; *People v. Duty* (1969) 269 Cal.App.2d 97, 104.) An accessory is one who lends assistance to the principal, after the commission of the offense, with the intent of helping him escape capture, trial or punishment. (*People v. Nguyen, supra,* 21 Cal.App.4th at p. 536; *People v. Gassaway* (1865) 28 Cal. 404, 405-406.)

"A person may aid, or attempt to aid, *the principal to a crime* by

making false or misleading statements to the authorities, and such conduct will support a conviction of accessory after the fact." (*In re I.M.* (2005) 125 Cal.App.4th 1195, 1203, emphasis added.) Thus, section 32, an accessory after the fact under California law, punishes "harboring or concealing *principals*." (*Navarro-Lopez v. Gonzales* (9th Cir. 2007) 503 F.3d 1063, 1072, emphasis added.) It "punishes a host of acts intended to assist the *principal* in evading capture." (*Navarro-Lopez v. Gonzales, supra,* 503 F.3d at p. 1081, dissent by J. Tallman.)

The statute, read as a whole, requires some logical, temporal, and facilitative nexus between the principal's engagement in the felony and the aid provided to him. Under the analysis of the Court of Appeal, if someone released after a murder conviction to a lifetime of parole is aided to hide from his parole agent, any person who aids him is liable as an accessory after the fact to murder. Decades after the indeterminate life term in prison has been completed, any aid to avoid reporting to a parole agent would result in liability as an accessory to murder. Respectfully, this is not a correct interpretation of section 32.

Stated yet another way, based on the Court of Appeal's opinion, the mens rea of a person aiding a person on parole to avoid his parole agent or arrest for absconding from parole is to help the parolee avoid punishment

for a violation of parole. This mens rea does not have any logical, temporal or facilitative nexus to avoiding responsibility for the initial felony as required by section 32. For example, Ms. Nuckles could not have intended to help Mr. Gray avoid punishment for the crime of intimidating a witness because he had already received and served his punishment prior to his release on supervised parole. In other words, her actions vis-a-vis Mr. Gray have no link to the initial felony Gray committed. They were inconsequential with respect to that crime.

The statute, read as a whole and interpreted by a long series of cases, makes the elements of the offense clear. It is equally clear that the act of aiding a principal to avoid punishment for absconding from parole does not have the prerequisite connection to the commission of the felony to constitute aiding the principal in escaping responsibility for a felony to meet the elements of section 32.

E. The Punishment Referenced in Section 32 is Described by Section 18.

The punishment of a felony is described before section 32 in section 18. (Pen. Code, tit. 1, pt. 1, "Persons Liable to Punishment for Crime") and provides that, unless a different punishment is prescribed, every offense declared to be a felony is punishable by imprisonment in any of the state prisons for 16 months, or two or three years, or by a fine, or by county jail

not exceeding one year. The recent Realignment in section 1170, subdivision (h) has added an additional option regarding where the defendant's term will be served.

It is clear from the undisputed facts of this case that Mr. Gray had been sentenced to prison in 2007. He was released from that sentence in 2009 and served a period of supervised parole. He was no longer subject to punishment for the crime of intimidating a witness, but was subject to possible violation for the conditions of his release on parole. As such, Ms. Nuckles could not have aided him in avoiding a punishment that had already been completed, and her acts certainly did not assist him in avoiding responsibility for his crime.

F. Punishment as a Consequence of a Felony or a Parole Violation.

One of the fundamental rules of statutory construction is that interrelated statutory provisions should be harmonized and that, to that end, the same word or phrase should be given the same meaning within the interrelated provisions of the law. (See, e.g., *Gruschka v. Unemployment Ins. Appeals Bd.* (1985) 169 Cal.App.3d 789, 792; and *In re Mark K.* (1984) 159 Cal.App.3d 94, 106; *People v. Elliott* (1993) 14 Cal.App.4th 1633, 1641.)

The Court of Appeal reasoned that a person, such as Adam Gray,

who is released on parole is a principal who is subject to, and avoiding, punishment because he "remains under the legal custody of the Department of Corrections and is subject to being taken back to prison. (Opinion, p. 11, citing *Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874; Pen. Code, §§ 3060, 3056.) This analysis overlooks the separation between punishment for the underlying felony for which he is a principal, and administrative sanctions for violations of the conditions of parole.

Any possible punishment for a violation of parole, separate from a new law violation, is not punishment for the underlying felony, but an administrative sanction. The analysis begins with long revered authority. *Morrissey v. Brewer* (1972) 408 U.S. 471, 480 [92 S. Ct. 2593; 33 L. Ed. 2d 484] recognized that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights afforded a criminal defendant do not apply to parole revocation proceedings. Parole arises after the end of the criminal prosecution and after release from state prison. Parole supervision is not directed by the court but by an administrative agency.

In California, since the advent of the determinate sentencing law in 1977, "the period of parole is not part of a defendant's prison term[.]" (*People v. Jefferson* (1999) 21 Cal.4th 86, 95.) A parole revocation term, or

fine, is considered to be imposed for the parole violation rather than for the original offense. (See *People v. Blunt* (1986) 186 Cal.App.3d 1594, 1600; *In re LeDay* (1985) 177 Cal.App.3d 461, 464-465; *In re Nolasco* (1986) 181 Cal.App.3d 39, 43.)

Conduct which results in parole revocation is often not a crime. Under section 3053, subdivision (a) the Board of Parole Hearings may "impose on the parolee any conditions that it may deem proper." Thus, parole may be revoked if the parolee moves without his parole agent's permission, drives a car, consumes alcohol, or fails to report.

Parole is not revoked until a formal revocation hearing is held. (*People v. Hunter* (2006) 140 Cal.App.4th 1147, 1153.) Parole revocation hearings are not part of a criminal prosecution, but administrative hearings which nevertheless require rudimentary due process. (*Valdivia v. Schwarzenegger* (9th Cir. Cal. 2010) 599 F.3d 984, 989; *Morrissey, supra,* 408 U.S. at p. 480.)

Due process requires that even though a parolee may be arrested on a parole violation, his parole may not be formally revoked until he has been afforded a formal parole revocation hearing. As the system is implemented in California, a parolee may be arrested for a suspected parole violation. (See *Swift v. Department of Corrections* (2004) 116 Cal.App.4th 1365,

1371.) Unless the parole hold is earlier removed, it will be maintained until the parolee receives a formal parole revocation hearing by the Board of Parole Hearings. "At the revocation hearing the hearing panel shall decide whether there is good cause to believe a condition of parole has been violated and, if so, the most appropriate disposition ... ." (Cal. Code Regs., tit. 15, § 2645, subd. (a).) Revocation is not a necessary consequence of a parole violation, but a decision made by the parole authorities based on the number and seriousness of all violations, as well as other current information about the parolee's progress. The disposition may include revocation of parole or a release back into the community. (Ibid; Cal. Code Regs., tit. 15, § 2646; *People v. Hunter, supra*, 140 Cal.App.4th at 1153-1154.)

Thus, Mr. Gray was not avoiding punishment as a principal in the felony of witness intimidation when he was aided by Jane Nuckles. His outstanding warrant for a violation of parole only subjected him to an administrative proceeding which could result in sanctions for violation of parole. Under the unmistakable and plain meaning of the statute, Ms. Nuckles could not have been an accessory after the fact to a felony, as his absconding from parole did not constitute an independent felony.

G. Construing Punishment to Include a Parole Violation Would Lead to Absurd Results.

Another rule of statutory construction comes into play. "It is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend." (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 113; *People v. Pieters* (1991) 52 Cal. 3d 894, 898.) Such an absurd result would be for Mr. Gray, the parolee, to be arrested and face a parole violation, which ultimately resolved by incarceration for six months time, and for Ms. Nuckles to be sentenced as a felon for having aided him in his absconding violation, resulting in a four year prison term. The scheme of principals and accessory after the fact subject the aider to felony punishment only if the aid is to a principal in a felony who is avoiding punishment for the felony.

> "California's parole system is the major contributor to overcrowding in the prison population, sending about 70,000 parole violators back to prison each year. About 20 percent of those violators churn in and out of prisons because they commit technical parole violations [such as absconding], not new crimes. Many are returned to prison for (sic) repeatedly. Each time, they typically serve less than four months in prison."

Petersilia, *Research Supports the Parole Violation Decision Making Instrument, What The Experts Are Saying* (2012)

http://www.cdcr.ca.gov/PVDMI/support_4_PVDMI.html.

The research by the California Department of Corrections finds that technical violators, such as for absconding, typically result in incarceration for a period of less than four months. While this is only a typical penalty, it suggests that parolees spend less time in custody than one who commits a misdemeanor. The typical parole violation punishment is less than that statutorily fixed for a felony. The implications are that it is unintended and inequitable to punish an accessory after the fact to a parole violator with a sentence of up to three years in state prison which is far greater than the sanction imposed against the felon parole violator. The legislative interest in punishing one who aids a principal to avoid punishment, as described in section 32, could not have been intended to apply to aiding one who has absconded from his parole supervision. There must be some temporal nexus or relationship between the felony committed by the principal and the mens rea of the accessory.

H. Reliance on the Requirements of Advice at the Time of a Guilty Plea is Inappropriate.

The appellate court in this case found that a violation of parole would be a direct penal consequence of the initial felony because of the requirement of advice at the time of a plea of guilty, relying on *People v. Moore* (1998) 69 Cal.App.4th 626, 630. (Opinion, p. 10.) The

consideration of advice on a plea of guilty includes the advice of the maximum parole period following completion of the prison term. The quote from the *Moore* decision is based on *In re Carabes* (1983) 144 Cal.App.3d 927, 933 which held that "a defendant should be made aware of the maximum adverse parole consequences of his plea, such as 'after you have served your prison term you may be subject to a maximum parole period of -- years.' Detailed explanation as to other eventualities, such as parole revocation, extension of period of parole due to incarceration for revocation, waiver of parole, discharge from parole earlier than the maximum parole term, would only have the potential of confusing the issue." (*In re Carabes, supra,* 144 Cal.App.3d at p. 933.)

These cases suggest that a knowing guilty plea must include advice about direct penal consequences, but not all possible eventualities. Even if the period of parole is a direct consequence, the *Carabes* case makes clear that a possible punishment for violation of parole is simply a possible eventuality. A possible eventuality, dependent on a separate administrative proceeding as described above, is not a direct penal consequence. It does not inexorably flow from the fact of conviction. The necessity for advice about a possible parole term does not embrace the need to speculate about possible future sanctions which may be imposed after the punishment, the

prison sentence, has been completed.

Therefore, although parole may be a consequence of a felony conviction, it is sufficiently attenuated from the commission of the initial felony that the act of one who aids an absconding parolee has no purpose or effect with respect to the underlying felony.

I. Applying the Rule of Lenity.

The rule of lenity is a concept which is brought to bear when it is unclear whether conduct comes squarely within the elements of a criminal statute. The rule is invoked when the question was close enough it would have warranted submission to Janus, the Roman god who could face in two directions at once. In this case, the Court of Appeal's suggestion to the Legislature for a "concise statute to specifically address such misconduct" acknowledges a concern that Jane Nuckles' conduct did not come squarely within the current statute.

The rule of lenity serves the purposes of minimizing the risk of selective or arbitrary enforcement, and maintaining the proper balance between the Legislature, prosecutors and the courts. (*United States v. Kozminski* (1988) 487 U.S. 931, 951–952 [101 L. Ed. 2d 788, 108 S. Ct. 2751].) It is the legislative responsibility to define criminal liability and the appropriate penalty by clear directives.

> Lenity is an appropriate background principle in the penal context because it maintains the judicial-legislative balance while protecting the rights of individuals. It has survived so long in the common law system precisely because it allays concerns with separation of powers and due process and provides interpretive consistency. When the legislature fails to speak clearly, considerations of lenity avoid the dilemma of how to derive a legitimate interpretation without 'legislating' by choosing *a priori* the stance the court will take. Considerations of lenity therefore create a presumption against criminal liability by assuming that the legislature only intended what was readily apparent.

(Newland, *The Mercy of Scalia: Statutory Construction and the Rule of Lenity* (1994) 29 Harv.C.R.-C.L. L.Rev. 197, 206–207, fns. omitted.)

Consistent with the rule of lenity, it must be kept in mind that "'[the] defendant is entitled to the benefit of every reasonable doubt, whether it arise out of a question of fact, or as to the true interpretation of words or the construction of language used in a statute.'" (*People v. Craft* (1986) 41 Cal.3d 554, 560, citing *People v. Davis* (1981) 29 Cal.3d 814, 828, quoting *In re Tartar* (1959) 52 Cal.2d 250, 256-257.)

In this case, if there is any manner of statutory construction which would allow section 32 to be used to treat a parole revocation as punishment for the initial felony, such that one who aids an absconding parolee is in violation of that section, the rule of lenity should reject such an interpretation. It is not readily apparent from section 32, in the context of

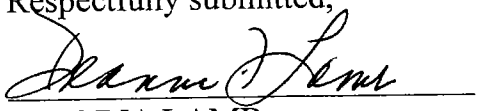
describing principals, accessories and punishment, that one is liable for felony prosecution by providing aid to an absconding parolee.

CONCLUSION

The appellate court erred in concluding that a parolee who has absconded is punishable as a principal for the underlying felony which initially resulted in his prison term. The criminal sanction of section 32 is not applicable to Ms. Nuckles' the conduct in this case. The conviction of Jane Nuckles, as an accessory for helping an absconding parolee avoid potential administrative sanctions must be reversed. It is for the Legislature and not the courts to devise a criminal sanction for harboring and concealing the whereabouts of a parolee who is known to have violated parole.

Dated: June 26, 2012

Respectfully submitted,



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Pursuant to Rules 8.520(c)(1) of the California Rules of Court

I, Deanna Lamb, appointed counsel for appellant, certify pursuant to rule 8.520(c)(1) of the California Rules of Court, that I prepared this opening brief on behalf of my client, and that the word count for this opening brief is 4,726.

This brief complies with the rule that limits a brief to 14,000 words, including footnotes. I certify that I prepared this document in WordPerfect 15 and that this is the word count WordPerfect generated for this document.

DATED: June 28, 2012

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DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my business address is 2407 J Street, Suite 301, Sacramento, CA 95816.

On June 28, 2012, I served the attached:

- **APPELLANT'S OPENING BRIEF ON MERITS**

by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed

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I declare under penalty of perjury that the foregoing is true and correct. Executed on June 28, 2012, at Sacramento, California.

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