S204387

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA



ELAYNE VALDEZ,

Petitioner,

vs.

WORKERS' COMPENSATION APPEALS BOARD; WAREHOUSE DEMO SERVICES; ZURICH NORTH AMERICA, ADJUSTED BY ESIS (Real Parties in Interest);

Respondents.

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**ANSWER TO PETITION FOR REVIEW**

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After a Published Decision by the Court of Appeal, Second Appellate District, Case No. B237147, Annulling an En Banc Decision by the Workers' Compensation Appeals Board, WCAB Case No. ADJ7048296

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## INTRODUCTION

This case involves an injured worker's "undoubted" right under *Labor Code* §4605 to select and pay for a physician of her own choice and the right of Worker's Compensation judges ("WCJ") under *Labor Code* §5703(a) to consider medical reports obtained by non-MPN physicians in awarding compensation for temporary or permanent disabilities. By their petition, Respondents urge this court to rewrite Article 2.3 of the Worker's Compensation Act ("Act"), the section pertaining to "Medical Provider Networks" ("MPN") (*Labor Code* §§4616-4616.7) to eliminate the constitutional right of an injured worker to pay for and make her own medical treatment decisions and to bar the WCJ's from considering non-MPN medical reports *under any circumstance*. (See *Cruzan v. Director, Mo. Health Dept.* (1990) 497 U.S. 261, 269.[1] )

The Legislature is presumed to have known of the existence of *Labor Code* §§4605 and 5703(a) when it overhauled the Act in 2004 and enacted the MPN statutory scheme. (*Rio Linda Union School Dist. v. Workers' Comp. Appeals Bd.* (2005) 131 Cal.App.4th 517, 530 [31 Cal.Rptr.3d 789].) This Court has cautioned against reading into a statute language it does not contain or rewriting a statute to conform to an assumed

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[1]A copy of the *Cruzan* decision is attached as Exhibit "16," 152-195 to the Petition for Writ of Review.

intention which does not appear from its language. (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253 [85 Cal.Rptr. 3d 466]; *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545 [67 Cal.Rptr.3d 330].) Had the Legislature intended to repeal or modify *Labor Code* §§4605 or 5703(a), it could have easily done so; it did not.

No provision of the MPN prohibits an employee from selecting and paying for her own doctor. Our courts have consistently recognized that *Labor Code* §4605 allows "any injured employee is free to seek medical treatment and/or consultation *in addition to, or independent of*, that for which his employer is responsible." [Emphasis added.] (*Bell v. Samaritan Medical Clinic, Inc.* (1976) 60 Cal.App.3d 486, 490 [131 Cal.Rptr. 583].) *Labor Code* §4605 "ensures that employees are not forced to accept treatment or advice from a physician selected by the employer if they wish to go outside the workers' compensation system at their own expense." (*Perrillo v. Picco & Presley* ( 2007) 157 Cal.App.4th 914, 936 [70 Cal.Rptr.3d 29].) It can be inferred that the Legislature left this statute alone since it actually promotes the cost-saving goals of the 2004 Act by having the injured employee, not the employer, bear the cost of medical treatment.

Furthermore, no language within the MPN bars an injured worker from submitting reports prepared by non-MPN physicians to determine benefits. It is well-settled that the report of a non-MPN treating physician may be admitted into evidence under *Labor Code* §5703(a) to resolve medical-legal disputes [entitlement to benefits]. The appellate courts and the WCAB have repeatedly affirmed this rule of law from 1932 to the present. (See *Union Lumber Co. v. Industrial Acci. Com.* (1932) 124 Cal App 584, 588 [2 P2d 1047]; *Los Angeles v. Industrial Acci. Com.* (1963) 215 Cal.App.2d 310, 313 [30 Cal Rptr 75]; *Heath v. Workers' Comp. Appeals Bd.* (1967) 254 Cal.App.2d 235, 240 [62 Cal.Rptr.139]; *Salgado v. County of Orange*, 2009 Cal.Wrk. Comp. P.D. Lexis 279; *Guerrero v. Davlyn Investments, Inc.*, 2010 Cal.Wrk. Comp. P.D. Lexis 47; *Martinez v. Alert Plating Company, Inc.*, 2010 Cal.Wrk. Comp. P.D. Lexis 108; and *Peak v. Rec Solar*, 2010 Cal.Wrk. Comp. P.D. Lexis 308.) Applying the statutory rules of construction, the Second District Court of Appeal in *Valdez* correctly opined that *Labor Code* §4616.6, on its face, is not a general rule of exclusion but instead, is limited to cases where there has been an independent medical review within the MPN. (Opinion, pg. 8-9.)

In sum, the Second District Court of Appeal has correctly interpreted *Labor Code* §§4605 and 5703(a) in affirming the mandated right of an

injured employee to self-procure medical treatment and the discretion of the WCJ to consider non-MPN medical reports in determining compensation. A review of this decision is unnecessary to secure uniformity of decision or to settle an important question of law. Accordingly, Respondents' petition for review should be denied.

## STATEMENT OF THE CASE

### A. Petitioner's Injury and Undisputed Diagnosis and Treatment

On October 7, 2009, Petitioner, Elayne Valdez sustained work-related injuries to her back, hip and neck, while employed as a product demonstrator by Warehouse Demo Services. Petitioner sought treatment from a physician within the Respondents' MPN. (Exhibit "1," 1:21-25, 3:4-21.)

On October 23, 2009, Petitioner, through her attorney, made a demand for a change of treating physician pursuant to *Labor Code* §4616.3(c). In that same correspondence the Respondents were advised that the names of the physicians within the MPN were not known to Petitioner or her attorneys. (Exhibit "2.") Petitioner's attorney requested a list of the names of the physicians available within the MPN. Thereafter,

Respondents failed to provide the requested MPN list and failed to make the requested change of MPN physician.

On October 23, 2009, Petitioner, through her attorney, sent a letter to ESIS notifying it that she was changing primary treating doctors to "Advanced Care Specialists (but not limited to) Mark Nario, D.C." In addition, the letter pointed out that the Respondents had failed to comply with MPN notice requirements. (Exhibit "2," 6-7.)

On October 31, 2009, Petitioner stopped treating with the Respondents' MPN doctor and elected to self procure treatment outside of the MPN because she felt her hip was not getting better and the treatment was "doing her more harm than good." (Exhibit "1," 3:20-25, 4:4-5.) Morever, Respondents never told her how she could go about changing doctors within the MPN. (Exhibit "1," 4:6-7.)

Dr. Nario evaluated Petitioner and prescribed treatment including physical therapy. (Exhibit "1," 4:8-10; Exhibit "3," 8-10.) He opined that the Petitioner was temporarily disabled. (Exhibit "3," 10.)

### B. Trial and Award of Temporary Disability Benefits

ESIS refused to comply with the findings of Dr. Nario and denied Petitioner temporary disability benefits. As a consequence, the issue of

whether Petitioner was entitled to temporary disability benefits went to trial on July 22, 2009. Petitioner offered Dr. Nario's medical report to substantiate her claim for temporary disability. (Exhibit "1," Applicant's 4; Exhibit "4," 13-21; Exhibit "5," 26; and Exhibit "6," 27-32.)

Respondents presented no evidence to contest Dr. Nario's findings. *Labor Code* §4062.2 sets forth the manner in which a party may object to the reports of treating physicians through the Qualified Medical Evaluator (QME) process. Respondents failed to avail themselves to the QME process.

In the end, the WCJ awarded Petitioner temporary disability benefits based on Dr. Nario's medical report. The WCJ rejected Respondents' contention that reports of non-MPN doctors were inadmissible, observing that "[r]ecords from treating doctors have always been admissible for the reason that such doctors are familiar with the patient, generally on a long time basis, and entitled to great weight." (Exhibit "6," 27-32.)

### C. Petition for Reconsideration and En Banc Decisions

Respondents filed a petition for reconsideration from the WCJ's decision on the grounds that the WCJ acted in excess of his powers by considering a non-MPN report on the issue of temporary disability.

(Exhibit "7," 34-40.) An en banc Workers' Compensation Appeals Board ("WCAB") granted the petition for reconsideration and ruled that the report of Dr. Nario, a non-MPN treating physician was inadmissable under *Labor Code* §4616.6 and rescinded the award of temporary disability benefits. (Exhibit "9," 50-51; Exhibit "10," 52-68.)

Two of the seven Commissioners filed dissenting opinions as to the WCJ's discretion to consider non-MPN doctors' reports to determine the issue of compensation. As one Commissioner observed, under Article 2.3, MPN doctors have exclusive control over issues of diagnosis and treatment. To extend that control to issues of compensation, the Commissioner opined, *"goes beyond the MPN statutory mandate and gives no effect to sections 4605 and 5703(a)."* (Exhibit "10," 63:3-27, 64-68:1-7.)

Because the WCAB ruled on matters not raised at trial, the Petitioner was newly aggrieved and filed a petition for reconsideration of the en banc decision which was granted. (Exhibit "11," 69-92.) In its second en banc decision, the WCAB reaffirmed its prior holding that reports of non-MPN treating physicians are inadmissible. (Exhibit "14," 131-133; Exhibit "15," 134-151.) The same two Commissioners, once again, filed dissenting opinions, rejecting the majority's position that non-MPN medical reports

are inadmissible under any circumstances. (Exhibit "15," 147:3-26, 148-151:1-26.) The dissent observed:

> While Legislative intent is not always apparent, it strains credulity to assume that in enacting section 4616.6, the legislature intended that by exercising the right to obtain medical treatment at their own expense, injured workers would preclude themselves from receiving benefits for their industrial injuries. Moreover, the majority has removed the discretion of the WCJ to admit the reports of non-MPN treating physicians in all cases and circumstances where there is a validly established and properly noticed MPN, apparently creating for the first time an exception to section 5703(b), which was enacted in 1937. (Exhibit "15," 150:19-24.)

**D. Petition for Writ of Review and Request for Publication**

Petitioner filed a timely petition for writ of review which was granted. The Second District Court of Appeal annulled the en banc decision of the WCAB and held that the rule of exclusion laid down by

*Labor Code* §4616.6 under the MPN statutes applies only when there has been an independent medical review pursuant to *Labor Code* §4616.4. (Opinion, pg. 8.) Upon the request of the Petitioner and amicus California Applicants' Attorneys Association, the decision in *Valdez* was published.

## LEGAL DISCUSSION

## I

## BACKGROUND OF THE MEDICAL PROVIDER NETWORK

In 2004, the MPN statutes (*Labor Code* §§4616-4616.7) were enacted as part of a comprehensive reform of the workers' compensation system. The MPN statutes which are found under Chapter 2, Article 2.3 of the Act, authorize an employer to create networks or MPN's composed of doctors chosen exclusively by the employer or its insurance carrier. (*Labor Code* §§4600, 4616(a)(1).) The goal of the MPN statutes was to save costs by requiring an injured employee treat *at the employer's expense* within the MPN only. (See *Brodie v. Workers' Comp. Appeals Board* (2007) 40 Cal.4th 1313, 1329 [57 Cal.Rptr.3d. 644].)

The MPN statutes describe the circumstances under which the employer may be held liable for the medical costs of the diagnosis and

treatment of an injured employee. These statutes expressly provide that an employer may control an injured worker's treatment *only if* the injured worker treats within the employer-controlled MPN. (*Labor Code* §4616.3(b).)

With a few noteworthy exceptions, the MPN statutes relieve an employer from paying for the cost of medical treatment if an injured worker elects to treat with a physician of her own choice outside of the MPN. *Labor Code* §4605 expressly allows an injured employee to self-procure medical treatment regardless of whether there is a validly established and properly noticed MPN. Likewise, an employee has the right to treat outside of the MPN with a physician of her own choice when an employer does not create a valid MPN or if the employer fails to meet the statutory notice requirements (failing to place the employee on notice of the MPN and failing to provide the employee with instructions on how to use the MPN). (*Knight v. UPS* (2006) 71 Cal.Comp.Cases 1423, 1430-1434.)

The rules for creating an MPN are rather lax. An employer is permitted to maintain an MPN even if the MPN does not meet the statutory requirements for its creation or existence. *Labor Code* §4616(b) provides that where the Administrative Director fails to approve the MPN within sixty days of the employer's application, the MPN is deemed approved and

is added to the Administrative Director's official MPN list. A WCJ may simply take "judicial notice" of the MPN list regardless of whether the MPN meets the minimum requirement under the Act. (See *Clifton v. Sears Holding Corporation* , 2012 Cal.Wrk. Comp. P.D. LEXIS 1, 15.)

Under the MPN's statutory scheme, the employer and its insurer hand picks each physician contained in the MPN. The employer's insurer may remove physicians from its MPN at any time and without cause (even after the employee has commenced treatment with an MPN physician) (*Labor Code* §4616.1(c)). Furthermore, despite the statute's "goal" concerning the composition of the doctors within the MPN, there is no legal requirement that the employer's insurer select any doctor with whom it objects. (*Labor Code* §4616(a)(1).)

For an employee who stays within the MPN and is treated at the employer's expense, the MPN statutes contains a multi-level dispute resolution process to address disputes either with diagnosis or treatment [not temporary or permanent disability]. (*Labor Code* §4616.3(c).) The MPN allows an injured employee to obtain a second or even third opinion from another of the employer's doctors within the MPN network. (*Id.*) If the second and third opinions are unacceptable, then employee may apply for an "independent medical review" ("IMR") to be conducted by a doctor

selected by the medical director. (*Labor Code* §§4616.4(b).) The IMR is the last word on the nature and extent of the employer's liability to furnish care within the MPN only. (*Labor Code* §§4616.4 and 4616.6.)

In sum, the MPN statutory scheme only applies when an injured worker elects to treat *at the employer's expense*. Rather than a general rule of exclusion, the limitation on the use of "other reports" under *Labor Code* §4616.6 pertains exclusively to controversies arising out of the MPN.

Contrary to the Respondents' contention, the MPN statutes do not preclude an injured worker from electing to self-procure medical treatment or bar the use of medical reports prepared by non-MPN physicians to determine eligibility for benefits. Excluding all non-MPN medical reports would give the employer an unfair advantage in collecting medical evidence from physicians of its own choice while barring the injured worker from doing likewise.

## II

## RESPONDENTS HAVE NOT ARTICULATED ANY LEGITIMATE GROUNDS FOR GRANTING REVIEW

Respondents contend that the Opinion merits review because the MPN was designed to be the "exclusive means of diagnosis and treatment

with regard to workers' compensation benefits" and was meant to bar an injured worker from offering any outside "doctor-advocate" reports for *any reason*. (Petition, pgs. 3-4.) Their contention is without merit. They have misconstrued the MPN statutes and interpreted *Labor Code* §§4605 and 5703(a) in such a manner that would render the plain and unambiguous language of these statutes meaningless and inoperable.

The MPN has nothing to do with medical treatment procured *at the injured worker's expense*. When our Legislature passed the MPN statutes, it left *Labor Code* §4605 undisturbed. This section provides that "*[n]othing* contained *in this chapter* shall limit the right of the employee to provide, at his own expense, a consulting physician or any attending physician whom he desires." [Emphasis added.] *"This chapter"* refers to Chapter 2 of Division 4, Article 2 of the Act. The MPN statutes are found under a different Article, Article 2.3 of Chapter 2.

*Labor Code* §4605 is a statutory restatement of an employee's constitutional right to direct and control her own medical treatment decisions without encumbrance, *at the employee's own expense*. (*Donaldson v. Lungren* (1992) 2 Cal.App.4th 1614, 1620 [4 Cal.Rptr.2d 59]; *Cruzan*, 497 U.S. at 269). Respondents have not cited any authority for their assertion that the MPN statutes *mandate* that an injured employee treat

*exclusively within* the employer-controlled MPN at the risk of being denied all benefits under the Act.

Similarly, the Legislature did not modify or repeal *Labor Code* §5703(a) which provides in part that "[t]he appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of *any fact in dispute*. . .(a) Reports of attending or examining physicians." Since 1932, numerous decisions have held that the reports of treating physicians are admissible in workers' compensation cases to resolve medical-legal disputes. (*Union Lumber Co.*, 124 Cal.App. at 588; *Los Angeles v. Industrial Acci. Com.*, 215 Cal.App.2d at 313; *Heath* ,254 Cal.App.2d at 240.)

The application of §5703 has not changed since the passage of SB 899 and the enactment of *Labor Code* §4616.6. Several WCAB decisions have continued to allow the introduction of reports of non-MPN physicians. (See *Salgado*, 2009 Cal.Wrk. Comp. P.D. Lexis 279; *Guerrero,* 2010 Cal.Wrk. Comp. P.D. Lexis 47; *Martinez*, 2010 Cal.Wrk. Comp P.D. Lexis 108; and *Peak* , 2010 Cal.Wrk. Comp. P.D. Lexis 308).

Accepting Respondents' assertion that *Labor Code* §4616.6 presents a general rule of exclusion would mean that *relevant medical reports* prepared by a qualified medical examiner, agreed medical examiner,

independent medical examiner or treating physicians through group health plans (i.e. Kaiser) outside the MPN would all be disregarded in determining eligibility for compensation under the Act. In the event of a related third-party claim, the injured worker would be prevented from offering expert medical opinions concerning causation or to rebut defenses raised by the employer simply because these doctors were outside the MPN. Such a narrow interpretation would lead to an absurd result - denying benefits to injured workers on accepted claims. (*Labor Code* §3202.)

## III

## THE VALDEZ DECISION DOES NOT "THREATEN" OR "UNDERMINE" THE PURPOSE OR INTENT OF THE MPN

In their petition, Respondents argue that the *Valdez* Opinion "threatens" and "undermines" the MPN statutory scheme. This Court should disregard such hyperbole because it is nonsensical.

The MPN remains the exclusive mechanism for medical treatment *at the employer's expense* (under a properly noticed and validly established MPN.) The MPN, as enacted, controls the medical costs incurred by an employer for the diagnosis and treatment of an injured worker. There is no provision within the MPN statutes that bars an injured employee from

treating outside the MPN *at no cost* to the employer, the ultimate cost-saving measure. (See *Labor Code* §4605; *Perrillo,* 157 Cal.App.4th at 936.)

Furthermore, the MPN statutes do not give the employer the exclusive right to collect medical evidence and to bar all other relevant medical reports. As the Court of Appeal astutely noted, a rule excluding all medical reports for the "sole reason that the report was not prepared by an MPN physician would eviscerate the right guaranteed by section 4605." (Opinion, pg. 11.)

Furthermore, numerous statutes and regulations within the Act expressly permit the use of a report prepared by a treating physician in deciding medical-legal disputes. A treating physician is not defined exclusively as a physician within the employer-controlled MPN. (*See Cal. Code Regs.*, tit. 8, Rule 35(a)(1), *Labor Code* §§ 4060(b), 4061(b), 4061.5, 4062(a), 4062.3(a), 4064(d), 4610(e), and 4628(a) and (e).

It is axiomatic that the vast majority of injured workers prefer to treat within the MPN at the expense of the employer. The MPN statutory scheme, however, has not eliminated an injured employee's constitutional and statutory right to procure medical treatment at their own expense.

## IV

## THE COURT OF APPEAL PROPERLY REJECTED RESPONDENTS' UNTENABLE POSITION THAT LABOR CODE §4616.6 SHOULD BE CONSTRUED AS A BROAD RULE OF EXCLUSION

*Labor Code* §4616.6 provides that "[n]o additional examinations shall be ordered by the appeals board and no other reports shall be admissible to resolve any controversy arising *out of this article.*" (Emphasis added.) The Court of Appeal correctly interpreted the phrase "*out of this article*" as specifically referring to Article 2.3 [*Labor Code* §§4616-4616.7]. As the Court of Appeal observed "[i]t does not make sense . . .to construe section 4616.6 as a general rule of exclusion, barring any use of medical reports other than those generated by the MPN. Section 4616.6 states nothing of the sort. If the Legislature intended to exclude all non-MPN medical reports, the Legislature could have said so, it did not." (Opinion, pg. 8.)

Respondents' contention that the limitations under *Labor Code* §4616.6 reach beyond the MPN, is simply not supported by the plain and ordinary meaning of the statute. Section 4616.6 does not address reports prepared by treating physicians under *Labor Code* §4605 or medical reports

used to determine benefits. Section 4616.6 applies exclusively to the MPN and the procedure for resolving disputes concerning diagnosis or treatment within the MPN only. Its sole purpose is to limit the number of opinions an injured worker may obtain to establish employer liability for additional medical treatment within the MPN.

To accept the Respondents' reading of the statute would require this Court to ignore the plain and ordinary meaning of §4616.6 and to rewrite the statute based on Respondents' speculation as to the Legislature's "inferred intent." Such a task is beyond the role of the courts.

## V

## BY ITS PLAIN AND UNAMBIGUOUS LANGUAGE, LABOR CODE §4616.6 ONLY APPLIES TO CONTROVERSIES WHEREIN THE INJURED WORKER IS SEEKING ADDITIONAL TREATMENT WITHIN THE MPN

In reviewing §4616.6, the Second District Court of Appeal properly concluded that the Legislature's use of the words "no additional examinations" and no "other reports" means reports in addition to the IMR report. An IMR is performed if a controversy relating to diagnosis or treatment within the MPN is not resolved through the multi-level dispute

process. (*Labor Code* §4616.4(b).) The appeal process occurs only if an injured employee disputes a "diagnosis" or "treatment prescribed" within the MPN. (*Id.*) *Labor Code* §4616.3 and §4616.4 describe the process by which an injured worker may seek proof of her need for additional medical treatment within the MPN. Section 4616.6 restricts additional efforts (once an IMR has been obtained) to show the employer's liability to furnish further medical treatment within the MPN.

*Labor Code* §4616.6 applies only to evidence that is obtained to resolve a "controversy arising out of . . ." any of the eight statutes of Article 2.3, all of which relate solely to the issues of medical treatment and diagnosis by physicians within the MPN. Article 2.3 does not mention temporary disability, permanent disability, or the adjudication of such claims, which are decided outside the MPN.

In this case, there was *no dispute* regarding diagnosis or treatment. The sole issue before the WCAB was Petitioner's entitlement to temporary disability (an issue outside the purview of Article 2.3). At trial, the WCJ relied upon the report of the Petitioner's treating physician, the only medical report offered into evidence. The WCJ accepted that report into evidence and issued an award of temporary disability. (Exhibit "6," 31-32.)

Thus, the Second District Court of Appeal correctly opined that "the rule of exclusion laid down by section 4616.6 applies only when there has been an independent medical review performed under the authority of section 4616.4." (Opinion, pg. 2.) Given the context of this case and the clear and unambiguous language of *Labor Code* §§4605 and 5703(a), Respondents have failed to justify review of the Opinion based on their distorted interpretation of Article 2.3 including *Labor Code* §4616.6.

## RESPONDENTS' REQUEST FOR DEPUBLICATION SHOULD BE REJECTED

*California Rules of Court*, Rule 8.1125(a)(2) provides that a request for depublication "must not be made part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages." In this case, Respondents' request for depublication which is found on page 29 of their 31-page brief, does not comply with the Rule. Accordingly, their Request should be denied on procedural grounds alone.

Even if this Court should consider their request, it should be denied. The publication of the Opinion should be left undisturbed because of the ubiquitous application of the en banc decision by administrative law personnel and by members of the workers' compensation claims

community. Dozens if not hundreds of hearings are sought every week due to the erroneous denial of benefits based on an allegation that the injured worker is "treating outside of the MPN." The Opinion in this matter provides needed clarity and will bring relief to the overburdened workers' compensation calendar.

## CONCLUSION

For the foregoing reasons, Petitioner, Elayne Valdez respectfully requests that Respondents' petition and request for depublication be denied.

DATED: August 16, 2012.

Respectfully submitted,

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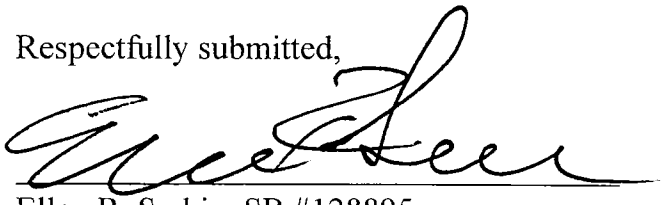
## CERTIFICATE OF COMPLIANCE

Counsel of Record, hereby certifies that, pursuant to California *Rules of Court*, the enclosed ANSWER TO PETITION FOR REVIEW was produced using 13-point type, including footnotes, and contains approximately 4,190 words. Counsel relies on the word count of the computer used to prepare this Brief.

DATED: August 16, 2012.

Respectfully submitted,



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## PROOF OF SERVICE

STATE OF CALIFORNIA
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I am employed in the county of Los Angeles, State of California in the offices of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action; my business address is 300 East San Antonio Drive, Long Beach, California 90807-0948.

On the date given, I served the following document:

**ANSWER TO PETITION FOR REVIEW**

on the interested parties through their attorneys of record by placing true and correct copies thereof addressed as shown on the attached list, as designated below:

(X) BY FIRST CLASS MAIL (C.C.P. §§ 1013a, et seq.): I caused said document(s) to be deposited in the United States Mail in a sealed envelope with postage fully prepaid at Long Beach, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown on this declaration.

() BY EXPRESS MAIL (C.C.P. §§ 1013(c)(d), et seq.): I caused said document(s) to be deposited with an express service carrier in a sealed envelope designed by the carrier as an express mail envelope, with fees and postage prepaid.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service is made.

DATE: August 17, 2012

Carol Stephen

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| Clerk of the Court<br>CA. COURT OF APPEAL, 2nd District, Div. 7<br>300 S. Spring St., 2nd Fl., North Tower<br>Los Angeles, CA 90013 | |