IN THE CALIFORNIA SUPREME COURT

No. S206874

MARIA AYALA, et al.,

Plaintiffs and Appellants,

v.

ANTELOPE VALLEY NEWSPAPERS, INC.,

Defendant and Respondent.

After a Decision by the California Court of Appeal,
Second Appellate District, Division Four
Case No. B235484

Appeal from the California Superior Court, Los Angeles County
Case No. BC403405 (Judge Carl J. West)

ANSWER TO PETITION FOR REVIEW

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on their own behalf and on behalf of all others similarly situated

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I. INTRODUCTION

Defendant/Petitioner Antelope Valley Newspapers, Inc. ("AVP") seeks review of an opinion affirming certification of a class of newspaper home delivery carriers in a lawsuit alleging that AVP improperly classified the carriers as independent contractors rather than employees, thereby violating California Labor Laws. Desperately seeking reversal of class certification, Petitioner urges that the Second District Court's opinion diverges from established law, and not surprisingly Petitioner (an employer) relies on *Sotelo* and *Ali*, both of which denied certification to a class of workers. The petition for review should be denied because:

- The opinion below adopted the same law as the Courts of Appeal in *Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639 (*Sotelo*) and in *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333 (*Ali*).
- The opinion below is consistent with *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).
- The facts and circumstances in the opinion below are significantly different from the facts and circumstances in *Sotelo* and *Ali*, and these unique facts and circumstances were determinative in the decisions reached in each of these three cases.

II. REVIEW SHOULD BE DENIED BECAUSE IT IS NOT NECESSARY "TO SECURE UNIFORMITY OF DECISION" OR "TO SETTLE AN IMPORTANT QUESTION OF LAW"

A. The Court Below Focused on the "Nature of the Service Relationship" Just like the Courts of Appeal Did in *Sotelo* and *Ali*

Petitioner claims that the opinion below "is contrary to settled law establishing that the focus of [the secondary] factors is on the nature of a specific service relationship." (Pet. p. 3) Petitioner asserts that, with regard to this "settled law," the Court below is "in conflict with" *Sotelo* and *Ali.* (Pet. p. 1) These assertions are not true because the opinion below and *Sotelo* and *Ali* all relied upon the same "nature of a service relationship" rule set forth in *Borello* which holds that courts are to look to *Borello's* secondary factors which are indicia of whether an employment or independent contractor relationship exists, such as the right to discharge at will. This is reflected in direct quotes from each of the these cases set forth in the chart below.

Ayala	*Sotelo*	*Ali*
"However, the courts have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While	"[C]ourts have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While	"While the right to control work details is the most important factor, there are also 'secondary' indicia of the nature of a service relationship. (*Borello, supra, 48 Cal.3d at p. 350*) The secondary

conceding that the right to control work details is the 'most important' or 'most significant' consideration, the authorities also endorse several 'secondary' indicia of the nature of a service relationship. *([Borello] at p. 350)*" (Opn. at p. 7) (Emphasis added.)	conceding that the right to control work details is the 'most important' or 'most significant' consideration, the authorities also endorse several 'secondary' indicia of the nature of a service relationship." (*S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341, 350.*" (*Sotelo,* 207 Cal. App. 4th at p. 656) (Emphasis added.)	factors are principally derived from the Restatement Second of Agency ...." (*Ali*, 176 Cal. App. 4th at p. 1347) (Emphasis added.)

The above language taken from each of the three cases show that the Court below adopted the same "nature of a service relationship" rule as the Courts did in *Sotelo* and *Ali.*

B. *Ayala, Sotelo* and *Ali* All Used the Same Tests Regarding Secondary Factors

Petitioner states that the opinion below and *Sotelo* and *Ali* are "irreconcilable" because "*Sotelo* and *Ali* [] say that variation in the secondary factors is critical to the analysis of independent contractor status and weighs against certification, and the decision below, [] says that such variation is irrelevant." (Pet. p. 3) However, with regard to variation in factors, including secondary factors, all three courts adopted the same exact test of predominance, as

reflected in the chart below:

Ayala	*Sotelo*	*Ali*
"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Opn. at p. 5) (Emphasis added.)	"The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sotelo,* 207 Cal. App. 4th at p. 651) (Emphasis added.)	"The 'community of interest' requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Ali,* 176 Cal. App. 4th at p. 1344) (Emphasis added.)

All three courts also adopted the same exact law regarding the intertwining and weighing of secondary factors. In fact, they all cited the same exact language from *Borello*, as reflected in the chart below:

Ayala	*Sotelo*	*Ali*
"The court cautioned that the individual [secondary] factors – from the Restatement as well as the six-factor test – 'cannot be applied mechanically as separate tests; they are inter-twined and their weight depends often on particular combinations.' ([*Borello] at p. 351*)" (Opn. at p. 8)	"These [secondary] factors 'cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.' (*Borello, supra, at p. 351.*)" (*Sotelo,* 207 Cal. App. 4th at p. 657)	"Generally, ... the [secondary] individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations. (*Borello, supra, at p. 351.*)" (*Ali,* 176 Cal. App. 4th at p. 1348)

Further, as shown below, all three Courts adopted the same test regarding individualized factors (including secondary factors) and evidence and whether they can be effectively managed.

Ayala	*Sotelo*	*Ali*
"[A court] must determine whether the elements necessary to establish liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence." (Opn. at p. 6)	"Individual issues do not render class certification inappropriate so long as such issues may effectively be managed." (*Sotelo,* 207 Cal. App. 4th at p. 652)	"We find no abuse of discretion, because when individual issues of fact predominate over common issues, as here, 'a class action would be extremely difficult to manage ...'" (*Ali*, 176 Cal. App. 4th at p. 1353)

Specifically, the Court below ruled: "On remand, the trial court shall certify the class as to the fourth through eighth causes of action unless it determines that individual issues predominate as to some or all of them, or that class treatment is not appropriate for other reasons." (Opn. at p. 22) This test regarding predominance and individual issues is the same test that was applied by the Courts of Appeal in *Sotelo* and *Ali*, as described above.

In sum, the opinion below and *Sotelo* and *Ali* are not "irreconcilable" as asserted by Petitioner, but rather they all adopted the same tests (predominance, weight, effective management) regarding the relevant factors in the employee versus independent contractor determination, including secondary factors.

C. The Opinion below Is Consistent with *Borello*

The above direct quotes from the opinion below refute Petitioner's contention that "the decision below is also inconsistent with this Court's decision in *Borello.*" (Pet. p. 8) The above quotes regarding "nature of service relationship" and the intertwining and weighing of secondary factors come straight from *Borello*, and the opinion below adopted them. Further, as explained in the next section, the opinion below expressly pointed to and adopted the multiple secondary factors described in *Borello*.

D. Petitioner's "Uncertainty for Businesses" Claim Is Unfounded Because the Opinion below Adopted the Secondary Factors Set Forth in *Borello*

Petitioner asserts that the opinion below "will create significant uncertainty for businesses that previously have been able to rely on the *Borello* [secondary] factors in determining the status of persons providing services to them but that now must attempt to apply the novel test announced by the Court of Appeal." (Pet. p. 21) First, as shown in the preceding sections, the opinion below did not apply a "novel test," but actually adopted the same tests as the Courts of Appeal did in *Sotelo* and *Ali*. Further, as shown in the chart below, all three courts pointed to the itemized list of secondary factors set forth in *Borello*.

Ayala	*Sotelo*	*Ali*
Those secondary indicia include the right to discharge at will, without cause, as well as other factors 'derived principally from the Restatement Second of Agency.' (Id. at pp. 350-351.) Those factors include: '(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job;	"The secondary factors usually considered by courts are '(1) whether there is a right to fire at will without cause; (2) whether the one performing services is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the services are to be performed; (7) the method of payment, whether by the time or by the job; (8) whether or not the	"The secondary factors are principally derived from the Restatement Second of Agency, and include '(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of

(g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.' ([*Borello*] *at p. 351.*) In addition to the Restatement factors, the Supreme Court noted with approval a six-factor test developed by other jurisdictions. In that test, '[b]esides the 'right to control the work,' the factors include (1) the alleged employee's opportunity for profit or loss depending on his managerial skill; (2) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer's business.' (*Borello, supra, 48 Cal.3d at pp.*	work is a part of the regular business of the principal; (9) whether or not the parties believe they are creating an employer-employee relationship; (10) whether the classification of independent contractor is bona fide and not a subterfuge to avoid employee status; and (11) the hiree's degree of investment other than personal service in his or her own business and whether the hiree holds himself or herself out to be in business with an independent business license; opportunity for profit or loss depending on his or her managerial skill; (12) whether the hiree has employees; (13) the hiree's contractor is bona fide and not a subterfuge to avoid employee status; (14) whether the service rendered is an integral part of the alleged employer's business.' (*JKH Enterprises, Inc. v. Department of*	employer-employee.' (*Borello, supra*; see Rest.2d Agency, § 220.) " (*Ali,* 176 Cal. App. 4th at pp. 1347-1348)

354-355.)" (Opn. at pp. 7-8)	*Industrial Relations (2006) 142 Cal.App. 4th 1046, 1064, fn. 14.*" (*Sotelo*, 176 Cal. App. 4th at p. 656-657)	

Thus, the Court below has not created any "uncertainty" for businesses regarding the *Borello* secondary factors because it expressly adopted them, just like the Courts of Appeal did in *Sotelo* and *Ali*.

E. The Facts in *Ayala, Sotelo* and *Ali* Are Not Similar, as Petitioner Alleges

Petitioner criticizes the Court below for finding that *Sotelo* and *Ali* involved facts and circumstances unique to the parties in those cases (Pet. p. 3), however, in actuality, the facts and circumstances were unique in each case. Petitioner asserts that "all three cases [*Ayala, Sotelo* and *Ali*] involve similar allegations and similar variations among the members of the putative classes" (Pet. p. 2), but this assertion is false. In truth, there are significant factual variations between the three cases that are at the root of the decisions made by the Courts of Appeal in each of the cases.

1. This Case Involves Only One Alleged Employer with Uniform Policies; in Contrast, *Sotelo* Involved 30 Alleged Employees with Varying Policies

One important distinguishing fact is that, in the opinion below, there was a single alleged employer (AVP) and it was undisputed that this one alleged

employer had policies that apply to all carriers: "Both sides argue that AVP has policies that apply to *all* carriers." (Opn. at p. 18) (Emphasis in original.)

In contrast to the single alleged employer in the opinion below, there were approximately 30 alleged employers in *Sotelo*. The Court of Appeal in *Sotelo* stated that one reason for denying certification was "the existence of about 30 potential employers in this case and the differences in their policies and procedures." (*Sotelo*, 207 Cal.App.4th at p. 662.)

2. Unlike *Sotelo*, this Case Involves Virtually Identical Contracts Signed by All Class Members

The Court below found that "all of the carriers performed the same job under virtually identical contracts" (Opn. at p. 2), and it described in detail the terms of those contracts:

> The agreements set forth the requirements for what is to be delivered. They require the carriers to deliver the newspapers (and other products that AVP provides) in a safe and dry condition. They prohibit the carriers from delivering any part of the newspaper (such as advertising inserts or coupons) separately, or from inserting into, attaching to, or stamping upon the newspaper any additional matter. They also prohibit the carriers from inserting the newspapers into any imprinted wrapping, covering, or container that has not been approved by AVP, and require carriers to use certain types or colors of bags for certain products.
>
> In addition to the daily newspaper AVP publishes, the agreements require carriers to deliver a weekly publication, the Antelope Valley Express. AVP also requires carriers to include certain items, such as

> advertising inserts or coupons, with the newspapers they deliver.
>
> The agreements also set forth requirements related to when the newspapers are to be delivered. Some of them require the carrier to pick up their newspapers by a certain deadline each day, and all of them require the carrier to complete delivery by a certain time.
>
> Under the agreements, the carrier is required to furnish the carrier's own vehicle and provide AVP with copies of the carrier's driver's license, Social Security number, and proof of automobile and workers' compensation insurance. The agreements also state that the carrier has no right, title, interest, or property right to subscriber information, may not disclose to third parties the subscriber list or route records, and must return all records to AVP upon termination of the contract. In addition, the carrier must give AVP an accurate updated subscriber delivery list when requested by AVP, and must cooperate with auditors for Verified Audit Circulation or the Audit Bureau of Circulations when requested.

(Opn. at pp. 9-10)

Further, the Court below noted that: "AVP did not dispute the existence of the terms." (Opn. at p. 10)

In contrast, there was no finding in *Sotelo* that the carriers performed the same job under virtually identical contracts. Quite the opposite. There it was found that "the proposed class contains an unknown number of members who have no recorded relationship with the respondents." (*Sotelo*, *supra*, 207 Cal.App.4th at p. 649 (Emphasis added.) The Court of Appeal in *Sotelo* noted that the trial court had expressed concern about "the determination of whether a person who signed

no carrier contract with a defendant nonetheless bagged and delivered papers for a defendant during the class period ..." (*Id.* at p. 648) (Emphasis added.) At the class certification hearing, the plaintiffs had proposed limiting the class to "those who had signed a contract with another class member and those who had received a section 1099 form." (*Id.* at p. 650.) The trial court rejected this proposal on the ground that there were "about 5,000 distributors" and "they may or may not have written contracts with their carriers and their carriers' helpers, they may or may not have issued 1099s." *(Id.)* The *Sotelo* Court also noted that "appellants point to no evidence in the record that proves the characteristics of the majority." (*Id.* at p. 659.)

3. Unlike *Ali*, this Case Involves Evidence of a Standardized Relationship Between the Alleged Employer and the Class Members

Significant factual differences also exist between *Ali* and the opinion below. In *Ali* – unlike in the opinion below – plaintiffs provided no evidence of uniform policies established by the company for the workers. The *Ali* Court examined *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal., Oct. 31, 2006, No. C-05-620 VRW) (2006 U.S. Dist. LEXIS 82029), where class certification had been granted, and it found that the alleged employer in *Chun-Hoon* had "standardized its relationship with the distributors" and had "established other uniform policies toward distributors." (*Ali,* 176 Cal.App.4th at 1351.) The *Ali* Court concluded that "the facts are distinguishable [in *Ali*] from those in *Chun-Hoon.*" (*Id.*) In contrast,

in the opinion below, Plaintiffs presented evidence of uniform policies and the standardization of AVP's relationship with the carriers. For example:

- "Plaintiffs submitted several examples of bundle tops, which AVP stipulated were representative of the bundle tops it provided to carriers on a daily basis." (Opn. at p. 11 fn. 5) (Emphasis added.) "The bundle tops inform the carrier about customers' requests regarding the placement of their papers and whether to start or stop delivery to certain customers, and provide instructions about inserts to the newspaper and/or use of colored bags on that day." (Opn. at p. 11.)
- "Plaintiffs submitted examples of route lists, which AVP stipulated were representative of route lists it provided to all carriers." (Opn. at p. 11 fn. 6.) (Emphasis added.) "[P]laintiffs contended that route lists that AVP provides to all carriers show the control AVP exercises, because the lists contain instructions about customer preferences or requests regarding how the newspapers are delivered." (Opn. at p. 11.)

No such evidence of uniform policies and standardization of relationship were presented by the plaintiffs in either *Sotelo* or *Ali*.

Further, unlike in the opinion below, the *Ali* Court found that "common questions pertaining to the *fact* of damage do not predominate." (*Id.* at 1349)

(Emphasis in original.)

Thus, contrary to Petitioner's assertions, the facts were not "largely the same" in the three cases, but rather they were significantly different. (Pet. p. 14)

4. The Court below Correctly Focused on the Common Evidence and the Nature of the Relationship

Also lacking foundation is Petitioner's complaint that the Court below erroneously determined that "the focus of the secondary factors is mostly on the job itself." (Pet. p. 2) What Petitioner fails to acknowledge is that the Court's determination regarding secondary factors was made in the context of the circumstances in this case where it is undisputed that there is a standard contract with work details signed by all class members and where it is further undisputed that the company has policies that apply to all class members. A recent case, *Bradley v. Networkers Int'l. LLC* (2012) 2012 Cal. App. LEXIS 1261, had circumstances similar to those in the case below, and it arrived at the same determination as the Court below. The *Bradley* Court found that "Networkers required each worker to sign a standard contract." (*Id.* at *4.) That standard contract contained terms similar to those in the AVP standard contracts, and the *Bradley* Court found that it "would constitute the focus of the proof:"

> [Plaintiffs] submitted a copy of Networkers' standard Independent Contractor Agreement, and produced evidence that it was signed by each putative class member. The agreement contained numerous provisions reflecting an independent contractor relationship, including that the worker was

> "responsible for determining when, where and how the Work is performed"; the worker was entitled to delegate the work or designate other individuals to perform the work; the worker could bid for the jobs; and the worker was required to maintain liability, errors and omissions, and workers compensation insurance. (*Id.* at *6.)
>
> Additionally, although Networkers' standard contract stated that the workers had the right to control the manner and means of the work, including that the workers were permitted to subcontract the work, Networkers had specific time and place job requirements that all workers were required to follow, and the workers could not deviate from these rules or delegate the work.
> These common facts would be relevant in each class member's case against Networkers and would constitute the focus of the proof on the independent contractor/employee issue. (*Id.* at *34.)

The defendants in *Bradley* argued that there were differences among the workers, but the Court found that the "global nature of the relationship" is the correct focus where there are "consistent companywide policies applicable to all employees:"

> Networkers argued below that there would be a need for individualized proof because of differences among the workers pertaining to job titles, skill levels, pay grades, and the specific type of repair or installation work. However, with respect to the issues "likely to be presented" in the litigation (*Brinker, supra, 53 Cal.4th at p. 1025*), these distinctions are not significant. The fact that some workers engaged in repair work and others engaged in installation work, or that workers had different pay grades or worked for different lengths of times on particular days, is not central to the issue whether the workers here were employees or

> independent contractors under the *Borello* or *Martinez* tests. (*See Martinez, supra, 49 Cal.4th at p. 76; Borello, supra, 48 Cal.3d at pp. 350-351.*) Under the analysis, the focus is not on the particular task performed by the employee, but the global nature of the relationship between the workers and the hirer, and whether the hirer or the worker had the right to control the work. **The undisputed evidence showed Networkers had consistent companywide policies applicable to all employees regarding work scheduling, payments, and work requirements**. (*Id.* at *35.) (Emphasis added.)

Here, as in *Bradley*, it is undisputed that there is a standard form contract signed by all class members and there are company policies applicable to all class members, and thus, the Court below correctly determined that under such circumstances the focus should be on that common evidence and the global nature of the relationship.

As pointed out in both the Petition (at p. 17) and the CELC *amicus* brief (at p. 6), "'each service arrangement must be evaluated on its facts, and the dispositive circumstances may vary from case to case.' (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal. App. 4th 72, 87, quoting *Borello*, 48 Cal. 3d at 354.)" Here, the dispositive circumstances in the opinion below were very different from the dispositive circumstances in *Sotelo* and *Ali*, and that is why the opinion below found class certification was proper and why the *Sotelo* and *Ali* Courts found that class certification was not proper. All three cases applied the same *Borello* tests, but they arrived at different conclusions because of the different dispositive

circumstances in each case.

The real objection that Petitioner and *amicus curiae* (all employers) have to the opinion below is that it granted certification to a class of workers, and the real reason they like *Sotelo* and *Ali* is because both of those cases denied certification to a class of workers.

III. THE OTHER PENDING CASES MENTIONED BY PETITIONER

Petitioner says that the opinion below creates a "problem" with regard to "a number of" pending cases which are identified in a footnote. (Pet. p. 14) However, the opinion below is actually factually very similar to these other pending cases as they all involve standardized contracts signed by all class members with a single alleged employer and all have company policies that apply to all class members. One reason for filing this petition for review was to prevent the plaintiffs in those other pending cases from relying on the factually-similar opinion below, which, of course, would be beneficial to the defendants (employers) in those cases. Notably, counsel for Petitioner represents the defendants in three of the pending cases: (1) *Becerra v. McClatchy Co.* (Fresno Cnty. Sup. Ct. Pending, No. 08CECG04411AMS) where Plaintiffs' motion for class certification is set to be heard on March 5, 2013; (2) *Sawin v. The McClatchy Co.* (Sacramento Cnty. Sup. Ct., Pending, No. 34-2009-00033950-CU-OE-GDS), where class certification was granted in July 2011 and Defendants' motion for decertification is set to be heard on March 22, 2013; and (3) *Salgado v. The Dailey*

Breeze, et al. (Los Angeles County Sup. Ct. No. BC458074). Also notable, Seyfarth Shaw, counsel for *amicus* Employers Group, represents the defendants in another pending case, *Espejo v. The Copley Press* (San Diego County Sup. Ct. No. 37-2009-00082322-CU-OE-CTL) and defendants' motion for decertification is set to be heard on February 1, 2013.

IV. CONCLUSION

The petition for review should be denied, because Petitioners have failed to establish that review of the opinion is necessary "to secure uniformity of decision" or "to settle an important question of law." (Cal. Rules of Ct., Rule 8.500(b)(1).)

DATED: December 21, 2012 CALLAHAN & BLAINE, APLC

BY: _____
KATHLEEN L. DUNHAM
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CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE 8.204(c)
OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204(c) of the California Rules of Court, and in reliance on the count feature of the software used to prepare this document, I certify that the attached Answer to Petition for Review contains 4,601 words, including footnotes and exclusive of those materials not required to be counted under Rule 8.204(c)(3); is proportionally spaced; and has a typeface of 13 points.

DATED: December 21, 2012 CALLAHAN & BLAINE, APLC

BY: _____

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situated

PROOF OF SERVICE

Ayala, et al., v. Antelope Valley Newspapers, et al.
Court of Appeal Case No. B235484
Supreme Court Case No. S206874

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3 Hutton Centre Drive, Ninth Floor, Santa Ana, California 92707.

On **December 21, 2012,** I served the foregoing document(s) entitled:

ANSWER TO PETITION FOR REVIEW

on the interested parties in this action by placing [ ] the original **[X]** a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

[X] **BY FEDEX:** I deposited such envelope at Santa Ana, California for collection and delivery by Federal Express with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing packages for overnight delivery by Federal Express. They are deposited with a facility regularly maintained by Federal Express for receipt on the same day in the ordinary course of business.

[X] **BY MAIL:** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **December 21, 2012**, at Santa Ana, California.

Elena Richards

Ayala, et al., v. Antelope Valley Newspapers, et al.
Court of Appeal Case No. B235484
Supreme Court Case No. S206874

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