S219919

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOSHUA HAVER, individually and as successor-in-interest to LYNNE HAVER, deceased, *et al.*,

Plaintiffs, Appellants and Petitioners,

vs.

BNSF RAILWAY COMPANY,

Defendant and Respondent.

After A Decision By The Court Of Appeal,
Second Appellate District, Case No. B246527;
Los Angeles County Superior Court, Case No. BC435551

REPLY TO ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Plaintiffs, Appellants and Petitioners Joshua Haver, Christopher Haver, Kyle Haver, and Jennifer Morris (collectively, "Plaintiffs") hereby submit this reply to Defendant and Respondent BNSF Railway Company's ("Defendant BNSF" or "BNSF") answer to their petition for review.

INTRODUCTION

As shown by Plaintiffs in their petition for review, review in this case is "necessary to secure uniformity of decision," (Cal. Rules of Court, rule 8.500(b)(1)), because the no-duty finding by the majority in the Court of Appeal is contrary to the recognition of a duty of care under substantially similar circumstances in *Kesner v. Superior Court* (2014) 226 Cal.App.4th 251. (Pet. at 1-5, 12-27.) Additionally, review is warranted "to settle an important question of law," (Cal. Rules of Court, rule 8.500(b)(1)), namely, whether application of the duty factors identified in *Rowland v. Christian* (1968) 69 Cal.2d 108, 112-113 justifies a categorical exception to the fundamental duty of care established by *Civil Code* § 1714(a) in take-home or secondary toxic exposure cases under the circumstances involved here. (Pet. at 1-5, 27-34.)

Defendant BNSF disagrees. It argues that review should be denied because, like *Campbell v. Ford Motor Co.* (2012) 206 Cal.App.4th 15, this case addresses the issue of duty in the context of a take-home asbestos exposure claim based on a premises liability theory, whereas *Kesner* addressed the take-home duty issue in the context of "a *products liability*

claim." (Answer at 1-12 [italics in original].) As BNSF sees it, there is no need "to secure uniformity of decision" because "*Kesner* involved a distinct issue" and, thus, there is no disagreement between the majority's no-duty finding in this case and the *Kesner* court's recognition of a duty of care under the circumstances of that case. (*Ibid.*)

Additionally, BNSF argues that review is not necessary "to settle an important question of law" because the majority's no-duty finding is correct and because recognizing a duty of care under the circumstances of this case "would trigger an onslaught of questionable asbestos claims and render California an outlier among jurisdictions." (Answer at 2, 13-19.)

As discussed below, BNSF's arguments are meritless, as the majority's no-duty finding *is* in conflict with the *Kesner* court's recognition of a duty of care. The dissent in this case agreed, finding that *Kesner* was indistinguishable and that its analysis of the duty issue was correct and supported a duty of care by BNSF. (Dissent at 1-2.) Moreover, contrary to BNSF's assertion, the duty issue in this case does present an important question of law that should be resolved by this Court.

Accordingly, for the reasons set forth below, as well as in Plaintiffs' petition for review, review in this case is warranted and should be granted.

WHY REVIEW IS WARRANTED

I. THE NO-DUTY FINDING BY THE MAJORITY IN THE COURT OF APPEAL IS CONTRARY TO THE *KESNER* COURT'S RECOGNITION OF A DUTY OF CARE UNDER SUBSTANTIALLY SIMILAR CIRCUMSTANCES.

As demonstrated by Plaintiffs in their petition for review, review is "necessary to secure uniformity of decision," (Cal. Rules of Court, rule 8.500(b)(1), because the no-duty finding by the majority in the Court of Appeal is contrary to the *Kesner* court's recognition of a duty of care under substantially similar circumstances. (Pet. at 1-5, 12-27.) Defendant BNSF disagrees, arguing that *Kesner* is distinguishable because it addressed the duty issue in the context of "a *products liability* claim," not a claim for premises liability, which is the claim asserted here. (Answer at 1-2, 9-12 [italics in original].) Thus, according to BNSF, there is no conflict between the majority's decision in this case and the decision in *Kesner*. (*Ibid.*) Additionally, BNSF argues that this case is "on all fours with" *Campbell* because, like *Campbell*, it alleges a claim for premises liability and the majority was correct in applying *Campbell*. (*Id.* at 1-2, 3-9.) BNSF is wrong.

A. The Majority's No-Duty Finding Conflicts With The Recognition Of A Duty Of Care in *Kesner*.

Defendant BNSF argues that *Kesner* is distinguishable and does not conflict with the majority's decision in this case because *Kesner* did not address the duty issue in the context of a premises liability claim, which is

the type of claim at issue here. Rather, *Kesner* considered the issue, according to BNSF, in the context of "a *products liability* claim alleging 'negligence in the manufacture of asbestos-containing brake linings." (Answer at 1, 9 [italics in original].) This argument, which Plaintiffs previously addressed in their petition for review, (Pet. at 24-25), does not stand scrutiny.

In *Kesner*, the complaint alleged multiple causes of action against several defendants, including a claim for negligence and a claim for "strict products liability arising from [the plaintiff's] contact with asbestos manufactured or supplied to his him as a worker or end user." (*Kesner*, *supra*, 226 Cal.App.4th at 254-255.) The cause of action at issue in the appeal, however, did *not* involve the products liability claims, as those claims were resolved prior to trial. (*Ibid.*) Rather, the appeal involved the plaintiff's claim for negligence arising out of his exposure to asbestos carried home on his uncle's clothing from his uncle's employment with the defendant.[1] (*Id.* at 253-255.) While the asbestos his uncle was exposed to

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[1] The court described this claim as follows:

> Kesner's remaining claim against Abex is based on the fact that Kesner's uncle was an Abex employee who allegedly was exposed to harmful levels of asbestos in his job. Between 1973 and 1979 Kesner was a frequent guest in his uncle's home, and often spent the night there. The uncle allegedly came home in his work clothes covered in asbestos dust. While he was still in his work clothes, Kesner's uncle would often play with Kesner and sometimes sleep near him.

and carried home came from the defendant's use of asbestos in its manufacturing operations, (*id.* at pp. 255, 258), this did not transform the plaintiff's claim against that defendant into a products liability claim. There was no allegation that the plaintiff used or was exposed to asbestos from the products manufactured by the defendant (brake-linings). Rather, the plaintiff alleged that his uncle "was exposed to harmful levels of asbestos in his job" and that he (the plaintiff) was exposed to that asbestos over a period of several years from frequent contact with his uncle after he came home from work. (*Id.* at 255.)

Accordingly, *Kesner* cannot be distinguished on the false ground that the duty issue in that case was decided as part of a products liability claim. Nor can *Kesner* be distinguished on the ground that it involved a claim for negligence, whereas this case involves a claim for premises liability. First, the complaint in this case alleges claims against BNSF for negligence and premises liability. (1 AA 1-14.) Second, it is well-settled that in evaluating a cause of action, the label given to the cause of action is not controlling or relevant. (*Howe v. Bank of Am. N.A.* (2009) 179 Cal.App.4th 1443, 1449.) Rather, it is the allegations that are important, (*ibid*), and the allegations here show that this case is legally

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> Kesner alleges that his exposure to the asbestos dust on his uncle's clothing contributed to his contracting mesothelioma.

(*Kesner*, *supra*, 226 Cal.App.4th at 255 [footnote omitted].)

indistinguishable from *Kesner*.[2]

The complaint in this case alleges the following: that BNSF used asbestos in the operation of its railroad business; that it did so through the work of its own employees under its direct control; and that its negligence in using the asbestos resulted in Ms. Haver's exposure when her husband carried the asbestos home from the workplace on his clothing and body, causing her development and death from mesothelioma. (1 AA 5-10, 13, 17-18 [¶¶ 10-13, 22-24, 26-34, 44 and Exs. A and B]; typed opn. at 2-3; Pet. at 6-7.) These allegations are substantially similar to the claim in *Kesner*, where the defendant used asbestos in its manufacturing operations, the plaintiff's uncle worked for the defendant, and the plaintiff was exposed to the asbestos used by the defendant when his uncle carried the asbestos home from the workplace on his clothing. (*Kesner*, *supra*, 226 Cal.App.4th at 253-255, 258.) Contrary to any suggestion by BNSF, *Kesner* is not distinguishable because the defendant there was a manufacturer and used asbestos as part of its manufacturing operations, whereas BNSF operated a railroad and used asbestos as part of its railroad operations. The key similarity between this case and *Kesner*, which distinguishes both of them from *Campbell*, is that the asbestos hazard was created by the defendants themselves, through their own use of asbestos in the operation of their

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[2] The dissent in this case agreed, stating that "[w]hatever label is attached to the take-home exposure cases, they are all based on the alleged negligence of the employer. (Dissent at 1-2.)

businesses, and that their liability is not predicated on mere ownership of the property where the asbestos was used.

Keeping with its premises liability theme, BNSF argues that *Kesner* is distinguishable because the *Kesner* court itself "distinguished – and did not 'question' – the conclusion in *Campbell*" because the claim in that case was based on a premises liability theory. (Answer at 9-10.) Because the Plaintiffs in this case have also asserted a premises liability claim, in addition to a claim for negligence, (1 AA 1-14), BNSF argues that *Kesner* is "distinct" and does not conflict with the majority's decision in this case. (*Id.* at 1-2, 9-10.) Again, a cause of action is not defined by its label, but by its allegations, (*Howe*, *supra*, 179 Cal.App.4th at 1449), and the allegations here show that claims against BNSF are legally indistinguishable from the claim in *Kesner*.

Moreover, as discussed by Plaintiffs in their petition for review, (Pet. at 25-26), the *Kesner* court made clear what it meant when it distinguished *Campbell* on the ground that it was "based on a theory of premises liability." (*Kesner*, *supra*, 226 Cal.App.4th at 258.) The court explained that "[t]he [premises liability] claim against Ford Motor Company asserted in *Campbell* was based on Ford's passive involvement as owner of the plant in which an independent contractor was installing asbestos insulation." (*Ibid.*) In contrast, the claim in *Kesner* was based on the defendant's negligence in its *own use* of asbestos in its business operations, not some

passive role. (*Kesner*, *supra*, 226 Cal.App.4th at 258.) The same is true here, as the claims against BNSF are based on its negligence arising out of its *own use* of asbestos in the operation of its railroad business, not some passive involvement as a mere property owner. (1 AA 5-10, 13, 17-18 [¶¶ 10-13, 22-24, 26-34, 44 and Exs. A and B]; typed opn. at 2-3; Pet. at 6-7.)

Accordingly, because the circumstances of this case are substantially similar to those in *Kesner*, the majority's no-duty finding conflicts with the *Kesner* court's recognition of a duty of care. Review, therefore, is "necessary to secure uniformity of decision." (Cal. Rules of Court, rule 8.500(b)(1).)

B. *Campbell* Is Distinguishable.

Defendant BNSF argues that this case is "on all fours with" *Campbell* because, like *Campbell*, it alleges a claim for premises liability. It argues that *Campbell* was correctly decided and that the majority properly followed and applied *Campbell* in this case. (Answer at 1-2, 3-9.) BNSF is wrong.

Contrary to BNSF's assertion, this case is *not* "on all fours with" *Campbell*. First, as discussed above, the complaint does not merely allege a claim for premises liability; it also alleges a claim for negligence. (1 AA 1-14.) Second, the label attached to a cause of action does not define it or control its evaluation; it is the allegations that matter. (*Howe*, *supra*, 179

Cal.App.4th at 1449.) Third, and most importantly, based on the allegations, this case is materially different than *Campbell*, resulting in a different outcome as to the duty question.

In *Campbell*, the issue was whether Ford, as a mere property owner, had a duty to protect a family member of employees of an independent contractor from secondary or take-home exposure to asbestos resulting from the independent contractor's asbestos-related work on Ford's property. The workers using the asbestos were employees of the independent contractor, not Ford; the work that resulted in the exposures to the independent contractor's employees was performed by the independent contractor, not Ford; and Ford had no control over the independent contractor's work. (*Campbell, supra*, 206 Cal.App.4th at 19-21, 23, 28-29.) These were the circumstances under which the *Campbell* court found, based on its assessment of the *Rowland* factors, that Ford did not owe a duty of care in that case. (*Id.* at 26-34.)

The circumstances in this case are different. In contrast to *Campbell*, the complaint here alleges that BNSF itself used asbestos in the operation of its business, that it did so through the work of its own employees under its direct control, and that Ms. Haver was exposed to asbestos carried home from the workplace on her husband's clothing and body as a result of BNSF's negligence in using the asbestos. (1 AA 5-10, 13, 17-18 [¶¶ 10-13, 22-24, 26-34, 44 and Exs. A and B]; see also typed

opn. at 2-3; Pet. at 6-7.) Thus, the claims here are not like the claim in *Campbell*, which "was based on Ford's passive involvement as owner of the plant in which an independent contractor was installing asbestos insulation." (*Kesner*, *supra*, 226 Cal.App.4th at 258.) Rather, the claims here are like the claim in *Kesner*, as they are premised on BNSF's own conduct in creating the asbestos hazard through its own use of asbestos. Under these circumstances, the *Rowland* factors balance in favor of a duty of care and against a categorical duty exception, as the *Kesner* court correctly concluded. (*Kesner*, *supra*, 226 Cal.App.4th at 256-261.)

Notwithstanding the broad language used by the *Campbell* court in stating its holding, *Campbell* did not consider the duty issue under the circumstances presented in this case, where the defendant, through its own use of asbestos, created the hazard that resulted in the injurious exposures. *Kesner*, on the other hand, did consider the issue under substantially similar circumstances and rightly concluded that a duty of care was owed. As noted, the dissenting justice in this case agreed, finding that *Kesner* was indistinguishable and that its analysis of the duty issue under *Rowland* was correct and supported a duty of care by BNSF. (Dissent at 1-2.)

Accordingly, the *Rowland* duty factors balance differently in this case, compared to *Campbell*, because of the different circumstances involved here. *Campbell*, therefore, is distinguishable and a duty of care can be recognized in this case without conflicting with *Campbell*. If,

however, this case is be deemed to be legally indistinguishable from *Campbell*, this Court should grant review and disapprove *Campbell* because its analysis of the duty issue under *Rowland* was flawed and it was wrongly decided.

II. REVIEW IS WARRANTED BECAUSE THE NO-DUTY FINDING BY THE MAJORITY IN THE COURT OF APPEAL PRESENTS AN IMPORTANT QUESTION OF LAW THAT SHOULD BE SETTLED BY THIS COURT.

As demonstrated by Plaintiffs in their petition for review, review is also warranted "to settle an important question of law," (Cal. Rules of Court, rule 8.500(b)(1)), specifically, whether application of the *Rowland* duty factors justifies a categorical exception to the fundamental duty of care established by *Civil Code* § 1714(a) in take-home or secondary toxic exposure cases under the circumstances involved here. (Pet. at 1-5, 27-34.) Defendant BNSF disagrees, arguing that "there is no 'important question of law' for this Court to settle" because the majority in "the Court of Appeal faithfully applied *Campbell* and other longstanding principles of premises liability." (Answer at 13.) In addition, citing articles by known defense apologists, BNSF argues that recognizing a duty of care under the circumstances of this case "would trigger an onslaught of questionable asbestos claims," "would be devastating for businesses" and cause them to "inevitably go bankrupt," and would turn California into an "outlier" on the take-home duty issue. (*Id.* at 2, 9, 13-19.) These arguments are meritless.

As to the first argument, the majority in this case did not "faithfully appl[y] *Campbell*" because, as shown above, this case is distinguishable from *Campbell*. The majority should have followed and applied *Kesner*, which is legally indistinguishable from this case and supports a duty of care, as the dissent in this case correctly concluded. (Dissent at 1-2.) As to the second argument, that recognition of a duty of care will result in horrific economic consequences and bankruptcy for countless businesses, it is nothing more than unsupported hyperbole.

Initially, Plaintiffs find it necessary to respond to BNSF's assertions that asbestos injury claims based on take-home exposures are "questionable," "dubious," "based on scientific theories that are shaky at best," and premised on "misleading testimony by experts." (Answer at 2, 14-15.) Not only are these assertions specious and unsupported, they impermissibly contradict the allegations in this case. (*Gould v. Maryland Sound Indus., Inc.* (1995) 31 Cal.App.4th 1137, 1144 [for purposes of a general demurrer, the factual allegations of the complaint must be accepted as true and cannot be disregarded or contradicted].) As demonstrated by the proposed allegations included in Plaintiffs' demurrer opposition in the trial court, the risk of exposure to asbestos brought home on the clothing of workers was known as early as the 1930s and was well established by the early-to-mid 1970s, when the exposures in this case took place. (2 AA 256-258.) As early as the 1930s and 1940s, government and private

organizations recognized the need for changing rooms, showers and isolation of dusty clothes in order to prevent workers from taking home toxic dust. (*Ibid.*) Further, by the time of the exposures in this case (June 1972 to 1974), the scientific and medical literature had specifically demonstrated that take-home asbestos exposures could cause mesothelioma, the disease that killed Ms. Haver. (*Ibid.*)

As to the causal relationship between take-home asbestos exposures and the development of asbestos-related diseases, the National Institute for Occupational Safety and Health stated the following in its 1995 Report to Congress on Worker's Home Contamination Study, which was conducted under the Workers' Family Protection Act (29 U.S.C. 671a):

> It is *well established* that families of asbestos-exposed workers have been at increased risk of pleural, pericardial, or peritoneal mesothelioma, lung cancer, cancer of the gastrointestinal tract, and non-malignant pleural and parenchyma abnormalities as well as asbestosis.

(2 AA 256 [italics added].)

In addition, in *Campbell*, the undisputed medical evidence showed that "[b]y the early 1900s, ... the dangers of toxic substances being transferred from the workplace to the home through workers' clothing as well as methods for preventing such 'take home' exposures were known"; that "there was no dispute that asbestos was a known toxin by the 1930s"; and that "both asbestos hazards and the risk of toxic take home exposures had been reported in the scientific literature before 1945." (*Campbell*,

supra, 206 Cal.App.4th at 21.)

BNSF attacks the scientific basis for take-home asbestos injury claims by arguing that "[b]y their very nature, [these claims] involve lower levels of exposure than direct exposure claims" and are dependent on "misleading" expert testimony "that any exposure to asbestos – no matter how trivial – may be a substantial-factor cause of mesothelioma." (Answer at 14-15.) The only support cited by BNSF for this spurious contention, which, again, impermissibly contradicts the allegations, is an article by a well-known toxic tort defense attorney. (*Ibid.*) Conspicuously absent from its discussion of the issue is any acknowledgement of the fact, recently recognized by the Nevada Supreme Court, that "mesothelioma is a signature asbestos disease that can be contracted from *low doses* of asbestos exposure." (*Holcomb v. Georgia-Pacific, LLC* (Nev. 2012) 289 P.3d 188, 196 & n.9 and cases cited therein [italics added].) Indeed, this Court itself has noted that "it takes far less asbestos exposure to cause mesothelioma than to cause asbestosis." (*Hamilton v. Asbestos Corp., Ltd.* (2001) 22 Cal.4th 1127, 1136.) Moreover, under the causation standard for asbestos-related cancer cases established in *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 982-983, the Court of Appeal has held that asbestos exposures "similar to the asbestos levels recorded in ambient air" can constitute a substantial factor. (*Jones v. John Crane, Inc.* (2005) 132 Cal. App.4th 990, 1000.)

Accordingly, there is nothing "questionable," "dubious," "shaky" or "misleading" about take-home asbestos injury claims. It has been known and documented for numerous decades, including well prior to the exposures in this case, that asbestos can be carried home from the workplace by employees on their clothing and bodies, resulting in significant exposures to family members who subsequently develop asbestos-related diseases.

Equally unfounded is BNSF's assertion that recognition of a duty of care in this case "would be devastating for businesses" and cause numerous businesses to "inevitably go bankrupt." (Answer at 13-15.) There is no support in the record for these assertions, as noted by the dissent in its response to similar arguments made by the majority. (Dissent at 2 ["I question the factual basis for these concerns ...."].) Moreover, as discussed by Plaintiffs in their petition for review, (Pet. at 30-31), the same bankruptcy argument, along with several other defense "policy" arguments, was rejected by Tennessee Supreme Court in *Satterfield v. Breeding Insulation Co.* (Tenn. 2008) 266 S.W.3d 347, where it recognized a duty of care in a take-home exposure case. (*Id.* at 369-371.) The court there explained that it saw no policy reason to favor companies whose negligence caused the take-home exposures over persons who were exposed and thereby injured. (*Id.* at 371.)

Similarly, the court in *Kesner* acknowledged the "competing [public

policy] considerations" implicated by the take-home duty issue, including the alleged "threat of unlimited liability," but concluded that in weighing the various considerations as part of the *Rowland* duty analysis, "the balance falls *far short* of terminating liability at the door of the employer's premises." (*Kesner, supra*, 226 Cal.App.4th at 261 [italics added].) The court found that the assertions of "unlimited liability" did not justify a no-duty rule because the duty of care it recognized did not implicate "an unlimited number of persons" and because "mesothelioma (in particular, and other toxic-related diseases in general) can hardly be claimed by everyone." (*Ibid.*)

According to BNSF, Plaintiffs are advocating a "newfangled theory" of premises liability that, if adopted, will result in "a dramatic expansion of that doctrine, creating a duty that would run from a property owner to individuals who never set foot on, or have any direct interaction with, the allegedly dangerous property." (Answer at 3-4.) This argument ignores that it has long been law in California that a property owner's duty of care is not limited to injuries to persons on the property, but extends to persons injured off the property by the owner's negligent use, control and/or maintenance of the property. (*Garcia v. Paramount Citrus Ass'n, Inc.* (2008) 164 Cal.App.4th 1448, 1453; *Barnes v. Black* (1999) 71 Cal.App.4th 1473, 1478-1479; *A. Teichert & Son, Inc. v. Superior Court* (1986) 179 Cal.App.3d 657, 663; *Davert v. Larson* (1985) 163 Cal.App.3d 407, 409-

410.) BNSF attempts to respond to this point in a footnote, arguing that this rule is limited to situations where there is a "geographic proximity" between the injured person and the defendant's property. (Answer at 16-17 n.1.) BNSF does not define this "geographic proximity," but seems to suggest that the injured person must be adjacent to the defendant's property. (*Ibid.*) There is, however, no such "geographic proximity" restriction on a property owner's duty of care and BNSF does not cite a case imposing any such limitation. (*Ibid.*)

Finally, BNSF claims that California will become an "outlier" if a duty of care is recognized in this case and that Plaintiffs did "not identify a single decision from the highest court of a State supporting their position." (Answer at 2, 17.) Not so. In their petition for review, (Pet. at 28, 30-31), Plaintiffs cited the Tennessee Supreme Court's decision in *Satterfield*, where it recognized a take-home duty of care under circumstances analogous to this case. (*Satterfield, supra*, 266 S.W.3d at 351-354, 364-375.) Likewise, in *Olivo v. Owens-Illinois, Inc.* (2006) 895 A.2d 1143, the New Jersey Supreme Court held that the defendant owed a duty of care in a take-home asbestos case. (*Id.* at 1146-1149.) Notably, both Tennessee and New Jersey follow a *Rowland*-type analysis for determining issues of duty, where foreseeability is considered along with public policy factors. (*Satterfield, supra*, 266 S.W.3d at 365-366; *Olivo*, supra, 895 A.2d at 1147-1149.) Other decisions recognizing a duty of care in take-home asbestos

cases include: *Rochon v. Saberhagen Holdings, Inc.* (Wash. Ct. App. 2007) 2007 WL 2325214 at *3; *Chaisson v. Avondale Indus., Inc.* (La. Ct. App. 2006) 947 So.2d 171, 183-184; *Zimko v. American Cyanamid* (La. Ct. App. 2005) 905 So.2d 465, 482-484; and *Anchor Packing Co. v. Grimshaw* (Md. Ct. Spec. App. 1997) 692 A.2d 5, 34, vacated on other grounds *sub nom.*, *Porter Hayden Co. v. Bullinger* (Md. 1998) 713 A.2d 962.

Accordingly, review in this case is warranted because the majority's no-duty finding presents "an important question of law" that should be settled by this Court. (Cal. Rules of Court, rule 8.500(b)(1).)

CONCLUSION

For the reasons set forth above and in Plaintiffs' petition for review, the Court should grant the petition and order review in this case.

Dated: August 14, 2014.

Respectfully submitted,

WATERS, KRAUS & PAUL

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CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 8.504(d)(1), the undersigned hereby certifies that this Reply to Answer to Petition for Review contains 4,191 words, exclusive of the caption, tables, the signature block, this certification, and the attached opinion of the Court of Appeal, as counted by the Mircrosoft Word word-processing program used to generate it.

Michael B. Gurien
State Bar No. 180538

PROOF OF SERVICE

Joshua Haver, *et al.*, Plaintiffs, Appellants and Petitioners

vs.

BNSF Railway Company, Defendant and Respondent

Los Angeles Superior Court Case Number BC435551

Court of Appeal, Second Appellate District Case Number B246527

Supreme Court of California Case Number S219919

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, PHILIP KWAN, declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 222 North Sepulveda Boulevard, Suite 1900, El Segundo, California. I am employed in Los Angeles County, California.

On August 14, 2014, I served a copy of the following document(s):

- **REPLY TO ANSWER TO PETITION FOR REVIEW**

in this action to be served by placing the true and correct copies thereof enclosed in sealed envelopes addressed as stated as follows:

☒ (By Overnite Express) (CCP §§1013(c), 2015.5) By placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by Overnite Express Courier Service as part of the ordinary business practices of Waters, Kraus & Paul, addressed to Defendant's counsel:

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☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 14, 2014, at El Segundo, California.

PHILIP KWAN

SERVICE LIST

Joshua Haver, *et al.*, Plaintiffs, Appellants and Petitioners
vs.
BNSF Railway Company, Defendant and Respondent
Los Angeles Superior Court Case Number BC435551
Court of Appeal, Second Appellate District Case Number B246527
Supreme Court of California Case Number S219919

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Superior Court of California County of Los Angeles Honorable Richard E. Rico Judge Presiding, Department 17 111 North Hill Street Los Angeles, California 90012	(1 copy of Reply to Answer to Petition for Review)
Supreme Court of California 350 McAllister Street San Francisco, California 94102	(Served electronically pursuant to California Rules of Court, Rule 8.44(a)(1)(B) and (c))