

# Supreme Court Copy

Supreme Court Case No.: S152360

SUPREME COURT  
FILED

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Frederick K. Orlich, Clerk  
Deputy

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

ALEXANDRA VAN HORN,  
*Plaintiff and Respondent.*

v.

ANTHONY GLEN WATSON,  
*Defendant and Appellant*

LISA TORTI,  
*Defendant and Respondent.*

CASE NO. B188076 (Lead)

(Los Angeles County Superior Court  
Case No. PC 034945)

ALEXANDRA VAN HORN,  
*Plaintiff and Appellant.*

v.

ANTHONY GLEN WATSON, et al.,  
*Defendants and Respondents.*

CASE NO. B189254

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. THE PETITION DOES NOT PRESENT GROUNDS FOR REVIEW .....	3
III. THE COURT SHOULD DISREGARD THE NEW ISSUES RAISED BY THE PETITION .....	4
IV. THE COURT OF APPEAL DID NOT ABROGATE PETITIONER’S COMMON LAW PROTECTION AS A "GOOD SAMARITAN" .....	5
V. THE COURT OF APPEAL CORRECTLY DETERMINED THAT THE LEGISLATURE INTENDED THE EMERGENCY MEDICAL SERVICES ACT TO APPLY <i>ONLY</i> TO THE RENDERING OF <i>MEDICAL SERVICES</i> .....	7
VI. THE COURT OF APPEAL’S DECISION WILL NOT LEAD TO UNINTENDED NEGATIVE CONSEQUENCES ...	12
VII. THE COURT OF APPEAL’S DECISION WILL NOT LEAD TO UNWORKABLE SITUATIONS FOR ORDINARY PERSONS .....	14
VIII. CONCLUSION .....	15
CERTIFICATE OF WORD COUNT .....	16

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Coalition of Concerned Communities, Inc. v. City of Los Angeles*  
(2004) 34 Cal. 4th 733 ..... 7

*Giles v. Horn*  
(2002) 100 Cal. App. 4th 206 ..... 7

*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*  
(1995) 39 Cal. App. 4th 1379 ..... 7

*Nally v. Grace Community Church*  
(1988) 47 Cal. 3d 278 ..... 10

*People v. Ramirez*  
(1995) 33 Cal. App. 4th 559 ..... 7

*Williams v. State of California*  
(1983) 34 Cal. 3d 18 ..... 2, 5, 6

**STATUTES**

Civil Code section 1714 ..... 10

Civil Code section 1714.1 ..... 11

Civil Code section 1714.2 ..... 11

**TABLE OF AUTHORITIES** (cont.)

**Page**

**STATUES** (cont.)

Civil Code section 1714.21 .....	11, 13
Civil Code section 1714.21(a) .....	11
Civil Code section 1714.25 .....	13
Civil Code section 1714.25(a) .....	11
Health & Safety Code section 1767 .....	8- 9
Health & Safety Code section 1797.5 .....	8
Health & Safety Code section 1797 .....	3, 6-8
Health & Safety Code section 1797.70 .....	10
Health & Safety Code section 1799.102 .....	4, 8-10, 12, 13
Health & Safety Code section 1799.106 .....	13
Health & Safety Code section 1799.107 .....	12, 13
Health & Safety Code section 1799.108 .....	13

**TABLE OF AUTHORITIES** (cont.)

**Page**

**MISCELLANEOUS AUTHORITIES**

Assembly Bill 1301 ..... 9

CACI No. 450 ..... 2, 6

California Rule of Court, Rule 8.500(b)(1) ..... 3

California Rules of Court, Rule 8.500(c)(1) ..... 2, 4

Court of Appeal Decision ..... 6, 7, 10

Restatement Second of Torts, section 323 ..... 3

Senate Bill 125 ..... 9

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ANSWER TO PETITION FOR REVIEW

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**I. INTRODUCTION**

Lisa Torti's Petition fails the test for review by this Court: there is no incongruity between the Court of Appeal's decision in this case and other appellate decisions regarding these issues. Nor is there any issue in the decision both critical to public policy and erroneously discussed in the unanimous decision of this Court of Appeals.

Indeed the Petition misleads the Court regarding the law. Petitioner asks this Court to conclude that the Court of Appeal's decision abrogated the Good Samaritan law. That is simply not true. The decision of the Court of Appeal did not in any way limit a Good Samaritan's protection under the law.

As this Court itself stated, everyone who attempts to help others in distress, is immune from liability unless their actions place the victim in greater peril.<sup>1</sup> When this case goes back to the trial court, Petitioner is entitled to CACI Jury Instruction No. 450 which states that she is not liable to the Plaintiff unless her failure to exercise due care increased the risk of harm to the Plaintiff or the Plaintiff suffered harm because of her reliance on Petitioner's help.<sup>2</sup>

The Petition also stretches credibility to attack a well-reasoned Court of Appeal decision by imagining all sorts of scenarios that bear no relationship with reality.

Finally, Petitioner is not entitled to relief because normally the Court will not entertain arguments made for the first time in the Petition.<sup>3</sup> All of the arguments raised in the Petition could have been raised by Petitioner in the Court of Appeal.

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<sup>1</sup> *Williams v. State of California* (1983) 34 Cal. 3d 18, 23.

<sup>2</sup> CACI No. 450.

<sup>3</sup> California Rules of Court ("CRC"), Rule 8.500(c)(1).

## II. THE PETITION DOES NOT PRESENT GROUNDS FOR REVIEW

The primary grounds for review of a court of appeal decision are to "secure uniformity of decision" or to "settle an important question of law."<sup>4</sup> Neither ground is present here.

There are no other court of appeal decisions that construe Health & Safety Code section 1799.102, the statute at issue here. Therefore, there is no conflict among courts of appeal.

Nor is this Court called upon to settle an important question of law. The Court of Appeal's decision left intact the good Samaritan Law articulated in the Restatement Second of Torts, section 323, which provides that "one who undertakes to render services to another which he or she should recognize as necessary for the protection of the other's person is subject to liability to the other for physical harm resulting from his or her failure to exercise reasonable care to perform his or her undertaking, if his or her failure to exercise such care increases the risk of such harm, or the harm is suffered because of the other's reliance upon the undertaking."

The Court of Appeal simply determined that the Legislature did not intend an immunity statute, Section 1799.102, part of "the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act,"<sup>5</sup> to apply to non-emergency medical care professionals or laypersons not trained in life-saving techniques.

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<sup>4</sup> CRC, Rule 8.500(b)(1).

<sup>5</sup> Health & Safety Code §§ 1797, et. seq.

### III. THE COURT SHOULD DISREGARD THE NEW ISSUES RAISED BY THE PETITION

This Court will normally not consider issues the Petitioner failed to raise in the Court of Appeal.<sup>6</sup> This Petition raises issues that could have, but were not, presented before the Court of Appeal.

For example, Petitioner asks the Court to take judicial notice of a "Disaster Service Worker Volunteer Program Guidance" document. This publication and the argument in the Petition regarding the document were never presented to the Court of Appeal. The Petition does not offer any explanation as to why the argument and request for judicial notice were not presented with Petitioner's Respondent's Brief and Appendix.

Likewise, Petitioner raises for the first time the alleged impact of the Court of Appeal's interpretation of Section 1799.102 on sections 1799.107 and 1799.108. These issues are not novel and the argument could have been raised in the Court of Appeal.

In any event, the Court *did* consider the impact of its interpretation of Section 1799.102. That is why the Court unanimously concluded that Section 1799.102 was not intended to apply outside of rescues requiring emergency medical care. And that meant that the Good Samaritan statute remained intact for all non-medical rescues.

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<sup>6</sup> CRC, Rule 8.500(c)(1).

#### IV. THE COURT OF APPEAL DID NOT ABROGATE PETITIONER'S COMMON LAW PROTECTION AS A "GOOD SAMARITAN"

Petitioner states that after the Court of Appeal decision, "the brave soul who runs into a burning building to save another has no immunity from liability." Petitioner ignores the state of the law when she argues that "at common law, a good Samaritan, who renders aid to another, is potentially liable for injuries resulting from such care." That just isn't true.

Petitioner, like every other good Samaritan, was entitled to protection from garden-variety negligence liability when she came to Plaintiff Alexandra Vanhorn's aid following the motor vehicle accident.<sup>7</sup> The Court of Appeal noted that Petitioner's "liability to plaintiff must be evaluated under the standard set out by this Court in *Williams v. State of California*." This Court in *Williams* stated:

As a rule, one has no duty to come to the aid of another. A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act (citations). Also pertinent to our discussion is the role of the volunteer who, having no initial duty to do so, undertakes to come to the aid of another – the "good Samaritan." He is under a duty to exercise due care in performance and is liable if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered

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<sup>7</sup> This case is also unlike the "stranger running into a burning building" example offered by the Petition. Here, Petitioner was not a bystander but part of the drinking party that included Plaintiff. Petitioner was in the vehicle following the Watson vehicle returning from the tavern when the accident happened.

because of the other's reliance upon the undertaking.<sup>8</sup>

Therefore, one who runs into a burning building to save another *does* have protection from liability, so long as the good Samaritan *does* not make things worse. Indeed, the Court of Appeal reaffirmed that the Petitioner is entitled to have the trial court instruct the jury pursuant to CACI 450 that even if Petitioner is found negligent, she is not liable to Plaintiff *unless* Plaintiff proves either that (1) Petitioner's failure to use reasonable *care added to* Plaintiff's risk of harm or (2) Petitioner's conduct caused Plaintiff to reasonably *rely on* Petitioner's protection and the *additional risk* or reliance resulted in harm to Plaintiff.<sup>9</sup>

The Court of Appeal therefore did not change the state of the law. The Court merely held that when the legislature enacted "The Emergency **Medical Services** System and Prehospital Emergency **Medical Care Personnel** Act,"<sup>10</sup> it did not intend the Act to apply to good Samaritans who *do* not perform emergency medical services at the scene of an emergency.

However, good Samaritans who perform non-emergency, non-medically trained assistance are still entitled to qualified protection from liability under the common law good Samaritan law.

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<sup>8</sup> *Williams* at p. 23.

<sup>9</sup> Court of Appeal Decision, p. 13, Emphasis added.

<sup>10</sup> Health & Safety Code sections 1797 et. seq., Emphasis added.

**V. THE COURT OF APPEAL CORRECTLY DETERMINED THAT THE LEGISLATURE INTENDED THE EMERGENCY MEDICAL SERVICES ACT TO APPLY *ONLY* TO THE RENDERING OF *MEDICAL SERVICES***

The Court of Appeal correctly noted that its "primary duty when interpreting a statute is to determine and effectuate the Legislature's intent."<sup>11</sup> Here, because Section 1799.102 was simply one section in the comprehensive Emergency Medical Services Act, the Court of Appeal correctly concluded that it could not look at the plain language of Section 1799.102 *in isolation* but "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (citation) The legislative purpose will not be sacrificed to a literal construction of any part of the statute."<sup>12</sup>

This Court has declared the familiar rules of statutory construction: "Our fundamental task in interpreting a statute is to ascertain the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine the language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment."<sup>13</sup>

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<sup>11</sup> Court of Appeal Decision, pp. 7-8 (Citing *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal. App. 4th 1379, 1382; *People v. Ramirez* (1995) 33 Cal. App. 4th 559, 563).

<sup>12</sup> *Ibid.*, p. 8, citing *Giles v. Horn* (2002) 100 Cal. App. 4th 206, 220.

<sup>13</sup> *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal. 4th 733, 737.

The Legislature disclosed its purpose in enacting The Emergency Medical Services Act in Section 1797.5:

It is the intent of the Legislature to promote the development, accessibility, and provision of emergency **medical** services to the people of the State of California. ¶ Further, it is the policy of the State of California that people shall be encouraged and **trained to assist others** at the scene of a **medical emergency**. Local governments, agencies, and other organizations shall be encouraged to offer training in **cardiopulmonary resuscitation and lifesaving first aid techniques** so that people may be adequately trained, prepared, and encouraged to assist others immediately.<sup>14</sup>

The Legislature therefore declared its intent to train and encourage people, both professionals and laypersons, to provide life-preserving emergency medical care. If the Legislature had not wanted the entire Act to apply to medical care, it would not have used the word "medical" repeatedly in the title nor declared the intent of the Act to: "provide the state with a statewide system for emergency medical services."

Thus, the Emergency Medical Services Act was intended to promote proper training in life saving first aid techniques and CPR, then encourage those who have been trained to use their emergency medical training without fear of civil liability. The Court of Appeal correctly found no legislative intent to provide immunity for *non-life-saving conduct* and non-medical care by *untrained* individuals.

The Legislature also never intended Section 1799.102 to apply to transporting an accident victim. Section 1799.102's predecessor was Health

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<sup>14</sup> Health & Safety Code section 1797.5, emphasis added.

& Safety Code section 1767,<sup>15</sup> which originally read:

In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who in good faith and not for compensation renders emergency care at the scene of an emergency **or who transports an injured person** for emergency medical treatment shall be liable for any civil damages.<sup>16</sup>

In 1977, the Legislature removed the language: "or who transports an injured person for emergency medical treatment" from the bill.<sup>17</sup> The section was then enacted in 1978, without the "transporting" language. If the Legislature did not want to give immunity to a rescuer who drove an accident victim to the hospital, it certainly did not want to see immunity given to someone who took an accident victim from an accident vehicle and merely placed her right next to the vehicle and did not render any emergency *medical* care.

Petitioner is therefore mistaken when she states the Court of Appeal "glossed" the word "medical" into Section 1799.102 to make it apply only to persons rendering emergency medical care at the scene of a medical emergency. The Legislature effectively placed the words there, both because of its above-cited intent and by the definitions it gave to words in the Act.

Specifically, Section 1799.102 states that it applies to care given at scenes of *emergencies*. The Legislature defined "scene of an emergency" in

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<sup>15</sup> Chaptered SB 125 [AA 0032-AA 0041].

<sup>16</sup> Assembly Bill 1301, as introduced on March 31, 1977, emphasis added [AA 0009-AA 0012].

<sup>17</sup> AB 1301, amended June 10, 1997 [AA 0013-AA 0016].

Section 1797.70 of the Act as "a condition or situation in which an individual has a need for immediate **medical** attention, or where the potential for such need is perceived by emergency medical personnel or a public safety agency."<sup>18</sup>

Therefore, the Legislature defined the application of Section 1799.102 to *medical* emergencies. The Court of Appeal correctly found that Plaintiff was not in need of emergency medical care *from the Petitioner*. The Petitioner was not trained in, and did not render, any emergency medical care. As the Court of Appeal stated: "Because the record demonstrated the absence of a medical emergency, Torti was not entitled to summary judgment on this basis."<sup>19</sup>

The Court of Appeal's decision is consistent with *Nally v. Grace Community Church*,<sup>20</sup> wherein the court referred to Section 1799.102 as "exempting from liability nonprofessional persons giving *cardiopulmonary resuscitation*."

The Legislature also chose to place Section 1799 right in the middle of the "Emergency **Medical** Services Act" in the Health & Safety Code. If the Legislature had intended Section 1799.102, to apply to non-medical aid, it would have enacted legislation in the Civil Code to bar liability for certain conduct.<sup>21</sup>

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<sup>18</sup> Emphasis added.

<sup>19</sup> Court of Appeal Decision, p. 4.

<sup>20</sup> (1988) 47 Cal. 3d 278, 298.

<sup>21</sup> See, e.g. Civil Code § 1714, [Legislature specifically barred liability for furnishing alcohol: "No social host who furnishes alcoholic

For example, the legislature enacted Civil Code section 1714.2 which is completely consistent with Section 1799.102 and the Court of Appeal decision. Section 1714.2 states:

In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who has completed a basic cardiopulmonary resuscitation course which complies with the standards adopted by the American Heart Association or the American Red Cross for cardiopulmonary resuscitation and emergency cardiac care, and who, in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care. (b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering such emergency care constitutes gross negligence.

The Court of Appeal's decision is also consistent with Civil Code section 1714.21 which immunizes acts of medical care by good Samaritans:

Any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED<sup>22</sup> at the scene of an emergency is not liable for any civil damages resulting from any acts or omissions in rendering the emergency care . . . A person or entity that acquires an AED for emergency use pursuant to this section is not liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care by use of an AED, if that person or entity has

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beverages to any person may be held legally accountable for damages suffered by that person, or for injury to . . . any third person, resulting from the consumption of those beverages.]" and Civil Code § 1714.1 [Limits the liability of a parent or guardian having custody of a minor to \$25,000]; and Civil Code §1714.25(a) [Barring liability for negligent preparation of food donated to a nonprofit charitable organization or food bank.]

<sup>22</sup> Defined in 1714.21(a)(1) as an "automatic external defibrillator."

complied with subdivision (b) of Section 1797.196 of the Health and Safety Code.

Petitioner is therefore mistaken when she asserts that the Legislature did not intend Section 1799.102 to apply only to emergency medical care. The Court of Appeal correctly found that the Legislature's *only* intent by passing the Act was to ensure the proper emergency *medical care* of the state's citizens. Any other interpretation of Section 1799.102 by the Court of Appeal would have been inconsistent with Civil Code sections 1714.2 and 1714.21, CACI 450 and *Williams v. State of California, supra*.

#### **VI. THE COURT OF APPEAL'S DECISION WILL NOT LEAD TO UNINTENDED NEGATIVE CONSEQUENCES**

Petitioner's claim that the Court of Appeal's decision will have far-ranging unintended consequences is simply not true. The Court of Appeal's decision does not undercut the State's disaster preparedness program. Volunteers in state disasters are provided with immunity from their non-wilful acts.<sup>23</sup>

Petitioner also argues that the Court of Appeal decision "undoes" Health & Safety Code sections 1797.107 and 1797.108. In reality, the Court of Appeal decision is completely consistent with these sections. Section 1799.107 provides *qualified* immunity for *paid* emergency rescue personnel who provide "emergency services," including first aid, medical services, rescue procedures and transportation to insure the health or safety of a person in imminent peril.

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<sup>23</sup> Petitioner's Request for Judicial Notice, Exh. G, p. 8.

Thus, unlike Section 1799.102, Section 1799.107 specifically addresses immunity for *paid* rescue workers whose job it is to run into burning buildings and rescue people. Similarly, Section 1799.108 applies to *certified* professionals who provide prehospital emergency field care treatment at the scene of an emergency and also offers *qualified* immunity.

Therefore, firefighters, ambulance drivers and EMT's who perform *non-medical care* are entitled to immunity so long as their actions are not reckless. The Court of Appeal's decision is consistent with Sections 1799.107 and 1799.108 because one who performs non-medical care is entitled only to qualified immunity.

Indeed, virtually all good Samaritan statutes provide only qualified immunity. The rescuer cannot be grossly negligent or be guilty of willful and wanton misconduct.<sup>24</sup> On the other hand, if firefighters, ambulance drivers, EMT's or even Petitioner perform *medical* care, they are arguably entitled to the absolute immunity of Section 1799.102.

In order to try to make her point, Petitioner asks the Court to assume a completely false hypothetical situation. She asks the Court to assume that she was moving the Plaintiff in order for someone else to render CPR. First, of all, that is not what happened. Secondly, Plaintiff was not in need of CPR. She was at all times breathing just fine. Finally, Petitioner yanked Plaintiff out of the car because she panicked.

We also know that Petitioner did not move Plaintiff because she was concerned about an explosion or fire. At the moment Petitioner opened the

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<sup>24</sup> See, e.g., Civil Code §§ 1714.21 and 1714.25 and Health & Safety Code §§ 1799.106 - 1799.107.

door, she knew that what she previously thought was smoke was really only air bag dust.<sup>25</sup> Furthermore, if she were indeed concerned about fire or explosion, she would not have dropped Plaintiff within a foot of the vehicle she contends she thought could explode. She also would not have left Plaintiff's body so that one-half was on the curb and one-half on the street. Petitioner also left Plaintiff on top of a fallen pole.<sup>26</sup>

In any event, Petitioner's far-fetched two-part CPR hypothetical makes no sense. What good would it do to move the victim who is not breathing if the one who is to perform time-sensitive CPR is not at the scene?

## **VII. THE COURT OF APPEAL'S DECISION WILL NOT LEAD TO UNWORKABLE SITUATIONS FOR ORDINARY PERSONS**

Petitioner contends that the Court of Appeal decision will have adverse consequences because people will now be less willing to step forward to try to help those in peril. Just the opposite is true. The Court of Appeal's decision leaves in tact the common law good Samaritan law. This law promotes volunteer rescues. The law supports what any reasonable altruistic person would think:

I know I am not legally required to help this person but I would like to do so. However, since I am trying to do the right thing, I should not be held responsible even if I end up not being able to help him or her *unless* I make matters worse.

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<sup>25</sup> Torti Depo, pp. 95-96 [AA 0430, AA 0609].

<sup>26</sup> Plf Depo, p. 101 [AA 0444]; Carb Depo, p. 19 [AA 0467].

Good Samaritans want to help and should be encouraged to do so. The Court of Appeal's decision does no damage to the common law good Samaritan statute.

### VIII. CONCLUSION

The Court of Appeal correctly found that the Legislature intended Health & Safety Code section 1719.102 to give immunity to good Samaritans who provide medical care, such as life saving first aid or CPR in a medical emergency. Petitioner did not provide emergency medical care to the Plaintiff.

The trier of fact should be allowed to apply CACI 450 to Petitioner's conduct and determine whether Petitioner's actions increased the harm to Plaintiff. Mr. Watson respectfully requests that this honorable Court deny the Petition for Review.

DATED: May 17, 2007

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**CERTIFICATE OF WORD COUNT**

**(Cal. Rules of Court, Rule 14(c)(1))**

The Text of this brief consists of 3,652 words as counted by the Corel WordPerfect, Version 8, word processing program used to generate this brief.

DATED: May 17, 2007

A handwritten signature in black ink, appearing to read 'Edwin B. Brown', written over a horizontal line.

EDWIN B. BROWN

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PROOF OF SERVICE - 1031a(3) C.C.P.

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 7700 Irvine Center Drive, Suite 700, Irvine, CA 92618-2929.

On **May 18, 2007**, I served the foregoing document described as **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as set forth on the attached service list in the following manner:

- (X) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service on the same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a. I am aware that on a motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.
- ( ) **BY FACSIMILE.** In addition to service by mail as set forth above, a copy of said document(s) was also delivered by facsimile transmission to the addressee(s) pursuant to Code of Civil Procedure §1013(e).
- ( ) **BY PERSONAL SERVICE.** I caused a true copy of said document(s) to be hand-delivered to the addressee(s) via a California registered process server pursuant to Code of Civil Procedure §1011.
- ( ) **BY EXPRESS MAIL.** I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure §1013(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **May 18, 2007**, at Irvine, California.

  
\_\_\_\_\_  
TERESA SCHREIBER

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