IN THE SUPREME COURT

STATE OF CALIFORNIA

Case No. S242034

Court of Appeal Consolidated Case No.: D069626

CATHERINE A. BOLING, ET AL. and CITY OF SAN DIEGO,

Petitioners,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION, DEPUTY CITY ATTORNEYS ASSOCIATION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 127, SAN DIEGO CITY FIREFIGHTERS, LOCAL 145, IAFF, AFL-CIO,

Real Parties in Interest.

After a Decision by the Court of Appeal, Fourth Appellate District, Division One, Consolidated Case Nos. D069626 and D069630, PERB Decision No. 2464-M (PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, and LA-CE-758-M)

BRIEF OF AMICUS CURIAE ORANGE COUNTY ATTORNEYS ASSOCIATION IN SUPPORT OF UNION REAL PARTIES IN INTEREST AND RESPONDENT

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STATEMENT OF THE ISSUES

1. Did the Court of Appeal err in rejecting the well-settled principle that in a writ challenging a final decision of the Public Employment Relations Board (PERB) pursuant to Section 3509.5(b) of the Meyers-Milias-Brown Act (MMBA), PERB's legal conclusions and findings of fact are entitled to deference and, finding, instead, that they are subject to de novo review?

2. Is PERB's interpretation of a public agency's duty to "meet and confer" under MMBA Section 3505 reasonable or should Section 3505 be limited only to those situations when a public agency's governing body proposes to take formal action affecting wages, hours and/or other terms and conditions of employment pursuant to MMBA Section 3504.5?

I. INTRODUCTION

The cornerstone of public sector labor relations under the MMBA is the requirement that local public agencies meet and confer in good faith with the chosen representative of their employees with respect to such employees' wages, hours and other terms and conditions of employment. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780 [35 Cal.Rptr.2d 814, 823].) Here, PERB found that the City of San Diego (City), through its Mayor, sought to circumvent its meet and confer obligation by seeking to change City employees' pension benefits by means of a ballot measure behested and supported by the Mayor and, then, rejecting the meet and confer requests of the unions representing City employees on the spurious grounds that the City Council didn't author the measure and, so, there was nothing to talk about.

Rather than affording PERB's findings and legal conclusions the deference to which they are entitled under *Banning Teachers Association v. Public Employment Relations Board* (1988) 44 Cal.3d 799 [244 Cal.Rptr. 671] (*Banning*) and MMBA Section 3509.5(b), the Court of Appeal took an

absolutist view of the initiative power and, substituting its own judgment for that of PERB, determined that the City's actions were outside the regulatory scope of the MMBA. In so doing, the Court of Appeal ran roughshod over the longstanding principles of deference to which legal and factual conclusions in adjudicated administrative decisions are entitled. Indeed, if left undisturbed, the standard of review announced by Court of Appeal here will affect not only the parties to this case, but amicus curiae Orange County Attorneys Association (Amicus OCAA) and other similarly situated unions. The non-deferential standard of review announced and applied by the Court of Appeal is inconsistent with this Court's decision in *Banning, supra*, 44 Cal.3d 799 [244 Cal.Rptr. 671], and reverses a decades-long understanding that PERB's legal conclusions on matters within its jurisdiction, including the issue of agency, are reviewed under the "clearly erroneous" standard. This is vitally important to local public agency unions and the employees they represent because it undercuts the effectiveness of resort to PERB for vindication of employee rights inasmuch as a second bite at the apple in which the reviewing court can essentially decide the matter de novo will encourage requests for judicial review in all but the narrow band of cases involving the application of settled law to virtually uncontested facts. This will make resort to PERB more time-consuming than it already is and, by prolonging the process, make it harder for the more economically challenged party (frequently, the local public agency employee organization) to persist in its efforts to vindicate its statutory rights.

Further, by reading Government Code section 3504.5 to constrict the scope of the duty to meet and confer to governing body decisions, the Court of Appeal's construction of Government Code section 3505 has the potential to take outside the scope of bargaining many decisions heretofore regarded as subject to the duty to meet and confer. Being able to represent

members of its bargaining unit with respect to any and all terms and conditions of their employment, whether established by a County officer (such as a District Attorney or Public Defender) or the County Board of Supervisors itself, is critical to Amicus OCAA's ability to act as such employees' exclusive representative on matters that vitally affect their employment.

As we show below, where, as here, a local agency employer consciously uses the initiative process to bypass its employees' statutory bargaining representatives and to circumvent its meet and confer obligations under the MMBA--whether directly or through an agent--PERB properly can find, as it did here, that the employer local agency violated the MMBA and order that local agency to make its employees and their representatives whole.[1]

II. STATEMENT OF THE CASE

The factual and procedural summary in the Opening Briefs of the Public Employment Relations Board (pp. 19-36) and of Real Parties in Interest San Diego Municipal Employees Association (pp. 16-36) are sufficiently complete that no useful purpose would be served by Amicus OCAA separately setting forth those matters herein.

However, three facts are of particular import. First, the City's Mayor and Chief Negotiator (see AR: XI: 2983) decided to use the initiative process with the express intent of circumventing the duty to bargain. Thus, the Mayor stated in a taped-recorded interview,

> "[W]hen you go out and signature gather . . . [and expend the time, money and other resources that takes,] you do that so

[1] Specifically, the Board ordered the City to make the affected employees whole by paying the difference in value between the defined benefit plan and the 401(k)-style benefit enacted by Proposition B. The Board also ordered the City to pay certain union attorneys' fees if these unions undertook legal action to rescind Proposition B. [AR: XI: 3023-3025.]

> that you get the ballot initiative on that you actually want. [A]nd that's what we did. Otherwise, we'd have gone through the meet and confer [process] and you don't know what's going to go on at that point."

(*Boling v. Public Employment Relations Board* (2017) 10 Cal.App.5th 853, 859, fn. 2 [216 Cal.Rptr.3d 757, 764, fn. 2].)

Second, the Mayor's efforts to develop and publicize a pension reform initiative--both before the initiative was written and qualified, and afterwards--were frequently effectuated by paid City employees (both inside and outside the Mayor's office) on City time, including the Mayor's Chief of Staff, the City's Chief Operating Officer and Director of Communications, and the independently elected City Attorney. This includes review and analysis of the text by the City's Chief Operating Officer and the City Attorney as well as a fiscal impact analysis facilitated by the City's Chief Operating Officer who accessed City actuarial data not available to "someone off the street" [AR XI: 3067; XIV: 3545-3549].

Third, the City, acting through the City Attorney, summarily declined to meet and confer with the Real Parties in Interest unions (RPI Unions) on the grounds that there was nothing to talk about because the City could not "modify the [initiative], if it qualifies for the ballot." [AR XX: 5155]. This conduct was based on a fundamental misapprehension of the bargaining obligation. The meet and confer obligation requires the parties to meet upon request, to exchange information freely and to endeavor in good faith to reach an agreement, where possible, within the scope of representation. (Gov. Code, § 3505.) A local public agency like the City summarily rejects a request to meet and confer at its peril. A party's refusal to even discuss a proposal based solely on a belief that the proposal concerns a matter outside of the scope of representation can be a per se violation of the duty to bargain. (*County of San Luis Obispo* (2015) PERB Dec. No. 2427-M [2015 Cal. PERB LEXIS 22, *38-*45] (refusal to

bargain found based on union's refusal to bargain over employer's proposal to change employees' pension contribution amount because union believed the subject was outside the scope of representation); *Regents of the University of California* (2010) PERB Dec. No. 2094-H [2010 Cal. PERB LEXIS 4, *33].) Because the obligation to meet and confer promptly upon request regarding mandatory subjects of bargaining is absolute, there is no "good-faith doubt," "mistake of law" or similar defense available when a party has refused outright to meet or negotiate because it denies or entertains doubt as to the negotiability of a proposal. (*County of San Luis Obispo*, *supra*, PERB Dec. No. 2427-M [2015 Cal. PERB LEXIS 22, *38-*39].)

The request need not meet any formal requirements and need do no more than indicate a desire to meet to discuss matters within the scope of representation. (*City of Palo Alto v. Public Employment Relations Board* (2016) 5 Cal.App.5th 1271, 1307 [211 Cal.Rptr.3d 287, 316] ("words chosen by the labor organization are not important, so long as it is effectively conveyed to the responding party that the organization desires to negotiate"); *Rio Hondo Community College District* (2013) PERB Dec. No. 2313-E [2013 Cal. PERB LEXIS 12, *6-*7].) Upon receiving a bargaining demand, the public agency must attempt to clarify through discussions with the union(s) seeking bargaining any uncertainty as to what is proposed for bargaining and whether what they seek to discuss falls within the scope of representation. This requires the use of "give and take" of the bargaining process itself to seek clarification of any uncertainties about whether the demand encompasses proposals within the scope of representation. (*Healdsburg Union High School District*, *supra*, PERB Dec. No. 132 [1984 Cal. PERB LEXIS 14, *8-*10].) Here, as PERB found, the City and its unions could negotiate over, at least, an alternative (or competing) measure to be put on the ballot. In refusing to meet, and at least hear out what the

RPI Unions had to say and ask, the City acted in derogation of its statutory bargaining obligations.

III. ARGUMENT

A. The Court of Appeal Applied the Improper Standard of Review, Which Caused That Court Erroneously to Overturn PERB's Well-Founded Findings that the Mayor Was Acting as the City's Agent.

Prior to 2001, enforcement of the MMBA required the filing of a lawsuit in superior court. In 2000, the Legislature decided that enforcement of the MMBA should be entrusted to California's public employee labor relations agency, the Public Employment Relations Board. In so deciding, the Legislature opted for administrative expertise in the administration of the statute. (See, e.g., *City of Palo Alto*, *supra*, 5 Cal.App.5th at 1287-88.) As this Court explained in *Banning*, *supra*, 44 Cal.3d at 804:

> "PERB is 'one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect.' (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 488 [95 L.Ed 456, 467, 71 S.Ct. 456]). '[T]he relationship of a reviewing court to an agency such as PERB, whose primary responsibility is to determine the scope of the statutory duty to bargain and resolve charges of unfair refusal to bargain, is generally one of deference' (*Oakland Unified School Dist. v. Public Employment Relations Bd.* (1981) 120 Cal.App.3d 1007, 1012 [175 Cal.Rptr. 105]), and PERB's interpretation will generally be followed unless it is clearly erroneous. (*J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1, 29 [160 Cal.Rptr. 710, 603 P.2d 1306]; *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 668 [150 Cal.Rptr. 250, 586, P.2d 564], quoting *Bodison Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325 [109 P.2d 935].)"

Through its quotation from and citation of *Universal Camera Corp. v. Labor Bd.*, *supra*, 340 U.S. at 488, this Court invoked a deference to

administratively adjudicated decisionmaking which had long roots in federal law--a standard under which federal courts afforded "considerable deference" to adjudicated statutory construction and interpretations of the National Labor Relations Board for similar reasons. (*National Labor Relations Board v. Curtin Matheson Scientific, Inc.* (1990) 494 U.S. 775, 786-787 [110 S.Ct. 1542, 1549], citing *Fall River Dyeing & Finishing Corp. v. National Labor Relations Board* (1987) 482 U.S. 27, 42 [107 S.Ct. 2225, 2235]; *National Labor Relations Board v. Iron Workers* (1978) 434 U.S. 335, 350 [98 S.Ct. 651, 660]; *National Labor Relations Board v. J. Weingarten, Inc.* (1975) 420 U.S. 251, 265-266 [95 S.Ct. 959, 967-968].)[2]

In its decision in *Inglewood Teachers Assn. v. Public Employment Relations Board* (1991) 227 Cal.App.3d 767, 776 [278 Cal.Rptr. 228], the Second Appellate District--in a holding never questioned until this case--held that "PERB's interpretation of agency principles is subject to the clearly erroneous standard of review." (*Id.*) In so holding, the Second Appellate District followed federal precedents that held that "[t]ransplantation of ordinary agency law, which arises out of ordinary contract and tort disputes into the . . . [labor law] context necessarily requires sensitivity to particular circumstances of industrial labor relations." (*Local 1814, International Longshoremen's Assn. v. National Labor Relations Board* (D.C. Cir. 1984) 735 F.2d 1384, 1394, cert. denied, 469

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[2] Indeed, the "considerable deference" afforded rules announced as the result of an adjudication in an adversary proceeding, especially in the labor-management context, has a long pedigree in both federal and California state law. In the federal context, in addition to the cases cited in the text, see, e.g., *Charles D. Bonanno Linen Service, Inc. v. National Labor Relations Board* (1982) 454 U.S. 404, 413 [102 S.Ct. 720, 725]; *Republic Aviation Corp. v. National Labor Relations Board* (1945) 324 U.S. 793, 798 [65 S.Ct. 982, 985]. In the California context, in addition to *Banning, supra*, see, e.g., *J.R. Norton Co., supra*, 26 Cal.3d at 29; *Judson Steel Corp., supra*, 22 Cal.3d at 668-669.

U.S. 1972 (1984). Accord, *Dowd v. International Longshoremen's Assn.* (11th Cir. 1992) 975 F.2d 779, 784.)

Here, the Court of Appeal found that the principles of deference in *Banning* were inapplicable and, instead, chose to apply a sliding scale of "consideration" of an agency interpretation as a factor in the court's exercise of its independent judgment articulated in *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1 [78 Cal.Rptr.2d 1] (*Yamaha*).

However, *Yamaha* was dealing not with a decision of an expert agency in an adjudicatory context, but with a Board of Equalization annotation in a Business Taxes Law Guide--a subregulatory administrative interpretation of a statute or regulation. And the decision in *Yamaha* relies heavily on the "valuable judicial account of the process by which courts reckon the weight of agency interpretations" provided by the U.S. Supreme Court in *Skidmore v. Swift & Co.* (1944) 323 U.S. 134 [65 S.Ct. 161] (*Skidmore*). (*Yamaha*, *supra*, 19 Cal.4th at 13.) In describing the standard of review applicable to the kind of "administrator's interpretive bulletins and informal rulings" at issue in both *Yamaha* and *Skidmore*, the very first thing that the *Yamaha* court noted was that such rulings "were 'not reached as a result of . . . adversary proceedings'" and, thus, are substantively different from post-adjudication decisions in terms of the deference they demand. (*Yamaha*, *supra*, 19 Cal.4th at 14, quoting *Skidmore*, *supra*, 323 U.S. at 139 (which made the same distinction); see, also, *id.*, 323 U.S. at 140 (that "the Administrator's policies and standards are not reached by trial in [an] adversary form[at] does not mean that they are not entitled" to any deference or "respect").) Thus, as the foregoing makes clear, in contrasting the sliding scale it instructed courts to employ when dealing with informal advice, such as interpretive bulletins, to the considerable deference owed a rule announced in the adjudication of an adversary

proceeding, *Yamaha* did nothing to undercut the longstanding judicial understanding of the considerable deference to administrative decisions announced in a decision resolving the issues raised in an adversary proceeding reflected in *Banning*'s "clearly erroneous" standard--and, indeed, the holdings in *Yamaha* are entirely consistent with courts affording such deference.

Because PERB's decision here arose in the context of PERB's adjudication of an actual dispute in an adversary proceeding, the Court of Appeal's reliance on *Yamaha* rather than *Banning* was manifestly erroneous and a serious departure from this Court's decisions.

The Court of Appeal attempted to distinguish the situation here from cases in which courts accord deference to administrative decisions by stating that, in this case, laws other than the MMBA were implicated. However, as discussed in Part III.B, below, a construction of the relationship between Government Code sections 3504.5 and 3505 is precisely the type of interpretation of statutory provisions within PERB's legislatively designated field of expertise to which courts are to give deference unless clearly erroneous. (*San Mateo City School Dist. v. Public Employment Relations Board* (1983) 33 Cal.3d 850, 856 [191 Cal.Rptr. 800, 803-804]. Accord *City of Palo Alto*, *supra*, 5 Cal.App.5th at 1287-88.) And, as discussed above, issues of agency in the labor-management relations realm require the presumptive knowledge of, and sensitivity to, the unique dynamics and circumstances present in that context possessed by an expert agency, like PERB, and, thus, warrant the application of the deferential clearly erroneous standard. (See, e.g., *Local 1814, International Longshoremen's Assn. v. National Labor Relations Board* (D.C. Cir. 1984) 735 F.2d 1384, 1394, cert. denied 469 U.S. 1972 (1984).

As PERB and the RPI Unions urge [PERB Opening Brief at pp. 59-73; Real Party in Interest San Diego Municipal Employees Union Opening

Brief at pp. 50-62], once the deferential standard of review is applied, it is clear that the City is properly charged with the Mayor's conduct in purposely circumventing the City's meet and confer obligations by behesting and supporting Proposition B while simultaneously refusing to meet with the RPI Unions to bargain about mandatory subjects of bargaining, including an alternative ballot measure.

The City and ballot proponents/petitioners Catherine A. Boling, T.J. Zane and Stephen B. Williams [City Answer Brief at pp. 33-50; Petitioners Answer Brief at pp. 20-27], as well as the Court of Appeals [*Boling, supra*, 10 Cal.App.5th at 872-875], fundamentally misapprehend the importance of state elections law and the First Amendment rights of the Mayor to this case. The issue here is not whether the MMBA imposes a duty to bargain about the substance of a ballot measure to be placed on the ballot as a result of signature gathering or the right of an elected official, acting in his personal capacity, to endorse that measure--issues that might involve the interaction of the MMBA with other laws. Indeed, PERB's decision assumes that the City had an obligation to place Proposition B on the ballot without in any way affecting its substance and also assumes that, in the absence of evidence that he was acting as an agent of the City, the Mayor could be as involved in Proposition B as he wished.

Rather, the issue here is whether the *City* failed to discharge its duty to meet and confer with the unions representing its employees when its Mayor used City resources, including insider information and his status as chief labor negotiator, to shape and advocate for the qualification and passage of a ballot measure and, then, the City, acting through its City Attorney, summarily refused to meet with its employees' exclusive bargaining representatives to explore whether, as a result of this conduct, there were any issues within the scope of representation to discuss.

B. By Improperly Failing to Defer to PERB's Construction of the Meet and Confer Duty under Government Code Section 3505, the Court of Appeal Usurped a Responsibility to Construe the MMBA Delegated by the Legislature to PERB, Improperly Circumscribed the Scope of the Duty to Meet and Confer, and Failed to Appreciate the Importance of the Possibility of Placing an Alternative Measure on the Ballot to the Disposition of This Case.

PERB's construction of the interaction of sections 3504.5 and Section 3505 manifestly does not involve any law external to the MMBA. Rather, it involves solely a question of how the constituent parts of the MMBA interact with one another. In such circumstances, "considerable weight should be given" to an agency's "construction of a statutory scheme it is entrusted to administer." (*Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837, 844 [104 S.Ct. 2778, 2782].) This is especially true whenever "a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations." (*Id.*, quoting *United States v. Shimer* (1961) 367 U.S. 374, 382 [81 S.Ct. 1554, 1560].)

Here, the constriction of situations in which the duty to meet and confer attaches to those in which the governing body acts would take outside the scope of bargaining all sorts of changes in policy and administration, by agency heads and others, that PERB has heretofore found cannot be undertaken unilaterally. (See, e.g., *County of Santa Clara* (2013) PERB Dec. No. 2321-M [2013 Cal. PERB LEXIS 24, *28] (Sheriff's office unilaterally imposed mandatory, background check process for current correctional officers); *Omnitrans* (2009) PERB Dec. No. 2030-M [2009 Cal. PERB LEXIS 34, *47] (managers of joint powers agency unilaterally implemented new union access policy); *Willits Unified School*

District (1991) PERB Dec. No. 912-E [1991 Cal. PERB LEXIS 52, *30-*31] (school principal unilaterally changed past practice on released time for negotiations).) Indeed, the breadth of subjects taken outside the scope of bargaining by the Court of Appeal's construction of the interaction of Government Code sections 3504.5 and 3505 is illustrated in its statement that it was "unpersuaded" by cases where "unfair labor practices claims against governmental entities for conduct by their agents . . . undertaken without approval by the governing body" are applicable to refusal to bargain cases unless the "unapproved actions" also constituted an interference with, restraint or coercion of employees "in violation of section 3506 . . . or in violation of section 3543.5, subdivision (a)." (*Boling, supra*, 10 Cal.App.5th at 885.) Thus, under the Court of Appeal's reading of the statute, except in those instances where the action is taken by the governing body itself, any unilateral change or proposed unilateral change that was not independently a violation of MMBA section 3506 (as Government Code section 3543.5 is part of the Educational Employment Relations Act, sections 3540 et seq.) does not trigger a duty to bargain and, thus, can be made without providing the affected employees' union with notice and an opportunity to bargain.

A decision that so radically circumscribes the scope of the meet and confer obligation is the type of decision that calls upon the expertise of PERB with the matters under its jurisdiction, and PERB's construction of the bargaining obligation under the statutory scheme to encompass actions by a public agency's agents, and not just its governing board, is the type of decision which should be at the core of judicial deference. (*National Labor Relations Board v. Action Automotive, Inc.* (1985) 469 U.S. 490, 496 [105 S.Ct. 984, 988]; *Chevron, supra*, 467 U.S. at 842-845; *Mesa Verde Construction Co. v. Northern California District Council of Laborers* (9th Cir. 1990) 861 F.2d 1124, 1135.) PERB's construction of the MMBA to

prohibit the City from acting in disregard of its obligation to bargain to agreement or impasse where the proposed action is undertaken by a City agent rather than just its governing body is a reflection of PERB's presumptively expert knowledge of the matters subject to agency regulation; and the application of these principles to the situation here, where the circumvention is undertaken by the City's chief negotiator using City resources and his official status and is accompanied by a determination by the City to summarily reject any request by the affected unions to meet and confer is manifestly appropriate.

IV. CONCLUSION

For the foregoing reasons, Amicus OCAA respectfully submits that the Court of Appeals applied an insufficiently deferential standard of review. Applying, instead, the correct standard of review been applied, PERB's finding that the City acted in derogation of its meet and confer obligations under Government Code section 3505 was manifestly supported by substantial evidence in the record as a whole and not clearly erroneous. Accordingly, the Court of Appeals decision should be reversed and the PERB decision should be upheld in toto.

Dated: November 17, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to rules 8.204(c) and 8.520(c) of the California Rules of Court, I hereby certify that this brief contains 3,991 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: November 17, 2017

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COURT NAME:	In the Supreme Court for the State of California	
CASE NUMBER:	Supreme Court:	S242034
	Appellate Court:	D069626 (lead) and D069630
PERB DECISION NO.:	2464-M, PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, and LA-CE-758-M	
CASE NAME:	*City of San Diego v. Public Employment Relations Board; San Diego Municipal Employees Association; Deputy City Attorneys Association; American Federation of State, County and Municipal Employees, AFL-CIO, Local 127; San Diego City Firefighters, Local 145, IAFF, AFL-CIO; Catherine A. Boling; T.J. Zane; and Stephen B. Williams*	

I declare that I am a resident of or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled cause. My business address is 3550 Wilshire Blvd., Suite 2000, Los Angeles, CA 90010.

On November 20, 2017, I served the document described as **BRIEF OF AMICUS CURIAE ORANGE COUNTY ATTORNEYS ASSOCIATION IN SUPPORT OF UNION REAL PARTIES IN INTEREST AND RESPONDENT** regarding the above-referenced case on the parties listed below:

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