

S261247

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

LYNN GRANDE,

Plaintiff and Respondent,

v.

EISENHOWER MEDICAL CENTER,

Defendant;

FLEXCARE, LLC,

Intervener and Appellant

On Review From The Court Of Appeal For the Fourth Appellate District,
Division Two
E068730

After An Appeal From the Superior Court,
County of Riverside, Case No. RIC1514281
Honorable Sharon J. Waters

**REPLY TO PLAINTIFF AND RESPONDENT LYNN GRANDE'S ANSWER TO
PETITION FOR REVIEW**

DOWNEY BRAND LLP

*CASSANDRA M. FERRANNINI (Bar No. 204277)

cferrannini@downeybrand.com

BRADLEY C. CARROLL (Bar No. 300658)

bcarroll@downeybrand.com

621 Capitol Mall, 18th Floor

Sacramento, California 95814

Telephone: 916.444.1000

Facsimile: 916.444.2100

Attorneys for Intervener and Appellant
FLEXCARE, LLC

I. INTRODUCTION

Plaintiff and Respondent Lynn Grande’s Answer demonstrates the necessity for review in this case by highlighting the existing split of authority in the District Courts of Appeal regarding this Court’s holding in *DKN Holdings, LLC v. Faerber* (2015) 61 Cal.4th 813. FlexCare, LLC (“FlexCare”) is a temporary staffing agency that places nurses with client-employers like Defendant Eisenhower Medical Center (“Eisenhower”). Both FlexCare and Eisenhower filed petitions for review of the decision of the Fourth District Court of Appeal in this matter. Grande does not argue that this case is not appropriate for review by this Court. She does not argue that there is no split of authority. Nor does she dispute that the issue raised by FlexCare and Eisenhower is an important one affecting a multitude of employers and employees in California. Instead, she argues the merits of the case. This Court should grant review to ensure uniformity of decision by resolving the split of authority among the District Courts of Appeal and to settle the important question of law presented. (Cal. Rules of Court, rule 8.500(b)(1).)

II. DISCUSSION

A. **The Court Should Grant Review To Clarify That Joint Employers, Even If Jointly and Severally Liable, May Be Found in Privity for Purposes of Res Judicata**

Plaintiff and Respondent Lynn Grande’s (“Grande”) Answer conflates the question of whether the Court of Appeal’s decision below was correct with the question of whether this Court should grant review of the decision. Indeed, Grande focuses almost entirely on the merits of the Court of Appeal’s decision and, in doing so, demonstrates precisely why review is necessary and why this particular case is the perfect vehicle for that review.

First, Grande argues that the Court of Appeal below correctly found that Intervener and Appellant FlexCare, LLC (“FlexCare”) and Defendant

Eisenhower Medical Center (“Eisenhower”) were not in privity with one another for purposes of res judicata. In support of that argument, Grande relies almost entirely on this Court’s decision in *DKN Holdings, LLC v. Faerber* (“*DKN Holdings*”).

As previously noted in FlexCare’s petition for review, Grande argues (and the trial court believed) that *DKN Holdings* stands for the proposition that joint and several obligors can *never* be in privity for purposes of claim preclusion. (See Answer at 8-9.) Although extensively quoting from *DKN Holdings*, Grande pointedly refuses to address key language from this Court’s opinion: “Joint and several liability *alone* does not create such a closely aligned interest [as to establish privity] between co-obligors.” (*DKN Holdings, supra*, 61 Cal.4th at p. 826, emphasis added.) This Court did not hold, as Grande suggests, that in every instance joint and severally liable parties are not in privity for purposes of res judicata. Rather, this Court concluded that, in the circumstances present in that case, joint and several liability *standing alone* could not establish privity. Indeed, unlike in this case, the parties in *DKN Holdings*, “never contended” that they “should be considered the same party”; thus, in *DKN Holdings* this Court only decided that joint and several liability standing alone did not establish privity. (See *DKN Holdings, supra*, 61 Cal.th at p. 826; see also *American Federation of Labor v. Unemployment Insurance Appeals Board* (1996) 13 Cal.4th 1017, 1039 [“[C]ases are not authority for propositions not considered.”].)

Grande’s emphasis on her imagined decision of *DKN Holdings* demonstrates the necessity of review here. Although FlexCare does not find this Court’s decision in *DKN Holdings* ambiguous, Grande’s argument shows that there may be multiple, conflicting interpretations of the Court’s

holding.¹ To ensure uniformity of decision across the Courts of Appeal and provide certainty to litigants in California on the important and recurring question of privity for purposes of res judicata, this Court should grant review to clarify the holding in *DKN Holdings*.

Second, Grande contends that the decision in *Castillo v. Glenair, Inc.* (2018) 23 Cal.App.5th 262 (“*Castillo*”) finding privity between a temporary staffing agency and its client-employer was incorrect and conflicts with this Court’s decision in *DKN Holdings*. Although FlexCare disagrees – indeed, the *Castillo* court itself examined *DKN Holdings* and determined its decision did not conflict with *DKN Holdings* – Grande’s assertion emphasizes the need for review here.² The facts of this case are “essentially identical” to *Castillo*. (Slip. op. at dis. opn. of Ramirez, P.J.) Yet the Court of Appeal below declined to follow *Castillo* and instead found that in this case, on identical facts, the temporary staffing agency and client-employer were not in privity. As the dissent in this case recognized, by doing so the Court of Appeal below created a particularly clear split of authority. (Slip op. at dis. opn. of Ramirez, P.J.)

Ultimately, Grande might convince this Court that *Castillo* was incorrectly decided. That does not mean, however, that the *Castillo* decision and the decision of the Court of Appeal in this case did not reach

¹ As discussed directly below, the Court of Appeal in *Castillo v. Glenair, Inc.* (2018) 23 Cal.App.5th 262 also arrived at a decision that conflicts with Grande’s interpretation of this Court’s opinion in *DKN Holdings*.

² Grande’s merits-based attack on *Castillo*’s agency holding (see Answer at 14-18) further demonstrates why review should be granted in this matter. Agency is an important question of law that is litigated in California courts with great frequency. To the extent there is a conflict between supposed “long-standing principles of agency law” and the decision reached by the court in *Castillo* (as argued by Grande), then this Court should use this case as an opportunity to ensure uniformity of decision across the state when it comes to agency principles.

diametrically opposed decisions based on identical facts. Thus, review is necessary to secure uniformity of decision among the Courts of Appeal on a recurring, important question of law: the privity relationship between a temporary staffing agency and its client-employer. (Cal. Rules of Court, rule 8.500(b)(1).)

B. The Court Should Grant Review to Confirm the Agency Relationship Between Joint Employers and Can Do So Without Reviewing Any Factual Findings.

Grande also contends that FlexCare is “improperly” seeking review of the trial court’s finding that Eisenhower and FlexCare did not share an agency relationship. As FlexCare explained in its Petition for Review, however, the question of FlexCare and Eisenhower’s agency relationship raises a pure question of law based on undisputed facts. (See *Troost v. Estate of DeBoer* (1984) 155 Cal.App.3d 289, 299 [citing *Isenberg v. California Emp. Stab. Com.* (1947) 30 Cal.2d 34, 41].) Thus, this Court would not engage in any factual review by reviewing the Court of Appeal’s decision that FlexCare and Eisenhower did not share an agency relationship.

C. There is No Basis to Depublish the *Castillo* Decision

In an apparent effort to avoid the consequence of the split of authority between the *Castillo* decision and the decision of the Court of Appeal in this case, Grande suggests that the Court should simply depublish *Castillo*. The time to request depublication of *Castillo*, however, has long since passed. California Rules of Court, rule 8.1125(a)(4) provides that a request for depublication must be “delivered to the Supreme Court within 30 days after the decision [sought to be depublished] is final in the Court of Appeal.” *Castillo* was final in the Court of Appeal on or about June 13, 2018, nearly two years ago. (Cal. Rules of Court, rule 8.624(b)(1).) Grande cannot now request depublication of *Castillo*. In any event,

depublication would not address the recurring fundamental issue underlying the split among the Courts of Appeal here—it would simply kick the can down the road and lead to further confusion among California litigants.

III. CONCLUSION

FlexCare respectfully requests that the Court grant FlexCare’s petition for review.

DATED: April 17, 2020

DOWNEY BRAND LLP

By: /s/ Cassandra M. Ferrannini
CASSANDRA M. FERRANNINI
Attorneys for Appellant FLEXCARE,
LLC

**CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA
RULES OF COURT RULE 8.504(d)(1)**

Pursuant to California Rules of Court Rule 8.504(d)(1), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 1391 words.

DATED: April 17, 2020

DOWNEY BRAND LLP

By: /s/ Cassandra M. Ferrannini
CASSANDRA M. FERRANNINI
Attorneys for Appellant FLEXCARE,
LLC

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 621 Capitol Mall, 18th Floor, Sacramento, CA 95814.

On April 17, 2020, I served true copies of the following document(s) described as **REPLY TO PLAINTIFF AND RESPONDENT LYNN GRANDE’S ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered users will be served by the TrueFiling system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Downey Brand LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 17, 2020, at Sacramento, California.

/s/ Patricia Pineda
Patricia Pineda

SERVICE LIST

VIA TRUEFILING:

Court of Appeal, 4th Appellate
District, Division 3
750 B Street, Ste. 300
San Diego, CA 92101

VIA TRUEFILING:

*See Cal. Rules of Court, Rule
8.212(c)2*
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

VIA U.S. MAIL:

Honorable Sharon Waters
Riverside County Superior
Court
4050 Main Street
Riverside, CA 92501

VIA TRUEFILING:

Richard J. Simmons / Ruben D.
Escalante
Sheppard, Mullin, Richter, et al.
333 South Hope St., 43rd Floor
Los Angeles, CA 90071
T: 213-620-1780
F: 213-620-1398
E: rsimmons@sheppardmullin.com
rescalante@sheppardmullin.com

*Attorneys for Eisenhower Medical
Center*

VIA TRUEFILING:

Peter R. Dion-Kindem
The Dion-Kindem Law Firm
21550 Oxnard Street, Ste. 900
Woodland Hills, CA 91367
T: 818-883-4900
F: 818-883-4902
E: peter@dion-kindemlaw.com

VIA TRUEFILING:

Lonnie C. Blanchard, III, Esq.
The Blanchard Law Group, APC
3579 East Foothill Blvd., No. 338
Pasadena, CA 91107
T: 213-599-8255
F: 213-402-3949
E: lonnieblanchard@gmail.com

Attorneys for Lynne Grande

Attorneys for Lynne Grande

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **GRANDE v. EISENHOWER MEDICAL CENTER**
(FLEXCARE)

Case Number: **S261247**

Lower Court Case Number: **E068730**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **cferrannini@downeybrand.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	Reply ISO Petition

Service Recipients:

Person Served	Email Address	Type	Date / Time
Lonnie Blanchard The Blanchard Law Group, APC 93530	lonnieblanchard@gmail.com	e-Serve	4/17/2020 3:06:01 PM
Pamela Parker Sheppard Mullin Richter & Hampton	pparker@sheppardmullin.com	e-Serve	4/17/2020 3:06:01 PM
Karin Vogel Sheppard Mullin Ruchter & Hampton, LLP	kvogel@shepardmullin.com	e-Serve	4/17/2020 3:06:01 PM
Paul Grossman Paul Hastings Janofsky & Walker 035959	paulgrossman@paulhastings.com	e-Serve	4/17/2020 3:06:01 PM
Peter Dion-Kindem Peter R. Dion-Kindem, P.C. 95267	kale@dion-kindemlaw.com	e-Serve	4/17/2020 3:06:01 PM
Richard Simmons Sheppard, Mullin, Richter & Hampton LLP 72666	rsimmons@sheppardmullin.com	e-Serve	4/17/2020 3:06:01 PM
Peter Dion-Kindem Peter R. Dion-Kindem, P.C.	peter@dion-kindemlaw.com	e-Serve	4/17/2020 3:06:01 PM
Bradley Carroll Downey Brand LLP 300658	bcarroll@downeybrand.com	e-Serve	4/17/2020 3:06:01 PM
Karin Vogel Sheppard, Mullin, Richter & Hampton 131768	kvogel@sheppardmullin.com	e-Serve	4/17/2020 3:06:01 PM
Patricia Pineda Downey Brand LLP	ppineda@downeybrand.com	e-Serve	4/17/2020 3:06:01 PM
Cassandra Ferrannini Downey Brand LLP	cferrannini@downeybrand.com	e-Serve	4/17/2020 3:06:01 PM

204277

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/17/2020

Date

/s/Cassandra Ferrannini

Signature

Ferrannini, Cassandra (204277)

Last Name, First Name (PNum)

Downey Brand LLP

Law Firm