No. A140308

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

JOHN ST. CROIX, EXECUTIVE DIRECTOR, SAN FRANCISCO ETHICS COMMISSION; and SAN FRANCISCO ETHICS COMMISSION,

Petitioners and Respondents,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO,

Respondent and Appellant,

ALLEN GROSSMAN,

Real Party in Interest.

Appeal from the Superior Court of San Francisco,
Case No. CPF13513221
The Honorable Ernest H. Goldsmith

REQUEST FOR PERMISSION TO FILE BRIEF OF *AMICUS CURIAE* FIRST AMENDMENT COALITION IN OPPOSITION TO PETITION FOR PREMPTORY WRIT OF MANDATE AND IN SUPPORT OF REAL PARTY IN INTEREST ALLEN GROSSMAN; BRIEF OF AMICUS CURIAE [CALIFORNIA GOVERNMENT CODE SECTION 6259(C)]

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TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES, FIRST APPELLATE DISTRICT, DIVISION ONE:

Pursuant to California Rule of Court 8.200(c), the First Amendment Coalition (FAC) hereby requests permission to file the accompanying brief amicus curiae in support of real party in interest Allen Grossman.[1]

FAC is a California-based nonprofit organization that is dedicated to protecting freedom of speech and public access to government information and decision-making at all levels of government (federal, state and local) and all branches (executive, legislative and judicial). At the local level, FAC works to enforce and expand citizens' rights to open government. It does this directly, in FAC's own name, and also by assisting other organizations and individuals in enforcing the California Public Records Act, Gov. Code section 6250 et seq., and the Brown Act, Gov. Code section 54950 et seq., as well as so-called "sunshine laws": city ordinances that supplement the CPRA and Brown Act by providing additional access rights.

At issue in this case is the applicability of San Francisco's Sunshine Ordinance, which was enacted in 1993 and amended in 1999 through a voter initiative. FAC had a hand in drafting the San Francisco ordinance and has had a similar role in supporting adoption of sunshine laws in other cities and counties across the state. It therefore has a keen, perhaps unique, interest in the subject matter of this case. FAC also can be of assistance to

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[1] In accordance with California Rule of Court 8.200(c)(3), we make the following representations: 1) No party or counsel for a party in this case authored the proposed amicus brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief; and 2) no person, other than amicus curiae, its members, or its counsel in the pending matter, made a monetary contribution intended to fund the preparation or submission of the brief.

this Court in deciding this case.

The San Francisco sunshine law, to FAC's knowledge, is the strongest such law – meaning, the most protective of government transparency and citizens' access to government information – in California. It is a highly detailed, comprehensive and intricate law reflecting public dissatisfaction with the CPRA, which in some cases gives agencies considerable discretion in deciding whether to disclose requested public records.

The San Francisco ordinance sought to curb that discretion in a number of ways, including a provision that requires agencies to disclose, notwithstanding the attorney-client privilege, "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act . . . any San Francisco governmental ethics code, or this Ordinance [i.e., the Sunshine Ordinance]." San Francisco Admin. Code, Section 67.24(b)(1)(iii). This provision, by denying confidentiality to a narrow category of communications, will have the effect of deterring city agencies from seeking, and city lawyers from providing, advice on how to circumvent the CPRA. That is a judgment that the people of San Francisco are entitled to make.

Petitioners argue that this directive is contrary to, and superseded by, San Francisco's charter. However, FAC's amicus brief shows that the charter says nothing about the attorney-client privilege – not explicitly and not implicitly. Moreover, even if the charter can be construed to prescribe an attorney-client privilege for city agencies, there is nothing to prevent the city from choosing not to invoke the privilege – from waiving the privilege, in other words – for certain records.

Section 67.24(b)(1)(iii) is precisely such a choice, made by the citizens through the initiative process. As the ultimate "client" of lawyers representing the city, the people of San Francisco have the authority to make that choice.

For the foregoing reasons, we respectfully request that FAC's application to file the proposed amicus curiae brief be granted.

Dated: April 14, 2014

RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP

By: ***/s/ Karl Olson***
Karl Olson
Attorney for Amicus Curiae

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I. INTRODUCTION

The people of San Francisco, acting through the initiative process, chose to have their government – the departments, agencies and their personnel – conduct the city's affairs as openly and as publicly as possible.

In amending the city's Sunshine Ordinance in 1999, the voters not only plugged specific loopholes that had been drilled into the state open records law, the California Public Records Act (CPRA), Gov. Code section 6250 et seq., but they limited use of the attorney-client privilege to discourage agencies from using their discretion to look for ways to avoid disclosure.

At issue in this case is whether San Francisco's experiment in transparency will be cut short by restoration of secrecy for its lawyers' "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act . . . any San Francisco governmental ethics code, or this Ordinance [i.e., the Sunshine Ordinance]." San Francisco Admin. Code, Section 67.24(b)(1)(iii).

Petitioners contend that section 67.24(b)(1)(iii) of the Sunshine Ordinance is in conflict with the city Charter, which must prevail over an ordinance. The problem with this argument is that the Charter is silent on the attorney-client privilege. It does not even hint at the need for the privilege in the context of advice on open-government laws, much less command that the privilege apply in a way that eviscerates the Sunshine Ordinance. State law, not the Charter, is the legal source for the attorney-client privilege in the local government arena.

But assuming for purposes of argument that the Charter does prescribe an attorney-client privilege for San Francisco agencies, that is not

the end of the inquiry. As a *privilege*, the attorney-client privilege may apply or not, depending on the *choice* of the client. Section 67.24(b)(1)(iii) expresses the choice of the voter-citizenry, as the ultimate client, to waive the attorney-client privilege for the narrow category of advice and communications that the provision covers.

The clear choice of the people of San Francisco, as expressed in the ballot booth, should not be overturned without compelling reason. That petitioners would prefer to be able to invoke the privilege in this case is hardly surprising, but it is not nearly enough to support the extreme step – invalidation of section 67.24(b)(1)(iii) – that they are demanding.

II. INTEREST OF AMICUS CURIAE

The First Amendment Coalition (FAC) is a non-profit organization dedicated to defending freedom of speech and the public's right to know. Based in California (with offices in San Rafael), FAC has been active throughout the state in enforcing the California Public Records Act, Gov. Code section 6250 et seq., and other open-government laws, as well as in assisting local governments in adopting so-called "Sunshine" ordinances – local laws that supplement the open-government requirements of the CPRA. In fact, FAC Board members and staff were centrally involved in drafting language for the San Francisco Sunshine Ordinance,[2] whose interpretation and application figure prominently in this case.

FAC is committed to the proposition that government transparency – at the local, state and federal levels – is indispensable to democratic self-government. Government transparency – access to government

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[2] The Sunshine Ordinance was approved by the voters as Proposition G on San Francisco's ballot for the Nov. 2, 1999 election. It became effective January 1, 2000.

information, to meetings, and to the deliberative process – enables the people to hold government accountable. FAC works to enhance transparency through a variety of initiatives, including operating a free legal consultation service (on its website, www.firstamendmentcoalition.org) for journalists, community activists, public officials and ordinary citizens; the initiation of test-case lawsuits and the filing of amicus briefs in state and federal courts; and through public advocacy.

FAC is a California nonprofit corporation that is tax-exempt under section 501(c)(3) of the federal tax code. The organization receives financial support from members (dues and contributions), from individuals (contributions) and foundations (grants).

III. THE SUNSHINE ORDINANCE, REFLECTING DOUBTS ABOUT CITY AGENCIES' COMMITMENT TO OPENNESS, CURBS DISCRETION TO CIRCUMVENT ACCESS BY MEANS OF PRIVILEGE

In 1993 the citizens of San Francisco, acting through the initiative process, launched a bold experiment in government transparency. Frustrated with the limited scope and multiple loopholes of the California Public Records Act, Gov. Code section 6250 et seq., the state's freedom of information law (and to a lesser extent, the Brown Act, Gov. Code section 54950 et seq., California's open-meetings law), San Francisco voters enacted the Sunshine Ordinance, perhaps the most far-reaching public access and open-government law in the country. The Ordinance was amended in 1999. (Petition at 15-16.)

The Ordinance is an experiment to make city officials and city agencies function as though, in every decision they make and action they take, the people of San Francisco are looking over their shoulders. As such, it is hardly surprising that the Sunshine Ordinance is unpopular in some city

departments and agencies, not least the Office of the City Attorney. But their resistance should not be allowed to derail the San Francisco citizens' experiment in transparent, democratic governance.

The Sunshine Ordinance provision dealing with the attorney-client privilege (San Francisco Admin. Code, § 67.24(b)(1)(iii)) is an essential part of an intricate, detailed and comprehensive access law designed to make local officials, to the maximum extent possible, deliberate and make their decisions in the open, for all to see (or read about in public records or the media).

The ordinance is predicated on the idea that such transparency fosters political accountability while discouraging government conduct that is self-serving, ill-considered, erroneous – or far worse, corrupt. It reflects a choice by San Francisco voters, broader than the approach of the CPRA, to go "all-in" for government openness.

The Sunshine Ordinance implements this choice through a series of provisions intended to circumscribe or eliminate the discretion that public officials otherwise would have, under the CPRA, to deny requests for access to government information. Section 67.24(b)(1)(iii) is one such provision, withdrawing discretion to invoke the attorney-client privilege for legal advice on access (and ethics) matters.

Another provision, section 67.24(h) (San Francisco Admin. Code § 67.24(h)), removes the "deliberative process privilege" (enunciated in *Times Mirror v. Superior Court,* 53 Cal. 3d 1325; 813 P.2d 240; 283 Cal. Rptr. 893 (1991)) from the list of grounds for agencies' withholding of public records under the CPRA. Also removed – by section 67.24(g) (San Francisco Admin. Code § 67.24(g)) of the Sunshine Ordinance – is the CPRA's catch-all exemption, Gov. Code section 6255, which gives

officials discretion, on "public interest" grounds, to bar access even to public records that cannot be withheld on the basis of any of the CPRA's express exemptions.

In systematically curbing officials' discretion to decide whether or not to release public records, the Sunshine Ordinance reflects the public's deeply-felt skepticism about government's willingness, or even ability, to choose openness over secrecy on a consistent basis. Although public officials universally support openness in public pronouncements – who can be against government transparency, after all? – in practice their attention turns to exceptions, competing considerations and excuses. This mindset, which may be in the government's DNA, transforms a legal presumption of openness into a *de facto* presumption of secrecy.

This skepticism informs the Sunshine Ordinance provision that limits use of the attorney-client privilege. It provides, in relevant part, that "[n]otwithstanding a department's legal discretion to withhold certain information under the California Public Records Act," a San Francisco agency must produce "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act . . . any San Francisco governmental ethics code, or this Ordinance [i.e., the Sunshine Ordinance]." San Francisco Admin. Code, Section 67.24(b)(1)(iii).

Section 67.24(b)(1)(iii) enforces the rest of the Sunshine Ordinance by, in effect, preventing government officials from getting confidential expert advice on how to circumvent the openness requirements of the CPRA and the ordinance itself. The voters made a reasonable choice that tax dollars should generally not be used to enable government officials to secretly thwart the voters' will. The voters' choice was not dissimilar to the

choices made by the Founding Fathers in the 18th century who overthrew rulers who ignored them. Although legal advice on how to keep public records secret is not forbidden by section 67.24(b)(1)(iii), as long as lawyer and client are willing to share those communications with the people of San Francisco, the ordinance nonetheless discourages city officials from asking for such advice and lawyers for the city from giving it. Sunshine in this context is not only a "disinfectant" (to quote former Supreme Court Justice Louis Brandeis), but also a deterrent.

Under section 67.24(b)(1)(iii), agencies are not discouraged from receiving legal advice on how to *comply* with access laws; nor are they discouraged from seeking advice about issues that the access laws address *ambiguously* (that is, the public expects officials to seek legal advice when the law is unclear). The absence of confidentiality, however, does effectively deter them from engaging lawyers to develop creative strategies for gaming, avoiding, circumventing, and working around disclosure requirements. And that effect of section 67.24(b)(1)(iii) is precisely what the voters intended.

The people of San Francisco determined that there is no social value in fostering the use of government resources – bureaucratic or legal – to finding ways to conduct the city's business in secrecy. That is a legitimate political judgment to which the courts should defer.

IV. SAN FRANCISCO'S CHARTER SAYS NOTHING, EXPLICITLY OR IMPLICITLY, ABOUT CITY AGENCIES' ATTORNEY-CLIENT PRIVILEGE, AND IS THEREFORE IRRELEVANT

Section 67.24(b)(1)(iii) of the Sunshine Act requires city agencies, upon request, to disclose "[a]dvice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise

concerning the" CPRA, the ordinance or the city ethics code. This language is unambiguous and unequivocal, leaving no room for argument about San Francisco voters' intentions in enacting it.

Petitioners, accordingly, have had to focus on a different law, the San Francisco Charter, in whose language they claim to discern a legal prescription about the attorney-client privilege. They contend that this legal prescription precludes the voters' decision, expressed through the initiative process, to circumscribe the attorney-client privilege in one narrow area – that of communications and advice on compliance with open-government and ethics rules.

Petitioners' position does not withstand analysis.

Because petitioners' entire argument hangs on the language of the San Francisco Charter, one reads their pleadings expecting to see numerous citations to specific language in the Charter about privilege, or about attorney-client communications, or about confidential opinions or advice. But petitioners' briefs are bereft of such references.

Why? Because the Charter, in fact, is silent on the matter of the attorney-client privilege. Not a word. Nothing. All the Charter does is provide that the City Attorney's Office will serve as San Francisco's lawyer.[3] From this designation of counsel – really just an allocation of bureaucratic responsibility – petitioners have divined a specific intent to mandate a version of the privilege so inflexible that it requires the overriding of section 67.24(b)(1)(iii) of the Sunshine Ordinance.

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[3] The specific provisions of the Sunshine Ordinance should govern over the very general provisions of the City Charter which don't mention privilege. *Salazar v. Eastin* (1995) 9 Cal.4th 836, 857 [more specific provisions take precedence over more general ones].

That is a leap too far. From the Charter's provision of legal representation of city agencies, one can logically infer nothing about the applicability and scope of the attorney-client privilege for agencies and city personnel – just as one can infer nothing about whether the city should have sovereign immunity from tort suits; or whether the city will have a jury-trial right; or whether the city can insist on arbitration clauses in all government contracts.

Moreover, petitioners' argument flies in the face of Article I, Section 3(b)(2) of the California Constitution, added by Proposition 59 in 2004. It states:

> "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access . . ."

Petitioners rely on the City Charter as legal authority for excluding from the later-enacted Sunshine Ordinance section 67.24(b)(1)(iii), thereby gutting the ordinance's transparency mandate. But that is hardly a narrow interpretation of the Charter. It is the opposite. It is the broadest possible interpretation of the Charter: leveraging its silence on the issue of attorney-client privilege into a specific prohibition against section 67.24(b)(1)(iii). If Article I, section 3(b)(2) of the Constitution means anything, it stands as a complete bar to this kind of statutory interpretation on a government access issues.

The City Charter is of no avail to petitioners. It says nothing, and implies nothing, about the attorney-client privilege, much less the application of that privilege in the narrow context of advice on open records and open meetings issues. For San Francisco agencies, as for all California citizens, the attorney-client privilege derives from state law, not local law.

Codified in California's Evidence Code (sections 950-962), the state attorney-client privilege applies to confidential communications between a lawyer and a "client" (section 952), defined as a "person" (section 951), to include a "public entity" (section 175), which is in turn defined as, *inter alia*, a "state, county, city, . . . public authority, public agency, or any other political subdivision or public corporation . . ." (section 200). San Francisco would be subject generally to the attorney-client privilege even if the city Charter didn't exist.

Petitioners' argument should be rejected. The Charter should not be construed as forbidding San Francisco voters' decision to selectively withhold confidentiality from a single category of legal opinions: advice about open government laws. The Charter says nothing relevant to this case.

V. EVEN IF THE CHARTER CAN BE READ AS CONFERRING AN ATTORNEY-CLIENT PRIVILEGE ON CITY AGENCIES, THE PUBLIC, AS "CLIENT," HAS OPTED LEGITIMATELY NOT TO INVOKE IT FOR OPINIONS ON ACCESS LAWS.

Even if San Francisco's Charter can be read to include an implicit attorney-client privilege, the city is still free, using the initiative process, to enact a local ordinance that adjusts or modifies the application of the privilege to its agencies, departments and personnel.

Petitioner's position, as we understand it, is that any inconsistency between the Sunshine Ordinance (specifically, section 67.24(b)(1)(iii)) and the Charter necessarily voids the former. But that assumes that the Ordinance, to the extent of any deviation from the Charter, is an abrogation of the Charter. It is not.

The attorney-client privilege is a "privilege," not a command. Under even the most orthodox view of the attorney-client privilege, the client, as

holder of the privilege (not the lawyer), has a choice: He/she/it may choose to invoke the privilege or not. Section 67.24(b)(1)(iii) of the Sunshine Ordinance is nothing more (or less) than the city's exercise of its right to choose *not* to invoke the privilege for communications and advice on one limited set of issues.

The choice was made by the people of San Francisco through enactment of the Sunshine Ordinance. It is a selective, prospective choice by the citizenry. The citizenry is sovereign. It is the ultimate "client," for purposes of the attorney-client privilege in the governmental context. The fact that petitioners may disagree with the people's choice in section 67.24(b)(1)(iii) does not void that choice.

Adherence to section 67.24(b)(1)(iii) will not cripple San Francisco agencies or the City Attorney's Office. They have been operating under the amended Sunshine Ordinance since January 2000; in that time the city did not experience crises due to its agencies' inability to confer confidentially with lawyers regarding open-government laws. Moreover, section 67.24(b)(1)(iii)'s limitation on the attorney-client privilege is really not a radical departure.

Courts have long recognized that the attorney-client privilege applicable to government agencies is not the same – is not as protective of confidentiality – as the attorney-client privilege applicable to private individuals. *See In re Thirty-Third Investigating Grand Jury,* A.3d __, 2014 WL 619901 (Pa 2014), *In re Witness Before Special Grand Jury*, 288 F.3d 289 (7th Cir. 2002); *In re Grand Jury Subpoena Duces Tecum,* 112 F.3d 910 (8th Cir. 1997). But cf. *In Re Grand Jury Investigation,* 399 F.3d 527 (2d Cir. 2005).

This is especially true when an agency's interest in confidentiality is

balanced against the public's "right to know" – the people's need for information about the conduct of government business. Thus, the attorney-client privilege will not bar a grand jury's access to communications between a government agency and its lawyers, even though a subpoena for the same communications with a private client almost certainly would be quashed. *Ibid.*

As the Pennsylvania Supreme Court recently explained:

> ". . . . [T]he actual client of the agency's lawyers in such circumstances is the public. It follows that the only proper manner of considering the privilege in these circumstances is that the client-citizenry has impliedly waived the attorney-client privilege that might otherwise shield from revelation evidence of corruption and criminal activity." *In re Thirty-Third Investigating Grand Jury*, 2014 WL 619901 at *15.

In San Francisco, the client-citizenry's waiver of the attorney-client privilege is not implied – it is explicit in the Sunshine Ordinance. That choice is both unambiguous and plainly within the authority of the people of San Francisco, as "client," to make. The clear choice of the people of San Francisco, as expressed in the ballot booth, should not be overturned without compelling reason.

That petitioners would prefer to be able to invoke the privilege in this case is hardly surprising,[4] but it is not nearly enough to support the extreme step – invalidation of section 67.24(b)(1)(iii) – that they are requesting. We respectfully urge the Court to enforce the people's choice.

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[4] As real party Grossman points out in his March 7, 2014 Opposition to the Petition (at 6-7), petitioner St. Croix and his Ethics Commission have declined to take action on all 40 violations referred to them by the Sunshine Ordinance Task Force, and have been blasted as "The Sleeping Watch Dog" by the San Francisco Civil Grand Jury. Sadly, the once-so-called City That Knows How has placed a fox inside the ethics hen house.

VI. CONCLUSION

For the foregoing reasons, and in deference to the voters' recent and specific narrowing of the attorney-client privilege on a specific category of communications, the writ should be denied.

Respectfully Submitted,

Dated: April 14, 2014

RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP

By: ***/s/ Karl Olson***
Karl Olson
Attorneys for Amicus Curiae

CERTIFICATE OF WORD COUNT

(California Rules of Court, Rule 8.204(c)(1))

Pursuant to Rule 8.204(c)(1), and in reliance upon the word count feature of the software used, I certify that the foregoing Request For Permission to file REQUEST FOR PERMISSION TO FILE BRIEF OF AMICUS CURIAE FIRST AMENDMENT COALITION IN OPPOSITION TO PETITION FOR PREMPTORY WRIT OF MANDATE AND IN SUPPORT OF REAL PARTY IN INTEREST ALLEN GROSSMAN; BRIEF OF AMICUS CURIAE [CALIFORNIA GOVERNMENT CODE SECTION 6259(c)] contains 3,647 words, exclusive of those materials not required to be counted under Rule 8.204(c)(3).

Dated: April 14, 2014

RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP

By: ***/s/ Karl Olson***
Karl Olson

Attorneys for Amicus Curiae

PROOF OF SERVICE
No. A140308

I, Ann Williams, state:

I am a citizen of the United States. My business address is 555 Montgomery Street, Suite 820, San Francisco, CA 94111. I am employed in the City and County of San Francisco where this mailing occurs. I am over the age of eighteen years and not a party to this action. On the date set forth below, I served the foregoing document described as:

REQUEST FOR PERMISSION TO FILE BRIEF OF *AMICUS CURIAE* FIRST AMENDMENT COALITION IN OPPOSITION TO PETITION FOR PREMPTORY WRIT OF MANDATE AND IN SUPPORT OF REAL PARTY IN INTEREST ALLEN GROSSMAN; BRIEF OF AMICUS CURIAE
[CALIFORNIA GOVERNMENT CODE SECTION 6259(c)]

on the following person(s) in this action addressed as follows:

BY FIRST CLASS MAIL AND BY TRUEFILING EFS SYSTEM Andrew N. Shen Office of the City Attorney 1 Dr. Carlton B. Goodlett Place City Hall, Room 234 San Francisco, CA 94102-4682 Tel: 415-554-4780 Fax: 415-554-4745 Email: Andrew.shen@sfgov.org *Attorneys for Petitioner John St. Croix*	**BY FIRST CLASS MAIL AND BY TRUEFILING EFS SYSTEM** Michael Kai Ng Kerr & Wagstaffe LLP 100 Spear Street, 18th Floor San Francisco, CA 94105-1528 Tel: 415-371-8500 Fax: 415-371-0500 Email: mng@kerrwagstaffe.com *Attorneys for Real Party in Interest Allen Grossman*
BY FIRST CLASS MAIL The Hon. Ernest Goldsmith c/o Clerk San Francisco County Superior Court 400 McAllister Street San Francisco, CA 94102	**BY ELECTRONIC SERVICE** Office of the Clerk Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797

X **BY FIRST CLASS MAIL - I am readily familiar with my firm's practices for collection and processing of correspondence for mailing with the United States Postal Service, to-wit, I deposited with the United States Postal Service this same day in the ordinary course of business the said correspondence in a sealed envelope, postage prepaid.**

///

☐ BY OVERNIGHT MAIL - I delivered such envelope to an authorized commercial carrier office or courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid for overnight delivery to the office(s) of the addressee(s) noted above.

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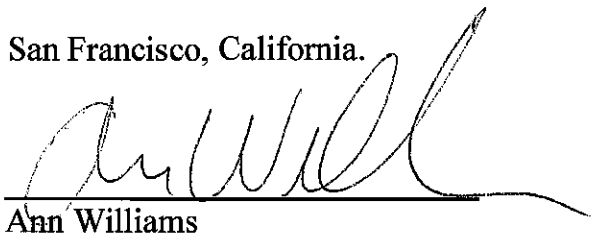
☐ BY PERSONAL SERVICE - I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s) noted above.

☐ BY EMAIL - I served the foregoing document(s) by transmitting via email to the email addressees noted above.

X **ELECTRONIC SERVICE THROUGH TRUEFILING EFS: I electronically filed the foregoing document on the date set forth below through the TrueFiling EFS website and the foregoing participants in the case who are registered EFS users will be served by the EFS system.**

X **ELECTRONIC SERVICE – I served the foregoing document in a text-searchable Portable Document Format (PDF), which exactly duplicates the appearance of the paper copy, including the order and pagination of all of the brief's components, by submitting it to the California Supreme Court's electronic service website, which complies with California Rule of Court, Rule 8.212(c)(2)(A).**

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 April 14, 2014 at San Francisco, California.



Ann Williams