No. S232946

IN THE SUPREME COURT OF CALIFORNIA

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP,

Plaintiff and Respondent,

v.

J-M MANUFACTURING CO., INC.,

Defendant and Appellant.

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Division Four, Case No. B256314

The Superior Court of Los Angeles County, Case No. YC067332
The Honorable Stuart M. Rice, Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

---

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INTRODUCTION

J-M's Answer tries to camouflage the Court of Appeal's departure from the rulings of this Court and various other Courts of Appeal. It offers irrational and meaningless distinctions of the relevant cases and an outright distortion of the actual facts of this case and the holdings of the decision below. In reality, the Court of Appeal's sweeping, unprecedented, and deeply troubling opinion, which has received considerable publicity, shifts the law in a direction that will have harmful consequences for the legal profession and render California a national outlier. A chorus of amici—over a dozen leading academics from across the nation, a Senior Fellow at the Center for the Study of the Legal Profession at Georgetown University, more than 30 law firms of a range of sizes representing thousands of lawyers, and a number of prominent insurance companies covering tens of thousands of additional lawyers—confirms this.

This is not a case about "lawyers behaving badly." (Ans. at p. 7.) It is about whether a conflict waiver was sufficiently detailed to constitute informed consent, and how informed consent under the existing Rules of Professional Conduct should be assessed. This case is also about whether the law permits an opportunistic, sophisticated client to evade its agreement to arbitrate disputes—and the decision of a distinguished panel of arbitrators—by claiming that a conflict waiver was not sufficiently detailed.

J-M seeks a nearly $4 million windfall based on a conflict arising from an average of one hour per month of unrelated labor advice by a different Sheppard Mullin lawyer in a different office, which the Court of Appeal assumed arose *after* J-M retained Sheppard Mullin. This conflict was encompassed by the waiver's clear language, notwithstanding J-M's rhetoric about being "hoodwink[ed]." (Ans. at p. 8.) Yet the Court of

Appeal, without even assessing J-M's actual understanding, ruled that the waiver was insufficiently specific to constitute informed consent, and then created a new per se rule requiring Sheppard Mullin to forfeit all fees after the conflict arose. It did so even though J-M undisputedly suffered no harm; the high quality of Sheppard Mullin's work was undisputed; no confidential information was used; J-M's general counsel extensively reviewed and edited the engagement agreement, but she did not raise any concerns about the conflict waiver (or the arbitration provision), and never claimed that she failed to read or understand the waiver's language; and the arbitration panel found Sheppard Mullin acted in good faith in light of all the evidence.

The unfair and unprecedented decision here implicates three important legal issues that warrant this Court's review.

First, the Court of Appeal's arbitration ruling did not follow "established law." (Ans. at p. 9.) It departed from this Court's decision in *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 (*Moncharsh*), as well as *Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21 (*Ahdout*) and *Cotchett, Pitre & McCarthy v. Universal Paragon Corp.* (2010) 187 Cal.App.4th 1405 (*Cotchett*), all of which recognized that the Rules of Professional Conduct, while important regulations of the legal profession, cannot be used to override the Legislature's intent to limit challenges to arbitration awards. J-M seeks to reconcile this authority by claiming that "illegality" means something completely different depending on how much of an agreement is challenged. No court, until the decision below, had ever adopted this inconsistent view of "illegality," and *Cotchett* expressly rejected it.

Second, the Court of Appeal's narrow interpretation of "informed written consent" under Rule 3-310(C)(3) "sows substantial uncertainty and confusion regarding a common component of the modern practice of law"—the agreement of sophisticated clients represented by independent counsel to advance conflict waivers. (Amici Curiae Ltr. of AF Beazley et al. at p. 2.) J-M's attempt to side-step this issue is premised on a blatant mischaracterization of both the Court of Appeal's decision and recent efforts to amend the Rules of Professional Conduct.

Third, J-M twists the Court of Appeal's decision in an attempt to mask its adoption of an unprecedented, "breathtakingly broad," per se rule that any actual conflict of interest, no matter how inconsequential and irrespective of the attorney's good faith, triggers automatic forfeiture and disgorgement of fees. (Amicus Curiae Ltr. of James W. Jones at p. 5.) That has never been the law in this state, and, particularly when combined with the rest of the Court of Appeal's decision, will create a perverse incentive encouraging more litigation between clients and their lawyers.

DISCUSSION

I. This Court Should Clarify When Courts Are Permitted to Vacate Arbitration Awards on "Illegality" Grounds

The Court of Appeal's decision takes what was a narrow "illegality" exception to the finality of arbitration awards and expands it exponentially, allowing judicial second-guessing of such awards based on conceptions of public policy that the Legislature has never endorsed. J-M's response is to pretend that the Court of Appeal merely applied "well-established law." (Ans. at p. 14.) It did not.

1. While "judicial review of private arbitration awards" is limited "to those cases in which there exists a statutory ground to vacate or correct the

award" (*Moncharsh, supra*, 3 Cal.4th at p. 28), this Court in *Loving & Evans v. Blick* (1949) 33 Cal.2d 603 (*Loving*) incorporated into the statutory grounds the concept of "illegality." Even though that term does not actually appear in the statute, *Loving* reasoned that an arbitrator exceeds his powers "[i]n the absence of a valid"—i.e., legal—"contract." (*Id.* at pp. 609-610; see also Code Civ. Proc., § 1286.2, subd. (a)(4).)

J-M's challenge to the arbitration award hinges on this "illegality" exception. But until now, decisions applying the *Loving* exception—like *Loving* itself—involved agreements that violated unwaivable *statutory* public policies. (See *Loving, supra*, 33 Cal.2d at pp. 604, 607 [contractor licensing statute]; *Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 891-892 [real estate broker statute]; *All Points Traders, Inc. v. Barrington Associates* (1989) 211 Cal.App.3d 723, 737-738 [same].) J-M nevertheless argued that the *Loving* "illegality" exception also covered agreements that violated non-statutory public policies. The Court of Appeal agreed. (Opn. at pp. 13-14, 23-25.)

But as this Court has explained, allowing challenges to arbitration awards "without an explicit legislative expression of public policy" is unwarranted because "the Legislature has already expressed its strong support for private arbitration and the finality of arbitral awards in title 9 of the Code of Civil Procedure." (*Moncharsh, supra*, 3 Cal.4th at p. 32.) Only the Legislature itself, through statutory enactments, can expand the limited exceptions to the finality of arbitration awards. (*Id.* at pp. 25-28.)

Because the Rules of Professional Conduct "are approved by the Supreme Court, not the Legislature," like other non-statutory authorities they do not "reflect[] an explicit expression by the *Legislature* of its public policy objectives." (*Ahdout, supra*, 213 Cal.App.4th at p. 39, italics in

original.) Thus, as the Court of Appeal in *Cotchett* held, "[t]o permit judicial review of [an] arbitrator's award" based on a violation of the Rules of Professional Conduct "would be contrary to the strong policy favoring the finality of arbitration awards" that the Legislature has adopted. (*Cotchett*, *supra*, 187 Cal.App.4th at p. 1418.) The Court of Appeal's decision to overturn the arbitration award based on a violation of those Rules conflicts with *Moncharsh*, *Ahdout*, and *Cotchett*.

2. J-M doesn't deny that other decisions have rejected illegality challenges to arbitration awards based on non-statutory expressions of public policy. Instead, J-M resorts to an irrational distinction, claiming that this "rule" applies "only" where "the illegality of a *single provision*" is at issue, but a different, far more expansive "illegality" exception applies when a party claims "the *entire contract* is illegal." (Ans. at p. 14, italics in original.) In short, J-M contends that "illegality" means something far different when an entire contract is claimed to be illegal, rather than a specific provision.

Cotchett, which was *not* "a particular-provision illegality case" (Ans. at p. 25), contradicts J-M's purported distinction. *Cotchett* held that all of the challenges that had been raised in the case, including that the "underlying contract or transaction was illegal in its entirety," were "necessarily resolve[d]" by its determination that a violation of the Rules of Professional Conduct could not be used to challenge an arbitration award. (*Cotchett*, *supra*, 187 Cal.App.4th at 1417, fn.1.) Thus, in assessing an illegality challenge to an entire agreement, *Cotchett* limited "illegality" to *statutory* expressions of public policy, unlike the Court of Appeal here.

To be sure, *Moncharsh* indicates that courts, rather than arbitrators, should make the "illegality" determination when it is "claimed [that] the

entire contract or transaction was illegal." (*Moncharsh*, *supra*, 3 Cal.4th at p. 32.) But nothing in *Moncharsh* (nor *Loving* or any other decision until now) endorsed the view that courts could look beyond statutory enactments when assessing illegality. And for good reason—an expansive definition of illegality would contravene the statutory restrictions on challenges to arbitration awards.

Tellingly, J-M never attempts to explain why the definition of "illegality" would possibly be different depending on whether the whole rather than part of an agreement is claimed to be illegal. The Legislature's "strong support for private arbitration and the finality of arbitral awards" was obviously not contingent on that artificial and meaningless distinction. (*Moncharsh*, *supra*, 3 Cal.4th at p. 32.)

3. Even if J-M were correct that "illegality" means something different when an entire agreement is challenged, review still would be warranted because the Court of Appeal's conclusion that J-M challenged the entire engagement agreement creates significant confusion over what exactly it means for a contract to be "entirely" illegal.

The Court of Appeal saw the engagement agreement as entirely illegal even though its terms governed all engagements for J-M (not just the qui tam action), and it included various provisions concerning other matters and the broader relationship between the parties. (Petn. at pp. 15-16.) Other courts faced with similar agreements have come to the opposite conclusion. (*Ibid.*)

J-M nonetheless claims there is no split in authority because the conflict here supposedly "permeate[d] the relationship" and thus "infect[ed] the entire agreement." (Ans. at p. 26.) But how could a conflict in one matter render *entirely* illegal an agreement that was designed to govern

other matters, or contained provisions that were to "survive any termination of [Sheppard Mullin's] representation of [J-M]"? (1AA200.) And why would a conflict arising three weeks *after* the agreement was executed render that agreement retroactively illegal in its entirety (as the Court of Appeal expressly held, see Opn. at p. 18)? Neither J-M nor the Court of Appeal provides any answers to these questions.

4. J-M's denial of the significance of the Court of Appeal's arbitration ruling rings hollow, as multiple amici confirm. J-M claims there "is no reason to think" that other Rules of Professional Conduct would be invoked to challenge arbitration provisions on "illegality" grounds. (Ans. at p. 30.) But with the door now open to using the Rules of Professional Conduct to challenge arbitration awards, it is only a matter of time before such challenges are made based on, for example, allegations that a lawyer "entered into an agreement for ... an illegal or unconscionable fee" prohibited under Rule 4-200(A), or violated Rule 3-310(C)(1) by failing to obtain "informed written consent" to potential conflicts before representing "more than one client in a matter." Even if courts are prepared to make arbitrary distinctions between the Rules and deem some more important than others—a troubling proposition—that will spawn litigation and uncertainty until such a hierarchy is established.

5. J-M also ignores the significant ramifications beyond attorney-client disputes. The opinion's broad language regarding the applicability of non-statutory public policy is not specifically limited to the Rules of Professional Conduct. The Court of Appeal's decision thus risks frustrating the ability of other commercial parties to arbitrate disputes in countless other contexts based on regulations, ordinances, rules, and other non-statutory expressions of public policy promulgated by myriad regulatory agencies, municipalities, and quasi-governmental entities.

II. This Court Should Decide Whether and How Sophisticated Clients Represented by Counsel Can Provide Informed Consent to the Waiver of Conflicts

J-M refuses to grapple with the second issue presented in the Petition—what does informed consent to a conflict waiver under Rule 3-310 actually mean for a sophisticated party represented by counsel? Rather than address this important issue, J-M relies on three baseless assertions: (1) the decision below involves "an *actual* conflict, not a potential one"; (2) Sheppard Mullin seeks "changes" to the Rules of Professional Conduct that must be made through a rulemaking process; and (3) Sheppard Mullin's position on advance conflict waivers was considered and rejected in that process. (Ans. at pp. 18-21.) J-M misunderstands the Court of Appeal's decision, the issue presented, and the tangled history of recent proposed revisions to the Rules of Professional Conduct.

1. J-M contends that "[t]his case does not present any real issue concerning advance conflict waivers," because such waivers are "'granted *before* the conflict arises,'" and here Sheppard Mullin "failed to disclose an existing, actual conflict." (Ans. at pp. 18-19.) But the Court of Appeal reached its decision based on the premise that "Sheppard Mullin was *not* representing South Tahoe at the time it entered into the agreement with J-M." (Opn. at 18, italics added.) This case thus squarely concerns a client's consent to waive a conflict before it arises.

In assessing that issue, the Court of Appeal failed to ask the right question—whether the sophisticated client here, who was represented by independent counsel, gave informed consent because it actually understood the scope of the waiver and the nature of the conflicts it covered. Instead, the Court of Appeal held that an advance conflict waiver must always identify with specificity any adverse party who may be covered by the

waiver, even if such specificity is not necessary for the client to actually understand the waiver. Going even further, the Court of Appeal held that renewed consent must be obtained when a conflict later arises, which undermines the whole point of an advance conflict waiver.

The Court of Appeal's decision represents a troubling interpretation of Rule 3-310(C)(3), as the amicus letters of leading scholars, law firms, and professional liability insurers in this case recognize. Sheppard Mullin seeks review of that erroneous interpretation, under which the firm was held not to have obtained "informed written consent" from J-M to the conflict that arose with South Tahoe; Sheppard Mullin absolutely is not asking this Court "to remake California's ethical rules." (Ans. at p. 18.)

This Court should decide whether, under Rule 3-310(C)(3), a sophisticated consumer of legal services, represented by independent counsel, can give informed consent to an advance conflict waiver—just as J-M did here—and whether informed consent should be measured by what the sophisticated client actually knew and understood. That obviously does not require turning to the "ethics rule-making process" (*id.* at p. 20), nor immunize the Court of Appeal's decision from this Court's review. Indeed, this Court previously has interpreted other aspects of Rule 3-310. (See, e.g., *Flatt v. Superior Court* (1994) 9 Cal.4th 275 [Rule 3-310(C)(2)]; *People v. SpeeDee Oil Change Sys, Inc.* (1999) 20 Cal.4th 1135 [Rule 3-310(E)]; *City & County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839 [Rules 3-310(C) & (E)].)

2. J-M next claims that the State Bar and this Court already considered and rejected the issue presented here. (Ans. at 20.) Not so.

In 2010 the State Bar Board of Trustees approved 67 proposed rules. (Sep. 19, 2014 Cal. Supreme Ct. Ltr. to Sen. Dunn.) Among them was a

proposed Rule 1.7 and comment 22 thereto regarding conflicts and advance conflict waivers, both based on the ABA's Model Rules. The State Bar filed 17 of the 67 proposed rules with this Court, but in August 2014 the Bar asked this Court to return the draft rules for a "comprehensive reconsideration," not because it had abandoned them on the merits, but to "avoid a lengthy and unwieldy process going forward." (Aug. 11, 2014 Sen. Dunn Ltr. to Cal. Supreme Ct.) This Court granted the Bar's request and directed the Bar to "establish a second Commission for Revision of the Rules of Professional Conduct." (Sep. 19, 2014 Cal. Supreme Ct. Ltr. to Sen. Dunn.) It also "strongly urge[d] that the second Commission ... focus on revisions that are necessary to address developments in the law, and that eliminate, where possible, *any unnecessary differences between California's rules and those used by a preponderance of the states*." (*Ibid.*, italics added.)

The "backstory" J-M tells is thus incomplete and misleading. (Ans. at p. 20.) California has not "considered" and rejected changes that would align its approach to conflict waivers with the modern trend reflected in the ABA Model Rules. (*Id.* at p. 21.) Quite the opposite: this Court's directive appears to point toward harmonizing California's approach with that trend.

3. Notably, J-M says almost nothing about the merits of the question presented. It does not seriously dispute that the decision below advances an impracticable approach to conflict waivers that fails to account for the "massive structural shift" in the market for legal services, typified by "sophisticated clients armed with more information and greater market power." (Henderson & Zahorsky, *Paradigm Shift* (July 2011) 97 ABA J. 40, 40, 44.) J-M also ignores the many reasons why leading bar associations, the Restatement, legal scholars, and, increasingly, courts favor

allowing sophisticated clients, represented by independent counsel, to consent to advance conflict waivers. (Petn. at pp. 19-23.) Such waivers promote the interests of sophisticated clients, as they allow them to hire lawyers who otherwise would decline the representation absent certainty regarding the validity of advance conflict waivers.

Most significantly, J-M does not explain why the conflict waiver in this case did not constitute J-M's "informed written consent" to the conflict that ultimately arose with South Tahoe due to a minimal amount of labor counseling that had nothing whatsoever to do with the qui tam action or J-M. That is because there is no explanation. The waiver told J-M in plain language that Sheppard Mullin "has many attorneys and multiple offices" and that it "may represent another client in a matter in which [Sheppard Mullin] d[id] not represent [J-M], even if the interests of the other client are adverse to [J-M] (including ... in litigation or arbitration)." (1AA201.)

J-M has never offered any alternative interpretation of that plain language. In fact, J-M's general counsel, who was familiar with advance conflict waivers (1AA191-192), closely reviewed and edited the engagement agreement containing the waiver, but never raised any concerns. (Opn. at pp. 5-6; 2AA477-478.) That is not surprising, as J-M already was aware that Sheppard Mullin had an on-going relationship with a former client who was one of J-M's significant potential adversaries in the qui tam action (the Los Angeles Department of Water and Power, whose claim dwarfed South Tahoe's), but had no issues with that because J-M thought that relationship would benefit J-M's defense. (2AA474-475, 490-492.)

III. This Court Should Grant Review Because the Court of Appeal's New Per Se Rule That Any Conflict of Interest Requires Forfeiture of All Attorneys' Fees Conflicts with Existing Law

The Court of Appeal's decision transforms a previously fact-bound inquiry into an unprecedented, categorical rule under which any conflict of interest, irrespective of the circumstances, prohibits a lawyer from retaining and recovering his fees. As with the other issues presented, J-M makes no attempt to justify what the Court of Appeal actually did.

1. J-M contends that the Court of Appeal did not announce any per se rule and merely held that "*in these particular circumstance*s [Sheppard Mullin] was not entitled to fees," because "serious conflicts" require fee forfeiture, while "technical violations or potential conflicts" do not. (Ans. at p. 22, italics in original.) J-M is wrong.

The Court of Appeal did not, as J-M contends, engage in a factual analysis and distinguish between "serious" versus "technical" *conflicts of interest*. Rather, it distinguished between "serious *ethical violations* such as conflicts of interest ... and technical *violations*," and concluded that Sheppard Mullin is not entitled to its fees because, in the Court of Appeal's view, *any* actual conflict of interest—no matter how minor, unrelated, or unintentional—is a "serious ethical violation[]." (Opn. at p. 26, italics added). This categorical rule conflicts with numerous decisions that have awarded fees notwithstanding an actual conflict of interest after considering all of the circumstances. (See *Clark v. Millsap* (1926) 197 Cal. 765; *Slovensky v. Friedman* (2006) 142 Cal.App.4th 1518 (*Slovensky*); *Sullivan v. Dorsa* (2005) 128 Cal.App.4th 947; *Pringle v. La Chapelle* (1999) 73 Cal.App.4th 1000.) It likewise conflicts with the Restatement. (See Rest.3d Law Governing Lawyers (2000) § 37.)

J-M also attempts to limit the Court of Appeal's ruling to actual conflicts involving direct adversaries. (Ans. at pp. 23, 29.) That distinction is found nowhere in the opinion. Rather, the Court of Appeal deemed all actual conflicts of interest to be "serious ethical violations." (Opn. at p. 26.) Yet even assuming the decision could be read to concern only actual conflicts involving direct adversaries, reliance on such an artificial distinction still warrants review.

Conflicts not involving direct adversaries can be quite serious, as *Slovensky* demonstrates. The attorneys there concealed from their client that they represented 41 other plaintiffs in actions against the same defendant, and to obtain the client's agreement to a global settlement, they provided her with erroneous information about her injuries, "breached confidentiality," and "used pressure tactics to break down her resistance." (*Slovensky*, *supra*, 142 Cal.App.4th at pp. 1523-1524, 1534.) According to J-M, this obviously serious misconduct was merely "technical" because it involved a conflict among supposedly "aligned plaintiffs" rather than direct adversaries. (Ans. at p. 29.)

In stark contrast to *Slovensky*, which held that damages were a prerequisite for disgorgement, the conflict here arose from 16 hours of entirely unrelated labor counseling over 16 months from an attorney in another firm office, and, as the arbitration panel found, Sheppard Mullin acted "honestly and in good faith believed that no conflict existed." (3AA674.) Nevertheless, the Court of Appeal held that forfeiture was required as a matter of law. (Opn. at pp. 26-29.)

2. The Court of Appeal's holding that Sheppard Mullin must disgorge $2.7 million in previously paid fees—even though J-M stipulated that it suffered no damages and the quality of Sheppard Mullin's work was

unassailable—conflicts with both *Slovensky* and *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135. (Petn. at pp. 23-26.) To avoid grappling with this conflict, J-M erroneously claims that the Court of Appeal awarded J-M disgorgement "as a *contract* and *equitable* remedy" and not as a tort remedy. (Ans. at p. 28, italics in original.)

Nothing in the Court of Appeal's opinion suggests it was awarding disgorgement as a contract or equitable remedy. While J-M contends that *Slovensky* is irrelevant because it involved a tort claim, the Court of Appeal never made that distinction. Rather, the Court of Appeal dismissed *Slovensky* not because it addressed tort remedies, but because (a) it supposedly did not involve a serious ethical breach, and (b) the attorneys did not contest the allegations of misconduct. (Order Modifying Opn. at pp. 1-2; Petn. at pp. 24-25.)

Moreover, the Court of Appeal had no reason to award J-M disgorgement on a breach of contract theory because J-M sought only "compensatory damages" as a remedy for its contract claim (1AA26), and in the arbitration J-M limited its cross-claims to tort claims. (3AA705.)

3. Permitting automatic disgorgement for any conflict of interest will be significantly disruptive to the practice of law in this state. Indeed, "under the Court of Appeal's *per se* rule, clients (especially sophisticated ones) may have little incentive to resolve conflicts when they arise, knowing they can later use the conflict as a means of avoiding payment for legitimate services." (Amicus Curiae Ltr. of James W. Jones at p. 5.) The Court of Appeal's rule is also illogical because "the measure of th[e] penalty is to be determined ... [by] the undisputed value and quality of the services performed after the conflict arose," and so "the more value that the

lawyer has conferred on the client, the greater the penalty." (Amicus Curiae Ltr. of Stephen McG. Bundy at p. 8.)

J-M refuses to acknowledge that courts have required a balancing of the equities to determine whether disgorgement is "[]proportionate to the wrong" (*Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23, 48), and to calculate the appropriate *measure* of disgorgement under the circumstances. (*Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 894.) The Court of Appeal's decision contradicts these cases by requiring automatic disgorgement of *all* fees after the conflict arose—without regard to Sheppard Mullin's good faith, the nature of the conflict, the undisputed quality of Sheppard Mullin's work, and the stipulated lack of damages. Whether that categorical approach is correct warrants this Court's review.

CONCLUSION

This Court should grant review.

DATED: April 8, 2016

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.504(d)(1), the undersigned certifies that this Petition for Review contains 4,131 words as counted by the word count feature of the Microsoft Word program used to generate this brief, not including the tables of contents and authorities, the court of appeal's order, the cover information, the signature block, and this certificate.

DATED: April 8, 2016 By: _____
Kevin S. Rosen

CERTIFICATE OF SERVICE

I, Dru Van Dam, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, San Francisco, CA 94105-0921, in said County and State.

On April 8, 2016, I served the following document(s):

PETITION FOR REVIEW

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

Unless otherwise noted on the attached Service List, **BY MAIL:** I placed a true copy in a sealed envelope or package addressed as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on 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 set forth in this declaration.

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

Executed on April 8, 2016, at San Francisco, California.

Dru Van Dam

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