Case no. B222391

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MARTHA JAIMES, MICHAEL CORDERO; FRANCES ROSE URIBE; and JANET DARLENE GARCIA,

Plaintiffs and Respondents

v.

AMERICAN INDIAN HEALTH & SERVICES; MARTIN YOUNG; RUSSELL GRANGER; and LINDA MURRAY,

Defendants and Appellants.

From the Superior Court for the County of Santa Barbara

Honorable James W. Brown, Case No.: 1266707

APPELLANTS' REPLY BRIEF

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I. Introduction.

Respondents' Brief ("RB") recites page after page of irrelevant and misstated facts relating to their dislike and disagreement with American Indian Health & Services, Inc.'s (AIHS) former Director Al Granados ("Granados") and their opposition to his implementing a requirement that Coastal Band of the Chumash Nation ("Coastal Band") members prove their eligibility for services. All of the facts recited about services and Granados are irrelevant because, as was held by the trial court, *there is no actual controversy as to whether the Coastal Band Chumash are eligible to receive free and/or discounted services from AIHS*. AA 555 (Judgment-finding no. 53). Further, it makes no difference what the terms of AIHS' 2009 contract are as terms in effect in 2009 are not relevant to actions taken in 2006.

Respondents overlook, or perhaps purposely ignore, the following key facts which are not disputed and which are dispositive of the issues raised in this appeal: (1) AIHS is a recipient of federal funds, (2) AIHS is required to meet federal funding requirements to maintain its qualification to receive federal funds, (3) AIHS has both the right and the obligation to ensure compliance with federal requirements, including requirements regarding the make up of its board, (4) AIHS has both the right and the obligation to, at any time, require proof that its board members meet the requirements for funding, (5) Respondents all failed to provide such proof, and (6) Respondents were properly removed from the board as a result.

Respondents' attempt to couch this as a dispute over "documentation requirements" misses the mark. It is not disputed that each of the Respondents is a member of the Coastal Band, and that, in 2005, each was thought to be qualified for board membership. It is also undisputed that, in 2006, AIHS became aware that its board was not properly constituted and action to correct that situation was required.

Put simply, it makes no legal difference that Respondents' qualifications were initially accepted by AIHS because, as it turns out, they were not qualified to serve on the board because they did not and do not meet the definition of urban Indian set forth in 25 U.S.C. section 1603. Thus, their respective board positions were vacated pursuant to Cal. Corp. Code section 5221(b).

In addition, as discussed more fully in the Appellants' Opening Brief ("AOB"), this Court should find that the trial court acted in excess of its jurisdiction in granting a mandatory injunction directing the Respondents to be reinstated to the AIHS board of directors because, in doing so, the trial court made a determination as to Indian tribal recognition which is a determination that is outside the purview of the courts, and there was no showing of a great and irreparable injury making injunctive relief appropriate in this circumstance. The trial court's decision was in error and should be reversed.

II. All Facts Necessary to The Resolution of This Appeal Are Undisputed.

In 2005, AIHS' bylaws provided that "no less than 51% of the [board] members shall be documented 'urban Indians,' as defined in 25 U.S.C. section 1603(f)." AA 388-389 (Trial Exhibit 35).

Contrary to Respondents' claim, the 2005 bylaws are silent as to what type of documents satisfy section 1603(f). See AA 383-408 (Trial Exhibit 35).

The 2006 bylaws are the same, and also specifically cited to 25 U.S.C. section 1603(f). See AA 417 (Trial Exhibit 36). The 2006 bylaws are also silent as to what documentation is required to prove urban Indian status under section 1603(f). See AA 409-437 (Trial Exhibit 36).

In July of 2006, while preparing for an audit by Indian Health Services (IHS), AIHS determined that at least 51% of the Board had to

meet one of the following criteria and live in the AIHS service area in order to be in compliance with 25 U.S.C. section 1603(h):

1. Certification as a documented member of a Federally-Recognized Tribe.
2. Possess a Certified Degree of Indian Blood (CDIB) from the Bureau of Indian Affairs (BIA).
3. Listed on the California Judgment Rolls with Certification from BIA.
4. Be a descendant of any of the above (limited) to two (2) generations. AA 299 (Trial Exhibit 49); RT 149:11-150:10.

On August 21, 2006, in his Executive Director Report, Granados requested that each Board Member submit verification of their tribal affiliation. AA 299 (Trial Exhibit 36). On August 29, 2006, at a board meeting, he advised that tribal affiliation must be demonstrated by one of the above listed documents. Id. On September 5, 2006, he sent each board member a letter again requesting that the above information be provided by September 15, 2006. AA 300-302 (Trial Exhibits 5, 18, 83).

The above information was requested such that AIHS could demonstrate its compliance with Title V and the IHS contract and grant in the upcoming audit. Id.

Respondent Jaimes confirmed directly with IHS that the above documentation requirement was accurate. RT 175:14-176:27. She also received an email from the IHS confirming that the above documents were required in order for persons to even receive services at AIHS. AA 307 (Trial Exhibit 12). That email, from Paul.Redeagle@ihs.gov, responded to Jaimes' question "Is denial of healthcare of established Native American 'Coastal Band' patients acceptable?" and stated as follows:

> Although we do not generally respond to emails that do not contain an actual name, I am providing you with the

> highlighted information that was excerpted from an email that the California Area IHS received from Mr. Granados. If he is requesting the information as he stated in this email excerpt, then he is following appropriate procedure. Anyone receiving care as an American Indian / Alaska Native in an IHS funded program is required to show proof of eligibility. Members of the Coastal Band Chumash, although they are not federally recognized, could be eligible for care under the terms of the Indian Health Care Improvement Act. However, they are required to get documentation and certification from the BIA and present it to the IHS funded program.

AA 307 (Trial Exhibit 12).

None of the Respondents or the other board members provided the requested documentation or responded to Granados' request in any way, and their board positions were vacated on September 25, 2006. RT 112:23-28; 177:20-27; 216:9-217:6; 286:21-23.

The Respondents were not able to provide the requested documentation because they do not possess it. Instead, Respondents each testified they provided proof of Coastal Band tribal membership to AIHS when they applied for AIHS board membership.

All Respondents admitted at trial that they are not members of a federally recognized tribe, do not have certified degree of Indian Blood from the Bureau of Indian Affairs, and either were not on the California Judgment Rolls or did not have certification from the BIA of judgment roll status. RT 150:11-151:10; 176:28-177:13; 110:3-21; 111:12-112:21; RT 216:13-217:23; 219:4-6; 286:1-9; 290:26-297:1.

None of the Respondents have ever reapplied for board membership or provided documentation of eligibility for board membership to AIHS. RT 112:23-28; 117:20-27; 216:9-217:6; 286:21-23.

III. The Trial Court Erred In Determining The Coastal Band Is Recognized By The State Of California.

A. Whether The Coastal Band Is Recognized By The State Is An Issue Of Law.

Respondents claim that the issue of whether the Coastal Band is recognized by the State of California is subject to an abuse of discretion standard of review. They offer no authority for this assertion and it should be rejected.

Instead, whether an Indian tribe is recognized by a state or by the federal government is an issue of law subject to *de novo* review, and the interpretation of a federal statute is an issue of law subject to *de novo* review. *See Bugenig v. Hoopa Valley Tribe* (9th Cir. 2001) 266 F.3d 1201, 1209.

B. Respondents' Claim That The Coastal Band Is Recognized By The State Because It Is On The Native American Heritage Commission Registry And Communicates With State Agencies Is Lacking Any Legal Authority And Inherently Wrong.

Respondents continue to assert that the Coastal Band is recognized by the State of California because of its being on the Native American Heritage Commission (NAHC) list and because it communicates with cities, counties and State agencies about preservation of historical sites and other Native American affairs. For the reasons stated in the AOB, at pages 34-38, and below, the Court should reject this assertion and find that the Coastal Band is NOT recognized by the State of California.

Moreover, Respondents cite to no authority for the proposition that the term "Native American," as used in Public Resources Code section 5097.9, et seq. was meant to mean the same as the term "Indian" in Title 25. Certainly, it can be presumed that the California legislature understood

the meaning of the term "Indian" when it enacted Public Resources Code section 5097.9 et seq., and is presumed to be aware that the terms "Indian," "Indian of California," and "Native American" each have different meanings in the law. Where the State legislature chose NOT to use the term "Indian" (or even "Indian of California") in creating the NAHC, this Court must conclude that whether a tribe or group is "Native American" for the purpose of the NAHC[1] is not the same as, and not determinative of whether, an individual or group is "Indian" under 25 U.S.C. section 1603.

Finally, Respondents' assertion that their communications with other State, county and city agencies is evidence of State recognition is lacking any legal authority and should be disregarded.

C. Respondents Do Not Meet The Definition Of 25 U.S.C. Section 1603 As A Matter Of Law.

Contrary to Respondents' claims, the definition of Indian under section 1603 requires more than simply being a descendant of a native person.

Throughout the Act, Congress made clear that it was intended to benefit only those persons considered to be "Indian." 25 U.S.C. section 1601 sets forth the Congressional findings underlying the Act as follows:

> The Congress finds the following:
>
> (a) Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people.

---

[1] The California legislature used the term "Indian" to refer to Indian children in the area of child welfare. See Welfare & Institutions Code section 224 (providing for the protection of Indian children), and section 224.1, in which the legislature expressly adopted the definition of Indian used in 25 U.S.C. section 1901 (defining Indians as members of federally recognized tribes or Alaska native).

(b) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services.

(c) Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, Indians.

(d) Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States.

25 U.S.C. section 1602(a) declares the objective of the Act as follows:

(a) The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.

(b) It is the intent of the Congress that the Nation meet the following health status objectives with respect to Indians and urban Indians by the year 2000.

25 U.S.C. sections 1651 - 1653 set forth the authority of the Secretary to enter into contracts with and award grants to "urban Indian" organizations for the provision of health services to urban Indians.[2]

Under section 1656(f), urban Indians, as defined in section 1603(f), are eligible for the services being provided pursuant to such grant.

In addition, "Indians of California" are also entitled to services under

---

[2] Under 25 U.S.C. section 1655, the IHS is to conduct annual compliance audits. It was this audit that AIHS was preparing for when it requested that Respondents provide proof of urban Indian status under section 1603. AA 300-302 (Trial Exhibits 5, 18, 83).

the Act pursuant to the express terms of 25 U.S.C. section 1679(b), as are certain other non-eligible individuals identified in 25 U.S.C. section 1680c.

In sum, the Indian Health Care Improvement Act (25 U.S.C. section 1601, et seq.) is consistent with the general framework of Title 25 where throughout Title 25 the term "Indian" is defined as a person who is a member of a federally recognized tribe (or Alaska native). See 25 U.S.C. section 1801(a)(1) and (2); 25 U.S.C. section 1903(3); 25 U.S.C. section 1452(b); 25 U.S.C. section 4103(10) and (13); and 25 U.S.C. section 479.

This statutory backdrop, and the consistent definition of the term Indian to signify a member of a federally recognized tribe, must be considered when construing the meaning of section 1603(c).

As discussed more fully in the AOB at pages 31-33 and 39-42, an urban Indian under 1603(f) is an individual that meets one or more of the criteria of section 1603(c)(1) to (4) and who resides in an urban center.[3] Section 1603(c) provides as follows:

> (c) **'Indians'** or 'Indian', unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof, except that, for the purpose of sections 102 and 103, such terms shall mean ***any individual*** who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of **Indians**, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an **Indian** for any purpose, or (4) is determined to be an **Indian** under regulations promulgated by the Secretary.
>
> The terms of subsection (c)(1)-(4) only apply to making the

[3] Respondents' claim that the "unless otherwise designated" language is meant to include California Indians should be rejected because that language is not part of (c)(1) to (4).

determination as to whether an individual person is an Indian. Although (c)(1) is not a model of clarity, its plain language indicates that it includes within its terms (i) *individuals* who do not live on or near a reservation but are members of a federally recognized tribe, band or group, (ii) *individuals* who are members of tribes, bands or groups whose federal recognition has terminated since 1940, (iii) *individuals* who are members of tribes, bands or groups recognized by the State in which they reside, and (iv) *individuals* who are first and second degree descendants of (i) to (iii).

In the alternative, one can meet section 1603(c)(3)-(4) if he or she *individually* is considered by the Secretary of the Interior to be an Indian for any purpose, or determined to be an Indian under regulations promulgated by the Secretary.

In contrast to the narrow definition of urban Indian under section 1603(c) and (f), the definition of "Indian of California" is much less stringent. Under section 1679(b), a person simply needs to be a descendant of an Indian to meet the definition of "Indian of California." See section 1679(b)(2) and (b)(4). Under section 1679, there is no limit to the degree of descendancy.

Here, it is plain that none of the Respondents met the requirements for section (c)(1) where they are not members of a currently or formerly federally recognized tribe, not members of a State recognized tribe, and not first or second degree descendants of either of the above.

Moreover, if Congress had intended that persons meeting the less restrictive definition of "Indians of California" met the definition of section 1603, such interpretation would render section 1679(b) superfluous where it would not have had to provide in section 1679(b) that "Indians of California" were also entitled to benefits under the Act.

Respondents also assert, without citation to any authority, that they are considered by the Secretary of the Interior to be an Indian because they

are "Indians of California." This assertion again begs the question and renders section 1679 superfluous. In addition, there was no evidence nor legal authority proffered in the court below indicating that the Secretary of the Interior (i) considers members of the Coastal Band to be Indians, or (ii) considers any individual Respondent to be an Indian.

Lastly, there was also no evidence nor legal authority for the assertion that there is a regulation adopted by the Secretary of the Interior that indicates that (i) members of the Coastal Band are to be considered as Indians, or that (ii) any individual Respondent is considered to be an Indian.

In sum, the finding of the trial court that Respondents are Indians under section 1603(c) was in error, and this Court must reverse that finding.

IV. The Documentation Required to Receive Services Is Not The Same As The Documentation Required For Board Membership.

In an attempt to confuse issues and the Court, the Respondents contend that the documentation required to receive services from AIHS and the documentation required to hold board membership are the same.[4] This is wrong because eligibility for *services* is expanded by, *inter alia*, sections 1679 and 1680c, but eligibility for *services* is not the same as eligibility for *board membership*, which is restricted to eligibility under section 1603.

As has been discussed, Congress carved out a specific exception for "Indians of California" in 25 U.S.C. section 1679. By carving out this exception, Congress indicated that "Indians of California" are not "urban Indians" within the scope of section 1603(c) but are entitled to receive services because of the enactment of section 1679.

In addition, 25 U.S.C. section 1680c, entitled "Health services for ineligible persons," makes clear that simply being of Indian descent does not render one eligible for services. Under section 1680c(a)(1), a natural or

[4] The trial court also made this erroneous finding. See AA 511:12-15.

adopted child, step-child, foster child, legal ward or orphan of an eligible Indian, is eligible for services only up to the age of 19. Similarly, under 1680c(a)(2), a spouse of an eligible Indian who is not Indian or, "who is of Indian descent but not otherwise eligible for the health services" provided under the Act, may be eligible for services.

Thus, when the structure of the Act is considered as a whole, it is clear that the determination of *eligibility for services* under the Act is broader in scope than the definition of urban Indian under section 1603(f), and one may be *eligible for services* but not be an Indian or urban Indian under the Act. Where AIHS' bylaws required (and continue to require) that the board be comprised of a majority of urban Indians as defined in 25 U.S.C. section 1603(f) (see AA 388-389, 417, 440; Trial Exhibits 35 - 37), and where Respondents are not urban Indians nor even Indians under section 1603, it makes no difference that they are eligible for services.

Accordingly, the Respondents' claims that they were not properly removed from the board because they were at all times *eligible for services* is inapposite.

V. The Issue Of Tribal Recognition Is A Political Question That The Trial Court Should Have Abstained From Addressing.

California courts have a long history of abstaining from making policy decisions better left to other branches of government or administrative agencies. *See Alvarado v. Selma Convalescent Hosp.* (2007) 153 Cal.App.4th 1292, 1298 -1306 (holding that judicial abstention is proper when the issue involves complex policy questions better suited for determination by legislature or administrative agencies); *California Grocers Assn v. Bank of America* (1994) 22 Cal.App.4th 205, 218-219 (holding that the courts should abstain determining questions of economic policy); *Max Factor v. Kunsman* (1936) 5 Cal.2d 446, 455-456 (same). *See also People ex rel. Dept. of Transportation v. Naegele Outdoor Advertising*

Co. (1985) 38 Cal.3d 509, 523; *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284, 1301–1302.

It cannot be denied that the issue of tribal recognition and tribal affiliation is a political question and, in the context of Indian child welfare, the State legislature has expressly acknowledged that the issue of tribal affiliation and tribal membership is an issue of "significant political affiliation." See Cal. Welf. & Inst. Code section 224(c); *see also In re BR* (2009) 176 Cal.App.4th 773, 783.

While Respondents object to the characterization of tribal recognition as a political question properly left to other branches of government for determination, they provide no legal authority, whether in the form of a case, statute, or regulation, that holds that it is proper for a court to "recognize" a tribe.

Thus, where tribal recognition is a function that has been historically vested in other branches of government,[5] and where there is no legal authority for the assertion that the trial court may determine an issue of tribal recognition, this court should find that it was improper for the trial court to make its *ad hoc* determination as to recognition of the Coastal Band.

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[5] The "questions whether, to what extent, and for what time [Indian tribes] shall be recognized ... [is] to be determined by Congress, and not by the courts." *United States v. Sandoval* (1913) 231 U.S. 28; *see also United States v. Holliday* (1866) 70 U.S. 407, 419 (With regard to tribal recognition, "...it is the rule of this court to follow the executive and other political departments of the Government, whose more special duty it is to determine such affairs.").

VI. The Trial Court Erred In Entering A Mandatory Injunction Requiring Reinstatement Of Respondents To AIHS' Board Of Directors and Granting Them Access To AIHS' Books and Records.

The propriety of an injunction rests on the trial court's evaluation of the following factors: (1) the character of the interest to be protected, (2) the relative adequacy to the plaintiff of injunction and of other available remedies such as damages, (3) plaintiff's delay in bringing suit, (4) plaintiff's misconduct, if any, (5) the relative hardship likely to result to defendant if the injunction is granted and to plaintiff if it is denied, (6) the interest of third parties and of the public, (7) and the practicability of framing and enforcing the order or judgment. *Pacific Gas & Elec. Co. v. Minnette* (1953) 115 Cal.App.2d 698, 709.

"The appropriateness of injunction is to be determined as of the time of the order or judgment unless special circumstances otherwise require." *Id.* Mandatory injunctions are "drastic" in character. *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 589.

Respondents' board positions were voluntary; they received no compensation, benefits, nor any other entitlements as a result of holding such positions. They were to hold two-year terms; and their terms expired before they filed suit.

Put simply, there was no evidence offered in the trial court that demonstrated that Respondents suffered any harm as a result of their board positions having been vacated.

However, there was evidence in front of the trial court that demonstrated that AIHS' federal funding would be jeopardized by reinstatement of Respondents as board members. Such evidence included a letter received by AIHS from Karen Nichols, contracting officer of the IHS, dated March 8, 2009, stating as follows:

Dear Mr. Black:

We have been provided a copy of the complaint and are aware of the lawsuit brought by four former [members of the] board of directors against the Santa Barbara urban Indian program. We understand that the four former board of directors are seeking re-appointment to the board of directors and approximately $1 million in damages against the program.

We are concerned that this lawsuit and potential outcome are threatening renewal of this contract and the continued viability of the Santa Barbara urban program for the following reasons:

1. The program is now stable, providing services, and is operating smoothly after a very difficult period. Wholesale replacement of the current board of directors with the former board of directors threatens to destabilize the program and will likely affect the government's consideration of whether to renew the contract. When renewing the contract, the federal contractor must have a "satisfactory performance record." 48 C.F.R. § 9.104-1(c).

2. Convicted felons should not serve on the program's board of directors. The regulations require that the contractor "have a satisfactory record of integrity and business ethics." 48 C.F.R. § 9.104-1(d).

...

Please note that Coastal Chumash members ***who meet the eligibility criteria for services*** at an urban Indian program may receive health care services at the program. This office offered to work with the members of the Coastal Chumash to acquire documentation to demonstrate that they are eligible for services at the Santa Barbara urban clinic. We never received a response. We continue to be willing to assist ***eligible*** Coastal Chumash members in receiving health care services at the program.

In addition, the urban program was not established for the Coastal Chumash specifically. On the contrary, it is an urban Indian program, established under Title V of the Indian

> Health Care Improvement Act, and accordingly, was established to make health services more accessible to urban Indians in the Santa Barbara urban area. 25 U.S.C. section 1651. While ***eligible*** Coastal Chumash members may receive services at the American Indian Health and Services Corporation, it is not for their exclusive use or benefit.

AA308-309 (Trial Exhibit 86) (emphasis added).

The above letter supports AIHS' contention that (1) Respondents are not qualified to hold board positions, and (2) their reinstatement to the board is detrimental to AIHS. It also reiterated the fact that Coastal Band members were not considered eligible for services (and not urban Indian) simply because of membership in the Coastal Band.

The above letter also reaffirmed the information received by Granados from IHS, which was forwarded to Respondent Jaimes, as follows:

> ..., I am providing you with the highlighted information that was excerpted from an email that the California Area IHS received from Mr. Granados. If he is requesting the information as he stated in this email excerpt, then he is following appropriate procedure. Anyone receiving care as an American Indian / Alaska Native in an IHS funded program is required to show proof of eligibility. Member of the Coastal Band Chumash, although they are not federally recognized, could be eligible for care under the terms of the Indian Health Care Improvement Act. However, they are required to get documentation and certification from the BIA and present it to the IHS funded program.

AA 307 (Trial Exhibit 12).

In addition, the evidence before the trial court was that AIHS believed that reinstatement of the Respondents would negatively affect AIHS and jeopardize its contract, and that Respondent Garcia was precluded from sitting on the board because of her undisclosed felony conviction. RT 477:19-26; 521:26-523:24; 527:6-9.

As a matter of simple common sense, AIHS should not have been

ordered to reinstate Respondents to the board where their membership jeopardizes AIHS' federal funding, and it was an abuse of discretion for the trial court to order the same. The Respondents had no right to the board positions at all, let alone a right to hold their board positions beyond their elected two-year terms. They suffered no harm in being removed from the board eight months before the end of their terms, and they inexplicably delayed in filing suit until after their terms had expired.

Accordingly, this Court should find that there was no basis for the drastic remedy of injunction ordered by the trial court, and the injunctive relief ordered by the trial court should be reversed.

VII. Conclusion.

Upon review, this Court should find that the trial court erred as a matter of law in entering a mandatory injunction directing reinstatement of the Respondents as AIHS board members and directing them to have access to AIHS' books and records. In so finding, this Court should enter an order directing that the judgment be reversed and a new judgment be entered in favor of AIHS.

Dated: April 18, 2010

GORDON & REES LLP

Stephen Ronk
Stephanie Alexander
Michelle Steinhardt
Attorneys for Appellants

CERTIFICATE OF WORD COUNT

(California Rules of Court, Rule 8.204(c) and Rule 8.490(b)(6))

The text of this brief contains 4518 words, as counted by the Microsoft Word program used to generate the brief.

Dated: April 18, 2011

GORDON & REES, LLP

Stephen Ronk
Stephanie Alexander
Michelle Steinhardt
Attorneys for Appellants

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 633 West Fifth Street, Suite 4900, Los Angeles, CA 90071. On **April 18, 2011**, I served the within documents:

APPELLANTS' REPLY BRIEF

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at Los Angeles, addressed as set forth below.

Eric A. Woosley, Esq. **[4 Copies]**
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Judge James W. Brown
Case No.: 1266707

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Sacramento, CA 95814

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I declare that I am employed in the office of a member of the Bar of this court at whose direction the service was made.

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

Executed on **April 18, 2011**, at Los Angeles, California.

FRANCES PEREZ