Case Nos. B243788, B247392

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 1

JENNIFER AUGUSTUS, Individually and on Behalf of All Similarly Situated Individuals,

Plaintiff and Appellee,

v.

ABM SECURITY SERVICES, INC., formerly d.b.a. AMERICAN COMMERCIAL SECURITY SERVICES, INC.,

Defendant and Appellant.

On Appeal from the Los Angeles Superior Court
Hon. John Wiley, Jr.
Case Nos. BC336416, BC345918, CG544421

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANT/APPELLANT ABM SECURITY SERVICES, INC.

D. Gregory Valenza, SBN 161250
SHAW VALENZA LLP
300 Montgomery Street, Suite 788
San Francisco, California 94104
Telephone: (415) 983-5960
Facsimile: (415) 983-5963

Attorneys for *Amicus Curiae*
California Chamber of Commerce

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

TABLE OF AUTHORITIES
(continued)

Page

Other Authorities

333997.3.00211.001

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE OF DIVISION ONE OF THE SECOND DISTRICT COURT OF APPEAL:

Pursuant to California Rule of Court 8.200(c), the California Chamber of Commerce requests permission to file the attached *amicus curiae* brief in support of Appellee ABM Security Services, Inc.[1]

The California Chamber of Commerce ("CalChamber") is a nonprofit business association, with over 13,000 individual and corporate members, representing virtually every economic interest in California. For over 100 years, CalChamber has been the voice of California business, both large and small.

CalChamber acts to improve the state's economic and jobs climate, by representing business on a broad range of legislative, regulatory and legal issues. CalChamber frequently advocates before the courts by filing *amicus curiae* briefs in cases involving issues of concern to the business community.

This Court's decision in this instant case is of critical importance to California businesses and, therefore, to CalChamber. The question: "what constitutes a legally required rest period" is one of first impression for California appellate courts. This Court's decision in the case will directly affect virtually every California employer. Nearly all California employers must authorize and

[1] Per Cal. R. Ct. 8.200(c)(3): no party or its counsel authored this brief in whole or in part. No party or its counsel, or any person or entity (other than *amicus* and its counsel), made any monetary contribution towards, or in support of, the preparation of this brief.

permit one or more paid rest periods, *every* work day, to *every* worker. Those who do not comply face breathtaking financial liability, as the award in the instant matter exemplifies.

California employers and employees alike will be well served by a clear definition of the term "rest period." This Court has the opportunity to interpret the rest period requirement in a practical, reasonable way. If the trial court's ruling is permitted to stand, however, it will drastically change working conditions for virtually all California businesses. Nearly all of California's thousands of employers will have to re-write policies and procedures. Employers will have to devise ways of proving that employees are not "potentially" subject to recall to duty while on rest breaks. Yet another wave of class action litigation will swamp the courts. Employers may be exposed to liability for hundreds of millions of dollars in penalties and interest,[2] payable to workers who had no idea they were harmed in the first place.

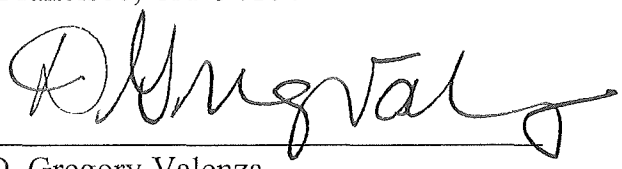
As counsel for *amicus curiae*, we have reviewed the briefs filed in this action. We believe that this Court would benefit from additional briefing on certain key issues and policy concerns implicated in this case. Therefore, on behalf of the CalChamber, the undersigned respectfully asks this Court to allow the filing of the attached brief.

[2] This prediction is not mere hyperbole, given that the trial court in this case awarded the plaintiffs nearly $90 million in penalties and interest because the plaintiff's breaks *potentially* were subject to interruption. See AOB p. 15. ABM is just one employer, and certainly not the largest.

Dated: May 1, 2014

Respectfully submitted,

SHAW VALENZA LLP
300 Montgomery Street, Suite 788
San Francisco, CA 94104

By: 

D. Gregory Valenza
Attorneys for *Amicus Curiae* California Chamber of Commerce

AMICUS CURIAE BRIEF

I. INTRODUCTION

This Court should reverse the trial court's judgment and orders granting certification, and grant the remaining relief Appellant seeks in this Court. The trial court's decisions are based on an erroneous, unjustifiable definition of "rest period." There is no basis in law, regulation, or precedent for the trial court's conclusion: "If you are on call, you are not on break."

This Court writes on a clean slate regarding the definition of "rest period" under the Wage Orders. This Court should define the term in accordance with its purpose and workplace realities. Properly understood, a "rest period" is a short, paid, part of the work day, during which the employer provides a worker with the opportunity to refrain from work activities.

Because rest periods are brief and paid, they are not analogous to meal periods. They also are not akin to those cases in which courts analyzed whether "standing by" should count as "hours worked." The analysis of whether a meal period is "duty free" or whether an employee's standing-by is sufficient to constitute "hours

worked" addresses the difference between paid and unpaid time. Rest periods already are "hours worked." The relevant issue for this Court to decide is: what does it mean to "rest"?

Labor Code section 226.7 prescribes a one-hour penalty when employers interrupt a rest period and require an employee to "work." The mere *potential* to be recalled to work is not "work." As discussed in the parties' briefs, the courts and the Division of Labor Standards Enforcement already have decided that an employer's requirement that an employee remain able to be "hailed" (via beeper, cell phone, etc.) does not even transform *off-duty* time into work time. If off-duty time does not become work time when an employee is on call, then it would be illogical to conclude that an employee is unable to rest when merely subject to the possibility of recall.

Even without a formal policy, management has the right to direct the work force. Thus, being "on call" at work is part of the realities of any work place, not just security guards' working conditions. Management has the inherent right to ask an employee to interrupt a break. To be sure, there is a cost for doing so: the one-hour penalty that Labor Code section 226.7 prescribes. Similarly, management has the right to call an employee at home to report to work, subject to the law's reporting time pay requirements. *A fortiori*, the employer's right to call someone to return to work does not transform the employee's rest time into "work."

Washington State's rest period law is similar to California's. The Washington Court of Appeals and the state's Department of Labor and Industries already have decided that a rest period is lawful even if the employee is "on call" – available to respond to an event if it should occur. These decisions obviously do not bind this Court.

But this Court should consider as persuasive that Washington's intermediate appellate court and its Department of Labor and Industries have already decided that an "on-call" rest period does not preclude rest.

II.
DISCUSSION

A. THIS COURT SHOULD HOLD THAT TO "REST" MEANS TO REFRAIN FROM WORK ACTIVITIES

The trial court granted summary judgment against ABM by concluding no ABM employee, within the certified class, ever had a rest break. The trial court's rationale is that an employee "on call" during a rest break is never provided a legally sufficient rest period. ABM's liability for rest period penalties *vel non* therefore turns on how this Court will define a "rest period."[3] As far as *amicus* can tell, this Court is unconstrained by any California law, regulation or controlling California authority defining "rest period."

The Washington Court of Appeals, interpreting Washington's rest break regulation, has held that "on-call" rest periods comply with Washington law. Washington's rest period regulation is substantially similar to California's:

> Employees shall be allowed a rest period of not less than ten minutes, on the employer's time, for each four hours of working time. Rest periods shall be scheduled as near as possible to the midpoint of the work period. No employee shall be required to work more than three hours without a rest period.

[3] Appellant raises issues independent of the trial court's rest break definition, such as whether class certification is warranted and whether Appellant raised a triable issue of fact regarding rest period liability. *Amicus*'s brief addresses only the trial court's erroneous holding that "if you are on call, you are not on break."

Wash Admin. Code § 296-126-092 (available on the internet at http://apps.leg.wa.gov/wac/default.aspx?Cite=296-126-092). [4]

California's requirement reads as follows:

> Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (31/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

Cal. Code Regs., tit. 8, § 11040, subd. (12)(A).

Like California, Washington has not in a statute or regulation defined what "rest period" means. The Washington Court of Appeals held that requiring an employee to be "on call" did not render void the rest periods that Salvation Army provided its employees. *See White v. Salvation Army*, 118 Wn. App. 272 (2003).[5]

The Salvation Army employed domestic violence counselors at one of its facilities. "Although the workers were required to remain on call and available to respond to telephone calls and resident needs at all times during their shift, they did have time during which they could rest, eat, or attend to personal matters." *Id*. at 281. Thus, as in the instant case, employees were

---

[4] *Amicus* respectfully requests this Court to take judicial notice of the Washington Department of Labor and Industries' administrative policy statement, a copy of which is attached to the Motion for Judicial Notice submitted herewith.

[5] *Amicus* respectfully requests this Court to take judicial notice of the Washington Court of Appeals's opinion, a copy of which is attached to the Motion for Judicial Notice submitted herewith.

required to be on call, but in practice stopped working to attend to personal matters.

The court relied on the state's Department of Labor and Industries' administrative policy regarding rest periods, which at the time defined "rest period" as "'relief from duty.'" *Id*. at 282 (quoting Wash. Dept. of Lab. and Indus., Administrative Policy No. ES.C.6 (rev. 2002)).[6] The administrative policy did not specify whether "on call" rest periods constituted "relief from duty." However, the Department submitted an *amicus curiae* brief in the *White* case, in which it represented: "'employees may be subject to call during intermittent rest periods . . . .'" *Id*. (quoting Brief *Amicus Curiae* of Department of Labor and Industries).

After reviewing the language of the rest period regulation and the agency's opinion, the Washington court held that the Salvation Army's "on-call" rest periods comported with the state's rest period requirement:

> The record here provides an excellent example of why *being on call is not inconsistent with being relieved from one's normal work duties*. Workers on the graveyard shift were permitted to sleep. Workers on all shifts were also allowed to eat, rest, make personal telephone calls, attend to personal business that would not take them away from the facility, and close the door to the office in order to make themselves unavailable. In short, we accept as valid DLI's explanation of its policy that permits the workers in this case to be on call during paid rest periods. The workers are not entitled to additional compensation for these periods.

---

[6] The Department of Labor and Industries later modified its interpretation to define "rest period" as "to stop work duties, exertions, or activities for personal rest and relaxation." *See* Washington Dept. of Lab. and Indus., Administrative Policy No. ES.C.6 (rev. 6/24/2005) (available in the internet at, http://www.lni.wa.gov/WorkplaceRights/files/policies/esc6.pdf). To *amicus*'s knowledge, no case has interpreted that administrative policy to prohibit on-call rest periods.

Id. at 283-284 (emphasis added).

Thus, the court in *White* interpreted a rest period rule that is substantially similar to California's and held that the mere potential of being "called" to respond did not vitiate the rest period. This Court should do the same.

As the court pointed out, the essential purpose of a rest period is "relief from work." *Id*. at 283. The mere possibility of interruption does not conflict with this goal. Rather, a rest break is best understood as a brief period, of paid work time, during which the employee refrains from work activity. In essence, the employer pays the employee to refrain from performing his or her normal work activities. This Court should adopt a similar definition, and should reject the argument that a potential interruption renders the rest period void.

B. MERELY BECAUSE AN EMPLOYER POTENTIALLY MAY INTERRUPT A REST PERIOD DOES NOT RENDER THE REST PERIOD NON-COMPLIANT

The superior court flatly ruled "if you are on call, you are not on break." *See* Order (quoted at AOB 18). But the trial court did more than merely decide that an employee's obligation to carry a pager or two-way radio rendered employees "on call." Rejecting evidence that some employees did not carry a radio, the trial court doubled-down: "There are many alternatives to the radio for hailing a person *back to work*: cell phone, pager, *fetching, hailing*, and so on." *Ibid*. (emphasis added).

Thus, the trial court recognized that an on-call employee is not "working," but is hailed "*back* to work." Even the trial court recognized the employer "hails" the employee *back* to work (from rest). The court then decided a lawful rest period occurs *only* when the employer cannot even *potentially* "hail" an employee back to work.

First, the court's interpretation is not consistent with the law. Section 226.7 provides only, "An employer shall not require an employee *to work* during a meal or rest or recovery period . . . ." (emphasis added). Being "on call" to respond to emergencies is not the same as being required "to work." To be sure, if the employee is *actually* "hailed" back to work, that is a rest period violation and a penalty is due. But the trial court's decision expands an employer's potential liability under Section 226.7 beyond what the statute provides.

Second, the trial court's decision does not take into account the realities of the workplace. If a lawful rest break turns on freedom from *potential* "hailing," then one could argue that virtually no employee within earshot of a manager has *ever* taken a legal break. It is beyond cavil that a supervisor has the authority to direct employees to work. *See*, *e.g.*, Lab. Code § 2856. Given a rest period is too short to guarantee an employee is free from a manager's scrutiny, the employee is always *potentially* subject to recall from break.

This Court should consider the situation in a hospital. A nurse may be on a rest break where she is not "on call." Yet there is always the "possibility" of a public address announcement of a medical emergency, to which a nurse would respond. Under the trial court's definition, can a nurse ever enjoy a rest break?

Even outside of the healthcare industry, and whether there is a company policy or not, all employees at an employer's facility *potentially* face the employer's request that he or she return to work. Certainly, any business with a public address system, such as a department store, would be incapable of providing an employee with a rest break under the trial court's definition. Employers with small offices or work areas would be unable to provide employees with total seclusion from a supervisor's potential interruption.

As stated, the law provides a remedy for an *actually* interrupted rest break: an hour's pay. *See* Lab. Code § 226.7. But the law does not say that an uninterrupted rest period warrants a penalty. Nor should it. The purpose of the rest period – a break from work activities – is served if the employee actually is rested; that is, ceases his or her regular work activities.

C. THE LAW RECOGNIZES THAT EMPLOYERS EXERCISE POTENTIAL CONTROL OVER EMPLOYEES DURING REST PERIODS BECAUSE THEY ARE CONSIDERED PART OF THE WORK DAY

Section 12 of the relevant IWC Wage Order provides: "[a]uthorized rest period time shall be counted as hours worked for which there shall be no deduction from wages." Federal law is the same: "Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked." 29 CFR § 785.18.

In contrast, meal periods are *unpaid*. Because they are unpaid, *bona fide* meal periods are not "hours worked." *Id*. § 785.19. Both federal and state law emphasize that a meal period qualifies as unpaid only if the employee is entirely free from duty. *See Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, 53 Cal. 4th 1004, 1040 (2012) ("the employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break."). The point is that if the meal period is not duty-free, it is counted as on duty, compensable work time.

Appellee incorrectly conflates the law governing unpaid meal periods and paid rest periods. Similarly, Appellee spends much time arguing that being "engaged to wait," or that being under employer control is compensable time. That is true, as far as it goes. But decisions such as

Morillion v. Royal Packing, 22 Cal.4th 575 (2000) (*see* Answering Brf. at 22), address whether the employer has controlled an employee's *unpaid, off-duty* time in a way that transforms *non*-working time into hours worked.

Rest periods, in contrast, already count as hours worked. As stated, what distinguishes the rest period from work time is the employee's ability to stop working and instead engage in personal activity. When on a rest break, the employee's "duty" is to refrain from work and recharge the batteries, as it were. There is nothing about merely carrying a radio or a beeper that interferes with that right, unless or until a call to return actually interrupts the break.

Appellee and the trial court borrowed the unpaid, meal period standard and applied it to the short, paid rest break standard. There is no statute, regulation or court opinion imposing the meal period's exacting requirements upon paid rest breaks. Contrary to Respondent's repeated arguments in her brief, the Supreme Court in *Brinker* did not define a "rest period," and certainly did not specify whether the mere potential to be called back to work rendered a rest period non-compliant. In fact, the Supreme Court refused to accept the plaintiff's invitation to add to the wage order's text a requirement that a rest period precede a meal period. *Brinker*, 53 Cal.4th. at 1031. The Supreme Court in Brinker was not called upon to define "rest period" and its opinion cannot be cited as "authority for a proposition not therein considered." *Ginns v. Savage*, 61 Cal. 2d 520, 524 (Cal. 1964).

D. THE MERE POTENTIAL TO BE CALLED TO WORK IS NOT SUFFICIENT TO RENDER REST PERIODS NON-COMPLIANT

Appellee argues throughout her brief that an employee who is required to respond to emergencies is, *ipso facto*, "on duty." But it is well settled under wage-hour law that an employee may be "on call," yet *off*

duty. Thus, as Appellant discusses in its Opening and Reply Briefs, an employer may require *off-duty*, *unpaid* employees to remain "on call" – to respond to a page and be available to return to work – without transforming the employee's off duty time into "hours worked." The issue is whether the employer's "on call" restrictions are so onerous as to transform the "off duty" time into hours worked. *See*, *e.g.*, Appellant's Reply Brief 11-14 and cases cited.

So, the employer's requirement that an off-duty employee must respond to a page, or carry a cell phone, does not transform off-duty time into work time. That means there is insufficient employer control to convert off duty time into hours worked. Given a rest period is already counted as *paid* hours worked, it cannot be that an employer's requiring an employee to carry a radio destroys the rest period. Put another way, if requiring an employee to respond to a radio call is sufficient control over an employee to void a rest period, there would be no such thing as off-duty, "on call" time. That is not the law.

If the on-call employee's mere apprehension of a potential call is enough to void a rest period, where would one draw the line? If an employee glances down at her uniform while on break, would that be enough to remind the employee of the job's potential responsibilities? Should the employer issue a blank, "rest break apron" to cover up the uniform? If a restaurant server on break notices that customers have arrived at the door, does that disrupt the feeling of repose? If so, what is the employer to do? Will employers have to construct a sound-proof location where the employee will have no reminders of work activities that await once the employee returns? Will employers have to provide sound deadening headphones and eye masks to block out the sights and sounds of the workplace and nearby supervisors who might one day interrupt a break?

Obviously not. This Court should not define "rest period" to require employers to provide more freedom than employees enjoy during unpaid, off-duty time. As stated, this Court should define "rest period" as a paid period during which the employee refrains from work activity. But even if this Court chooses another definition of rest period, the trial court's formulation is legally inform and practically unworkable. No matter how this Court defines "rest period," there is a triable issue of fact in this case requiring reversal. And because the trial court applied the wrong legal standard to its class certification analysis, the court abused its discretion when it granted class certification.

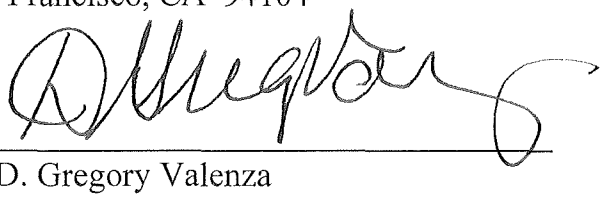
III.
CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the trial court and reverse the decision granting class certification as based on an erroneous legal standard, as well as grant the other relief Appellant requests.

Dated: May 1, 2014

Respectfully submitted,

SHAW VALENZA LLP
300 Montgomery Street, Suite 788
San Francisco, CA 94104

By: 

D. Gregory Valenza
Attorneys for *Amicus Curiae* California Chamber of Commerce

CERTIFICATE OF WORD COUNT

Counsel for *amicus curiae* certifies that its Brief is 3102 words (exclusive of the Application, tables, signature blocks and this certificate), based on the word count produced by the word processing software used to prepare the brief.

Date: May _1, 2014

D. Gregory Valenza

CERTIFICATE OF SERVICE

I, Carolyn Angel, declare that I am employed with the law firm of Shaw Valenza LLP, whose address is 300 Montgomery St., Ste. 788, San Francisco, California 94104; I am over the age of eighteen (18) years and am not a party to this action. On May 2, 2014, I served the attached

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CALIFORNIA CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANT/APPELLANT ABM SECURITY SERVICES, INC.

in this action by placing a true and correct copy thereof, enclosed in sealed envelope(s) addressed as follows: See Attached Service List

[X] BY MAIL: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct; executed on May 2, 2014, at San Francisco, California.

Carolyn Angel

Attorneys for Amici Curiae California Employment Law Council and Employers Group

Paul Grossman, Esq.
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071-2228
Telephone: 213-683-6000
Fax: 213-627-0705

Plaintiff and Respondent, Jennifer Augustus, Individually and on Behalf of All Similarly Situated Individuals; and Lead Counsel for the Class

Drew E. Pomerance, Esq.
Michael B. Adreani, Esq.
Marina N. Vitek, Esq.
ROXBOROUGH, POMERANCE, NYE & ADREANI LLP
5820 Canoga Avenue, Suite 250
Woodland Hills, CA 91367
Telephone: 818-992-9999
Fax: 818-992-9991

Jeffrey Isaac Ehrlich, Esq.
THE EHRLICH LAW FIRM
16130 Ventura Blvd., Suite 610
Encino, CA 91436
Telephone: 818-905-3970
Fax: 818-905-3975

Additional Counsel for Class Representatives and Class Members

Andre E. Jardini, Esq.
KNAPP, PETERSEN & CLARKE
550 North Brand Blvd., Suite 1500
Glendale, CA 91203-1922
Telephone: 818-547-5000
Fax: 818-547-5329

Scott Edward Cole, Esq.
Matthew R. Bainer, Esq.
SCOTT COLE & ASSOCIATES, APC
1970 Broadway, Suite 950
Oakland, CA 94612
Telephone: 510-891-9800
Fax: 510-891-7030

Michael S. Duberchin, Esq.
LAW OFFICES OF MICHAEL S. DUBERCHIN
P. O. Box 8806
Calabasas, CA 91372
Telephone: 818-222-8487
Fax: 818-222-8487

Alvin L. Pittman, Esq.
LAW OFFICES OF ALVIN L. PITTMAN
5933 West Century Blvd., Ste 230
Los Angeles, CA 90045
Telephone: 310-337-3077
Fax: 310-337-3080

Joshua M. Merliss, Esq.
GORDON, EDELSTEIN, KREPACK, GRANT, FELTON & GOLDSTEIN LLP
3580 Wilshire Blvd., Suite 1800
Los Angeles, CA 90010
Telephone: 213-739-7000
Fax: 213-386-1671

Monica Balderrama, Esq.
G. Arthur Meneses, Esq.
INITIATIVE LEGAL GROUP APC
1800 Century Park East, Mezzanine
Los Angeles, CA 90067
Telephone: 310-556-5637
Fax: 310-861-9051

Defendant and Appellant, ABM Security Services, Inc.

Theodore J. Boutrous, Jr., Esq.
Theane Evangelis, Esq.
Andrew G. Pappas, Esq.
Bradley J. Hamburger, Esq.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213-229-7000
Fax: 213-229-7520

Keith A. Jacoby, Esq.
Dominic J. Messiha, Esq.
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067
Telephone: 310-553-0308
Fax: 310-553-5583

Service Required Pursuant to Business & Professions Code Section 17209

Office of the District Attorney
County of San Francisco
Hall of Justice
Write & Appeals
850 Bryant Street, Room 322
San Francisco, CA 94103

Office of the District Attorney
County of Los Angeles
Appellate Division
320 West Temple Street, Suite 540
Los Angeles, CA 90012

Hon. John Shepard Wiley, Jr.
Department 311
Los Angeles Superior Court
600 S. Commonwealth Avenue
Los Angeles, CA 90005
Telephone: 213-351-8893

[X] BY ELECTRONIC MAIL

State of California Department of Justice
Office of the Attorney General
Appellate Coordinator
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230
Telephone: 213-897-2000
http://oag.ca.gov/services-info

Clerk of the Court
California Supreme Court
350 McAllister Street, Rm. 1295
Sam Francisco, CA 94102

Electronic copy submitted to
Second District Court of Appeal
http://www.courts.ca.gov/2dca-esub.htm

Service on the California Supreme Court is included (Cal. Rules of Court 8.212(c)(2))

335446.1.00211.001