

S261247

In The Supreme Court

OF THE

State of California

LYNN GRANDE

Plaintiff and Respondent,

v.

EISENHOWER MEDICAL CENTER

Defendant and Petitioner.

FLEXCARE, LLC

Intervener and Appellant.

On Review from the Court of Appeal for the
Fourth Appellate District, Division Two
Appeal Nos. E068730 and E068751

After an Appeal from the Superior Court of Riverside County
Honorable Sharon J. Waters
Case Number RIC1514281

**EISENHOWER MEDICAL CENTER’S OBJECTION TO
“GRANDE’S RESPONSE TO EISENHOWER’S SUPPLEMENTAL
BRIEF RE NEW AUTHORITIES”**

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TABLE OF CONTENTS

	Page
Eisenhower Medical Center’s Objection to Grande’s “Reply” to Eisenhower’s Supplemental Authorities Brief	4
1. The response is not authorized.	4
2. The response exceeds the allowed word count for a supplemental brief.	4
3. The response improperly goes far beyond addressing the new authority, discussing <i>Franklin</i> only briefly.....	5
CERTIFICATE OF COMPLIANCE	6
PROOF OF SERVICE.....	7

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>DKN Holdings LLC v. Faerber</i> (2015) 61 Cal.4th 813	5
<i>Franklin v. Community Regional Medical Center</i> (9th Cir. May 21, 2021) 998 F.3d 867.....	4, 5
<i>Noe v. Superior Court</i> (2015) 237 Cal.App.4th 316	5
<u>Other Authorities</u>	
Cal. R. Ct. Rule 8.520(d).....	4

**Eisenhower Medical Center’s Objection to Grande’s “Reply” to
Eisenhower’s Supplemental Authorities Brief**

On March 24, 2022, defendant and petitioner Eisenhower Medical Center submitted a supplemental brief to discuss the new authority *Franklin v. Community Regional Medical Center* (9th Cir. May 21, 2021) 998 F.3d 867 (*Franklin*). This brief was authorized by California Rules of Court, rule 8.520, subdivision (d), and item 4 of this Court’s Notice to Counsel Appearing for Oral Argument Before the Supreme Court of California, sent to the parties on March 16, 2022.

At 5:14 p.m. on March 25, 2022, plaintiff and respondent Grande filed a purported “response” to Eisenhower’s supplemental brief. That response is improper, and Eisenhower objects to it, for three reasons.

1. The response is not authorized.

The California Rules of Court do not allow for a response to a supplemental brief. (See Cal. R. Ct., rule 8.520(d).) The Court’s March 16, 2022 Notice to Counsel only allows “opposing counsel an opportunity to serve and file a reply to the newly cited authorities” upon the Chief Justice’s order granting that opportunity. The Chief Justice has issued no such order here.

2. The response exceeds the allowed word count for a supplemental brief.

Even if such authority were granted (and it has not been and should not be granted), the response Grande attempted to file exceeds the allowed word count for a supplemental brief under Rule of Court 8.520, subdivision (d). Grande’s unauthorized reply is 3,111 words and the word limit for a supplemental brief is 2,800 words.

3. The response improperly goes far beyond addressing the new authority, discussing *Franklin* only briefly.

Grande spends just two paragraphs of her “reply” brief addressing *Franklin*. (See Reply at p. 9.) The rest of her brief first largely addresses an older case that the petitioners, Eisenhower and FlexCare, LLC both relied on in their merits briefing, but that Grande ignored and failed to respond to then. (See Eisenhower Op. Br. at p. 26; FlexCare Op. Br. at pp. 15, 22, 23, 35; Eisenhower Reply at p. 19 fn. 9; FlexCare Reply at pp. 18, 23 [citing *Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782].) After that, Grande’s reply merely repeats arguments she made in her merits brief with regard to two older cases—*Noe v. Superior Court* (2015) 237 Cal.App.4th 316 and *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813. Eisenhower’s supplemental authorities brief does not discuss either *Noe* or *DKN Holdings* at all. Grande’s lengthy discussion of (and quotation from) *Noe* and *DKN Holdings* effectively and improperly expands Grande’s merits brief beyond the allowable word count rather than replying to Eisenhower’s supplemental authorities brief.

For these reasons, Eisenhower objects to Grande’s “reply” to Eisenhower’s supplemental authorities brief addressing *Franklin*. Grande’s reply should be rejected for filing.

Dated: March 28, 2022

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

By

s/Richard J. Simmons
RICHARD J. SIMMONS
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EISENHOWER MEDICAL CENTER

PROOF OF SERVICE

Lynn Grande v. Eisenhower Medical Center
Case No. S261247

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 501 West Broadway, 19th Floor, San Diego, CA 92101-3598.

On March 28, 2022, I served true copies of the following document(s) described as **EISENHOWER MEDICAL CENTER’S OBJECTION TO “GRANDE’S RESPONSE TO EISENHOWER’S SUPPLEMENTAL BRIEF RE NEW AUTHORITIES”** on the interested parties in this action as follows:

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

Executed on March 28, 2022, at San Diego, California.

s/Pamela Parker

Pamela Parker

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

Case Number: **S261247**

Lower Court Case Number: **E068730**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **kvogel@sheppardmullin.com**
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

3/28/2022

Date

/s/Pamela Parker

Signature

Vogel, Karin Dougan (131768)

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