IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JAMES RICHARD JOHNSON
Petitioner and Appellant,

v.

THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
Respondent;

THE PEOPLE OF THE STATE OF CALIFORNIA
Real Party in Interest and Respondent.

Case No. S209167

Court of Appeal Case No.
E055194 (4th Dist., Div. 2)

San Bernardino County
Superior Court Case No.
CIVDS1105422

OPENING BRIEF ON THE MERITS

After decision of the Fourth District Court of Appeal, Division Two

After Appeal from the Superior Court of San Bernardino County,
The Honorable David Cohn, Judge, Presiding

MICHAEL A. RAMOS
District Attorney
BRENT J. SCHULTZE
SBN 230837
Deputy District Attorney
Appellate Services Unit
412 W. Hospitality Lane,
First Floor
San Bernardino, CA,
92415-0042
Telephone: (909) 891-3302
Fax: (909) 891-3303
bschultze@sbcda.org
Attorneys for Respondent and
Real Party in Interest, the
People of the State of California

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

JAMES RICHARD JOHNSON v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY	**S209167**
(THE PEOPLE OF THE STATE OF CALIFORNIA)	Court of Appeal Case No. E055194 San Bernardino County Superior Court Case No. CIVDS1105422

TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The People file this opening brief on the merits, following the Court's grant of review on May 1, 2013.

The People respectfully urge the Court to hold that when selecting a comparison offense for purposes of the equal protection analysis mandated by *People v. Hofsheier* (2006) 37 Cal.4th 1185, the ages of the defendant and victim should be considered. The structure of the statutes at issue requires it.

ISSUE ON REVIEW

In the petition for review, the People presented the following issue:

> When evaluating whether sex offender registration stemming from an offense against a minor violates equal protection, is the age of the defendant at the time of the offense considered?

INTRODUCTION

In *People v. Hofsheier*, *supra*, 37 Cal.4th 1185 (*Hofsheier*), the Court examined California's sex offender registration scheme, and whether aspects of it violated the constitutional guarantee of equal protection. The Court held that there was no rational basis to require sex offender registration for someone convicted of oral copulation on a sixteen year-old victim, when it was not required for someone convicted of intercourse. The Court of Appeal has produced conflicting opinions when applying this analysis to other offenses, however.

In *Hofsheier*, the Court noted that for certain offenses, registration is required regardless of the sex act, due to the age of the victim or the force involved. (*Supra*, 37 Cal.4th at p. 1198.) In such cases there is no unequal treatment and thus no equal protection violation.

The Court of Appeal has split over whether it is appropriate to consider the age of the defendant when selecting a comparison offense, to see if different sex acts are being treated unequally. Considering the age of the defendant is appropriate, because the structure of relevant sex offenses requires that the defendant's age be taken into account.

BACKGROUND

Appellant's Registerable Offense

Appellant, James Richard Johnson, was a criminal defendant in San Bernardino Superior Court case number FSB270976. (1 CT[1] 1, 8.) Appellant was charged with two violations of Penal Code[2] section 288, subdivision (a) [lewd act on a child under the age of fourteen]; one violation of section 286, subdivision (b)(2) [sodomy on a child under the age of sixteen]; and two violations of section 288a, subdivision (b)(2) [oral copulation on a child under the age of sixteen]. (1 CT 8-11.) All the offenses were against the same victim, and were alleged to have occurred between June 1, 1988 and December 31, 1988. (1 CT 2, 8-11.) Pursuant to a plea agreement, appellant pleaded guilty to one of the oral copulation charges. (1 CT 2, 22, 23, 74-75.)

Appellant's Petition for Writ of Mandate

In 2011, appellant petitioned the Superior Court for a writ of mandate, asking to be relieved of the obligation to register as a sex offender. (1 CT 1-25.) Appellant argued that violations of Penal Code section 288a, subdivision (b)(2) should not require mandatory sex offender registration, relying on *Hofsheier*, *supra*, 37 Cal.4th 1185 and *People v. Luansing* (2009) 176 Cal.App.4th 676 (*Luansing*). (1 CT 4-5.) Appellant separately argued that he was not subject to discretionary registration under section 290.006, because

---

1 Clerk's Transcript.

2 Further statutory references are to the Penal Code, unless otherwise designated.

necessary findings had not been made at the sentencing in 1990 and because he had not reoffended. (1 CT 5-6.)

The People, as real party in interest, answered and opposed appellant's petition. (1 CT 63-77.) The People admitted the allegations in appellant's petition concerning the underlying conviction, and alleged that appellant's date of birth was April 19, 1961. (1 CT 63-64.) The People also provided a more-legible copy of the plea form, which contained appellant's date of birth as well. (1 CT 74.) The People argued that due to the age difference between appellant and the victim, registration was appropriate, under *Hofsheier, supra,* 37 Cal.4th 1185 and *People v. Manchel* (2008) 163 Cal.App.4th 1108 (*Manchel*). (1 CT 66-70.) In the alternative, the People argued that a discretionary registration hearing was required. (1 CT 70-71.)

In his reply, appellant urged the trial court to follow *Luansing, supra,* 176 Cal.App.4th 676 and *People v. Ranscht* (2009) 173 Cal.App.4th 1369 (*Ranscht*). (1 CT 81-83.)

The Trial Court's Denial of the Petition

The trial court considered the briefs of the parties, the arguments of counsel, and additional case law that was argued at the hearing, including *Ranscht, supra,* 173 Cal.App.4th 1369 and *People v. Alvarado* (2010) 187 Cal.App.4th 72. (1 RT[3] 30-37.) Faced with a split of authority, the trial court chose to follow *Manchel, supra,* 163 Cal.App.4th 1108, and denied the petition. (1 RT 36.)

---

3 Reporter's Transcript.

The Appeal

On appeal, the arguments of the parties were not terribly different from the arguments made before the trial court, and centered on the proper interpretation of *Hofsheier*, *supra*, 37 Cal.4th 1185. Appellant urged the Court of Appeal to follow *Luansing*, *supra*, 176 Cal.App.4th 676 and *Ranscht*, *supra*, 173 Cal.App.4th 1369, while the People urged the court to follow *Manchel*, *supra*, 163 Cal.App.4th 1108. The Court of Appeal found *Ranscht* and *Luansing* more persuasive and followed them, rejecting *Manchel*.

MEMORANDUM

I.

APPELLANT'S OFFENSE OF CONVICTION IS A MANDATORY REGISTRATION OFFENSE UNDER THE SEX OFFENDER REGISTRATION ACT

Appellant was convicted of violating section 288a, subdivision (b)(2). Under section 290, subdivision (c), it is a mandatory sex offender registration offense, like all violations of section 288a.

Section 288a concerns criminal acts[4] involving oral copulation of genitalia or the anus. (Subd. (a).) The statute's many subdivisions cover crimes against children and against adults, crimes committed with or without various types of force or duress, crimes against victims who are incapable of giving consent, crimes committed under color of authority, et cetera.

In *Hofsheier, supra,* 37 Cal.4th 1185, the Court held that requiring mandatory registration for violations of subdivision (b)(1), oral copulation on a person under age 18, violated the constitutional guarantee of equal protection. The differences between intercourse and oral copulation were not sufficient to mandate registration for the latter but not the former. (*Id.*, 1206-1207.)

---

[4] Oral copulation between consenting adults was decriminalized in 1975. (*Hofsheier, supra,* 37 Cal.4th 1185, 1194.)

Hofsheier did not address every subdivision of section 288a. However, it gave examples of subdivisions that it would not apply to, including (c)(1) (oral copulation on a minor under age 14) and subdivision (c)(2) (forcible oral copulation). (*Supra*, 37 Cal.4th 1185, 1198.)

II.

HOFSHEIER'S EQUAL PROTECTION ANALYSIS IS BASED ON SEXUAL CONDUCT AND CONSIDERS THE VICTIM'S AGE

In its equal protection analysis, *Hofsheier* scrutinized defendant's duty to register in light of the relevant statutory scheme, but emphasized that the only difference between the two offenses compared was "the nature of the sexual act." (*Supra*, 37 Cal.4th 1185, 1200.)

The precise issue examined in *Hofsheier* was whether there was a rational basis for the statutory classification requiring lifetime sex offender registration by a person convicted of voluntary oral copulation with a 16-year-old, where a person convicted of voluntary sexual intercourse with a 16-year-old would not be. (*Supra*, at p. 1201.)

Hofsheier assumed that the victim's age would be the same for the offenses under comparison. This assumption was necessary and logical; a victim's age is the only reason that these sex acts are crimes at all.[5]

---

[5] *Hofsheier* addressed "voluntary" sex acts, which lacked force, violence, duress, menace, threats, unconsciousness, intoxication, et cetera. (*Supra*, 37 Cal.4th 1185, 1193, fn. 2.)

III.

HOFSHEIER'S EQUAL PROTECTION ANALYSIS REQUIRES CONSIDERATION OF THE DEFENDANT'S AGE

Two lines of cases have interpreted and applied *Hofsheier's* equal protection analysis to other sex offenses against minor victims, and the disagreement between those cases needs to be resolved. The question is whether similarly situated groups are being treated in an unequal manner. (The Court already determined in *Hofsheier* that there was no rational basis for unequal treatment based on the nature of the sex act alone. (*Supra*, 37 Cal.4th 1185, 1206-1207.))

A. Voluntary Sexual Intercourse Can Be Prosecuted Under Multiple Statutes

1. Section 261.5

Voluntary sexual intercourse with a non-spouse minor is explicitly criminalized by section 261.5. Subdivision (a) contains the generic definition of what constitutes "unlawful sexual intercourse" while subdivisions (b) through (d) provide discrete punishments, based on the ages of the victim and defendant.

2. Section 288

Lewd and lascivious acts generally are criminalized by section 288. Intercourse can constitute a lewd and lascivious act. (*People v. Fox* (2001) 93 Cal.App.4th 394, 399; *People v. Ward* (1986) 188 Cal.App.3d 459, 469-470; *People v. Deletto* (1983) 147 Cal.App.3d 458, 475, fn. 13; see also *Michael M. v. Superior Court* (1981) 450 U.S. 464, 477 (conc. opn. of Stewart, J.)) Subdivision (a) defines the basic crime, and

expressly includes "acts constituting other crimes provided for in Part 1 [of the Penal Code]."

People v. Greer (1947) 30 Cal.2d 589 (*Greer*) (overruled on other grounds in *People v. Fields* (1996) 13 Cal.4th 289, 308, fn. 6; diapproved on other grounds in *People v. Pearson* (1986) 42 Cal.3d 351, 357-358), discussed the 1937 amendment to section 288. (At pp. 601-603.) The prior version of the statute had *excluded* acts that were covered by other statutes, and the amendment changed the language to *include* other offenses, using language nearly identical to that in the statute today. (At pp. 601-602.)

Construing the amendment, *Greer* concluded "[n]ow statutory rape committed upon the body of a child under 14 years of age can be punished as a lewd and lascivious act." (At p. 603.) The Court noted section 288's additional intent requirement, and added "[t]he intent could normally be inferred from the very nature of the acts now under consideration." (*Ibid.*)

B. Unlawful Sexual Intercourse Crimes under Section 261.5 All Take the Defendant's Age into Account

Section 261.5 is structured in three parts: subdivision (a) provides a generic description of unlawful sexual intercourse; subdivisions (b) through (d) define crimes of unlawful sexual intercourse, based on the ages of the victim and perpetrator; and subdivision (e) establishes monetary civil penalties.

Subdivision (a) provides a generic definition of unlawful sexual intercourse, but it provides no penalty.

Subdivision (b) criminalizes unlawful sexual intercourse with a minor who is not more than three years older or younger than the perpetrator. A violation is a misdemeanor.

Subdivision (c) criminalizes unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator. A violation is a wobbler.

Subdivision (d) criminalizes unlawful sexual intercourse with a minor under age 16, if the perpetrator is at least age 21. A violation is a wobbler.

Subdivision (e) concerns civil penalties, and defines no crimes.

No part of section 261.5 provides for a generic crime of unlawful sexual intercourse, only a generic definition of the act.

C. *Hofsheier* Considered the Defendant's Age

Although *Hofsheier* often discussed section 261.5 in generic terms, when considering the facts of the actual case before it, the Court used defendant's age, determining that had he engaged in intercourse with a 16-year-old, he would have been guilty of violating section 261.5, subdivision (c). (*Supra*, 37 Cal.4th 1185, 1195.) It was necessary for the Court to consider defendant's age, in light of the language of section 261.5.

IV.

THE *HOFSHEIER* EQUAL PROTECTION ANALYSIS SUPPORTS THE TRIAL COURT'S RULING REQUIRING MANDATORY REGISTRATION, BECAUSE THERE WAS NO UNEQUAL TREATMENT

A. The Heart of *Hofsheier's* Equal Protection Analysis Is Conduct

Sex offender registration is mandated by section 290 and for the purposes of this case, is based on convictions for California crimes enumerated in subdivision (c).[6] Yet those statutes criminalize certain conduct, and the differences in conduct (intercourse versus oral copulation) are not great enough to merit registration for one group but not the other. (*Hofsheier, supra,* 37 Cal.4th 1185, 1206-1207.)

B. Appellant's Oral Copulation Conviction

Appellant was convicted of oral copulation on a person under 16 by a person over age 21, occurring on and between September 1, 1988 and December 31, 1988. (1 CT 10, 22, 23.) Appellant was born on April 19, 1961, making him 27 years old at the time of the offense. (1 CT 20, 64, 74.)

---

[6] Other provisions mandate registration for sexually violent predators (§ 290.001), for mentally disordered sex offenders and those found not guilty by reason of insanity of enumerated sex offenses (§ 290.004), for persons with certain convictions from other jurisdictions (§ 290.005), and for some juvenile offenders (§ 290.008).

C. Application of the *Hofsheier* Equal Protection Analysis to Appellant

Had appellant's conduct been intercourse, rather than oral copulation, he could have been convicted of two different crimes: unlawful sexual intercourse with a minor under 16 by someone over age 21 (§ 261.5, subd. (d)), or lewd act on a child aged 14 or 15 by someone at least 10 years older (§ 288, subd. (c)(1)). Given the ages of appellant and the victim, both offenses applied.[7] (See discussion *ante*, in section III.A.)

Had appellant engaged in sexual intercourse, rather than oral copulation, he could have been prosecuted under section 288, subdivision (c)(1), a mandatory registration offense. (§ 290, subd. (c).) Therefore, although he is similarly situated to a defendant who engaged in "voluntary sexual intercourse with a minor of the same age" (*Hofsheier*, *supra*, 37 Cal.4th 1185, 1207), appellant suffers no unequal treatment. Intercourse could have been prosecuted as a mandatory registration offense.

V.

THE ANALYSIS ABOVE AND IN *MANCHEL* BETTER PRESERVES THE LEGISLATURE'S INTENT

Where a statutory classification violates the constitutional guarantee of equal protection, the remedy

---

[7] Had appellant been less than ten years older than the victim, it could not have been prosecuted under section 288, subdivision (c)(1). In that situation, there is no comparable intercourse offense requiring mandatory registration.

should be chosen based on which alternative the Legislature would prefer. (*Hofsheier, supra*, 37 Cal.4th 1185, 1207-1208.)

A. Portions of Section 288a Remain Mandatory Registration Offenses

The Legislature has expressed its intent that all persons who violate section 288a must register as sex offenders. (§ 290, subd. (c).) *Hofsheier* held that this swept too broadly, and ruled that violations of section 288a, subdivision (b)(1) should be subject to discretionary registration only. (*Supra.*) Yet *Hofsheier* expressly left other subdivisions of section 288a untouched: subdivision (c)(1) (oral copulation with a minor under age 14), and subdivision (c)(2) (forcible oral copulation). (*Supra*, 37 Cal.4th 1185, 1198.) By virtue of comparison with sections 288 (lewd or lascivious act on a child under 14) and 264 (rape), requiring registration for violations of section 288a, subdivisions (c)(1) and (c)(2) does not violate equal protection. (*Ibid.*)

B. The Legislature Has Shown That It Intends to Protect 14- and 15-Year-Olds from Predatory Adults

Likewise, the Legislature has required registration for persons who commit lewd or lascivious acts on minors aged 14 and 15, where the perpetrator is 10 or more years older. (§ 288, subd. (c)(1).) Section 288 is intended to provide children with special protection from sexual exploitation, and assumes that young victims suffer profound harm from such exploitation. (*People v. Martinez* (1995) 11 Cal.4th 434, 443-444.) Subdivision (c)(1) protects slightly older, but still "sexually naïve" children from exploitation by significantly

older adults. (*People v. Paz* (2000) 80 Cal.App.4th 293, 297.) Violations of section 288, subdivision (c)(1) encompass all sex acts, and therefore mandatory registration does not violate the equal protection guarantee. (See *Hofsheier, supra*, 37 Cal.4th 1185, 1198, 1202; *People v. Cavallaro* (2009) 178 Cal.App.4th 103.)

In *Manchel, supra*, 163 Cal.App.4th 1108, the Court of Appeal adopted this reasoning. The court explained that due to the ages of Manchel and the victim, either act constituted a lewd and lascivious act under section 288, subdivision (c)(1), and would subject him to mandatory sex offender registration. (*Id.*, at p. 1114.) *Manchel* preserves mandatory sex offender registration for defendants who are at least ten years older than their 14 or 15-year-old victims, an outcome that serves the intent of the Legislature, as manifested by the creation of section 288, subdivision (c)(1).

C. *Ranscht* and the Cases that Followed it Erred

In this case, the Court of Appeal chose to follow *Ranscht, supra*, 173 Cal.App.4th 1369, which criticized *Manchel*, and *Luansing, supra*, 176 Cal.App.4th 676 (which applied *Ranscht* to violations of section 288a, subdivision (b)(2)). (*Johnson v. Superior Court* (Jan. 31, 2013, E055194) [nonpub. opn.])

Ranscht[8] erred in two respects: it neglected the importance of conduct as the foundation for the distinction

---

[8] As *Luansing, supra*, 176 Cal.App.4th 676 explicitly adopted *Ranscht's* reasoning and criticisms, the latter case is

between statutes, and it inserted an intent analysis not found in *Hofsheier*.

1. Ranscht *Did Not Appreciate the Importance of Conduct in Differentiating Statutes*

Ranscht correctly observed that *Hofsheier* compared a defendant convicted of a voluntary oral copulation offense with a person convicted of a voluntary intercourse offense with a like-aged victim. (*Supra*, 173 Cal.App.4th 1369, 1374.) However, *Hofsheier* delved more deeply than that. The Attorney General had argued in *Hofsheier* that persons convicted of violating section 288a, subdivision (b)(1) and section 261.5 were not similarly situated, because the two groups were convicted of different crimes. (S*upra*, 37 Cal.4th 1185, 1199.) The Court rejected that argument, observing that the decision to distinguish "between similar criminal *acts*" is itself subject to equal protection scrutiny. (*Ibid.*, italics added.) Turning to the statutes at issue, the Court explained that the only difference between the two offenses was "the nature of the sexual *act*." (*Id.*, at p. 1200, italics added.)

Just as importantly, *Hofsheier* explained what it did *not* reach: persons convicted of forcible sex crimes, or of sex crimes against victims under age 14. (*Id.*, at p. 1198.) This was because registration was mandatory for all such offenders "irrespective of whether they engaged in oral copulation or sexual intercourse." (*Ibid.*)

---

analyzed. The critique of *Ranscht's* reasoning applies to its application in *Luansing*, as well.

Ranscht, in contrast, considered the defendant to be "similarly situated with an offender convicted of unlawful sexual intercourse with a 13-year-old victim." (*Supra*, 173 Cal.App.4th 1369, 1375.) *Ranscht* did not consider whether an act of intercourse on a thirteen year old could also be prosecuted under section 288, subdivision (a). Instead, *Ranscht* dismissed the portion of *Hofsheier* making this very point, claiming that it was dicta. (*Id.*, at p. 1374.)

Ranscht's reasoning is problematic because it implicitly assumes that the comparison offense must be section 261.5. Yet if that were the case, no sex offense against a child would ever require mandatory registration. That does not comport with the Legislature's intent, nor does it comport with the logic of *Hofsheier*.

2. Hofsheier *Does Not Support* Ranscht's *Distinction between Specific and General Intent Sex Crimes*

Ranscht made much of the specific intent element of section 288, which is not present in section 261.5. (*Supra*, 173 Cal.App.4th 1369, 1373.) That distinction was not found in *Hofsheier*, which only spoke of legislative intent, not of specific or general criminal intent.

When *Hofsheier* specified what offenses it did not apply to, it made no mention of intent. (*Supra*, 37 Cal.4th 1185, 1198.) Rather, it explained that the listed offenses were excluded from its holding because registration was required regardless of whether the sex act was intercourse or oral copulation. (*Ibid.*) Notably, it excluded section 288a, subdivisions (c)(1) and (c)(2), even though neither offense

contains section 288's specific intent element. (*Ibid.*) Rather, those subdivisions were excluded because they addressed victims under age 14 and the use of force. (*Ibid.*)

CONCLUSION

Applying *Hofsheier's* equal protection analysis can be tricky, because the statutes being compared are often not structured the same way. The crime of unlawful sexual intercourse, section 261.5, requires consideration of the ages of both the victim and the defendant in order to determine which subdivision applies. More broadly, age is the warp and woof of all statutes defining sex crimes against children.

Appellant was convicted of violating section 288a, subdivision (b)(2), oral copulation on a 14- or 15-year-old by a person over 21. Considering his age and the victim's age, had he engaged in intercourse instead, he could have been prosecuted for unlawful sexual intercourse (§ 261.5, subd. (d)), or for lewd or lascivious act on a child (§ 288, subd. (c)(1)). The latter offense mandates sex offender registration. The Legislature has shown its intent to extend special protection to children of the victim's age when they are sexually exploited by adults of appellant's age. Allowing section 288, subdivision (c)(1) to be used as a comparison offense would better preserve the Legislature's intent.

Because intercourse could have been prosecuted as a mandatory registration offense, appellant has suffered no unequal treatment. There is no equal protection violation.

The People respectfully request that the Court of Appeal's opinion be reversed.

Done this 29th day of May, 2013, at San Bernardino, California.

Respectfully submitted,

MICHAEL A. RAMOS,
District Attorney,

BRENT J. SCHULTZE,
Deputy District Attorney,
Appellate Services Unit.

CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF ON THE MERITS** uses a 13-point Bookman Old Style font and contains **3,468** words.

Done this 29th day of May, 2013, at San Bernardino, California.

Respectfully submitted,

MICHAEL A. RAMOS,
District Attorney,

BRENT J. SCHULTZE,
Deputy District Attorney,
Appellate Services Unit.

SAN BERNARDINO COUNTY
OFFICE OF THE DISTRICT ATTORNEY
PROOF OF SERVICE BY UNITED STATES MAIL

STATE OF CALIFORNIA
ss
COUNTY OF SAN BERNARDINO

James Richard Johnson v.
Superior Court (People)
S209167

Brent J. Schultze says:

That I am a citizen of the United States and employed in San Bernardino County, over eighteen years of age and not a party to the within action; that my business address is 412 W. Hospitality Lane, First Floor, San Bernardino, CA, 92415-0042.

That I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

That on May 30, 2013, I served the within:

OPENING BRIEF ON THE MERITS

on interested parties by depositing a copy thereof, enclosed in a sealed envelope for collection and mailing on that date following ordinary business practice at 412 W. Hospitality Lane, First Floor, San Bernardino, CA, 92415-0042, addressed as follows:

Marilee Marshall
523 W. Sixth Street,
Ste. 1109
Los Angeles, CA, 90014
(2 copies)

Andrew J. Moll
Deputy Public Defender
364 N Mountain View Ave
San Bernardino, CA, 92415

Attorney General
P.O. Box 85266-5299
San Diego, CA, 92186-5266

Appellate Defenders, Inc.
555 W. Beech Street,
Ste. 300
San Diego, CA, 92101

Clerk of the Court
San Bernardino
Superior Court
For: Hon. David Cohn
303 W. Third Street
San Bernardino, CA, 92415

Clerk of the Court
Court of Appeal
Fourth Appellate District,
Division Two
3389 Twelfth Street
Riverside, CA, 92501

I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino, California, on May 30, 2013.

_____

Brent J. Schultze