IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re ISAIAH W.,	Civil No. S221263
A Person Coming Under The Juvenile Court Law.	
LOS ANGELES COUNTY DEP"T OF CHILDREN AND FAMILY SERVICES,	Court of Appeal No. B250231 Superior Court No. CK91018
Respondent,	
v.	
ASHLEE R. (Mother),	
Petitioner and Appellant.	

REVIEW FROM THE COURT OF APPEAL

SECOND APPELLATE DISTRICT, DIVISION TWO

OPENING BRIEF ON THE MERITS

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Statement of Specified Issue to be Briefed

This Court's order granting review specifies one issue to be briefed and, pursuant to California Rules of Court, rule 8.520(b), this brief will contain arguments on the following issue, and related issues fairly included within it:

> Does a parent's failure to appeal from a juvenile court order finding that notice under the Indian Child Welfare Act was unnecessary preclude the parent from subsequently challenging that finding more than a year later in the course of appealing an order terminating parental rights?

Factual and Procedural Background

Appellant and Petitioner Ashlee R. is the mother of the subject child, Isaiah W. In November 2011, Isaiah was born with a positive toxicology for marijuana and exhibited withdrawal symptoms. (*In re Isaiah W.* (2014) 228 Cal.App.4th 981, 983 (*Isaiah W.*), superseded by grant of review, Oct. 29, 2014, S221263.) Respondent Los Angeles County Department of Children and Family Services filed a petition under Welfare and Institutions Code section 300, subdivision (b), alleging that parental drug use placed Isaiah at risk of harm. (*Ibid.*)

At the detention hearing, mother told the juvenile court that she might have American Indian ancestry and the court ordered the department to investigate whether Isaiah might be an Indian child under the Indian Child Welfare Act, 25 U.S.C. §§1901, et seq. (ICWA). (*Isaiah W., supra,* 228 Cal.App.4th at p. 983.) The department interviewed maternal relatives and reported to the court that a maternal grandfather might have Blackfoot ancestry and a maternal great-great-grandmother may have been part of a Cherokee tribe. (*Id.* at p. 984.)

At the jurisdictional and dispositional hearing in January 2012, the juvenile court reviewed the department's report and erroneously

concluded there was no "reason to know" that Isaiah was an Indian Child as defined under ICWA. (*Isaiah W., supra,* 228 Cal.App.4th at p. 984.) Accordingly, the court did not order the department to provide notice to any tribe or the Bureau of Indian Affairs. (*Ibid.*)

The juvenile court adjudged Isaiah a dependent child and ordered him placed in foster care. (*Isaiah W., supra,* 228 Cal.App.4th at p. 984.) The court ordered the department to provide reunification services to the parents and ordered mother participate in counseling and drug testing. (*Ibid.*) Mother did not appeal that order. (*Ibid.*)

The parents failed to regain custody and, in September 2012, the juvenile court terminated the parents' reunification services and set a hearing under section 366.26 to select and implement a permanent plan for Isaiah. (*Isaiah W., supra,* 228 Cal.App.4th at p. 984.) In November 2012, the department placed Isaiah with a prospective adoptive family. (*Ibid.*)

In April 2013, the juvenile court selected adoption as the permanent plan for Isaiah and terminated parental rights. (*Isaiah W., supra,* 228 Cal.App.4th at p. 984.) At that hearing, the court repeated its prior finding that there was no reason to know Isaiah was an Indian child. (*Ibid.*) In June 2013, mother filed a notice of appeal.

In her opening brief filed November 18, 2013, mother contended the juvenile court erred in finding it had no "reason to know" Isaiah was an Indian Child, and in failing to order the department to comply with ICWA notice requirements. (Appellant's Opening Brief (AOB) pp. 16-32; *Isaiah W., supra,* 228 Cal.App.4th at p. 984.) She pointed out that, because the determination of a child's Indian status is up to the tribe, the juvenile court needs only a suggestion of Indian ancestry to trigger the ICWA notice requirement. (AOB pp. 1, 16-19.) The Indian status of the child need not be certain to invoke the notice requirement. (AOB pp. 23, 31.) Information provided by mother and her relatives suggestive of Indian ancestry with specific tribes through specifically-named ancestors was sufficient to trigger ICWA notice requirements. (AOB pp, 1, 19-28.)

On April 3, 2014, after the parties had completed their briefing, the Second District Court of Appeal, Division Three, requested supplemental briefing on whether mother was foreclosed from raising on appeal from the order terminating her parental rights the juvenile court's failure to order notice be provided under the Indian Child Welfare Act at disposition. (*In re Isaiah W.* (B250231), unpub. order dated April 3, 2014.) The court noted in its request for supplemental

briefing that mother did not raise on appeal the issue of ICWA notice until a year and three months after the jurisdictional and dispositional order when the juvenile court evaluated the department's report about the child's possible Indian ancestry and decided not to order notice to any tribe or the Bureau of Indian Affairs. (*In re Isaiah W.* (B250231), unpub. order dated April 3, 2014.)

On April 15, 2014, respondent filed a supplemental letter brief arguing the forfeiture doctrine applied. (Respondent's Supplemental Letter Brief (SLB), pp. 1-4.)

Mother's supplemental letter brief, filed April 18, 2014, pointed out that the generally-accepted rule in dependency cases is that the forfeiture doctrine does not bar consideration of ICWA notice issues on appeal; the notice requirements serve the interests of the Indian tribes irrespective of the position of the parents and cannot be waived by the parent. (Appellant's SLB, p. 2.) Under the generally-accepted rule adopted by almost every other appellate district and division in this State, a parent in a dependency proceeding is permitted to raise ICWA notice issues not only in the juvenile court but also on appeal, even where, unlike this case, no mention was made of the issue in the juvenile court. (Appellant's SLB, p. 2.)

Nevertheless, in a unpublished decision issued April 29, 2014, Division Three rejected this generally-accepted rule in favor of reviving a much-criticized and rejected 1995 decision, *In re Pedro N.* (1995) 35 Cal.App.4th 183, which applied the forfeiture doctrine. (*In re Isaiah W.* (April 29, 2014, No. B250231), unpub. opn.) The court held that ICWA did not authorize a parent to delay in challenging a trial court's determination on the applicability of ICWA and mother was foreclosed from raising ICWA notice compliance issues from the order terminating her parental rights. (*Ibid.*)

On May 14, 2014, respondent filed a request to publish the opinion. On May 19, 2014, appellant filed a request to publish the opinion.

On May 15, 2014, Division Three found good cause and, on its own motion, granted a rehearing on the matter. (*In re Isaiah W.* (May 15, 2014, No. B250231), unpub. order.)

On August 8, 2014, Division Three issued a published opinion once again holding the time limits to appeal and the forfeiture doctrine applied to preclude review of violations of ICWA notice requirements. (*Isaiah W., supra,* 228 Cal.App.4th at p. 986.) The court reasoned that, to allow a parent unlimited time within which to raise an ICWA challenge

would violate the child's constitutional right to a stable and permanent home. (*Ibid.*) The court purported to limit its application of time frames and forfeiture by claiming it was "only addressing the rights of mother, not the rights of a tribe under the ICWA." (*Id.* at p. 988.)

On September 15, 2014, appellant filed a petition for review. On October 29, 2014, this Court granted review. (*In re Isaiah W., supra,* 228 Cal.App.4th 981, review granted on specified issue October 29, 2014, S221263, see 2014 Cal. LEXIS 10484.)

Argument

THE COURT OF APPEAL'S DECISION TO BAR REVIEW OF A PARENT'S CLAIM ON APPEAL FROM AN ORDER TERMINATING PARENTAL RIGHTS THAT FEDERAL AND STATE ICWA NOTICE PROVISIONS WERE VIOLATED BY THE PARENT'S FAILURE TO TIMELY APPEAL THE ISSUE IS PRECLUDED BY FEDERAL PREEMPTION AND FAILS TO PROTECT THE INTERESTS OF INDIAN CHILDREN AND TRIBES

The decision by Division Three of the Second District Court of Appeal[1] to bar review of a parent's claim on appeal from an order terminating parental rights that federal and state ICWA notice provisions were violated by the parent's failure to timely appeal the issue is precluded by federal preemption and fails to protect the interests of Indian children and tribes.

A. Federal Preemption Precludes the Application of California's Time Limits and Forfeiture Doctrine to an Appeal of ICWA Notice Violations

Federal preemption precludes the application of California's appellate time limits and forfeiture doctrine to an appeal raising violations of the notice requirements under the Indian Child Welfare Act, 25 U.S.C. §§ 1901, et seq. (ICWA).

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[1] Division Three is one of eight divisions in the Second Appellate District Court of Appeal. (www.courts.ca.gov)

1. The United States Congress Enacted ICWA to Impose More Stringent Procedural and Substantive Safeguards to State Child Custody Proceedings Involving Indian Children in Recognition That No Resource More Vital to Indian Tribes than Their Children, and the United States Has a Direct Interest in Protecting Indian Children

ICWA is a federal law passed by the United States Congress which "recognized 'there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.' (*25 U.S.C. § 1901*(3).)" (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1407. Accord Welf. & Inst. Code § 224, subd. (a)(1); *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 35.)

Congress passed ICWA to cure "abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." (*Mississippi Choctaw Indian Band v. Holyfield, supra,* 490 U.S. at p. 32.)

ICWA is a federal law enacted to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." (25 U.S.C. § 1902; *In re Matthew Z.* (2000) 80 Cal.App.4th

545, 551.) "In passing the Act, Congress identified two important, and sometimes independent, policies. The first, to protect the interests of the Indian child. The second, to promote the stability and security of Indian tribes and families." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421, citations omitted.)

This Federal act is directed at the child custody proceedings in all 50 states because Congress believed the states had failed to recognize and protect "the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian homes and communities." (25 U.S.C. § 1901(5); *Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at p. 36.) Therefore, Congress designed ICWA to make both the placement and adoption of children in non-Indian homes subject to more stringent procedural and substantive safeguards. (*Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at p. 36.)

"The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource. [Citation.] Congress has concluded the state courts have not protected these interests and drafted a statutory scheme intended to afford needed protection." (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247,

253; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.)

2. Notice to the Indian Tribe Is a Key Component of the Congressional Goal to Protect and Preserve Indian Tribes and Families

"Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) Under ICWA, if there is reason to believe that the child that is the subject of the dependency proceeding is an Indian child, ICWA requires notice to the child's Indian tribe of the proceeding and of the tribe's right of intervention. (25 U.S.C. § 1912(a); see also Welf. & Inst. Code, § 224.2, subd. (b).)

The right of a tribe to intervene would be meaningless without notice. Notice requirements are intended to ensure the child's Indian tribe will have the opportunity to intervene and assert its rights in the proceedings. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.)

"The ICWA notice requirement is not onerous. 'Compliance requires no more than the completion of a preprinted form promulgated by the State of California, Health and Welfare Agency, for the benefit of county welfare agencies.'" (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 254; *In re Desiree F., supra,* 83 Cal.App.4th at p. 475.)

"The determination of a child's Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848; see rule 5.481(a)(5)(A); *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 258 [providing exhaustive analysis of the issue and concluding the "minimal showing" required to trigger notice under the ICWA is merely evidence "suggest[ing]" the minor "may" be an Indian].) "Given the interests protected by the [ICWA], the recommendations of the [federal] guidelines, and the requirements of our court rules, the bar is indeed very low to trigger ICWA notice." (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 [finding father's suggestion that child "might" be an Indian child because paternal great-grandparents had unspecified Native American ancestry was enough to trigger notice].)

"Notice ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." (*In re Kahlen W., supra,* 233 Cal.App.3d at p. 1421.)

This Court described in *In re W.B.* (2012) 55 Cal.4th 30 how, "[i]n 2006, with the passage of Senate Bill No. 678 (2005–2006 Reg. Sess.)

(Senate Bill No. 678), the Legislature incorporated ICWA's requirements into California statutory law. (Stats. 2006, ch. 838, § 1, p. 6536.)" (55 Cal.4th at p. 52.) As this Court stated, "The primary objective of Senate Bill No. 678 was to increase compliance with ICWA." (*Ibid.*)

Our State Legislature adopted Welfare and Institutions Code section 224 through 224.6 "to encourage *full* compliance with ICWA by codifying its requirements into state law. (Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005– 2006 Reg. Sess.) as amended Aug. 22, 2005, pp. 1, 6; Sen. Appropriations Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 1; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended June 14, 2006, p. 6.)" (*In re W.B, supra,* 55 Cal.4th at p. 55, emphasis added.) Because "courts and county agencies still had difficulty complying with ICWA 25 years after its enactment," it was believed that "codification of the Act's requirements into state law would help alleviate the problem. (Sen. Judiciary Com., Analysis of Sen. Bill No. 678 (2005–2006 Reg. Sess.) as amended Aug. 22, 2005, p. 6.)" (*In re W.B., supra,* 55 Cal.4th at p. 52.)

This Court has recognized that "It is undisputed that all dependency proceedings *must* be conducted in compliance with ICWA.

(*In re W.B., supra,* 55 Cal.4th at p. 58, emphasis added, citing as an example, *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 253.) Even so, as this case demonstrates, noncompliance continues.

Recent judicial decisions reflect ongoing concern over noncompliance with ICWA. For example, in the case of *In re Autumn K.* (2013) 221 Cal.App.4th 674, the court expressed, "Despite extensive case law and many other writings on the subject, dependency courts and social services departments continue to ignore the dictates of the [ICWA], often failing to provide proper notice of a dependency proceeding involving an Indian child (see, e.g., *In re A.G.* (2012) 204 Cal.App.4th 1390, 1396–1397 [139 Cal.Rptr.3d 727]) and, in other instances, disregarding the substantive mandates of the law (see, e.g., *In re Jullian B.* (2000) 82 Cal.App.4th 1337, 1349–1351 [99 Cal. Rptr. 2d 241])." (221 Cal.App.4th at pp. 700-701.)

Without notice, no enforcement of ICWA will occur. Without enforcement of the Act, there is not the protection for Indian children and tribes in state child custody proceedings Congress intended by its enactment.

3. Federal Preemption Precludes Division Three's Decision to Place a California Rule of Court and the Forfeiture Doctrine Over and Against this State's Compliance with ICWA

By applying California's time frames to appeal and the doctrine of forfeiture to bar review of violations of ICWA notice requirements, Division Three's decision in this appeal directly conflicts with this Federal law. Thus, federal preemption precludes the placement of a California rule of court and its forfeiture doctrine over and against this State's compliance with ICWA because it would obstruct the purpose and objectives of Congress. California may not evade compliance, as Division Three's decision would allow, simply because its noncompliance is not caught until a parent who raises the issue for the first time in an appeal from an order terminating parental rights.

a. Federal preemption precludes permitting California's court rule on appellate time frames and forfeiture doctrine to obstruct the purpose and objectives of Congress under ICWA

Section 395, subdivision (a)(1), of the California Welfare and Institutions Code provides that a judgment in a dependent proceeding may be appealed in the same manner as any final judgment. California Rules of Court, rule 8.406(a)(1), states that an appeal must be filed within 60 days after the rendition of the judgment or order being

appealed.

The forfeiture doctrine states that a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not make in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) This Court has held that dependency matters are not exempt from this rule. (*Ibid.*) However, as this Court also held, application of the forfeiture rule is not automatic and forfeiture may be excused in cases presenting an important legal issue. (*Ibid.* [holding the forfeiture doctrine did not apply to preclude the mother's challenge to a visitation order notwithstanding her failure to object to it in the juvenile court because the issue of delegating visitation authority is an important legal issue].)

Division Three's application of this State's court rule on appellate time frames and California's forfeiture doctrine stands as an obstacle to the accomplishment and execution of the full purposes and objectives of this Federal act. As such, its actions are superceded by ICWA's preemption of state law in this regard. (See *California Coastal Comm'n v. Granite Rock Co.* (1987) 480 U.S. 572, 581 [state law is pre-empted to the extent it conflicts with federal law].)

Federal preemption of state law under the supremacy clause of the United States Constitution, article VI, clause 2, "may be either express or implied, and 'is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.'" (*Shaw v. Delta Air Lines, Inc.* (1983) 463 U.S. 85, 95.)

"Principles of preemption have been articulated by numerous courts." (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 818.) " 'State law that conflicts with a federal statute is " 'without effect.' " (*Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949.) "The purpose of Congress is the ultimate touchstone" ' of preemption analysis." (*Ibid.*)

This Court has identified "four species of federal preemption: express, conflict, obstacle, and field."[2] (*Viva! Internat. Voice for Animals v.*

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[2] This Court described the four species of federal preemption as follows:

> "First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when ' "under the circumstances of [a]

Adidas Promotional Retail Operations, Inc. (2007) 41 Cal.4th 929, 935–936.) Relevant here, obstacle preemption arises when "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Id.* at p. 936.) If the purpose of a Federal act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. (*Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 373; *County of San Diego v. San Diego NORML, supra,* 165 Cal.App.4th at pp. 821-822.)

Our state courts have recognized that "[t]he courts of this state must yield to governing federal law" in juvenile dependency appeals involving ICWA issues. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.)

> particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." ' [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citation.]" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935–936, fn. omitted.)

The purpose and objective of the federal ICWA trumps California's ability to apply its time limits and forfeiture doctrine to parental appeals of ICWA notice violations.

b. Federal preemption precludes California from evading compliance with ICWA notice requirements, as Division Three's decision would allow, simply because its noncompliance is not exposed until a parent raises the issue for the first time in an appeal from an order terminating parental rights

Rather than acknowledging federal preemption in this area, Division Three instead impermissibly carves a major exception out of full compliance with ICWA for California. To this intermediate appellate court, if a parent does not appeal violations of ICWA notice requirements within California's time frames, no relief will be given. Simply because it is a parent who exposes this State's noncompliance for the first time in an appeal from an order terminating parental rights, the decision permits California to evade compliance with the notice provisions in ICWA. Federal preemption precludes such a result.

The decision in this appeal permits California to evade compliance with the notice provisions in ICWA under circumstances for which the Act, nor California's statues incorporating the Act, do not expressly or implicitly provide and which undermine the purpose of the

federal and state ICWA laws. Nowhere in ICWA is there a time when a state need no longer comply with any provision, including the notice provisions, of the Act. Nowhere in California's statutory laws incorporating ICWA is there a time or circumstance when compliance with the Act expires.

Nevertheless, the decision in this appeal effectively declares that California can evade compliance with ICWA if it does not to get caught violating the Act, or its own laws incorporating the Act, before the parent raises the issue of noncompliance in an appeal from an order terminating parental rights under Welfare and Institutions Code section 366.26.

If Congress wanted to provide California, or any other state, with such an exception, it would have included one in ICWA. It did not. To the contrary, the time frame to raise ICWA error is limitless. An order terminating parental rights and any subsequent adoption order lacks finality because ICWA allows an Indian child, the child's parent, and the tribe, to petition to invalidate an order at any time, even after an adoption has been finalized. (25 U.S.C. § 1914; Welf. & Inst. Code § 224.4; *Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54; *In re Christian P.* (2012) 207 Cal.App.4th 1266, 1281-1282; *In re*

Desiree F. (2000) 83 Cal.App.4th 460, 473; *In re Alicia S.* (1998) 65 Cal.App.4th 79, 82.) An order terminating parental rights, and even a final decree of adoption, may be invalidated by a violation of the notice provisions. (25 U.S.C. § 1914.)

Division Three attempts to justify its decision by asserting that the provision in ICWA which confers standing upon a parent claiming an ICWA violation to petition to invalidate a state court dependency action "does not state that a parent may claim an ICWA violation at any point in the proceeding." (*In re Isaiah W., supra,* 228 Cal.App.4th at p. 987, referring to 25 U.S.C. § 1914.) It points to another provision which authorizes a tribe to intervene in a dependency action "at any point in the proceeding" which makes no mention of a parent. (*Ibid.*, referring to 25 U.S.C. § 1911(c).) From the absence of such language, Division Three noted, the *Pedro N.* court concluded Congress did not intend to preempt, in the case of appellate review, state appellate time frames. (*Ibid.*)

Such faulty reasoning cannot stand. First, the absence of explicit language naming parents in the provision authorizing intervention at any point (25 U.S.C. § 1911(c)) fails to support a conclusion that Congress did not intend to preempt state appellate time frames with the provision

authorizing a parent to petition to invalidate an order terminating parental rights or an adoption decree (25 U.S.C. § 1914).

The right to intervene in a state dependency proceeding is different from the right to petition to invalidate an order entered in violation of ICWA. The reasoning of Division Three, and the *Pedro N.* case, mistakenly depends on the conflation of these distinct rights. The parent need not be mentioned in a provision authorizing intervention in a child custody proceeding as Congress reasonably understood the parent is already and necessarily a party to the proceeding.[3] (See generally, Welf. & Inst. Code § United States Constitution, article VI, clause 2 § 200 et seq.; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1642.)

The ICWA provision authorizing both the parent and the tribe the right to petition to invalidate an order terminating parental rights which violates the Act does not differentiate between the parent and the

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[3] If, for some inexplicable reason, a parent is not already a party to the child custody proceeding, or more specifically here, the dependency proceeding, the provision authorizing a tribe to intervene "at any point" also authorizes "Indian custodians" to intervene "at any point." (25 U.S.C. § 1911(c).) ICWA defines an "Indian custodian" as any Indian person who has legal custody of an Indian child." (25 U.S.C. § 1903(6).) This definition would at least include the Indian parent of an Indian child who has legal custody even if physical custody has been removed. In this case, this child's Indian heritage comes from his maternal side and mother qualifies as an Indian custodian entitled to intervene "at any point" under this provision of ICWA.

tribe in granting that right. (See 25 U.S.C. § 1914.) Nor does that provision explicitly state that right may be exercised by either the parent or the tribe "at any time." (See 25 U.S.C. § 1914.)

Irregardless, the United States Supreme Court has declared that the belated discovery of non-compliance with the ICWA's notice requirements will result in the invalidation of an order terminating parental rights and any subsequent adoption decree after more than three years later. (25 U.S.C. § 1914; Welf. & Inst. Code § 224.4; *Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54.)

In that case, the invalidation was sought by an Indian tribe. (*Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54) However, no statutory grounds can justify differential treatment of a parent's right to seek redress of ICWA notice violations. Neither the ICWA provision authorizing intervention nor the provision authorizing a petition to invalidate an order for noncompliance with the Act serve to defeat federal preemption in this appeal as Division Three suggests.

Furthermore, as this Court has articulated, the "ultimate touchstone" of any preemption analysis is "[t]he purpose of Congress." (*Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949.) Statutes are not to be read in isolation, but rather must be construed with related statues and

considered in the context of the statutory framework as a whole. (*Residential Capital v. Cal-Western Reconveyance Corp.* (2003) 108 Cal.App.4th 807, 821; *Hicks v. E.T. Lett & Assoc.* (2001) 89 Cal.App.4th 496, 505.) As discussed *supra,* Congress enacted ICWA to protect Indian children and tribes by imposing more stringent procedural and substantive safeguards on state child custody proceedings and notice is "a key component of the congressional goal to protect and preserve Indian tribes and Indian families." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.)

States are wholly dependent upon the parents to identify Indian children who are the subjects of their child custody proceedings. The parent serves as the conduit for triggering ICWA notice. Without notice having been provided to the tribe, the parent is also the avenue by which violations of ICWA procedural and substantive violations are raised at the appellate level, even belatedly.

One wonders what alternative avenue for appellate review of ICWA notice violations Division Three could possibly have in mind. Most certainly, neither the lower trial courts nor the county agencies would appeal their own ICWA errors.

Consequently, for better or worse, protecting the rights of Indian children and tribes is inextricably bound up in the ability of a parent to raise ICWA notice errors at any time. Unless the parent is heard at any time, the tribe will not be protected and Indian children will not be reunited with Indian families and their tribe. The entity that suffers by denying appellate rights to the parent of an Indian child is the tribe and the human being that suffers most is the Indian child.

Limiting the time frame to raise error frustrates the purposes and objectives of ICWA. To limit the time when parents can raise error effectively limits the time when the Indian child and the tribe can raise error. To cut off the parent is to cut off the tribe and render meaningless the provision authorizing the tribe to intervene at any time and invalidate an order terminating parental rights at any time. Such a result constitutes a direct assault on Congressional purpose and intent under ICWA and is precluded by federal preemption.

The United States Supreme Court has ruled that the mandate of ICWA must be followed, even when the consequences of reversing an adoption decree issued three years earlier causes the "considerable pain" of separating children from their adoptive parents. (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 53.) Nothing can be

allowed to defeat the purposes of ICWA. (*Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54.)

The decision in this appeal creates an exception to compliance with ICWA for this State which runs contrary to the structure and purpose of the Act and must be reversed as precluded by federal preemption.

B. The Generally-Accepted Rule in Dependency Cases Is That the Forfeiture Doctrine Does Not Bar Consideration of ICWA Notice Issues on Appeal

"The generally accepted rule in dependency cases is that the forfeiture doctrine does not bar consideration of ICWA notice issues on appeal. (See, e.g., *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739 [109 Cal.Rptr.2d 267] (*Marinna J.*).)" (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1195; *In re Z.W.* (2011) 194 Cal.App.4th 54, 63 ["Generally, the forfeiture doctrine does not bar consideration of ICWA notice issues not raised in the juvenile court.") "The notice requirements serve the interests of the Indian tribes "irrespective of the position of the parents" and cannot be waived by the parent. [Citation.] A parent in a dependency proceeding is permitted to raise ICWA notice issues not only in the juvenile court, but also on appeal even where, as here, no mention was made of the issue in the juvenile court." (*In re Justin S.*

(2007) 150 Cal.App.4th 1426, 1435.)

Departing from the generally-accepted rule, the decision by Division Three of the Second District follows the 1995 case of *In re Pedro N.* (1995) 35 Cal.App.4th 183. (*Isaiah W., supra,* 228 Cal.App.4th at pp. 985-987.) In that case, the Fifth District held that a parent was untimely in raising the issue of the juvenile court noncompliance with ICWA notice requirements "as she could have made such a challenge at the dispositional hearing but failed to do so" and therefore had forfeited the right to raise the issue on appeal from an order terminating her parental rights. (35 Cal.App.4th at pp. 189-191.)

Since then, however, the *Pedro N.* decision has been criticized and rejected by other appellate districts. For example, in *In re Marinna J.* (2001) 90 Cal.App.4th 731, the Sixth District questioned the conclusion reached in *Pedro N.* and observed that "it would be contrary to the terms of the Act to conclude, as the court did implicitly in *In re Pedro N., supra,* 35 Cal.App.4th 183, that parental inaction could excuse the failure of the juvenile court to ensure that notice under the Act was provided to the Indian tribe named in the proceeding." (90 Cal.App.4th at p. 739.) Instead, the *Marinna J.* court concluded that, "where the notice requirements of the Act were violated and the parents did not raise that

claim in a timely fashion, the waiver doctrine cannot be invoked to bar consideration of the notice error on appeal. . . To the extent *In re Pedro N., supra*, 35 Cal.App.4th 183, 41 Cal.Rptr.2d 819 reached a different result, we respectfully disagree with it." (*In re Marinna J., supra,* 90 Cal.App.4th at p. 739.) The court reversed the order terminating parental rights in that case and remanded the matter for notice to be provided. (*Id.* at p. 740.)

All three divisions of the Fourth District have expressly rejected the *Pedro N.* decision. (See *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247 [Division One]; *In re Jonathon* S. (2005) 129 Cal.App.4th 334, 342 [Division Two]; *In re Nikki R.* (2003) 106 Cal.App.4th 844, 849 [Division Three].)

This Court cited the *Dwayne P.* decision in *In re W.B.* (2012) 55 Cal.4th 30 in affirming the mandate that all dependency proceedings *must* be conducted in compliance with ICWA. (55 Cal.4th at p. 58.) In *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, the court held in a writ proceeding challenging the scheduling of a selection and implementation hearing under section 366.26 that the parents could raise ICWA notice issues even though they did not appeal the jurisdictional and dispositional order in which the juvenile court

addressed the ICWA issue, and they never raised the issue at the juvenile court. (103 Cal.App.4th at pp. 253, 260, citing *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739.) The court explained that "[w]hen the court has reason to know Indian children are involved in dependency proceedings ... it has the duty to give the requisite notice itself or ensure the social services agency's compliance with the notice requirement. [Citations.] In our view, the court's duty is sua sponte, since notice is intended to protect the interests of Indian children and tribes despite the parents' inaction." (*Dwayne P. v. Superior Court, supra,* 103 Cal.App.4th at p. 261, citing *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1425.)

The *Dwayne P.* court included broad language, such as "[b]ecause the court's duty continues until proper notice is given, an error in not giving notice is also of a continuing nature and may be challenged at any time during the dependency proceedings," and "[t]hough delay harms the interests of dependent children in expediency and finality, the parents' inaction should not be allowed to defeat the laudable purposes of the ICWA." (*Dwayne P. v. Superior Court, supra,* 103 Cal.App.4th at p. 261.)

In *In re B.R.* (2009) 176 Cal.App.4th 773, the First District explicitly rejected the department's claim that a mother waived the issue

of ICWA notice on appeal from an order terminating her parental rights by failing to raise it earlier. (176 Cal.App.4th at p. 779.) In discussing the case of *Pedro N.*, the *B.R.* court stated it agreed with the view taken in *Marinna J.*, "which questioned the conclusion reached in *Pedro N.* and observed that 'it would be contrary to the terms of the [ICWA] to conclude ... that parental inaction could excuse the failure of the juvenile court to ensure that notice ... was provided to the Indian tribe named in the proceeding.'" (*In re B.R., supra,* 176 Cal.App.4th at p. 779.) The *B.R.* court affirmed the decision in *Dwayne P.*, which "rejected *Pedro N.* and held that the juvenile court had a sua sponte duty to ensure compliance with ICWA notice requirements since notice is intended to protect the interests of Indian children and tribes despite the parents' inaction.'" (*In re B.R., supra,* 176 Cal.App.4th at p. 779, also citing *In re Nikki R.* (2003) 106 Cal.App.4th 844, 848; *In re Suzanna L.* (2002) 104 Cal.App.4th 223, 231–232.)

The Third District, while not discussing the *Pedro N.* decision, has also held that the forfeiture doctrine does not bar consideration of ICWA notice issues not raised in the juvenile court. (See, e.g., *In re Z.W.* (2011) 194 Cal.App.4th 54, 63-67.) The Fifth District itself has distinguished the rule in *Pedro N.* under certain circumstances, including

two cases which involved an appeal was taken from an order terminating parental rights. (See, e.g., *In re Gerardo A.* (2004) 119 Cal.App.4th 988, 993 [finding no forfeiture from failing to appeal an earlier ICWA ruling under *Pedro N.* because the department failed to perfect notice until later and the parent had not received discovery of information concerning the other parent's Indian heritage or the earlier ruling prior to the termination hearing]; *In re Joseph P.* (2006) 140 Cal.App.4th 1524, 1529 [distinguishing *Pedro N.* and finding no forfeiture because the parent challenged the court's decision not to reopen the ICWA issue at the termination hearing rather than the earlier ICWA finding].)

Division Three of the Second District's decision conflicts with published opinions from almost every other appellate district. It constitutes a marked departure from this great weight of well-reasoned authority.

C. Division Three's Application of California's Time Limits and Forfeiture Doctrine in this Appeal Fails to Protect the Interests of Indian Children and Tribes

The departure from the generally-accepted rule by Division Three's decision in this appeal must be rejected as bad law because the application of the time limits and forfeiture doctrine fails to protect the

interests of Indian children and tribes. It potentially means that an Indian tribe may never receive notice that its children are subjects in a juvenile dependency proceeding in California. The tribe thus lacks the ability to protect its children, the most valuable resource the tribe has and the very purpose for which Congress enacted ICWA. (25 U.S.C. § 1901(3).) It also means that an Indian child will not be identified as such and lose the rights, benefits, and protections that come with being recognized as an Indian child.

Ensuring full compliance with ICWA is of such significance that the ususal rules do not apply. For example, ICWA provides that the ordinary principles of legal standing do not apply. Generally, only an aggrieved party may appeal an adverse judgment and a party lacks standing to raise issues affecting another person's interests. (*In re Paul W.* (2007) 151 Cal.App.4th 37, 55; *In re Gary P.* (1995) 40 Cal.App.4th 875, 876.)

ICWA, however, allows a non-Indian parent to raise error. (25 U.S.C. §§ 1903(9) ["Parent" for purposes of ICWA proceedings means "any biological parent. . . of an Indian child"], 1911(c) [any Indian child, parent or tribe may petition to invalidate the proceedings upon a showing the ruling violated any of the provisions of ICWA]; §§ 224.1,

subd. (c), 224.4, subd. (a)(5)(G)(i); *In re Jonathan S.* (2005) 129 Cal.App.4th 334; *In re Riva M.* (1991) 235 Cal.App.3d 403, 411, fn. 6.)

And, as discussed *supra,* the time frame to raise ICWA error is limitless. An order terminating parental rights and any subsequent adoption order lacks finality because ICWA allows an Indian tribe to petition to invalidate an order at any time, even after an adoption has been finalized. (25 U.S.C. § 1914; Welf. & Inst. Code § 224.4; *Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54; *In re Christian P.* (2012) 207 Cal.App.4th 1266, 1281-1282; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 473; *In re Alicia S.* (1998) 65 Cal.App.4th 79, 82.)

The decision in this case recognizes the controversial nature of its decision (*In re Isaiah W., supra,* 228 Cal.App.4th at pp. 986, 988), but its rationale for adopting *Pedro N.* is faulty. Division Three reasoned in its decision that, to allow a parent unlimited time within which to raise this challenge would violate the child's constitutional right to a stable and permanent home. (*Id.* at p. 986.)

Such reasoning falls short under the overriding mandate of ICWA compliance. While a laudable goal, Division Three's concern for protecting a child's interest in stability and permanency has been

rejected by the United States Supreme Court as a justification for limiting the time within to appeal an ICWA notice violation. In *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, the United States Supreme Court invalidated an adoption decree issued three years earlier because it was entered in violation of ICWA. (490 U.S. at p. 53.) The Supreme Court recognized that separation of the children from their adoptive parents "would doubtless cause considerable pain." (*Ibid.*) The Court refused to allow this fact defeat the purposes of ICWA, stating that, had the mandate of the ICWA been followed, "much potential anguish might have been avoided." (*Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54.)

The decision by Division Three purports to limit its application of time frames and forfeiture by claiming it was "only addressing the rights of mother, not the rights of a tribe under the ICWA." (*In re Isaiah W., supra,* 228 Cal.App.4th at p. 988.) Nevertheless, its resolution is illusory.

In essence, Division Three is asserting that, if a parent does not appeal violations of ICWA notice requirements within California's time frame, no recourse exists for notice violations. Foreclosing a parent's

review of the juvenile court's noncompliance is not the answer.

It is crucial to note that ICWA places no burden on the parents of an Indian child whatsoever. "The responsibility for compliance with the ICWA falls squarely and affirmatively on the court and the [department]." (*Justin L. v. Superior Court* (2008) 165 Cal.App.4th 1406, 1410, citing § 224.3, subd. (a); *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1409.) No statutory support or persuasive policy basis exists for shifting the burden of ICWA compliance to the child's parents. (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1197.)

In reality, the parent whose child is the subject of the dependency proceeding is the originating source of information the subject of that proceeding may be an Indian child. And, the parent is typically the procedural conduit through which a violation of ICWA is raised on appeal, even belatedly. Neither the courts nor the county agencies can reasonably be expected to appeal their own ICWA errors. Indeed, the entire ICWA statutory scheme typically hinges on parental participation in the enforcement of the Act's notice requirements.

The decision by Division Three, however, places its aversion to its perception of any form of parental benefit, and its aversion to any delay in the finality of an order for permanence whatsoever, even if that

delay might promote the best interests of a not-yet-recognized Indian child and the child's tribe, over the importance of compliance with federal and statutory ICWA laws. Yet, the Federal act itself mandates that belated discovery of non-compliance with the ICWA's notice requirements will result in the invalidation of an order terminating parental rights and any subsequent adoption decree. (25 U.S.C. § 1914; Welf. & Inst. Code § 224.4; *Mississippi Band of Choctaw Indians v. Holyfield, supra,* 490 U.S. at pp. 53-54.)

Under case law providing for a limited reversal of an order terminating parental rights with directions for the reinstatement of the termination order once compliance with the notice provisions is accomplished (see, e.g., *In re Jack C.* (2001) 192 Cal.App.4th 967, 988; *In re Francisco W.* (2006) 139 Cal.App.4th 695, 706), parental benefit is *de minimus* at best unless the child turns out to be an Indian child.

If the child is found to be an Indian child, then the parent rightfully is legally entitled to benefit from each and every substantive provision in ICWA (see 25 U.S.C. § 1912, subds. (b)–(f); *Adoption of Hannah S.* (2006) 142 Cal.App.4th 988, 997-1000), not to mention the benefits which would then flow to the child. (Cf. *In re Barbara R.* (2006) 137 Cal.App.4th 941, 947 [referring to the benefits conferred upon

members of the Sycuan Band of the Kumeyaay Nation].)

If the child is found not to be an Indian child, only a slight delay in the finalization of the termination order occurs. That notwithstanding, any consequential, token benefit a parent gains from serving as the whistleblower for noncompliance, be it incidental or significant, fails to detract from the importance of ensuring compliance.

More importantly, for all intents and purposes, Division Three's conclusion that a dilatory parent can foreclose review of ICWA compliance in effect addresses and ignores the federal and state right of the tribe to notification. If the tribe has no notice of that dependency proceeding is pending, the tribe lacks any ability to exercise its rights protect its children. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 253 ["Of course, the tribe's right to assert jurisdiction over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending."].) As such, the tribe is effectively denied its rights under the *Isaiah W.* decision.

Furthermore, an Indian child entitled to all of the benefits of the ICWA's provisions from the inception of the case, even if the child's tribe does not otherwise object or intervene on her or his behalf, and the child may gain significant tribal benefits such as a possible "monthly

financial stipend, funding for higher education, medical and dental coverage, and a home on the reservation." (Cf. *In re Barbara R.* (2006) 137 Cal.App.4th 941, 947 [referring to the benefits conferred upon members of the Sycuan Band of the Kumeyaay Nation].) An Indian child received none of these benefits without being recognized under ICWA, and that will not happen without ensuring compliance with notice provisions.

Therefore, contrary to the conclusion of Division Three, its application of California time frames for filing an appeal and its forfeiture doctrine does in fact "address" the rights of the tribe. Its decision detrimentally affects the rights of the tribe and the Indian child.

When the department and the lower court fail to ensure compliance with ICWA, it falls upon the appellate courts to do so. Mother's appeal serves as the conduit and any benefit she gains, be it incidental or significant, fails to detract from the importance of ensuring compliance with ICWA. The decision in this appeal constitutes bad law for failing to protect the interests of Indian children and tribes.

D. The Forfeiture Doctrine Should Not Apply Where, as Here, This Is a Parent's First Appeal

Appellant urges this Court to adopt the generally-accepted rule in dependency cases that the forfeiture doctrine does not bar consideration

of ICWA notice issues on appeal. Federal preemption precludes any limitation on a parent's ability to raise notice issues on appeal. That notwithstanding, the forfeiture doctrine should not apply especially where, as here, this is mother's first appeal.

A parents first appeal is distinguishable from cases which have created an exception to the general rule against forfeiture as a way of balancing the child's interest in permanency and stability against the tribes' rights under ICWA. Some courts have held that, "When a case is remanded to the juvenile court for the purpose of curing ICWA notice defects and the parent is represented by counsel at the postremand compliance hearing and counsel raises no objection to new ICWA notices, an exception to the general rule against forfeiture may apply." (*In re Z.W.* (2011) 194 Cal.App.4th 54, 63, citing *In re X.V.* (2005) 132 Cal.App.4th 794; *In re Amber F.* (2007) 150 Cal.App.4th 1152; *In re N.M.* (2008) 161 Cal.App.4th 253.) Balancing the child's interest in permanency and stability against the tribes' rights under the ICWA may require a different result in such a case. (*In re Z.W., supra,* 194 Cal.App.4th at p. 63.)

Courts applying this reasoning perceive that allowing parents to raise notice issues on second appeal after failing to raise those issues in

the juvenile court at the postremand compliance hearing "opens the door to gamesmanship, a practice that is particularly reprehensible in the juvenile dependency arena." (*In re Amber F.* (2007) 150 Cal.App.4th 1152, 1156; *In re X.V.* (2005) 132 Cal.App.4th 794, 804–805.) Thus, courts have applied the forfeiture doctrine to certain second appeals. (But see *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1197 ["We find no statutory support or persuasive policy basis for shifting the burden of ICWA compliance to the child's parents, even if ICWA was raised in a prior appeal"].)

This is the first appeal of ICWA issues in this case. Indeed, this is the first appeal of any kind in this case. Thus, as was the case in *B.R.*, this is "not a case in which a forfeiture may be found because the parents have raised a series of ICWA issues in successive appeals after failing in each instance to raise the issue in the trial court." (*In re B.R., supra,* 176 Cal.App.4th at p. 779, citing *In re X.V.* (2005) 132 Cal.App.4th 794, 804–805.)

Mother has not raised this issue as a game, but rather in an effort to preserve her rights and the rights of her son. A finding a child is an Indian child under the ICWA automatically triggers certain procedural requirements and safeguards. (See 25 U.S.C. § 1912, subds. (b)–(f).)

Should notice on remand reveal that Isaiah is an Indian child, mother would be entitled to receive "active efforts" from the department to prevent the breakup of the Indian family and the department would have to produce evidence, including testimony of a qualified expert witness, to support a determination beyond a reasonable doubt that the continued custody of the child by mother was likely to result in serious emotional or physical damage to the child. (25 U.S.C. § 1912(d); *Adoption of Hannah S.* (2006) 142 Cal.App.4th 988, 997-1000.)

In addition, Isaiah would be entitled to all of the benefits of the ICWA's provisions and may gain other significant tribal benefits. (Cf. *In re Barbara R.* (2006) 137 Cal.App.4th 941, 947 [referring to the benefits of a "monthly financial stipend, funding for higher education, medical and dental coverage, and a home on the reservation" conferred upon members of the Sycuan Band of the Kumeyaay Nation].)

Therefore, even it this Court decides to impose some type of limit on a parent's ability to appeal violations of ICWA's notice requirements, any such limit should not be applied to this first appeal by mother.

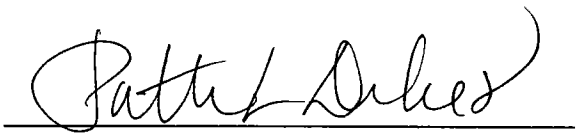
Conclusion

This Court should reverse the Court of Appeal's decision because it is precluded by federal preemption and it fails to protect the interests of Indian children and tribes. Alternatively, this Court should hold the forfeiture doctrine does not apply especially where, as here, this is mother's first appeal.

Appellant respectfully requests that this Court reverse the decision and remand this case with directions that the order terminating her parental rights be reversed, at least conditionally, until the court ensures notice under ICWA has been provided, before determining whether other ICWA provisions apply and conducting a new section 366.26 hearing.

DATED: January 8, 2015

Respectfully submitted,



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Certification of Word Count

I certify that the foregoing brief on the merits complies with California Rules of Court, rule 8.204(c) and contains 6414 words, including footnotes, according to the word count feature of Word Perfect X4, the computer program used to prepare the brief.

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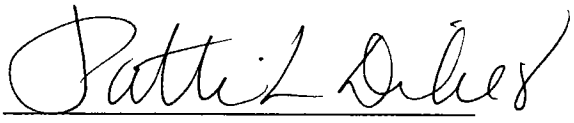

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Declaration of Service by Mail

I, Patti L. Dikes, declare that: I am over 18 years of age, employed in the County of San Diego, California, in which county the within-mentioned mailing occurred, and not a party to the subject cause. My business address is 9116 E. Sprague Avenue #473, Spokane Valley, Washington. I served Opening Brief on the Merits in Case No. S221263 of which a true and correct copy of the document filed in the cause is affixed, by e-submission on this Court's website: http://www.courts.ca.gov, and by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

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Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at Spokane Valley, Washington, on January 8, 2015.

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

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Patti L. Dikes