2

No. S237014
(Court of Appeal No. A139411)
(Alameda County Superior Court No. 91694B)

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN RE ROY BUTLER, ON HABEAS CORPUS,

After a Decision By the Court of Appeal
First Appellate District, Division Two
Appeal No. A139411

ANSWER TO PETITION FOR REVIEW BY THE CALIFORNIA BOARD OF PAROLE HEARINGS

Keker & Van Nest LLP
SHARIF E. JACOB - #257546
Email: sjacob@kvn.com
ANDREA NILL SANCHEZ - #308477
Email: anillsanchez@kvn.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Petitioner and Non-Movant
ROY BUTLER

No. S237014
(Court of Appeal No. A139411)
(Alameda County Superior Court No. 91694B)

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN RE ROY BUTLER, ON HABEAS CORPUS,

After a Decision By the Court of Appeal
First Appellate District, Division Two
Appeal No. A139411

ANSWER TO PETITION FOR REVIEW BY THE CALIFORNIA BOARD OF PAROLE HEARINGS

Keker & Van Nest LLP
SHARIF E. JACOB - #257546
Email: sjacob@kvn.com
ANDREA NILL SANCHEZ - #308477
Email: anillsanchez@kvn.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Petitioner and Non-Movant
ROY BUTLER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

State Rules

Court Orders

Constitutional Provisions

Other Authorities

I. INTRODUCTION

Pursuant to California Rule of Court 8.500(a)(2), and the September 14, 2016 request of the Clerk of the Supreme Court, Roy Butler respectfully files this answer brief opposing the petition for review filed by the California Board of Parole Hearings ("Board"). The Board's petition fails to present any grounds meriting this Court's review.

Before the Court of Appeal, the Board sought to modify a Settlement Order to which it stipulated over two years ago. Having admitted that it stopped complying with the Settlement Order long before seeking modification, the Board seeks to cut out the heart of the settlement—its requirement to calculate a base term for all life-term inmates in California. The parties agree on the legal standard that governs the Board's motion: it is not entitled to modification unless it can show that that law upon which the Settlement Order was based on has changed in a way that conflicts with the relief required by the Order. *See* Cal. Civ. Proc. Code § 533. The law upon which the Settlement Order was based is the California Constitution, and nothing in the Constitution has changed since the Order was entered. The Board admitted at oral argument before the Court of Appeal "that nothing it is required to do by the stipulated order is prohibited by SB 230, SB 260, or the *Coleman* Order." *See* Cal. Ct. of Appeal Order Denying

Resp't's Mot. to Modify at 4, Jul. 27, 2016 ("Mot. to Modify Order"). Therefore, the Board's petition is meritless and should be denied.

II. FACTS AND PROCEDURAL HISTORY

On December 10, 2012, Petitioner Roy Butler filed a pro per Petition for Writ of Habeas Corpus in the Court of Appeal, First Appellate District. *See* Pet. for Writ of Habeas Corpus, Dec. 10, 2012. The Court of Appeal bifurcated his supplemental petition into two separate cases, recognizing that it raised two distinct types of claims—one focused on the sufficiency of the evidence of Mr. Butler's individual case, and the other asserting a broader constitutional challenge to the Board's base term-setting policy.[1] The petition relates to the latter.

After Mr. Butler was appointed counsel, the parties participated in three settlement conferences before Justice Jim Humes starting on November 20, 2013. The Executive Officer of the Board and the General Counsel participated in each settlement conference, represented by the Attorney General. *See* Stip. and Order Regarding Settlement at 1, Dec. 16, 2013 ("Settlement Order"). At the final settlement conference on December 13, 2013, the parties signed a settlement agreement stipulating to the terms of a Proposed Order to resolve Mr. Butler's base term claim.

[1] Mr. Butler's individual claim remained the subject of case number A137273, while the base term claim was assigned to case number A139411.

On December 16, 2013, the Court of Appeal entered the stipulated Settlement Order requiring the Board to set base terms and adjusted base terms for life prisoners at their initial parole hearing, or at the next scheduled hearing. *See* Settlement Order ¶¶ 3-4. The Settlement Order also directs the Board to amend its regulations to reflect the new policies and procedures set forth in the Settlement Order "as soon as reasonably practicable." *Id.* ¶¶ 5, 7. The Court of Appeal retains jurisdiction over this case until those amended regulations become effective. *Id.* ¶ 8.

Although they were not parties to the litigation, the District Attorneys of San Diego and Sacramento Counties challenged the Settlement Order, asking the Supreme Court to transfer the instant action to itself in April 2014. Both Mr. Butler and the Board opposed the request to transfer. The Court denied the applications on July 30, 2014. *See* Cal. Supreme Ct. Order, No. S217611, Jul. 30, 2014.

On May 15, 2015, the Court of Appeal granted Mr. Butler's request for attorneys' fees. *See In re Butler*, 236 Cal. App. 4th 1222, 1244 (2015). The District Attorney of San Diego County submitted a request in July 2015, asking the Supreme Court to either grant review or depublish the attorneys' fees opinion. Mr. Butler opposed the request. The Board neither submitted a response nor independently sought review of the decision. This Court denied review and depublication on October 28, 2015. *See* Cal. Supreme Ct. Order, No. S227750, Oct. 28, 2015.

For two years, the Board did not challenge the Court of Appeal's decisions—despite the passage of S.B. 260 in 2013, the entry of the *Coleman v. Brown* order in early 2014, and the enactment of S.B. 261 and 230 one year later. *See Youth Offender Parole Hearings*, 2013 Cal. Legis. Serv. Ch. 312 (S.B. 260) (codified at Cal. Penal Code, § 3051); *Sentencing: Parole*, 2015 Cal. Legis. Serv. Ch. 471 (S.B. 261) (codified at Cal. Penal Code § 3051); *Sentencing: Parole*, 2015 Cal. Legis. Serv. Ch. 470 (S.B. 230); *see also* Case No. 3:01-cv-01351-THE, Dkt. No. 2766 (N.D.C.A) ("*Coleman* Order"). It was not until January 28, 2016, that the Board filed a motion to modify the Settlement Order. The Court of Appeal denied the Board's motion to modify on July 27, 2016. *See* Mot. to Modify Order.

III. ARGUMENT

"[R]eview by this [C]ourt—to secure uniformity of decision or resolve important questions of law—[is] purely discretionary." *Snukal v. Flightways Manufacturing, Inc.*, 23 Cal. 4th 754, 770 (2000). "There is no abstract or inherent right in every citizen to take every case to the highest court." *People v. Davis*, 147 Cal. 346, 349 (1905). "The [S]upreme [C]ourt's focus is not on correction of error by the court of appeal in a specific case." Jon B. Eisenberg, Ellis J. Horvitz & Justice Howard B. Wiener, *Cal. Prac. Guide Civ. App. & Writs* § 13-1 (2015).

California Rule of Court 8.500(b) sets forth the grounds for review:

1. When necessary to secure uniformity of decision or to settle an important question of law;

2. When the Court of Appeal lacked jurisdiction;

3. When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or

4. For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

Grounds two through four do not apply, and the Board does not contend otherwise. Nor has the Board identified a split in the rulings of the Court of Appeal. So the Board is left to argue that granting its petition will settle an important question of law. But the Board's motion to modify the Settlement Order did not present the issue of law upon which the Board now seeks a ruling.

A. The Board's petition does not properly present the legal issue it seeks to have determined.

The Board's petition for review mounts constitutional and policy attacks on a Settlement Order to which it stipulated over two years ago. The Board argues that the base term has no constitutional significance. Pet. for Review at 15-18, No. S237014, Sept. 2, 2016. The Board further contends that the relief to which it agreed is "contrary" to this Court's holding in *In re Dannenberg*, 34 Cal. 4th 1061 (2005). *Id.* at 13-15. None of those issues are properly presented by the Board's petition.

The Board is petitioning for review of a decision denying its motion to modify. Despite that fact, the Board devotes no more than a single sentence in the background section to the legal standard that applies to the motion, a standard on which the parties agreed below. Pet. for Review at 9. The Board's motion to modify is governed by California Code of Civil Procedure § 533. Section 533 describes a two-step process to guide the Court in ruling on a motion to modify. ***First***, the Court must determine "the law upon which the [settlement order] . . . was granted." *Id.* ***Second***, once determined, the Court asks whether that law has changed. *Id.*

The authorities the Board cited to the Court below—but omitted from its petition—explain that the Court should determine "the law upon which the [settlement order] . . . . was granted" by looking to the complaint. *See System Federation No. 91 Railway Employees' Dep't v. Wright*, 364 U.S. 642, 643 (1961); *Welfare Rights v. Frank*, 25 Cal. App. 4th 415, 417 (Cal. App. 1st Dist. 1994). Mr. Butler's action is not founded on a complaint, but is instead a habeas proceeding founded upon a petition. Accordingly, Mr. Butler's causes of action are set forth in his supplemental petition for habeas corpus, starting on page 55. *See* Supp. Pet. for Writ of Habeas Corpus and Supp'g Mem. of Points and Authorities, May 28, 2013. His claims, as set forth in his petition, sought to vindicate the constitutional rights of inmates under the state and federal due process clause, Cal. Const., art. I, § 7(a); U.S. Const., amend. XIV, § 1, and the proscription against

cruel and/or unusual punishment set forth in the Eighth Amendment and Article 1, Section 17 of the California Constitution. Nothing in the Federal and California Constitutions has changed since the Board stipulated to the Settlement Order. That is the only question presented by the Board's petition. The parties agree on the answer and the Court correctly ruled on the motion below.

The Board wishes to argue that Mr. Butler could not have achieved the same relief he obtained in the Settlement Order had he fully litigated his action. In other words, the Board—after stipulating to the Settlement Order and claiming to have partially complied with its provisions—now wishes to argue that the constitutional claim upon which Mr. Butler obtained the settlement lacks merit. It is simply too late for that. *See Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 389 (1992) (ruling that a clarification in the law does not "automatically open[] the door for relitigation of the merits of every affected consent decree[,]" as that "would undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements in institutional reform litigation.").

B. The Board's argument that the legislature has not guaranteed the same relief the Board stipulated to in the Settlement Order is irrelevant, and, in any event, meritless.

Mr. Butler's claims were never rooted in the statutory scheme set forth in Cal. Penal Code § 3041. He did not seek to vindicate a statutory right; therefore amendments purporting to change any such statutory rights

are irrelevant. Regardless, there is no conflict between the statutory scheme as amended and the Settlement Order. Indeed, the Board admitted at oral argument below that there is no express conflict between the S.B. 260, S.B. 230, the *Coleman* order, and the relief it agreed to provide. *See* Mot. to Modify Order at 4.

The youth offender bills do not prohibit the Board from calculating base terms. The stated purpose of S.B. 260 is to "create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established." Youth offender parole hearings, 2013 Cal. Legis. Serv. Ch. 312 (S.B. 260). S.B. 260 accomplished this goal by modifying the parole process for inmates, *id.* (codified at § 3051(a)(1)), and imposing a new requirement that the Board release youth offenders found suitable for parole, even if they have not yet served their base terms. *See* Cal. Penal Code § 3046(c)). Nothing in the amendments prohibits the calculation of base terms.

Similarly, S.B. 230 amended the law to instruct the Board to release inmates upon a grant of parole. *See id.* § 3041(a)(4). The relevant aspects of both of these reforms are entirely concerned with the actions the Board must take once it determines an inmate is suitable for parole. Nothing in S.B. 230 prohibits the Board from calculating base terms.

Nor does the *Coleman* Order preclude the calculation of base terms. Aimed at reducing California's prison population, the *Coleman* court

ordered the defendants to institute a "new parole process" for considering the suitability for parole of certain elderly inmates. *Coleman* Order at 1, 3. The order explicitly states that it "is narrowly tailored to the constitutional violations identified by the *Plata* and *Coleman* courts" and "extends no further than necessary to remedy those violations, and is the least intrusive possible remedy." *See id.* at 2. The phrase "base term" does not even appear in the Order. *See id.* at 3. "At oral argument on this motion the Board virtually conceded that nothing it is required to do by the stipulated order is prohibited by SB 230, SB 260, or the *Coleman* Order." Mot. to Modify Order at 4. Thus, the Court of Appeal correctly denied the motion to modify.

C. The Board's attempt to re-litigate the constitutional basis of the Settlement Order is not only procedurally improper, but also precluded by law of the case.

The Board previously passed on two opportunities to seek Supreme Court review. Despite now claiming that it lacks the authority to comply with the Settlement Order, the Board opposed a third-party request asking the Supreme Court to overturn the Settlement Order. In fact, the Board argued that "the Court of Appeal has held that comparable orders granting motions to enforce settlement . . . are final orders because they 'dispose[] of the litigation' and leave the court with 'nothing . . . to do other than enforce its order.'" *See* Resp't's Answer to Request for Transfer at 3, May 15, 2014 (quoting *Critzer v. Enos*, 187 Cal. App. 4th 1242, 1252 (2010)). Notably,

by that time, S.B. 260 was already in effect and the *Coleman v. Brown* order had been issued. This Court denied review. *See* Cal. Supreme Ct. Order, No. S217611, Jul. 30, 2014.

The Board also chose not to petition for review of the Court of Appeal's prior decision granting Butler's motion for attorneys' fees. Unlike the motion to modify, the motion for attorneys' fees squarely presented the issue of whether the Settlement Order resulted in the "enforcement of an important right affecting the public interest[.]" Cal. Civ. Proc. Code § 1021.5. Indeed, in order to determine that Mr. Butler's litigation enforced an important right, the Court of Appeal made the express determination that the Settlement Order vindicated the constitutional rights the Board now claims it does not. *See In re Butler*, 236 Cal. App. 4th 1222, 1230, 1233-1235 (2015) (explaining that the Board's arguments "ignore[] the role the base and adjusted base terms play in promoting proportionality, which is both constitutionally mandated and an express goal of the DSL"); *see also Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 318 (1983) (holding that litigation that vindicates rights "of constitutional stature" satisfy the public interest element of Cal. Civ. Proc. Code § 1021.5) (quoting *Serrano v. Priest*, 20 Cal. 3d 25, 46 n.18 (1977)). The Board never sought

reconsideration, Supreme Court review, or even depublication of the Court of Appeal's opinion.[2]

The Board's failure to appeal from the Court of Appeal Order granting attorneys' fees precludes its challenge to the constitutional significance of the Settlement Order under the law of the case doctrine. Generally, "the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." *Sargon Enterprises, Inc. v. Univ. of S. California*, 215 Cal. App. 4th 1495, 1505 (2013) (internal quotation marks and citation omitted); *see also* Cal. Prac. Guide Civ. App. & Writs Ch. 14-D ¶ 14:172. The law of the case doctrine binds the Supreme Court to the legal findings of a previous appeal before the Court of Appeal in the same case, even where the Supreme Court may conclude that the Court of Appeal opinion was erroneous. *See People v. Stanley*, 10 Cal. 4th 764, 786 (1995). Therefore, in addition to not being properly presented in its petition, the Board's previously-rejected arguments are settled by the law of the case.

[2] On October 28, 2015, the Supreme Court declined a third-party request to review or depublish the decision. *See* Cal. Supreme Ct. Order, No. S227750, Oct. 28, 2015.

D. The Board is barred from seeking review of the motion to modify decision under the disentitlement doctrine.

A party "cannot, with right or reason, ask the aid or assistance of this [C]ourt in hearing [its] demands while [it] stands in an attitude of contempt to the legal orders and processes of the courts of this state which [it] seeks to avoid through the intervention of an appeal to this tribunal." *Knoob v. Knoob*, 192 Cal. 95, 97 (1923); *accord MacPherson v. MacPherson*, 13 Cal. 2d 271, 277 (1939). Pursuant to the disentitlement doctrine, an appellate court has the inherent power to dismiss an appeal by a party that refuses to comply with a lower court order. *See id.*; *see also Gwartz v. Weilert*, 231 Cal. App. 4th 750, 757 (2014), *reh'g denied* (Nov. 18, 2014), *review denied* (Feb. 18, 2015) (citing *Stoltenberg v. Ampton Investments*, 215 Cal. App. 4th 1225, 1229 (2013), *as modified* (May 6, 2013), *as modified on denial of reh'g* (June 5, 2013)). The doctrine has been applied in a wide array of cases, such as instances in which a judgment debtor frustrated efforts to enforce the judgment, cases where parties willfully refused to respond to postjudgment interrogatories, and where an appellant disobeyed a prejudgment order requiring the deposit of partnership funds into a trustee account. *See Gwartz*, 231 Cal. App. 4th at 758 (listing cases). A formal judgment of contempt is not required under the doctrine; dismissal of an appeal is justified when the appellant has "willfully

disobeyed the lower court's orders or engaged in obstructive tactics." *Id.* at 757-758 (citing *Stoltenberg*, 215 Cal. App. 4th at 1230).

Here, the Board currently stands in contempt of the Settlement Order. The Board has admitted that it refused to calculate base terms for youthful offenders and elderly inmates, despite the Settlement Order's express requirement to do so. *See* Ltr. from Brian C. Kinney, Dpty. Att'y General, to the Hon. Justices of the Ct. of App. of the State of Cal., June 7, 2016. Since the Settlement Order went into effect, the Board has violated it in over 1,600 occasions. Nill Sanchez Decl. Charging the Cal. Board of Parole Hrgs. With Contempt ("Nill Sanchez Contempt Decl.") ¶¶ 21-26. The Board's contempt is particularly disturbing because it refuses to provide a base term calculation to those inmates who are most likely to benefit from one: the elderly and those who committed their crimes while they were children or adolescents. The Board's contempt extends beyond its own admissions. The Board contends that it is calculating base terms for regular life-term inmates. But after a thorough investigation, Mr. Butler discovered that the Board also failed to calculate a base term in approximately 500 regular hearings as well. *Id.* at ¶ 26.

The Board began disobeying the Settlement Order long before seeking modification. *See id.* at ¶¶ 17-41; *see also Signal Oil & Gas Co. v. Ashland Oil & Refining Co.*, 49 Cal. 2d 764, 776 (1958) ("It is for the court of first instance to determine the question of the validity of the law, and

until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.") (quoting *Howat v. Kansas*, 258 U.S. 181, 189-190 (1922)). In fact, it did not even seek to modify the Settlement Order until counsel for Mr. Butler raised the violations directly with the Board. *See* Nill Sanchez Contempt Decl. ¶¶ 30-31. Most of these violations were not a matter of mere oversight—they were the product of a deliberate policy adopted by the Board that was directly in conflict with the requirements of the Settlement Order. *Id.* ¶¶ 27-29. The Board's violations of the Settlement Order are presently the subject of contempt proceedings in the Court of Appeal. The instant petition is the Board's attempt to remove from the Settlement Order the provisions it violated. The disentitlement doctrine was developed to prevent precisely that sort of abuse of the Court's process. *See Stoltenberg*, 215 Cal. App. 4th at 1230.

E. The Board's parade of horribles is counterfactual.

The Board recites a list of ills that it claims will result from the Settlement Order. Just like its legal attacks on the merits, those arguments are irrelevant because they do not represent circumstances that have changed since the Settlement Order issued. Regardless, they have no basis in fact.

First, the Board claims that calculating the base term will "waste resources." Pet. for Review at 10. Mr. Butler presented undisputed evidence in the Court of Appeal that the Board can calculate a base term in less than five minutes. *See* Jacob Decl. Ex. E at 110:7-19.

Second, the Board claims that calculating base terms will "befuddle inmates." Pet. for Review at 13. Counsel from Butler has personally received hundreds of letter from inmates asking about the base term. Their only source of confusion is the Board's failure to calculate the base terms despite its agreement to do so.

Third, the Board implies that the Settlement requires it to "direct the release of inmates." *Id.* at 15. The Board's suggestion that the Settlement Order will result in the mass release of inmates is a scare tactic. The Settlement Order does not direct the release of any inmate. The Board represents that it "has calculated thousands of inmates' base terms per the settlement's terms." *Id.* at 7. Yet, to Mr. Butler's knowledge, not one inmate has been released from prison as a result of a successful disproportionality challenge based on his base term.

Indeed, it is the relief the Board seeks before this Court—abandoning base term calculations for all parole-eligible life-term inmates—that is entirely unprecedented. The Board and its predecessor agencies have been calculating base terms in some form since the 1970s. The Board began calculating base terms in response to this Court's decision

in *In re Rodriguez*, 14 Cal. 3d 639, 652 (1975), which required the Board's predecessor agency to promptly fix terms "within the statutory range that are not disproportionate to the culpability of the individual offender." In response to the Court's ruling in *Rodriguez*, the predecessor agency of the Board issued Chairman's Directive No. 75/30 setting forth detailed procedures for the setting of the primary term. *See* Mot. for Judicial Notice Ex. A, Jan. 8, 2014. The agency ultimately promulgated regulations requiring it to fix a "primary term," which consisted of a "base term and adjustments." *See* 15 Cal. Admin. Code §§ 2000-2725 (1976); *see also* App'x of Pet'r's Opp. to Resp't's Mot. to Modify, Tab 5, March 1, 2016. The agency's own regulations noted that "the primary term is the maximum period of time which is constitutionally proportionate to the individual's culpability for the crime." 15 Cal. Admin. Code § 2100(a) (1976). The Board's argument before this Court that the base term has no constitutional significance therefore contradicts its own prior guidance.

In 1976, the legislature adopted the Determinate Sentencing Law ("DSL"), Cal. Penal Code §§ 1170 *et seq.* The DSL, which remains in effect today, largely abandoned indeterminate sentencing, and instead requires sentences of a fixed term of years for most felonies. However, certain enumerated felonies remain subject to indeterminate sentences. Since 1976, the Board has calculated base terms for all indeterminately-sentenced life term inmates sentenced pursuant to the DSL. The Board's

attempt to end this practice, which is precisely the relief it seeks by this petition, would be a radical departure from forty years of Supreme Court jurisprudence, and the Board's own prior regulations and administrative guidance.

IV. CONCLUSION

The Board's petition presents no issue of law that merits this Court's review. Therefore, the petition should be denied.

Respectfully submitted,
KEKER & VAN NEST LLP

Dated: September 30, 2016

By: */s/ Sharif E. Jacob*
Sharif E. Jacob
Andrea Nill Sanchez
Attorneys for
ROY BUTLER
By Appointment of the Court of
Appeal of the First Appellate
District

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court 8.504(a), 8.504(d)(1) and 8.204(c)(1), and in reliance upon the word count feature of the software used, I certify that the attached ANSWER TO PETITION FOR REVIEW BY THE CALIFORNIA BOARD OF PAROLE HEARINGS contains 3,970 words, excluding parts not required to be counted under Rule 8.204(c)(3).

Dated: September 30, 2016

/s/ Sharif E. Jacob
SHARIF E. JACOB

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On September 30, 2016, I served the following document on the person(s) below:

ANSWER TO PETITION FOR REVIEW BY THE CALIFORNIA BOARD OF PAROLE HEARINGS

by **COURIER**, by placing a true and correct copy in a sealed envelope addressed as shown below, and dispatching a messenger from Nationwide Legal, whose address is 859 Harrison Street, Suite A, San Francisco, CA 94107, with instructions to hand-carry the above and make delivery to the following during normal business hours, by leaving the package with the person whose name is shown or the person authorized to accept courier deliveries on behalf of the addressee.

Sara J. Romano
Supervising Deputy Attorney General
Brian C. Kinney
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Email: Brian.Kinney@doj.ca.gov
Attorneys for Board of Parole Hearings

Clerk of Court
California Court of Appeals
First Appellate District
Division 2
350 McAllister Street
San Francisco, CA 94102
(Case No. A139411)

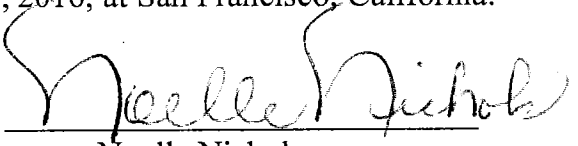
by **FEDEX**, by placing a true and correct copy in a sealed envelope addressed as shown below. I am readily familiar with the practice of Keker & Van Nest LLP for correspondence for delivery by FedEx Corporation. According to that practice, items are retrieved daily by a FedEx Corporation employee for overnight delivery.

Clerk of Court
County of Alameda, Criminal Division
Rene C. Davidson Courthouse
Superior Court of California
1225 Fallon Street, Room 107
Oakland, CA 94612-4293
(Case No. 91694B)

On September 30, 2016, I caused one electronic copy of the above stated document(s) in this case to be served on the California Supreme Court by sending the copy to the Supreme Court's electronic service address pursuant to Rule 8.212(c).

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

Executed on, September 30, 2016, at San Francisco, California.



Noelle Nichols