S174773



IN THE SUPREME COURT OF THE STATE OF CALIFORNIA



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| JEWERELENE STEEN,<br><br>Petitioner,<br><br>v.<br><br>APPELLATE DIVISION OF THE LOS ANGELES COUNTY SUPERIOR COURT<br><br>Respondent,<br><br>PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Real Party in Interest. | S174773<br><br>(2d Dist.No. B217263;<br>App.Div.No. BR046020;<br>Trial Ct.No. 6200307) |

**REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE**

From the Appellate Division, Los Angeles County Superior Court
Hon. Patti Jo McKay, Presiding Judge

MICHAEL P. JUDGE, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

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| APPELLATE DIVISION OF THE LOS ANGELES COUNTY SUPERIOR COURT Respondent, | ) | |
| PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest. | ) | |

**REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE**

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner Jewerelene Steen, by and through her attorney Michael P. Judge, Public Defender of Los Angeles County, hereby makes her reply to the Preliminary Opposition (hereinafter "Opp.") filed by the People. [1/]

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[1/] In her prayer, petitioner asked that the Appellate Division be directed to recall its remittitur, if necessary. (Pet., pp. 9-10.) That remittitur was issued on August 25, 2009, and thus petitioner does pray that the Appellate Division be directed to recall that remittitur and to reverse the trial court judgment.

## ARGUMENT

I

THE PEOPLE HAVE FAILED TO SHOW THAT IT IS CONSTITUTIONAL TO PERMIT CRIMINAL CHARGES TO BE INITIATED BY COURT CLERKS ABSENT PRIOR SCREENING AND AUTHORIZATION BY THE PUBLIC PROSECUTOR

Petitioner has demonstrated that due process is violated when criminal charges are filed absent the prior review and authorization of the public prosecutor, citing, inter alia, People v. Municipal Court (Pellegrino) (1972) 27 Cal.App.3d 193, and that the filing of charges by court clerks violates the constitutionally mandated separation of powers, citing, inter alia, People v. Viray (2005) 134 Cal.App.4th 1186. In responding to the due process issue, the People make the remarkable argument that "Pellegino does not stand for the proposition that prior approval is required." (Opp., p. 14; emphasis original.)

This is remarkable because the People actually quote one portion of Pellegrino which does require such prior approval: "By this holding we do not mean to imply that criminal complaints need take any different form than they presently do, but only that their filing must be approved, authorized or concurred in by the district attorney before they are effective in instituting criminal proceedings against an individual." (Opp., p. 15, quoting Pellegino, supra, 27 Cal.App.3d at p. 206; emphasis added.)

Of course, the People ignore even stronger language in Pellegrino: "Thus the theme which runs throughout the criminal procedure in this state is that all persons should be protected from having to defend against frivolous prosecutions and that one major safeguard against such prosecutions is the function of the district attorney in screening criminal cases prior to instituting a prosecution." (Id., 27 Cal.App.3d at pp. 205-206, emphasis added, footnote omitted.)

The People do not dispute the fact that there was no screening prior to the institution of charges against petitioner. The People claim only that Pellegrino does not require prior screening, when it obviously does require such screening.

The People assert that all that Pellegino holds is that a criminal proceeding, although instituted by a person other than the authorized prosecutor, "cannot proceed until the defendant returns to court, at which time the prosecutor may review any additional facts, the defendant may raise any defenses, and the prosecutor can approve or object to the complaint." (Opp., p. 16, emphasis original.) However, that is clearly not the holding of Pellegrino. The requirement of prior screening and approval is not a mere bar to proceeding upon a complaint which is otherwise proper. The clear ruling in Pellegrino is that complaints not instituted by the authorized prosecutor are ineffective to commence a criminal prosecution; they are, in the words of the Court of Appeal, "nullities." (Id., 27 Cal.App.3d at p. 206.)

Indeed, while the People facilely say that the prosecutor can "disapprove or object" to a complaint (Opp., p. 16), the People fail to thereafter discuss the legal effect of such a disapproval or objection. The People actually include the relevant quote from Pellegino, which demonstrates that the prosecution cannot unilaterally abandon a criminal prosecution, once instituted, in such a manner: "[T]he existence of a discretionary power in the district attorney to control the institution of criminal proceedings is a necessary prerequisite to the constitutional validity of the requirement that the district attorney seek court approval for abandoning a prosecution as required by sections 1385 and 1386 of the Penal Code." (Opp., p. 15; quoting Pellegrino, 27 Cal.App.3d at p. 204.) The point is that if criminal proceedings can actually be instituted without the prosecutor's screening and approval,

the prosecutor cannot thereafter terminate the prosecution simply by objecting to it.

That is why allowing a clerk to initiate criminal proceedings would be violative not only of due process, but of the separation of powers, as recognized in Pellegrino as well as People v. Viray (2005) 134 Cal.App.4th 1186, 1202-1203.[2/]) The only time that the prosecutor can abort a criminal proceeding is before it is instituted. Consequently, if the judiciary can institute criminal proceedings, and also control the termination of such proceedings, then the entirety of prosecution has been placed in the hands of the judiciary. However, such an unconstitutional procedure is not authorized in California, since the judiciary cannot institute criminal proceedings without violating the Constitution. Since the filing of a complaint by somebody other than the prosecutor is a nullity, the prosecutor is not required to proceed with an action filed by a court clerk because no action has been lawfully commenced. That is the point of Pellegrino and Viray which the People seemingly fail to comprehend.

Additionally, if the People are correct that court clerks can initiate criminal proceedings under the authority of Penal Code section 959.1, there is nothing in that statute which requires a prosecutor to review a charge after it has been filed by a clerk. Even the People appear to recognize this: "[A] prosecution for a failure to appear cannot proceed until the defendant returns to court, at which time the

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[2/] Curiously, the People cite Viray for the proposition that a complaint is merely an accusation necessary to secure a defendant's arrest. (Opp., pp. 12-13, fn. 5.) However, what Viray states is that while that may be true elsewhere, the rule is different in California, and that ". . . in this state, it [a complaint] commits the prosecutor to pursue a criminal conviction–a commitment from which only a court can grant relief." (134 Cal.App.4th at p. 1205; emphasis original.)

prosecutor may review any additional facts . . . and the prosecutor can disapprove or object to the complaint." (Opp., p. 16; emphasis added and deleted.) The People do not suggest that the prosecutor must do so, and petitioner is unaware of any California law which requires a prosecutor to engage in a review of the validity of criminal charges brought by a court clerk. Perhaps a defendant's objection would cause such a duty to arise, but a defendant's right to due process of law should not depend upon her affirmative assertion of that right. This is particularly so in the kind of case in which many defendants may waive the right to counsel and not know that they have to make an affirmative demand for due process in the filing decision.

The People also fail to discuss the additional authority provided by petitioner which also demonstrates that only the authorized prosecutor can commence a criminal prosecution. Petitioner has cited People v. Smith (1975) 53 Cal.App.3d 655, 659: "The discretionary decision to bring criminal charges rests exclusively in the grand jury and the district or other prosecuting attorney. [Citations.] The choice of the appropriate offense to be charged is also within the discretionary power of the prosecuting attorney. [Citation.]" (Emphasis original; see Pet., p. 13.) The People do not cite, discuss, or distinguish Smith.

Petitioner has noted that the Attorney General has agreed that due process requires that criminal prosecutions be initiated only after screening by the prosecutor on a case by case basis. (63 Ops.Atty.Gen. 861.) The People do not cite, discuss, or distinguish the Attorney General's opinion.

As noted above, the People erroneously cite People v. Viray, supra, for the proposition that a criminal complaint does not institute criminal proceedings, when what the case actually says is that while that may be true elsewhere, it is not true in California. (See fn. 1, ante.) However, the People fail to discuss or distinguish that portion of Viray

which demonstrates that the filing of charges without prior screening by the prosecutor violates due process, and that the filing of charges by the judiciary would violate the separation of powers.

The People make a lengthy, and to petitioner's mind, absurd argument that court clerks should be permitted to initiate criminal proceedings without prior screening by the prosecutor because the clerk has "personal knowledge" of the commission of the offense. (Opp., p. 13.) However, it is almost universally true that the authorized prosecutor will not have personal knowledge of any offense presented to the prosecutor for prosecution. Thus, this argument is simply a claim that the prosecutor should not have to be involved with any decision to initiate criminal charges, since somebody else will inevitably have personal knowledge. That obviously is not, and should not be, the law.

The People claim that the initiation of criminal proceedings is a ministerial function. (Opp., p. 18.) The Appellate Division did not find the initiation of criminal charges to be a ministerial duty of a clerk, but held instead that such a power could properly be exercised by the clerk. It is clear that the initiation of criminal charges is not a ministerial duty.

> "A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment. [Citation.]" (Rodriguez v. Solis (1991) 1 Cal.App.4th 495, 501-502; emphasis added.)

When a duty is purely ministerial in character, not only is the public officer without power to exercise any discretion in determining whether or not to perform the duty, but exercise of the duty may be compelled by mandamus. (Id., at p. 501; see State of California v.

Superior Court (1974) 12 Cal.3d 237, 247.) If the filing of a criminal charge is a action within the "ministerial" duties of a court clerk, then a clerk not only may, but must file such charges in every case, without the exercise of any discretion whether to file such charges. If the clerk fails to file such charges, he may be forced to do so by a writ of mandate.

Appellant is unaware of any law or rule which requires court clerks to file criminal charges. Even if court clerks were authorized to file criminal charges, there would be no public duty upon court clerks to file criminal charges, nor could anyone compel a court clerk to file criminal charges in a proceeding in mandate. The filing of criminal charges, even were court clerks authorized to do so, is not a ministerial duty. It is, rather, patently obvious that the question of whether a criminal charge shall be filed remains a matter of discretion, as it always has been, and must be as a matter of due process as discussed above.

Indeed, the entire history of the prosecutorial function in Anglo-American jurisprudence is that the decision whether or not to commence a criminal action is one involving the exercise of discretion. (See Dix v. Superior Court (1991) 53 Cal.3d 442, 451-452.) Even when an offense has undoubtedly been committed, the prosecutor retains the discretion not to file charges. Thus, whether exercised by the public prosecutor or the court's clerk, the prosecutorial function is exactly the opposite of a ministerial duty:

> "The public prosecutor has no enforceable 'duty' to conduct criminal proceedings in a particular fashion. On the contrary, his obligation is to exercise exclusive professional discretion over the prosecutorial function." (Id., 53 Cal.3d at p. 453.)

Moreover, a claim that the clerk has a "ministerial" duty to file criminal charges would still fail to respond to the point that allowing (or requiring) the clerk to do so results in a violation of the separation-of-

powers doctrine. Whatever the clerk may be, the clerk is not part of the executive branch of government. If the Legislature had, in fact, imposed a ministerial duty upon court clerks to file criminal charges, then it would be the Legislature which had usurped the exclusively executive function of commencing criminal proceedings, by itself effectively mandating when and against whom criminal charges should be filed. However, as discussed above, there simply is no such ministerial duty.

The People actually claim that the decision whether to file any failure to appear charge involves no evaluation or exercise of discretion whatsoever. (Opp., p. 18.) Petitioner is disturbed by a prosecutor so devaluing the duties and obligations of a prosecutor, but at any rate it is clear that the People are wrong. There are many issues which must be addressed, even when deciding whether or not to file a charge of failure to appear. In addition to the same questions which arise when deciding whether to file any criminal charge (including whether the perpetrator is dangerous and whether there are reasonable alternatives to prosecution), many other questions arise with regularity.

Shall a criminal charge be filed if a defendant fails to appear on the date specified on a ticket, but appears one day later? Although, perhaps, a technical violation of the law has occurred, most prosecutors would probably decline to pursue criminal charges in such a case as an exercise of discretion.

Shall a criminal charge be filed if a defendant fails to appear, but thereafter provides an excuse? The question of whether a defendant's explanation would provide a legal defense, and whether in light of that explanation charges should be filed even if it did not rise to a legal defense, will affect the prosecutor's decision whether to file a criminal charge as an exercise of discretion.

Shall a criminal charge be filed if the failure to appear is upon a matter merely requiring repair of equipment? Shall a criminal charge be filed when a defendant has appeared in court, but is late with the payment of a fine? Again, a prosecutor might well decide not to file criminal charges in such cases, as an exercise of discretion.

Perhaps the most obvious situation requiring an exercise of discretion is when an accused felon has failed to appear. Shall that charge be filed as a misdemeanor or a felony (see Pen. Code § 1320, subd. (b))? What is the clerk's "ministerial duty" in that case: to file the felony, or the misdemeanor? Is it truly the position of the People that clerks can initiate felony criminal proceedings, and have the additional authority to make the discretionary decision to pursue such a charge as a misdemeanor? What if the defendant has prior felony convictions? Should those be alleged, and if so, under which applicable statute? Is the clerk bound by local prosecutorial policies concerning the filing of "third strike" allegations? It simply cannot rationally be claimed that all that is required in filing such a charge is "a review of the court file." (Opp., p. 18.)

Obviously, discretion must be exercised in all of these situations, and more. Even if a decision is made to file all such charges, that decision is still an exercise of discretion. If such discretion is not being exercised by somebody, then, as discussed above, the potential criminal defendant is denied due process of law. If that discretion is being exercised by a court clerk, then the process violates the separation of powers. In either event, the filing of criminal charges by court clerks and without prior screening and approval by a prosecutor offends the Constitution.

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II

PENAL CODE SECTION 959.1 IS AMBIGUOUS AND SHOULD BE INTERPRETED CONSTITUTIONALLY; IF IT IS NOT AMBIGUOUS, IT IS UNCONSTITUTIONAL AND CANNOT BE ENFORCED

Petitioner has discussed the ambiguities to be found in Penal Code section 959.1. (Pet., 24-28.) The People argue that the provisions of Penal Code section 959.1 are unambiguous, and that they provide for the initiation of criminal proceedings by court clerks. (Opp., pp. 8-13. [3/]) However, the People also assert that the prosecution below was brought in the name of the People of the State of California, as required by Penal Code section 959. (Opp., p. 12, fn. 5.) However, if section 959.1 is clear and unambiguous, then it requires that criminal proceedings initiated by the court clerk are to be filed "in the name of . . . a clerk of court." (Emphasis added. [4/]) Either the People must admit that they are improperly prosecuting a case in the name of the People which should be prosecuted in the name of the clerk, and by an attorney authorized to represent the clerk (which the City Attorney is not), or they must admit that section 959.1 is not unambiguous.

Once it is recognized, as petitioner suggests it must be, that section 959.1 is not unambiguous, then this court is both privileged and required to interpret that statute so as to preserve its constitutionality. Since, as discussed above, it is unconstitutional for criminal proceedings to be initiated by court clerks and without prior screening

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[3/] The Appellate Division below found that the statute could not be applied according to its terms, since that court found that court clerks are not limited to filing criminal charges in electronic form. (See Pet., pp. 27-28.)

[4/] This point was raised in the petition before this court. (Pet., pp. 24, fn. 7, 26-27.) The People have simply ignored the problem.

and approval by the authorized prosecutor, this court must interpret the statute to permit only the clerk's reception of charges initiated by a prosecutor in electronic form, as well as in "hard copy."

Frankly, petitioner believes it is obvious that the Legislature was simply providing an additional way for clerks to receive accusations of crime initiated by prosecutors. There is simply nothing in the legislative history to suggest that the Legislature believed it was engaged in the momentous change of authorizing court clerks to initiate criminal proceedings for the first time in the history of California. However, should this court agree with the People that the statute does authorize clerks to initiate criminal proceedings, then this court must strike that statute down as resulting in an unconstitutional violation of due process and the separation of powers.

III

THE PEOPLE HAVE FAILED TO SHOW THAT THEIR BELATED APPROVAL OF THE "COMPLAINT" FILED IN THIS CASE OCCURRED WITHIN THE STATUTE OF LIMITATIONS PERIOD

Petitioner has noted that even if the People could belatedly "approve" a charge filed by a court clerk, no criminal proceeding could lawfully be initiated until such an approval occurred. Petitioner has further noted that such approval did not occur in this case until long after the expiration of the statute of limitations. (Pet., pp. 22.) The People assert that "the fugitive defendant does not reap the benefit of the statute of limitations" (Opp., pp. 19-20.) The People's point is not well taken for two reasons. First, appellant was not a "fugitive" as regards the misdemeanor charge which is at issue. A fugitive is one who flees to avoid a prosecution. Appellant was never arrested for nor required to appear on the charge of violating Vehicle Code section 40508. It is very doubtful that she even knew such a charge was

pending. She may have been a "fugitive" as regards the underlying infractions, but not as to the misdemeanor herein at issue.

Second, there is nothing in California law which tolls or extends the statute of limitations merely because the defendant is a fugitive. Penal Code section 803, subdivision (d), provides that the statute of limitation is tolled if the defendant is out of the state, but that provision does not require that the defendant be a fugitive, and the maximum tolling period is three years. Even if petitioner could have been shown to have been out of state, which is not likely, the delay in prosecution was over four years, and thus could not be saved by section 803(d). The claim that the statute of limitations is vitiated if the defendant is a fugitive finds no support in California law.

It is true that the issuance of an arrest warrant commences a proceeding for the purposes of the statute of limitations. (Pen. Code § 804, subd. (d).) However, this presupposes that a valid complaint has been filed giving a magistrate jurisdiction to issue a warrant, or that a defendant has failed to appear in a matter as required by law. (See 66 Ops.Atty.Gen. 256.) As discussed herein, there was no valid complaint in this case, and appellant was never required to appear upon the misdemeanor charge at issue. Consequently, the People's argument that the record is insufficient because they did not act to include a document on appeal which might have shown that a warrant was issued on the failure to appear charge (Opp., pp. 23-24) is specious–even if there was such a warrant, there was no valid complaint which would have authorized the warrant, which would thus

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itself be a nullity, just like the document upon which it might have been based. [5/]

Finally, the People assert that a failure to appear is a "continuing offense," which would theoretically permit the violation to be charged as having been committed on any date upon which the defendant is not in court. (Opp., pp. 20-21.) The People cite no California authority supporting this theory. The People's reliance upon federal authority is somewhat circular, since federal law (unlike California law) specifically provides that the statute of limitations is inapplicable to a fugitive. (18 U.S.C. § 3290.) Federal courts have thus reasoned that the offense is a continuing offense because the statute of limitations is inapplicable. (See United States v. Gray (9th Cir. 1989) 876 F.2d 1411, 1419.)

Moreover, although colloquially termed "failure to appear," the offense defined by Vehicle Code section 40508 is not "failure to appear," but is wilfully violating a written promise to appear or continuance of that promise. The "nature of the crime" (Opp., p. 20) is not failing to appear, but violating a promise to appear. A promise to appear is effective for only one specific date, and no promise to appear is made for any subsequent date, and thus could not be violated on any subsequent date. Consequently, the statutory language is not susceptible of being termed a "continuing offense."

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[5/] It should be emphasized that one of the protections given to the potential criminal defendant is that a prosecutor reviews the validity of a criminal proceeding before a warrant is issued. Otherwise, under the People's theory, a defendant may be subject to arrest and detention, perhaps for many weeks, on a charge which a prosecutor may ultimately determine should not have been filed. Due process is not protected by such a system.

Unlike jurisdictions in which the crime is not complete until the defendant finally appears (see Opp., p. 20), the offense defined in California law is complete on the date the defendant violates her promise to appear. If a charge is to be filed it can be filed immediately, and must usually be filed (if a misdemeanor) within one year thereafter. Unlike the situation in the cases cited by the People, such as United States v. Martinez (10th Cir. 1989) 890 F.2d 1088 (Opp., p. 20, and n.b. fn. 8), there is no question of the offender being able to avoid prosecution by remaining at large until the statute of limitations has expired, since the charge may be brought immediately, and no defense of lack of knowledge of the appearance date could be advanced, since the offense is not failure to appear, but violation of a promise to appear.

However, in fact this issue is not presented by the record of this case. The document filed in this case alleges a violation of appellant's promise to appear which occurred on July 23, 2002. That document was filed on August 12, 2002, and obviously could not serve as an accusation that an offense was committed on some future date. When the People "approved" of the document as a complaint, even if that served to convert the document into a valid accusatory pleading, they nevertheless did not purport to amend it to charge any different date for the commission of the offense, and thus the limitations bar was and is apparent from the face of the pleading.

If the People had wished to test their "continuing offense" theory, since the document which was before the court was a nullity, they certainly could have filed a valid complaint alleging a date of commission within the limitations period (e.g., under their continuing offense theory, any date prior to July 27, 2007) or otherwise alleging facts demonstrating that the statute of limitations had been satisfied. However, since appellant appeared on July 27, 2007, any ability the People had to do so expired no later than July 27, 2008.

Even if the People could, by later approval, transform an invalid document into a valid accusatory pleading, there was no valid pleading until after the applicable statute of limitations had expired, invalidating the judgment in this case.

## IV

## THIS COURT HAS AUTHORITY TO GRANT EXTRAORDINARY RELIEF IN THIS CASE

The People argue that since the Court of Appeal's order denying transfer is not subject to review, this court should not grant extraordinary relief, even if the Appellate Division's decision is clearly unlawful and permits enforcement of an unconstitutional statute. (Opp., p. 22.) However, the ability of this court, and of the Court of Appeal, to act upon a petition for extraordinary relief, despite the lack of authorization for direct review of Appellate Division (previously, Appellate Department) rulings, when necessary to decide important points of law, has been settled for decades. (See, in addition to the cases already cited in Paragraph XVII of the petition, Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 454; In re Zerbe (1964) 60 Cal.2d 666, 667; In re Panchot (1968) 70 Cal.2d 105, 107; Bellamy v. Appellate Division (1996) 50 Cal.App.4th 797, 800.)

Writs have issued to the Appellate Division even when that court certified the matter to the Court of Appeal, resulting in a denial of transfer. (In re Zerbe, supra, 60 Cal.2d at p. 667.) Thus, there would seem to be no basis for concluding that the new rules permitting a party to seek transfer in the absence of Appellate Division certification would make any difference in the availability of relief. In fact, this court has itself recently recognized the availability of this procedure, even after the adoption of the new rules. (See Tecklenburg v. Appellate Division (2009) 169 Cal.App.4th 1402, 1405 [this court treated the matter as one in certiorari in that case].) Accordingly, given the importance and

continuing nature of the issues in this case, and the clear violation of constitutional standards authorized by the Appellate Division, writ review in this instance is clearly appropriate.

## CONCLUSION

The People assert that this court should not act because there is no conflict in appellate decisions interpreting Penal Code section 959.1. (Opp., p. 24.) That is obviously because there are no published appellate decisions interpreting that statute. What there is, however, is a large and consistent body of law showing that if that statute authorizes court clerks to initiate criminal proceedings, there is a conflict between that statute and constitutionally-mandated due process and separation of powers. That conflict should not be allowed to fester in California law, and it is to resolve that conflict that petitioner has presented this important and constantly recurring issue to this court. This court should accordingly issue its writ of mandate as prayed.

Respectfully submitted,

Ilya Alekseyeff,
John Hamilton Scott,
Deputy Public Defenders

By _____
John Hamilton Scott
Deputy Public Defender

Attorneys for Petitioner

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to the California Rules of Court, the REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF PROHIBITION/MANDATE in this action contains 4,659 words. Counsel relies on the word count of the WordPerfect X3 program used to prepare this brief.

JOHN HAMILTON SCOTT
Deputy Public Defender

DECLARATION OF SERVICE

I, the undersigned, declare:

I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on August 27, 2009, I served a copy of the within REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE, JEWERELENE STEEN, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid in the United States Mail in the County of Los Angeles, California, addressed as follows:

ATTORNEY GENERAL
STATE OF CALIFORNIA
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

PRESIDING JUDGE
SUPERIOR COURT
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012

CLERK, APPELLATE DIVISION
SUPERIOR COURT
111 NORTH HILL STREET
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CARMEN TRUTANICH, CITY ATTORNEY
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CLERK, CALIFORNIA COURT OF APPEAL
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LOS ANGELES, CA 90013

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 27, 2009, at Los Angeles, California.

FREDDY CAMPOS