S249792

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JAMES GUND, et al.
Plaintiffs, Appellants & Petitioners,

v.

COUNTY OF TRINITY, et al.,
Defendants and Respondents.

After a Decision by the Court of Appeal,
Third Appellate District, Case No. C076828
(TCSC No. 11CV0080)

RESPONDENTS' BRIEF

PORTER SCOTT
A Professional Corporation
John R. Whitefleet, SBN 213301
350 University Avenue, Suite 200
Sacramento, CA 95825
Telephone: 916.929.1481
Facsimile: 916.927.3706
Attorneys for Defendants/Respondents

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I.

INTRODUCTION

This matter stems from a 911 call in a remote area of Trinity County. According to Plaintiffs, after receiving a 911 call for help in their area, Trinity County Sheriff's Department Deputy Sheriff Defendant Corporal Ron Whitman called Plaintiff Gund. As he was hours away, Plaintiffs claimed the Deputy asked them to "check" on a neighbor in response to the 911 call for help. Unbeknownst to Deputy Whitman, a third party was present at the neighbors. Plaintiffs went to the house and engaged the stranger, who attacked Plaintiffs.

At the trial court, Defendants moved for summary judgment citing Plaintiffs' own testimony of the events, arguing that Plaintiffs either should be deemed employees or volunteers, either of which means that Plaintiffs must seek remedy by way of the Workers' Compensation scheme. Specifically, Defendants first argued Labor Code section 3366 applied, which deems anyone who assists a deputy in his law enforcement functions an 'employee' for purposes of Workers' Compensation. Alternatively, Defendants next argued Trinity County Resolution No. 163.87 applies, which deemed citizens who volunteer to assist a deputy in his functions to be employees.

In ruling on the motion for summary judgment, the trial court found that Labor Code section 3366 applied, rejecting Plaintiffs' narrow and unsupported interpretation that the phrase "active law enforcement" should be read to mean "suppression of crimes and arrest and detention of criminals." In light of this finding, the trial court rejected that Plaintiffs were volunteers under the Trinity ordinance.

Plaintiffs appealed, taking a slightly different tack. Plaintiffs characterized the 911 call as akin to a welfare check, because it "likely weather related," and "probably no big deal" which should not be considered "active law enforcement" under Labor Code section 3366, because it does not carry the same risk of death or injury, or because they were not asked to assume such risks by the Deputy.

The Court of Appeal affirmed. Specifically, the Court of Appeal found that Plaintiffs' alleged claim that Cpl. Whitman stated the 911 call was "likely weather related" and purportedly omitted facts suggesting potential criminal activity was irrelevant to the statutory construction of Labor Code section 3366. In that regard, the Court of Appeal found that "[h]ad the deputy responded to the 911 call, he clearly would have been engaged in active law enforcement,

because any 911 call seeking unspecified help presents a risk of criminal activity." Accordingly, responding to a 911 call regardless of the nature of the alleged misrepresentations was assisting in "active law enforcement" as used in Labor Code section 3366. The Court of Appeal did not address Trinity County Resolution No. 163.87.

This Court *sua sponte* granted review. In their opening brief, Plaintiffs continue to argue the nature of the 911 call was more akin to "community caretaking" function of law enforcement, and their subjective speculation into the deputy's statements about the 911 call being "likely weather related" should allow them to assume this was not real law enforcement activity.

Defendants submit such a novel interpretation is contrary to the plain meaning of the phrases within Labor Code section 3366 and ignores proper edicts of statutory construction, particularly in light of the way other courts have viewed the phrase. Defendants submit the lower courts correctly interpreted Labor Code section 3366 to include the conduct complained of – a 911 call for help as a law enforcement function. Alternatively, the appeal may be confirmed by the application of language in Trinity County Resolution No. 163.87.

II.

STATEMENT OF FACTS AND THE CASE

Corporal Ron Whitman is a deputy sheriff with the Trinity County Sheriff's Department. (Clerk's Transcript "CT" 2-537, 2-583, 3-713). On March 13, 2011, Cpl. Whitman contacted Norma Gund via telephone. (CT 2-557, 2-558; 2-583, 3-676). Cpl. Whitman identified himself and told Norma Gund that there was a 911 call from a "Christine" who said "help me." (CT 2-558, 2-561-2, 2-584). Plaintiff Norma Gund claims Cpl. Whitman told her he was "hours away." (CT 2-560, 2-583, 2-584). Plaintiff Norma Gund claims Cpl. Whitman asked her to "go down to her house and check on her" to see if she was okay. (CT 2-561, 2-563-4, 2-584, 3-676). Plaintiff Norma Gund claims Cpl. Whitman told her, "Don't go down there without your husband." (CT 2-561-3, 2-584).

Plaintiff Norma Gund claims she relayed to her husband Cpl. Whitman's request to "go down there and check on her." (CT 2-561-3, 2-584, 3-676). They went together. (CT 2-553-4, 2-585, 3-676) Plaintiff James Gund understood he was checking on Christine's welfare. (2-553-4, 2-585) Thereafter, both were attacked and injured by a third party Tomas Gouvenour. (CT, 3-715)

On December 1, 1987, Trinity County adopted Resolution No. 163.87, "Resolution declaring any volunteer or unsalaried person to be county employees for purposes of workmen's compensation insurance." (CT 2-540-44) Resolution No. 163.87 provides that any person(s) who performs any service for the County either voluntarily or without pay, is deemed an employee of the County. (*Id*)

III.

LEGAL ARGUMENT

A. Labor Code Section 3366 Applies

This is matter of statutory construction that is of first impression before this court. Labor Code section 3366 states in pertinent part:

> (a) For the purposes of this division; each person engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county, and each person (other than an independent contractor or an employee of an independent contractor) engaged in assisting any peace officer in active law enforcement service at the request of such peace officer, is deemed to be an employee of the public entity that he or she is serving or assisting in the enforcement of the law, and is entitled to receive compensation from the public entity in accordance with the provisions of this division.

(Lab. Code, § 3366). While the phrase "active law enforcement service as part of the posse comitatus or power of the county" is not

defined within the statute or even preceding sections, the phrase is nonetheless modified by the conjunctive phrase "as part of the posse comitatus or power of the county". The phrase also appears as "engaged in assisting any peace officer in active law enforcement service at the request of such peace officer."

Defendants submit that Plaintiffs were engaged in "active law enforcement service" as part of "the posse comitatus" or "the power of the county" as well as "in assisting any peace officer in active law enforcement service at the request of such peace officer." It is not clear which section the appellate court was interpreting.

In interpreting a statute, courts apply the usual rules of statutory construction. It is a primary rule of statutory construction that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the statute. (*Bonnell v. Medical Bd. Of Cal.* (2003) 31 Cal. App. 4th 1255, 1261.) In this case, that intent is colored by the following truth:

> Underlying premise of exclusivity of the workers' compensation remedy is a presumed bargain that the employer assumes liability for industrial injury without regard to fault in exchange for limitations on the amount of that liability, and the employee is afforded relatively swift and certain payment of benefits to relieve the effects of industrial injury without having to prove fault but gives up the wider range of damages potentially available in tort...

(Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund (2001) 24 Cal. 4th 800, 811.) That is because the language in the statute should be construed "in the context of the entire statutory framework, with consideration given to the policies and purposes of the statute," as noted by the appellate court in this case, citing *Jones v. Superior Court* (2016) 246 Cal. App. 4th 390, 397.

To determine intent:

> "'The court turns first to the words themselves for the answer.'" [Citations.] "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute)..." 'We give the language of the statute its 'usual, ordinary import and accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose... The words of the statute must be construed in context, keeping in mind the statutory purpose... Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.'"

(Kane v. Hurley (1994) 30 Cal. App. 4th 859, 862.; see also *Amend v. City of Long Beach* (1965) 30 Cal. Comp. Cases 29 [construction worker entitled to Workers' Compensation benefits after suffering battery while "engaged in active law enforcement" by serving, at police request, as an informant against his co-worker who was suspected of selling stolen gun.].)

In statutory construction, the court must account for all the language contained therein, so as to avoid rendering one phrase essentially superfluous to the other. Stated another way, "[w]ords must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn. v. Public Utilities Com* (1979) 24 Cal. App. 3d 836, 844.)

1. Active Law Enforcement Service

"Active law enforcement service" appears twice in the statute, but is not actually defined within Labor Code section 3366. Other sections within the Labor Code, however, use the phrase. (See Labor Code, §§ 4850, 3212, 3212.6 and 3212.9.) In each instance, the phrase "active law enforcement service" in those sections is used as simply a way of identifying the main duties of a peace officer, as opposed to other positions that may occasionally be called upon within the field, but are not peace officers, such as telephone operator, clerk, stenographer, machinist, mechanic, firefighters or first-aid responders.

For example, in prefatory sections regarding the Workers' Compensation scope, Labor Code sections 3212.6 and 3212.9, both sections distinguish "active law enforcement service" from "those

whose principal duties are clerical" such as "stenographers, telephone operators, and other office workers." These sections also appear to make a distinction between "active law enforcement service" and firefighting and first-aid responders. In other words, "active law enforcement service" has been defined to mean the position of "peace officer" as opposed to other positions.

Similarly, Labor Code section 4800 regarding Special Payments to Certain Persons, indicates a peace officers' "active law enforcement services" are not those duties of a telephone operator, clerk, stenographer, machinist, mechanic, or "otherwise clearly not falling within the scope of active law enforcement service, even though this person is subject to occasional call or is occasionally called upon to perform duties within the scope of active law enforcement service." In other words, clerical or technical duties are excluded.

Likewise, the phrase "active law enforcement service" appears in various sections of the Public Employees' Retirement Act (e.g., Gov. Code §§ 20017.5, 20021.5) as well as in the County Retirement Law of 1937 (e.g., Gov. Code §§ 31469.3, 31470.3, 31470.6, 31558). The distinction in those statutes again appears to be based on the

peace officer's position and general duties arising therefrom.

The Court of Appeal, Fourth Appellate District, Division Two also noted the phrase "active law enforcement essentially refers to a "position" as opposed to the type of activities. (*Crumpler v. Board of Administration* (1973) 32 Cal. App. 3d 567, 577, citing 22 Ops. Cal. Atty. Gen. at p. 229.) Indeed, the Attorney General made the distinction between "position" and "principal duties" of active law enforcement. (*Id.*) ([describing duties to include "active investigation and suppression of crime; the arrest and detention of criminals and the administrative control of such duties in the offices of the sheriff and district attorney," but not limited to "physically active" work such as the arrest and detention of criminals, but "duties which expose officers and employees to physical risk in the law enforcement field (see Gov. Code, § 31901)"]).

In other words, the Labor Code has consistently utilized "active law enforcement" as referring to a position, and encompassing the duties of that position in the broadest sense, in an attempt to distinguish those positions and duties like secretarial or administrative positions. It is thus logical that intent of the Legislature in using the phrase within Labor Code section 3366 was as a simple reference to

the position that encompasses peace officer duties, as distinguished from other types of position without such duties.

Plaintiffs seek to parse out the phrase "active law enforcement service" to include narrowly only suppression of crime and/or arresting and detention of criminals, but not 'welfare' type calls in response to 911 calls for help, relying on cases like *Crumpler*, 32 Cal. App. 3d at 578, *Boxx v. Board of Administration* (1980) 114 Cal. App. 3d 79, and *McCorkle v. City of Los Angeles* (1969) 70 Cal. 2d 252.

These cases are not contrary to a finding that "active law enforcement" includes responding to 911 calls. As Justices Traynor, et al., in their concurring section noted, "[t]he legislative purpose of [Labor Code section 3366] was to cover a person who assumes the functions and risks of a peace officer...". (*McCorkle, supra,* 70 Cal. 2d at p. 264 [(merely pointing out skid marks to a traffic officer does not constitute "active law enforcement", citing 4 Cal. Law Revision Com. Rep. (1963) pp. 1505-1507].) In other words, *McCorkle* is readily distinguishable from a civilian taking active steps in response to a 911 call, which clearly assumes the functions and risks of a peace officer.

In *Crumpler*, the court was called upon to interpret Government Code section 20020 (similar to what is now Government Code section 20045), regarding retirement benefits claimed by an animal control officer in San Bernardino County. In that regard, it was critical to the analysis regarding what was considered the animal control officer's principal duties in order to determine eligibility. In distinguishing an animal control officer's duties as opposed to a "local safety member" the court reasonably concluded that the "phrase 'active law enforcement service' as used in section 20020 was no doubt intended to mean law enforcement services normally performed by policemen." (*Crumpler*, 32 Cal.App. 3d at p. 578.) In other words, the court distinguished a peace officer principal duties from the animal control officer's principal duties, the court found an animal control officer fell did not fall under the definition of 'safety member.'

In *Boxx*, the court was again asked to interpret Government Code section 20020 for purposes of determining retirement benefits, to a patrolman working for the Housing Authority of the City of Los Angeles ("HACLA"). The *Boxx* trial court made a finding that the respondent was performing duties of a police officer, which the appellate court affirmed, essentially rejecting HACLA's arguments

there was no authority to hire police, but also because the officer was uniformed, armed, and could make arrests. (*Boxx*, 114 Cal. App. 3d at p. 86.) In other words, it was not merely the involvement of crime which was the deciding factor, but the scope of *Boxx*'s duties.

Here, it is undisputed that Trinity County Sheriff's Department Deputy Sheriff Cpl. Whitman was a deputy sheriff (CT 2-537, 2-583, 3-713), whose principal duties include law enforcement activities, is necessarily a "peace officer in active law enforcement service" within the meaning of Labor Code section 3366 - meaning his duties implicitly and statutorily involved the investigation of crime, and responding to 911 calls. In other words, there is no dispute Cpl. Whitman is peace officer and has all authority vested in him pursuant to Penal Code § 830.37. (See also Cal. Gov. Code § 20436 [(defining county peace officer)].) Thus, for either appearance of the phrase "active law enforcement" in Labor Code section 3366, it refers to his position, for which the deputy was qualified.

Equally important, a 911 call by someone in unidentified distress – where someone is not calling for an ambulance or first aid - invokes the power of law enforcement, even if "likely weather related." The appellate court correctly recognized that vague 911

calls present risks of a peace office in his principal duties.

Indeed, this court has implicitly recognized that responding to vague 911 calls are within those principal duties of a peace officer. (See *People v. Dolly* (2007) 40 Cal. 4th 458 [majority rejecting the proposition that that 911 calls from even anonymous callers must contain information "suggestive of criminal behavior" in order for officers to commence an investigation].) It is a peace officer in his duties of "active law enforcement" that determines if a crime is in progress, or some other need of assistance is required, even in his community caretaking function, in responding to a 911 call.

This is not the case where an animal control officer was attempting to enlist assistance, but a peace officer, on duty, responding to a 911 call. This case might be different if there were no 911 call; if the claimed "request" from Cpl. Whitman was motivated as a concerned neighbor. Plaintiffs do not dispute that the day-to-day activities of a law enforcement officer includes responding to 911 calls, the response to which necessarily dictates the duties of a peace officer engaged in "active law enforcement activities." It is axiomatic that the day-to-day activities of a law enforcement officer range far and wide, which include responding to 911 calls.

While 911 calls may not turn out to involve a crime, the investigation of a 911 call to determine whether a crime is involved certainly and reasonably is encompassed within those duties, notwithstanding some speculative interpretation that the 911 call it is "likely weather related." Indeed, Plaintiffs provide no authority that any weight should be placed on the speculation allegedly conveyed to Norma Gund that the call may be weather related. Here, this impetus (the 911 call) to the commencement of an investigation – even if it simply means checking on the welfare of a citizen - is the essence of law enforcement: it carries the inherent risks of the duties of a peace officer.

In other words, in interpreting "active law enforcement service as part of the posse comitatus or power of the county, and each person...engaged in assisting any peace officer in active law enforcement service at the request of such peace officer" of Labor Code 3366, under either phraseology, "active law enforcement" is distilled into principal duties such as responding to 911, as opposed to "clerks, typists, machinists, mechanics" who do not respond to remote locations in response to 911 calls.

Clearly, a 911 call of unknown distress has the potential to be any number of scenarios, including the need to prevent a disturbance of the peace. Courts have recognized even a silent 911 "hang-up call" suggests the possibility of illegality (see *United States v. Cohen*, 481 F.3d 896, 900 (6th Cir. 2007)) such that a breach of the peace – and its prevention – is a legitimate law enforcement goal.

Potentially preventing a breach of peace encompassed within the general request for some assistance by the 911 caller, and "pressed into service" by a law enforcement officer, necessarily fits within the definition of active law enforcement. Equally important, responding to a 911 call to check on a neighbor, even if "likely weather related," invokes the inherent risks of the duties of a peace officer. To claim that this vague supposition attributed to Cpt. Whitman somehow subjectively "dispelled" the inherent risk involved in those duties merely supplants Plaintiffs' subjective understanding with the objective risk of the peace officer's position. Such speculation about the cause of the 911 call does not diminish the inherent risks in responding to such 911 calls.

Indeed, the United States Supreme Court noted that the "role of a peace officer includes preventing violence and restoring order...".

(*Brigham City v. Stuart* (2006) 547 U.S. 398, 406.) This includes conducting welfare checks on citizens. (*People v. Hochstraser* (2009) 178 Cal. App. 4th 883 [officers were dispatched to conduct a welfare check after a woman and her two-year-old son were reported missing].)

"Citizens call 911 for many different reasons. A citizen may call 911 in order to report an emergency, be it criminal activity, a fire, or a medical emergency, but someone may also call 911 because he or she misdialed another number, accidentally activated a speed dial feature, or wished to pull a prank on the authorities...". (*United States v. Cohen*, 481 F.3d 896, 900 (6th Cir. 2007) [(noting that while even a "silent 911 hang-up call could be said to have suggested the possibility of, among other things, a limited 'assertion of illegality,'" absent any corroboration did not support reasonable suspicion for the stop of a vehicle in the area].)

Nonetheless, medical emergencies or other civil disturbances may lead to an officer ensuring someone is not injured. (See, e.g., *State v. May* (2007) 2007 Ohio 1428, [finding that officer that was dispatched to investigate two hang up calls with whispering had a duty to enter the home to inquire whether residents needed assistance,

noting that 911 hang up calls are "inherent emergencies" that "only cease once the emergency responder is able to ascertain whether someone is in need of aid. Once the responder discovers that no emergency exists, there is no need to further investigate.])

Defendants respectfully submit that duties of peace officers include responding to those matters initiated by the 911 call system to render aid or investigate some unrest, and thus encompass a deputy's request for assistance to "check" on a neighbor in response to a 911 call. (See *Davis v. Washington* (2006) 547 U.S. 813 [the caller is "seeking aid, not telling a story about the past."].) Indeed, the primary purpose of a 911 call is to enable police assistance to meet an ongoing emergency. (See *Ibid.* ["911 calls are the predominant means of communicating emergency situations" and "are distinctive in that they concern contemporaneous emergency events, not general criminal behavior..."] and *U.S. v. Terry Crespo* 356 F.3d 1170, 1176 (9th Cir. 2004) (noting that 911 calls are "entitled to greater reliability than a tip concerning general criminality because the police must take 911 emergency calls seriously and respond with dispatch"].)

Plaintiffs cite to *People v. Ray* (1999) 21 Cal. 4th 464 to bolster their argument that community caretaking function takes the 911 call

in this instance out of "active law enforcement" because of their subjective understanding. This must be rejected. In *Ray*, the court analyzed the emergency aid exception to the Fourth Amendment, where police officers "may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance" as part of the officer's duties but not related to the investigation of crimes. (*Id.* at p. 471.) In other words, the court implicitly recognized the officer's duties include community caretaking, not that such were outside "active law enforcement".

By Plaintiffs' logic, Labor Code section 3366 should be interpreted to mean "active law enforcement as understood by the citizen" for which there is no authority and would otherwise stand against the reasonable rules of statutory construction. Contrary to Plaintiffs' cascading consequences argument, affirmation of the appellate ruling would have no effect on Fourth Amendment jurisprudence.

Plaintiffs also argue that in order for Labor Code 3366 to apply, the "active law enforcement" must by "voluntary." (AOB, p. 30). Plaintiffs rely on *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10

Cal. 3d 222, 229. Plaintiffs miss the mark.

The court in *Moyer* was interpreting a provision of Labor Code section 139.5 that "acceptance [of a rehabilitation program] shall be voluntary and not be compulsory," where a rated linebacker's rating changed without knowing that before accepting the employer's rehabilitation program, he was unaware of the consequences of his doing so. Thus, *Moyer* has no bearing on whether a person is a volunteer when performing services, nor is it about employee versus volunteer status.

This argument is tantamount to another attempt to interject negligence of the deputy into these provisions of the Labor Code, which must be rejected. "Under the Workers' Compensation statutes, an employee who is injured in the course of his employment may recover compensation benefits from his employer without regard to the negligence of either party." (*Rodgers v. Workers' Comp. Appeals Bd.* (1984) 36 Cal. App. 3d 330, 334 [citing Labor Code section 3600]); see also *Wright v. FMC Corp.* (1978) 81 Cal. App. 3d 777 [(that defendant concealed and misrepresented the hazard to induce plaintiff to accept employment did not take the case out of the statutory provisions which generally make workers' compensation the

exclusive remedy for injuries in the course of employment].) "The fact that appellant founds his [case] upon the deceit allegedly practiced by [the employer] is immaterial." (*Buttner v. American Bell Tel. Co.* (1940) 41 Cal. App. 2d 581, 584.)

Ironically, Plaintiffs rely on the "risk of physical injury" exception to the application of immunity under Government Code section 818.8 in *Garcia v. Superior Court* (1990) 50 Cal. 3d 728. (AOB, p. 33) Defendants submit such is a tacit admission that the 911 call at issue carried the risk of physical injury. Regardless, "likely weather related" cannot reasonably be interpreted to be the equivalent of "willful and conscious disregard of the rights and safety of others" to meet the definition of malice. Such alleged statements again invoke negligence that should not be read into the Labor Code. Accordingly, this court should affirm.

B. Alternatively, Plaintiffs are Deemed Employees Under the County's Resolution as Volunteers

Should the court not affirm on the above grounds, Defendants submit this court may also affirm[1] based on Trinity County Resolution No. 163-87, which provides that any person who performs any service

[1] This Court may affirm based on any grounds supported by the record. See *Econ. Empowerment Found. v. Quackenbush* (1997) 57 Cal. App. 4th 677, 690, 692 n. 15.

for the County either voluntarily or without pay, is deemed an employee of the County for purposes of Workers' Compensation.

A volunteer is a person not a regular employee, not paid, or otherwise not considered an employee within the meaning of Labor Code § 3352, subdivision (i). (See e.g., *Brassinga v. City of Mountain View* (1998) 66 Cal. App. 4th 195 [officer, assigned to training, did not "volunteer" for purposes of Labor Code when he acquiesced to play a particular role during the training exercises, which caused his death, and thus workers' compensation was the exclusive remedy]; see also *Barragan v. Workers' Comp. Appeals Bd.* (1987) 195 Cal. App. 3d 637, [explaining volunteering to mean expending ones' time at a task without any form of compensation] and *Munoz v. City of Palmdale* (1999) 75 Cal. App. 4th 367, review denied [unpaid volunteer who had placed a coffee pot on the shelf was neither an employee nor servant under the volunteer exclusion of Labor Code section 3352, subdivision (i)]). Here, Plaintiffs were not paid and thus were volunteers under the Trinity County Ordinance, such that Workers' Compensation applies.

IV.

CONCLUSION

Defendants respectfully submit that this court affirm the Court of Appeal's opinion, finding that Plaintiffs were engaged in active law enforcement as defined in Labor Code section 3366, or that Plaintiffs be deemed employees under Trinity County Resolution No. 163-87, such that the action is barred by Workers' Compensation.

Respectfully submitted,

Dated: December 20, 2018

PORTER SCOTT

A Professional Corporation

By _____
John R. Whitefleet
Attorneys for Respondents
COUNTY OF TRINITY and
CORPORAL RON WHITMAN

CERTIFICATE OF COMPLIANCE

I certify that the text of this document uses a 14 point Times New Roman font and consist of 5425 words as counted by Microsoft Wood Processor 2013 processing program used to generate this document.

Dated: December 20, 2018 PORTER SCOTT

A Professional Corporation

By 

John R. Whitefleet
Attorneys for Respondents
COUNTY OF TRINITY and
CORPORAL RON WHITMAN

Gund, et al. v. County of Trinity, et al.
Court of Appeal, State of California, Case No. C076828
Trinity Superior Court, Case No. 11CV0080

DECLARATION OF SERVICE

I am a citizen of the United States and a resident of Sacramento County, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 350 University Avenue, Suite 200, Sacramento, California.

On the date indicated below, I served the following:

RESPONDENTS' BRIEF

✓ BY MAIL. I am familiar with this Company's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mailbox in the City of Sacramento, California, after the close of the day's business.

✓ BY ELECTRONIC SERVICE. Submitted via e-submission through the court's electronic filing system.

✓ BY OVERNIGHT DELIVERY. I caused such document to be delivered overnight to the office of the person(s).

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California on December 21, 2018.

Jessica L. Walker

SERVICE LIST

Attorneys for Appellants James Gund and Norma Gund Benjamin H. Mainzer ZWERDLING, BRAGG & MAINZER, LLP 804 Third Street Eureka, CA 95501 **Via U.S. Mail**	**Court of Appeal** California Appellate Court Third Appellate District 914 Capitol Mall, 4th Floor Sacramento, CA 95814 **Via U.S. Mail**
Trinity County Superior Court Trinity Superior Court Honorable Dennis Murray & Honorable Richard Schueler P.O. Box 1258 Weaverville, CA 96093 **Via U.S. Mail**	**Supreme Court** California Supreme Court 350 McAllister Street San Francisco, CA 94102 **Via Overnight Mail and E-Submission-Original and 9 copies** ***(1 to be conformed & returned)***