

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BONNIE DUCKSWORTH et al.	)	Case No.: S262699
	)	
Plaintiffs and Petitioners	)	
	)	
	)	
TRI-MODAL DISTRIBUTION	)	
SERVICES, INC. et al.	)	
Defendants and Respondents	)	
	)	
_____	)	

After a Final Opinion of the Court of Appeal of the State of California,  
Second Appellate District, Division 8, Case No. B294872,  
Affirming Final Judgments On Orders Granting Summary Judgments

The Superior Court of Los Angeles County, Case No. BC676917  
The Honorable Lia Martin, Presiding

**REPLY TO ANSWER TO PETITION FOR REVIEW**

Kevin A. Lipeles [SBN 244275]  
Thomas H. Schelly [SBN 217285]  
Julian Bellenghi [SBN 129942]  
**Lipeles Law Group, APC**  
880 Apollo Street, Suite 336  
El Segundo, CA 90245  
(310)322-2211  
Attorneys for Petitioners  
Bonnie Ducksworth and  
Pamela Pollock

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## **I.**

### **INTRODUCTION**

In their Answer to the Petition for Review, Respondents SCOTT'S LABOR LEASING COMPANY, INC. and PACIFIC LEASING, INC. ("Respondents") contend that the deadline for filing the instant Petition was June 1, 2020, and therefore the June 11, 2020 filing of said Petition was untimely and it should be dismissed. Respondents' contention is flawed in two respects. First, Respondents ignore the April 15, 2020 Emergency Order issued by Court of Appeal for the Second District ("Court of Appeal") which automatically extended for thirty days the finality of its opinions. In light of the Emergency Order, the Opinion at issue here, which the Court of Appeal filed on April 7, 2020, became final on June 6, 2020. As such, Petitioners' June 11, 2020 filing is timely. Second, Respondents suggest that the Opinion did not become final until thirty days after the Court of Appeal's April 22, 2020 Order denying Petitioners' petition for rehearing. But, that Order did not modify the Court of Appeal's April 7, 2020 Opinion. As such, by statute, it did not extend the Opinion's date of finality.

Respondents do not address the substance of the Petition in their Answer. This Court should consider that failure as an admission that the Petition has merit.

## **II.**

### **THE PETITION FOR REVIEW WAS FILED TIMELY**

Respondents' contention that the deadline for filing the instant Petition was June 1, 2020 is flawed in two respects. First, Respondents ignore the automatic thirty day

extension provided by the Court of Appeal’s April 15, 2020 Emergency Order. As permitted by Rule 8.66 of the *California Rules of Court*, given the current public health crisis, said Order automatically extended for thirty days any deadline or date occurring from April 20, 2020 to May 18, 2020, including the finality of its opinions:<sup>1</sup>

All time periods specified by the California Rules of Court that occur between April 20, 2020 through and including May 18, 2020 are hereby extended for 30 days from the date of the specified event. No application for extension of time shall be required.... *This extension applies to time periods pertaining to the finality of a decision when finality is not immediate under the California Rules of Court.*

(Order at p. 1; emphasis added)

The Court of Appeal filed its Opinion on April 7, 2020; thus under normal circumstances it would have become final on May 7, 2020 under Rule 8.264(b)(1). However, by its terms, the April 15, 2020 Emergency Order extended that finality deadline by 30 days to June 6, 2020. Petitioners filed the Petition on June 11, 2020, within ten days of June 6, 2020, as required by Rule 8.500(e)(1). Therefore, the Petition was filed timely.

Second, without specifically so arguing, Respondents suggest that the Court of Appeal’s Opinion did not become final until May 22, 2020, thirty days after the Court of Appeal issued its April 22, 2020 order denying Petitioners’ petition for rehearing, which

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<sup>1</sup> All subsequent references to a “Rule” are to the *California Rules of Court*.

falls outside the April 20 to May 18, 2020 automatic extension window specified in the April 15, 2020 Emergency Order. Absent this thirty day extension, Respondents suggest, Petitioners’ deadline to file the instant Petition under Rule 8.500(e)(1) was ten days after May 22, 2020 – June 1, 2020.<sup>2</sup>

Respondents’ argument ignores the clear language of Rule 8.264(c)(2). An order made subsequent to the filing of an opinion that “does not change the appellate judgment does not extend the finality date of the decision.” Clearly, the Court of Appeal’s April 22, 2020 order denying the petition for rehearing “did not change the appellate judgment.” Therefore the Court of Appeal’s Opinion would have become and remained final on May 7, 2020, within the 30 day extension window provided in the April 15, 2020 Emergency Order. Pursuant to that extension, the Opinion actually became final thirty days thereafter, on June 6, 2020. Petitioners filed their Petition on June 11, 2020, within ten days of June 6, 2020, as required by Rule 8.500(e)(1) and therefore the Petition is timely.

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<sup>2</sup> Respondents incorrectly argue that thirty days after April 22, 2020 is May 21, 2020. Thirty days after April 22 actually is May 22.

**III.**

**RESPONDENTS' FAILURE TO ADDRESS THE SUBSTANCE OF THE  
PETITION SHOULD BE CONSIDERED AN ADMISSION THAT THE PETITION  
HAS MERIT.**

Respondents' Answer does not address the Petition's substance. That failure should be deemed by this Court an admission that the Petition has merit. *Cf. Hennefer v. Butcher*, 182 Cal.App.3d 492, 504 (1986).

**IV.**

**CONCLUSION**

For the forgoing reasons and for those reasons set for in the Petition, Petitioners respectfully request that this Court grant their petition for review.

Respectfully submitted,

DATED: June 16, 2020

By: /s/Kevin A. Lipeles  
Kevin A. Lipeles [SBN 244275]  
Lipeles Law Group, APC

DATED: June 16, 2020

By: /s/Thomas H. Shelly  
Thomas H. Shelly [SBN 217285]  
Lipeles Law Group, APC

DATED: June 16, 2020

By: /s/Julian B. Bellenghi  
Julian B. Bellenghi [SBN 129942]  
Lipeles Law Group, APC

Attorneys for Petitioner  
Pamela Pollock

**CERTIFICATE OF COMPLIANCE**

Pursuant to rule 8.504(d) of the *California Rules of Court*, we hereby certify that this reply contains 1436 words. In making this certification, we have relied on the word count of the computer program used to prepare the petition.

DATED: June 16, 2020

By: /s/ Kevin A. Lipeles  
Kevin A. Lipeles [SBN 244275]  
Lipeles Law Group, APC

DATED: June 16, 2020

By: /s/ Thomas H. Shelly  
Thomas H. Shelly [SBN 217285]  
Lipeles Law Group

DATED June 16, 2020

By: /s/ Julian B. Bellenghi  
Julian B. Bellenghi [SBN 129942]  
Lipeles Law Group, APC

Attorneys for Petitioner  
Pamela Pollock



**PROOF OF SERVICE**

I, Elena Monroy, certify and declare that I am over the age of 18 years and not a party to this action and that my place of employment is in the County of Los Angeles, State of California, located at 880 Apollo St., Suite 336, El Segundo, California 90245.

On this date hereon, I served a true copy of the following document(s):

**REPLY TO ANSWER TO PETITION FOR REVIEW**

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<p>Maital Savin  <b>Littler Mendelson, P.C.</b>  2050 Main Street, Ste. 900  Irvine, CA 92614-8266  msavin@littler.com</p> <p><i>Attorneys of Record for Defendants-Respondents, Tri-Modal Distribution Services; Ability Tri-Modal Transportation Services, Inc.; and Decoy Freight Systems</i>  (Via TrueFiling)</p> <p>///  ///  ///  ///  ///</p>	<p>Hon. Lia Martin  Los Angeles Superior Court  111 N. Hill Street – Dept 16  Los Angeles, CA 90012  (Via First Class Mail)</p> <p>California Court of Appeal, Second Appellate District, Division 8  300 South Spring Street, North Tower  Los Angeles, CA 90013-1213  (Via First Class Mail)</p>
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Daniel Keith Gaston

**Larson & Gaston LLP**

200 S Los Robles Ave #530

Pasadena, CA 91101

[daniel.gaston@larsongaston.com](mailto:daniel.gaston@larsongaston.com)

*Attorneys of Record for Defendants-Respondents, Scotts Labor Leasing Company, Inc., and Pacific Leasing, Inc.*

(Via TrueFiling)

Gloria Medel

**Larson & Gaston LLP**

200 S. Los Robles Ave., # 530

Pasadena, CA 91101

[gloria.medel@larsongaston.com](mailto:gloria.medel@larsongaston.com)

*Attorneys of Record for Defendants-Respondents, Scotts Labor Leasing Company, Inc., and Pacific Leasing, Inc.*

(Via TrueFiling)

Jack E. Jimenez

**Lewis Brisbois Bisgaard & Smith  
LLP**

633 W 5th Street, Ste. 4000

Los Angeles, CA 90071

[Jack.jimenez@lewisbrisbois.com](mailto:Jack.jimenez@lewisbrisbois.com)

*Attorneys of Record for Defendant-Respondent, Mike Kelso*

(Via TrueFiling)

///

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///

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///

Lann G. McIntyre

**Lewis Brisbois Bisgaard & Smith  
LLP**

701 B Street, Suite 1900

San Diego, CA 92101

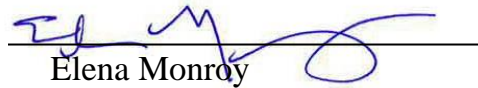
lana.mcintyre@lewisbrisbois.com

*Attorneys of Record for Defendant-  
Respondent, Mike Kelso*

(Via TrueFiling)

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

Executed on June 16, 2020 at El Segundo, California 90245.

  
Elena Monroy

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **DUCKSWORTH v. TRI-MODAL DISTRIBUTION SERVICES**

Case Number: **S262699**

Lower Court Case Number: **B294872**

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Lann McIntyre Lewis Brisbois Bisgaard & Smith LLP 106067	lann.mcintyre@lewisbrisbois.com	e-Serve	6/16/2020 10:10:40 PM
Kevin Lipeles The Law Office of Kevin A Lipeles 244275	kevin@kallaw.com	e-Serve	6/16/2020 10:10:40 PM
Tracy Forbath Lewis, Brisbois, Bisgaard & Smith LLP 292711	tracy.forbath@lewisbrisbois.com	e-Serve	6/16/2020 10:10:40 PM
Jack Jimenez Lewis Brisbois Bisgaard & Smith 251648	jack.jimenez@lewisbrisbois.com	e-Serve	6/16/2020 10:10:40 PM
Elena Monroy Lipeles Law Group, APC	elena@kallaw.com	e-Serve	6/16/2020 10:10:40 PM
Julian Bellenghi, Esq.  129942	julian@kallaw.com	e-Serve	6/16/2020 10:10:40 PM
Daniel Gaston, Esq.	daniel.gaston@larsongaston.com	e-Serve	6/16/2020 10:10:40 PM

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

6/16/2020

Date

/s/Elena Monroy

---

Signature

Lipeles, Kevin (244275)

---

Last Name, First Name (PNum)

Lipeles Law Group, APC

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Law Firm