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SUPREME COURT
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Deputy

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *James Richard Johnson v. California Department of Justice*
Case No. S209167
Court of Appeal Case No. E055194

To the Honorable Chief Justice Tani Cantil-Sakauye, and the Honorable Associate Justices of the California Supreme Court:

Pursuant to this Court's December 18, 2013 letter, Petitioner and Appellant, James Johnson (hereinafter "appellant"), submits the following letter brief addressing the following questions:

(1) What level of equal protection scrutiny applies to the statutory difference in sex offender registration requirements between those convicted of violating Penal Code section 288a and those convicted of violating Penal Code section 261.5?

(2) Has *Hofsheier* presented practical difficulties of application in the trial and appellate courts?

(3) Has *Hofsheier* been extended beyond the sex offender registration

context in ways that could not have been anticipated at the time of the decision?

(4) Absent the limitations on *Hofsheier's* application asserted in *People v. Manchel* (2008) 163 Cal.App.4th 1108, the validity of which is challenged in the present case, what principles, if any, constrain the application of *Hofsheier?*

(5) Does *Hofsheier's* equal protection analysis logically extend beyond the context of sex offender registration?

(6) If *Hofsheier's* holding is overruled, would and should the court's decision apply retroactively to offenders who have been convicted or released from custody since the decision in *Hofsheier* without registration orders or who have obtained relief by writ petition from preexisting registration requirements?

In short, appellant submits: (1) that rational basis scrutiny applies and there is no rational relationship between disparity of treatment and some legitimate governmental purpose; (2) *Hofsheier* has not presented practical difficulties in the courts; (3) *Hofsheier* has not been extended beyond the sex offender registration context in ways that could not have been anticipated; (4) the application of *Hofsheier* is limited to situations where the two crimes being compared are absolutely identical aside for the prohibited sexual act, including the voluntary nature of the act, the ages of the people involved, and the intent required; (5) *Hofsheier's* equal protection analysis logically extends beyond the context of sex offender registration; and (6) if *Hofsheier* is overruled, the court's decision should not apply retroactively.

1. Rational Basis Scrutiny Applies to The Statutory Difference in Sex Offender Registration Between Those Conviction of Violating Penal Code Section 288a and Those Convicted of Violating Penal Code Section 261.5; There is No Rational Relationship Between Disparity of Treatment and Some Legitimate Governmental Purpose

The issue in this case is whether the equal protection principles of *People v. Hofsheier* (2006) 37 Cal.4th 1185 (*Hofsheier*) bar mandatory sex offender registration for a defendant convicted of Penal Code section 288a, subdivision (b)(2). Penal Code section 290 requires mandatory sex offender registration for a Penal Code section 288a, subdivision (b)(2) conviction, but does not require mandatory registration for a Penal Code section 261.5, subdivision (b) conviction.

The analysis of equal protection issues involves different levels of scrutiny, depending on the interests being protected. The three levels of review applied in equal protection cases are: (1) strict scrutiny, (2) intermediate scrutiny, and (3) rational basis. When suspect classifications or fundamental rights are at stake, equal protection analysis requires the use of the strict scrutiny standard. Under strict scrutiny, the government must show that the challenged classification serves a compelling state interest and that the classification is necessary to serve that interest. (*Loving v. Virginia* (1967) 388 U.S. 1, 11[87 S.Ct. 1817, 18 L.Ed.2d 1010].) Intermediate scrutiny applies to what are sometimes referred to as "quasi-suspect" classifications, which has been applied to discriminatory classifications based on sex or illegitimacy. Under intermediate scrutiny, the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest. Rational basis review is applied to all non-suspect classes. (*Clark v. Jeter* (1988) 486 U.S. 456, 461 [108 S.Ct. 1910, 100 L.Ed.2d 465].) Under rational basis, the government need only show that the challenged classification is rationally related to serving a legitimate state interest. (*Central State University v. American Assoc. of University Professors* (1999) 526 U.S. 124, 128 [119 S.Ct. 1162, 143 L.Ed.2d 227], citing *Heller v. Doe* (1993) 509 U.S. 312, 319-321[113 S.Ct. 2637, 125 L.Ed.2d 257].) A classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. (*Heller v. Doe, supra*, 509 U.S. at p. 320.)

In *Hofsheier*, this Court held that requiring a defendant, guilty of Penal Code section 288a, subdivision (b)(1), oral copulation with a 16 year old, to register as a sex offender, denied him equal protection because a person convicted of voluntary sexual intercourse with a minor of the same age, under Penal Code section 261.5, subdivision (c), would not face mandatory sex offender registration. Using the rational basis test, this Court could "perceive no reason why the Legislature would conclude that persons who are convicted of voluntary oral copulation with adolescents 16 to 17 years old, as opposed to those who are convicted of voluntary intercourse with adolescents in that same age group, constitute a class of "particularly incorrigible offenders" who require lifetime surveillance as sex offenders." (*Id.* at pp. 1206-1207, citations omitted.) Therefore, this Court concluded that the distinction requiring mandatory registration of defendants convicted of voluntary oral copulation with a minor of the age of 16 or 17, but not of someone convicted of voluntary sexual intercourse with a minor of the same age, violates the equal protection clauses of the federal and state Constitutions. (*Id.* at p. 1207.) This Court has also held that the lifetime sex offender registration requirement of Penal Code 290 is a regulatory statute that does not involve loss of liberty and thus is subject to

rational basis review.[1] (*People v. McKee* (2010) 47 Cal.4th 1172, 1211, fn. 14.)

In the instant case, as in *Hofsheier*, there is no conceivable legitimate purpose to which the law could be rationally related in order to pass the rational basis test. Here, requiring mandatory registration for those who engage in oral copulation with minors under 16 years of age, without such a requirement for those who engage in sexual intercourse with a minor under 16, is a distinction without any rational support which does not withstand equal protection scrutiny. As the classification does not withstand equal protection scrutiny, appellant's mandatory registration requirement must be reversed.

2. *Hofsheier* Has Not Presented Practical Difficulties of Application in the Trial and Appellate Courts

As of December 27, 2013, there are hundreds of California opinions citing *Hofsheier*. A Lexis search reveals that this Court has cited to *Hofsheier* 10 times in the seven years and eight months since it was published. However, most of the cases simply cite to general principles of equal protection or remand for reconsideration. In fact, this Court has only discussed *Hofsheier* in detail once. In *People v. Picklesimer* (2010) 48 Cal.4th 330, this Court upheld *Hofsheier* and explained the procedural method of asserting a claim.

The appellate courts have cited to *Hofsheier* more often, in approximately 65 published cases and 378 unpublished cases. However, again, most of the cases cite generally to *Hofsheier's* equal protection principles regarding the rational basis test and those who are similarly situated. For example, *Hofsheier* is often cited in cases dealing with Penal Code section 4019 and whether equal protection requires that amendments be applied retroactively. (See *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 52 [citing *Hofsheier* and noting the first prerequisite to a meritorious claim under the equal

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[1] Other courts have suggested that defendants may have a liberty interest in remaining free from the sex offender registration, in the due process context. (See *Paul v. Davis* (1976) 424 U.S. 693, 711-12 [96 S.Ct. 1155, 47 L.Ed.2d 405] [While stigma alone is inadequate to affect a liberty interest, stigma plus an alteration in legal status can encroach on a cognizable liberty interest]; *Neal v. Shimoda* (9th Cir. 1997) 131 F.3d 818, 830 [prison inmates have a liberty interest at stake in the determination of their status as sex offenders]; but see *Smith v. Doe* (2003) 538 U.S. 84, 1010 [123 S.Ct. 1140, 155 L.Ed.2d 164] [while the publication of an offender's identity may cause embarrassment, "these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record."].)

protection clause is a showing the state has adopted a classification that affects two or more similarly situated groups in an unequal manner]; *People v. Kennedy* (2012) 209 Cal.App.4th 385, 397 [citing *Hofsheier* and noting where the statutory distinction at issue neither "touch[es] upon fundamental interests" nor is based on gender, there is no equal protection violation "if the challenged classification bears a rational relationship to a legitimate state purpose. [Citations.]"].) *Hofsheier* is also cited in other cases for its principles on equal protection, including cases relating to same sex marriage and domestic partnerships (*In re Marriage Cases* (2006) 143 Cal.App.4th 873; *Burham v. Public Employees' Retirement System* (2012) 208 Cal.App.4th 1576), zoning ordinances (*County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188), and realignment (*People v. Lynch* (2012) 209 Cal.App.4th 353; *People v. Cruz* (2012) 207 Cal.App.4th 664). Thus, despite what may seem like a high number of cases citing *Hofsheier*, it does not appear as though it has presented many practical difficulties in application in the trial and appellate courts. Instead, courts simply appear to be citing generally to *Hofsheier* to explain underlying equal protection principles.

Indeed, the courts appear to be declining to further extend *Hofsheier*. For example, in *Shoemaker v. Harris* (2013) 214 Cal.App.4th 1210, the court held that possession and reproduction of child pornography, which involved perpetuating the exploitation of minors for purposes of the offender's sexual stimulation, could rationally be classified differently than exposing minors to sexually explicit materials or engaging with them in voluntary sexual conduct, as prohibited by the statutes cited for comparison. Similarly, in *People v. Gonzalez* (2012) 211 Cal.App.4th 132, the court held that because the defendant could not show that the children in the pornography that he possessed acted voluntarily, he could not show that he was situated similarly to someone who committed voluntary statutory rape.

In addition, courts have declined to extend *Hofsheier* to violations of Penal Code section 288, subdivision (a). In *People v. Tuck* (2012) 204 Cal.App.4th 724, 738 the court held that Penal Code section 288, subdivision (a), does not impose more severe treatment on persons convicted of violating its provisions than that imposed on similarly situated persons by other statutes for which there is no rational basis for distinction. There is no sexual offense involving only minors less than 14 years of age for which conviction does not require mandatory sex offender registration. Therefore, the statute does not treat similarly situated offenders differently, and the distinction drawn by the statute, based on the victim's age, bears a rational relationship to an appropriate legislative purpose. Similarly, in *People v. Singh* (2011) 198 Cal.App.4th 364, 367, 370-371 the court found the defendant is not similarly situated to offenders convicted under Penal Code sections 261.5, 288a, subdivision (b)(1) or 289, subdivision (h), because those provisions are not limited to children under the age of 14 and are general intent offenses. Likewise, in *People v. Alvarado* (2010) 187 Cal.App.4th 72, 79, the court held that "a section 288(a)

offense is limited to victims under the age of 14 years, who tend to be more vulnerable to being preyed upon by sexual predators than older children, and the offense requires a finding that, when the perpetrator committed the lewd act, he or she possessed specific intent 'to arouse or gratify the sexual desires of either the perpetrator or the victim.'" Therefore, the court concluded there was no equal protection violation in imposing mandatory registration for the defendant's attempted section 288, subdivision (a) conviction.

The courts have also declined to extend *Hofsheier* to annoying or molesting a child (*People v. Brandao* (2012) 203 Cal.App.4th 436 [holding while Penal Code section 647.6 does not have a specific intent requirement, the requirement that the conduct be motivated by an unnatural or abnormal sexual interest in children further differentiates it from *Hofsheier* and other cases involving voluntary sexual offenses]), indecent exposure (*People v. Honan* (2010) 186 Cal.App.4th 175[defendant did not demonstrate that persons convicted of indecent exposure in violation of Penal Code section 314, subdivision (1) are similarly situated to those convicted of lewd conduct]), and attempting to exhibit harmful material (*People v. Kennedy* (2009) 180 Cal.App.4th 403 [refused to extend *Hofsheier* to a defendant convicted of attempting to exhibit harmful matter to a minor via the Internet in violation of Penal Code section 288.2, subdivision (b)].) Finally, courts have also declined to extend *Hofsheier* to violations of Penal Code section 288, subdivision (c)(1), lewd acts with a child 14 of 15 years old, where the person is at least 10 years older than the child. For example, in *People v. Cavallaro* (2009) 178 Cal.App.4th 103 and *People v. Anderson* (2008) 168 Cal.App.4th 135, the courts held there is no relevant similarly situated group for which mandatory registration is not required that may serve as the basis for an equal protection challenge.

On the other hand, the courts have extended *Hofsheier* in very limited circumstances. In *People v. Thompson* (2009) 177 Cal.App.4th 1424, 1431, the court extended *Hofsheier's* holding to a 36-year-old defendant convicted of voluntary sodomy with a 17 year old, under Penal Code section § 286, subdivision (b)(1). In *People v. Ranscht* (2009) 173 Cal.App.4th 1369, the court extended *Hofsheier's* holding to a defendant convicted of voluntary digital penetration of a 13-year-old's vagina, under Penal Code section 289, subdivision (h). In addition in *People v. Taravella* (2010) 182 Cal.App.4th 161, *People v. Luansing* (2009) 176 Cal.App.4th 676, *People v. Hernandez* (2008) 166 Cal.App.4th 641, and *People v. Garcia* (2008) 161 Cal.App.4th 475, the courts extended *Hofsheier's* holding to a defendant more than 10 years older than a minor, who was convicted of voluntary oral copulation with a person under age 16 by a person older than age 21, under Penal Code section 288a, subdivision (b)(2).

People v. Manchel (2008) 163 Cal.App.4th 1108 is the only published case thus far, which has declined to extend *Hofsheier* to violations of Penal Code section 288a,

subdivision (b)(2). However, *Manchel* had been repeatedly rejected both in the cases cited above, and numerous unpublished opinions. In fact, the Attorney General has conceded that *Hofsheier* applies to violations of Penal Code section 288a, subdivision (b)(2), in at least two unpublished cases. (*People v. Porter* (Oct. 24, 2011, B228381) [nonpub. opn.]; *People v. Wagner* (Oct. 4, 2010, E049563) [nonpub. opn.].)[2]

In looking at the totality of the cases, it does not appear as though *Hofsheier* has presented practical difficulties in application. Rather, as discussed above, the majority of the cases simply appear to be using the general underlying principles to explain equal protection principles and have declined to extend *Hofsheier*.

3. *Hofsheier* Has Not Been Extended Beyond the Sex Offender Registration Context in Ways That Could Not Have Been Anticipated at the Time of the Decision

It does not appear *Hofsheier* has been extended beyond the sex offender registration context in ways that could not have been anticipated. As noted above, *Hofsheier* is often cited for its equal protection principles. For example, in *People v. Doyle* (2013) 220 Cal.App.4th 1251, the court held that the Legislature's different treatment of DUI offenders with prior convictions for gross vehicular manslaughter while intoxicated or second degree murder while driving intoxicated (*Watson* murder) is permissible under the equal protection clause. After laying out the principles in *Hofsheier* relating to when offenders who commit different crimes are similarly situated, the court concluded that "[w]hile the Supreme Court has not provided a bright-line rule for when those committing different crimes must be treated similarly, there can be no doubt that those who are convicted of manslaughter can be treated differently from murderers." (*Id.* at p. 1267.)

4. The Application of *Hofsheier* is Limited To Situations Where the Two

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[2] Appellant acknowledges California Rules of Court, Rule 8.1115, which provides "an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." However, appellant cites to it herein, to show that respondent, the People of the State of California, when represented by the Attorney General of California, rather than the San Bernardino District Attorney's Office, has reached a different conclusion. Rule 8.1115, subdivision (b)(2) provides that an unpublished opinion may be cited when the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

Crimes Being Compared Are Absolutely Identical Aside For The Prohibited Sexual Act, Including the Voluntary Nature of the Act, The Ages of the People Involved, and the Intent Required

Equal protection principles analyzing whether the state has adopted a classification that affects two or more similarly situated groups in an unequal manner constrain the application of *Hofsheier*. Specifically, *Hofsheier's* application should be limited to situations where the two crimes being compared are absolutely identical except for the prohibited sexual act. This includes looking at whether the act was voluntary, the ages of the people involved, and the intent required for each offense. *Hofsheier's* application should not depend on speculative inferences about what a defendant could have been convicted of. While respondent urges this Court to utilize Penal Code section 288 as a comparison, Penal Code sections 288a, subdivision (b)(2), and 261.5, subdivision (d), do not contain the element of intent or the 10-year age threshold that Penal Code section 288 contains. Instead, the proper comparison is between 288a and 261.5 as they are identical aside from the sexual act.

5. *Hofsheier's* Equal Protection Analysis Logically Extends Beyond the Context of Sex Offender Registration

In *Hofsheier*, this Court provided a detailed explanation of the equal protection analysis, including the "similarly situated" requirement, the rational relationship test, and the remedy for a violation. (*People v. Hofsheier*, *supra*, 37 Cal.4th at pp. 1198-1208.) As discussed above, *Hofsheier* is most often cited for its equal protection analysis and it has been cited in many cases beyond the context of sex offender registration. For example, in *County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188, which dealt with a zoning ordinance regarding a medical marijuana collective, the court cited to *People v. Hofsheier*, *supra*, 37 Cal.4th at p. 1200, stating, "When a statutory classification is challenged on equal protection grounds, most legislation is reviewed only to determine whether the classification bears a rational relationship to a legitimate state interest." In *People v. Vallejo* (2013) 214 Cal.App.4th 1033, the court rejected the defendant's contention that a sentence enhancement under Pen. Code section 12022.53, subdivision (d), as applied to him, violated substantive due process and equal protection. In its analysis, the court cited to *People v. Hofsheier*, *supra*, 37 Cal.4th at p. 1199, quoting, " 'The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.' [Citations.]" In *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 53, the court cited to the same principle from *Hofsheier* in analyzing whether the defendant was denied equal protection where he did not get additional conduct credits under a newly enacted version of Penal Code section 4019. In addition, in analyzing whether the realignment act violated equal protection, the court in *People v.*

Lynch (2012) 209 Cal.App.4th 353, cited to *People v. Hofsheier, supra*, 37 Cal.4th at pp. 1200-1201, stating "If groups are similarly situated but treated differently, the state must then provide a rational justification for the disparity." There are over 20 published cases citing *Hofsheier* for its equal protection analysis outside of the context of sex offender registration. Thus, *Hofsheier's* equal protection analysis logically extends beyond the context of sex offender registration.

6. If *Hofsheier's* Holding Is Overruled, The Court's Decision Should Not Apply Retroactively Due to Considerations of Fairness and Public Policy

"In determining whether a decision should be given retroactive effect, the California courts undertake first a threshold inquiry, inquiring whether the decision established new standards or a new rule of law. If it does not establish a new rule or standards, but only elucidates and enforces prior law, no question of retroactivity arises. [Citations.] Neither is there any issue of retroactivity when we resolve a conflict between lower court decisions, or address an issue not previously presented to the courts. In all such cases the ordinary assumption of retrospective operation [citations] takes full effect." (*Donaldson v. Superior Court* (1983) 35 Cal.3d 24, 36–37; see also *People v. Gallego* (1990) 52 Cal.3d 115, 170 ["for questions of retroactivity concerning matters of state law we adhere to the test employed in *Donaldson*"].)

"Unlike statutory enactments, judicial decisions . . . are generally applied retroactively. [Citation.] But considerations of fairness and public policy may require that a decision be given only prospective application. [Citations.] Particular considerations relevant to the retroactivity determination include the reasonableness of the parties' reliance on the former rule, the nature of the change as substantive or procedural, retroactivity's effect on the administration of justice, and the purposes to be served by the new rule. [Citations.]" (*Woods v. Young* (1991) 53 Cal.3d 315, 330.) Although a judicial decision ordinarily applies retroactively, a judicial decision is not given retroactive effect when it overrules controlling authority that parties might justifiably have relied on. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 378–379; *Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 372; *Woods v. Young, supra*, 53 Cal.3dat p. 330; see also *People v. Simon* (2001) 25 Cal.4th 1082, 1108; *People v. Blakeley* (2000) 23 Cal.4th 82, 91–92.)

For example, in *Woods v. Young, supra*, 53 Cal.3d 315, a medical malpractice

action against doctors and a medical center, the trial court granted the defendants summary judgment on the ground that the complaint was barred by the statute of limitations. The plaintiff had filed her notice of intent to sue pursuant to Code of Civil Procedure, section 364, subdivision (a), more than 90 days prior to the running of the one-year statute of limitations for actions based on professional negligence of health care provider, but did not file her complaint until one year and three weeks after the commission of the alleged negligent act. Prior to the plaintiff filing her action, several appellate courts had held that Code of Civil Procedure section 364, subdivision (d) extended the statute of limitations by 90 days if the notice if served within 90 days of the running of the statute of limitations. The Court of Appeal reversed the trial court's summary judgment ruling and this Court affirmed. This Court noted that "if the construction of the relevant statutes that we have adopted were applied retroactively to the facts of this case, plaintiff's action would be barred by the statute of limitations." (*Id.* at p. 329.) Thus, this Court concluded:

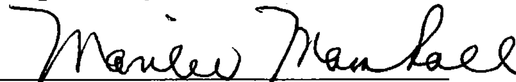
> Reliance by litigants on the former rule and the unforeseeability of change support prospective application of the rule adopted here. As we have observed, the issue presented in this case has been addressed in seven published Court of Appeal decisions. Although the Courts of Appeal were divided on the interpretation and application of section 364(d), all seven opinions concluded that the one-year limitations period was tolled during section 364(a)'s ninety-day waiting period regardless of when during the limitations period the notice of intent to sue was served. This unanimous conclusion established a settled rule upon which plaintiff could reasonably rely in determining when to file her action.

(*Id.* at p. 330.)

Similarly, in *People v. Simon, supra,* 25 Cal.4th 1082, a defendant who was convicted of two counts of a assault on a police officer claimed after trial that the court erred in failing to direct a verdict in his favor or instruct the jury on the question of venue. The Court of Appeal found that the defendant waived any objection to venue for failing to raise it at the preliminary hearing. The Court of Appeal recognized that past decisions were inconsistent regarding the proper procedure for raising and preserving a claim of improper venue and urged this Court to provide guidance on the matter. This Court concluded that a defendant in a felony proceeding forfeits a claim of improper venue when he or she fails specifically to raise such an objection prior to the commencement of trial. (*Id.* at p. 1086.) However, this Court agreed with the defendant and the attorney general that the holding should apply prospectively only. (*Id.* at p. 1108.)

In the instant case, as in *Woods v. Young*, *supra*, 53 Cal.3d 315, and *People v. Simon*, *supra*, 25 Cal.4th 1082, past decisions have been somewhat inconsistent. As discussed above, four courts have held that *Hofsheier* applies to violations of Penal Code section 288a, subdivision (b)(2), and *People v. Manchel, supra*, 163 Cal.App.4th 1108 has held that it does not apply. Thus, if *Hofsheier* is overruled, it would clearly establish a new standard, as it would again require mandatory registration for certain violations which are now subject only to discretionary registration. Since *Hofsheier,* defendants have relied on the decision by filing petitions, such as in the instant case, to remove the mandatory registration requirement and negotiating plea bargains to charges that did not require mandatory registration. If *Hofsheier* is overruled and the ruling is applied retroactively it would undoubtedly have a drastic effect on both the administration of justice, as well as individual defendants, as it would require reopening cases and imposing mandatory registration in cases where judges have exercised their discretion to find that registration is not required. It would also no doubt invalidate numerous settlements where pleas were in good faith negotiated to charges that did not involve mandatory registration. Many of such cases would likely have to proceed to trial. Therefore, as a matter of fairness and public policy, if *Hofsheier* is overruled, such a decision should not apply retroactively.

Respectfully submitted,



MARILEE MARSHALL
Attorney for Appellant

DECLARATION OF SERVICE BY MAIL AND ELECTRONIC SERVICE

I, the undersigned, declare:

I am over eighteen (18) years of age, and not a party to the within cause; my business address is 523 West Sixth Street, Suite 1109, Los Angeles, CA 90014; that on January 6, 2014, I served a copy of the within:

SUPPLEMENTAL LETTER BRIEF

on the interested parties by placing them in an envelope (or envelopes) addressed respectively as follows:

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Each said envelope was then, on January 6, 2014, sealed and deposited in the United States mail at Los Angeles, California, the county in which I maintain my office, with postage fully prepaid.

I, further declare that I electronically served a copy of the same above document from electronic notification address (marshall101046@gmail.com) on January 6, 2014 to the following entities electronic notification addresses:

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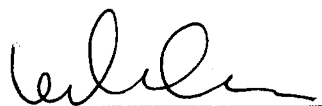
I additionally declare that I electronically submitted a copy of this document to the Supreme Court on its website at www.courts.ca.gov in compliance with the court's Terms of Use, as shown on the website.

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

Executed on January 6, 2014, at Los Angeles, California.



LESLIE AMAYA

James Richard Johnson v. California Department of Justice, Case No. S209167

CERTIFICATE OF COMPLIANCE

This brief consists of 4,411 words in 13 point font as counted by the word processing program used to generate it.

Dated: January 8, 2014

Respectfully submitted,

MARILEE MARSHALL