Case No. A138355

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FIRST APPELLATE DISTRICT,

DIVISION TWO

TAYLOR DANE,

Plaintiff/Appellant,

v.

CITY OF SANTA ROSA, et al.,

Defendants/Respondents.

On Appeal From the Judgment of the Superior Court
of the State of California, County of Sonoma
(Case No. SCV 253003, Hon. Nancy Case Shaffer, Presiding)

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT CITY OF SANTA ROSA; PROPOSED BRIEF

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LEAGUE OF CALIFORNIA CITIES
and CALIFORNIA STATE
ASSOCIATION OF COUNTIES

TO THE HONORABLE J. ANTHONY KLINE, PRESIDING JUSTICE OF THE FIRST DISTRICT COURT OF APPEAL, DIVISION TWO:

Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities and the California State Association of Counties ("*Amici*") respectfully apply for permission to file the accompanying brief amicus curiae in support of Respondent City of Santa Rosa. The brief has been prepared and is submitted concurrently with this application.

INTEREST OF *AMICI*

The League of California Cities ("League) is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance. The League appears frequently before the courts of appeal and Supreme Court as amicus curiae on matters affecting local government.

The California State Association of Counties ("CSAC") is a non-profit corporation. The membership consists of the 58 California counties.

CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

AMICI ARE FAMILIAR WITH THE ISSUES IN THIS CASE

Amici and its counsel are familiar with the issues in this case, and have reviewed the orders of the Superior Court and the briefs on the merits filed with this Court. As statewide organizations with considerable experience in this field, the League and CSAC believe they can provide important perspective on the issue before the Court. Counsel for *Amici* has represented public agencies in a broad range of cases in which plaintiffs asserted taxpayer standing under Code of Civil Procedure section 526a.

POINTS TO BE ARGUED BY *AMICI*

If permission to file the accompanying brief is granted, the League and CSAC will address the following issue:

> May a plaintiff who has neither been assessed a tax, nor paid a tax, claim standing to challenge a local agency's expenditure of tax proceeds under Code of Civil Procedure section 526a?

The League and CSAC will urge the Court to uphold the decision of the Sonoma County Superior Court.

Wherefore, the League of California Cities and the California State Association of Counties respectfully request this Court to grant this application to file the accompanying brief *amicus curiae*.

Dated: October 23, 2013

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

Thomas B. Brown
Matthew D. Visick
Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES
and CALIFORNIA STATE
ASSOCIATION OF COUNTIES

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Pursuant to Rule 8.200(c) of the California Rules of Court, the League of California Cities ("League") and the California State Association of Counties ("CSAC") (collectively, "*Amici*") respectfully submit this brief *amicus curiae* in support of Respondent City of Santa Rosa ("City").

I.

INTEREST OF *AMICI*

The League is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The Committee has identified this case as having such significance. The League appears frequently before the courts of appeal and Supreme Court as *amicus curiae* on matters affecting local government.

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Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

II.

POINT TO BE ARGUED BY *AMICI*

> May a plaintiff who has neither been assessed a tax, nor paid a tax, claim standing to challenge a local agency's expenditure of tax proceeds under Code of Civil Procedure section 526a?

A plaintiff may assert taxpayer standing under Code of Civil Procedure section 526a ("Section 526a") *only if* he or she has been assessed, or has actually paid, a tax. As case law has consistently recognized, any other conclusion would be at odds with the clear text of Section 526a.[1] (Section 526a ("An action . . . may be maintained . . . by a

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[1] Code of Civil Procedure section 526a provides:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.
>
> An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all

citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or . . . has paid, a tax therein").) Moreover, to read the taxpayer requirement out of the statute would effectively do away with the need for standing in *every* action against a public entity. That extreme result was clearly not what the Legislature contemplated when it adopted Section 526a.

As the trial court correctly recognized, Appellant Taylor Dane ("Appellant") does not meet the requirements for taxpayer standing under Section 526a because she has not actually paid a tax used to fund the City policies she seeks to challenge, and because no court has ever held payment of state income tax sufficient to challenge the policies of a local agency (any other conclusion would effectively do away with the standing requirement altogether when challenging policies of local agencies). Moreover, her argument that refusing to grant her standing under Section 526a would effectively preclude all but the wealthy from asserting taxpayer standing is simply wrong.

For the reasons discussed below, Appellant's attempt to expand the scope of taxpayer standing must be rejected.

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civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

III.

STATEMENT OF FACTS

Amici adopt the statement of facts in the City's Respondent's Brief.

IV.

ARGUMENT

A. THE PLAIN LANGUAGE OF SECTION 526a LIMITS STANDING TO A PLAINTIFF WHO "IS ASSESSED FOR . . . OR . . . HAS PAID, A TAX".

As Appellant recognizes in her Opening Brief, the Court's task when interpreting a statute is to give effect to the intent of the Legislature, and the first point of reference for the Court when establishing that intent are the words that the Legislature adopted. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) As Appellant also recognizes, when the meaning of those words is plain, the Court must look no further in gauging the Legislature's intended meaning. (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 787 ("*Alejo*").)

Turning to Section 526a, the relevant portions of the statute state that "[a]n action . . . may be maintained . . . either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein."[2] The

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[2] The full text of Section 526a provides:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and

language of the statute is clear. To establish standing, one must either be assessed and liable to pay a tax, or have paid a tax, within the jurisdiction within one year of bringing her claim.

Not surprisingly, litigants have attempted to fit themselves within the "taxpayer" category by asserting that they have paid taxes despite the fact that they were not themselves legally liable to pay them. As Appellant does here, plaintiffs have unsuccessfully sought to establish taxpayer standing under Section 526a based upon their belief that they pay sales tax at the point of purchase (*Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035 ("*Torres*")) or gas taxes when they fill up their cars at the pump (*Cornelius v. Los Angeles County MTA* (1996) 49 Cal.App.4th 1761 ("*Cornelius*")). In each case, their claims have been rejected because, to use Appellant's phraseology, merchants (and not the plaintiffs) were the individuals "technically" assessed and liable to pay the tax in question.

> county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.
>
> An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(Appellant's Reply Brief ("ARB"), at p. 26; see also Appellant's Opening Brief ("AOB"), at p. 41.)

Indeed, while the courts have read Section 526a broadly to allow a large section of the citizenry to challenge governmental action, they have always held firm on the requirement that a plaintiff actually be the person or entity that paid the tax at issue. (See *Torres*, *supra*, 13 Cal.App.4th at p. 1047 (listing those ways in which courts have liberally construed Section 526a, and then concluding that "[n]onetheless, a plaintiff must establish he or she is a taxpayer to invoke standing under Section 526a or the case law.").)

B. FOR NEARLY TWENTY YEARS, THE DECISIONS IN *TORRES* AND *CORNELIUS*, WHICH FAITHFULLY APPLIED SECTION 526a's TAXPAYER REQUIREMENT, HAVE STOOD UNCHALLENGED.

To broaden Section 526a's applicability to allow standing to plaintiffs who merely place money into the stream of commerce that may be used by others to pay a tax—as Appellant urges here—would upset nearly twenty years of settled precedent. Under *Torres* and *Cornelius*, local agencies throughout the state have known that any plaintiff challenging their policies would have some "skin in the game" (i.e., they would either have had the policy applied to them, or their tax dollars would have been used to fund it). As Appellant recognizes in her Opening Brief, for this Court to find that Section 526a provides her standing, it would have to find

that both *Torres* and *Cornelius* were wrongly decided. But, in the nearly twenty years that these decisions have been on the books, no court has even suggested that either case should be overruled.[3]

Numerous cases stand for the proposition that, where the Supreme Court denies review of a decision of a Court of Appeal—as it did in both *Torres* and *Cornelius*—it may be understood as an approval of the result reached by the Court of Appeal. (*In re Henley* (1970) 9 Cal.App.3d 924, 931; *Amaya v. Home Ice, Fuel & Supply Co.* (1963) 59 Cal.2d 295, 306; *DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 178; *Eisenberg v. Superior Court* (1924) 193 Cal. 575, 578; *Houghton v. Long*

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[3] Appellant makes much of the Supreme Court's decision in *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, and suggests that it calls the holdings in *Torres* and *Cornelius* into doubt. However, the passages from *Tobe* on which Appellant relies are not authority for the proposition that Section 526a provides standing to non-taxpayers. The context for these statements was a discussion of whether the plaintiffs had mounted an as-applied challenge (as the Court of Appeal had understood), or whether they had asserted a facial claim (as the plaintiffs argued in their briefs). (9 Cal.4th at pp. 1083-86.) The Court concluded, without *any* substantive discussion, that the plaintiffs were "taxpayers" with standing under Section 526a, and that it need not consider whether they had a beneficial interest required to bring a writ of mandate. (*Id.*, at p. 1086.) The Court never considered what kind of tax was necessary to qualify as a "taxpayer," nor did it explain the type of tax the plaintiffs paid. It is well-established that cases are not authority for propositions they do not actually consider. (*Environmental Charter High School v. Centinela Valley Union High School* (2004) 122 Cal.App.4th 139, 150; *Gomes v. County of Mendocino* (1995) 37 Cal.App.4th 977, 985.)

Beach (1958) 164 Cal.App.2d 298, 309; *Housing Authority of the City of Los Angeles v. Juan Peters* (1953) 120 Cal.App.2d 615, 616.)[4]

Further, it is also important to note that the Legislature has not amended Section 526a to abrogate the holdings in *Torres* and *Cornelius*. If these cases were out-of-step with the Legislature's intent when it adopted Section 526a, as Appellant argues, it is reasonable to expect the Legislature would have amended the statute by now to reflect its actual intention. (See AOB, p. 33; see also ARB, p. 6.)

For nearly twenty years, neither the Legislature nor the Supreme Court has overruled any part of the decisions in *Torres* and *Cornelius*. This is appropriate, as both cases faithfully track the plain language of the statute. Further, as described below, it is not surprising when one considers what a drastic change in the law of standing would result if the term "taxpayer" were redefined in the open-ended fashion Appellant urges here.

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[4] Appellant argues that the Supreme Court's decision to deny review in *Torres* and *Cornelius* should not be understood as an endorsement of the result in either case. (AOB, at p. 46, n.15.) She cites to the decision in *Trope v. Katz* as support, in which the Court stated that its failure to grant review shall not be understood to be an endorsement "when [the decision upon which review is sought] is in conflict with the law as stated by this court." (11 Cal.4th 274, 287, fn.1.) However, that rule is inapplicable here because, as Appellant admits, the Supreme Court has never weighed in on whether taxpayer standing extends to those who do not "technically" pay the tax at issue. (AOB, at p. 20.) Appellant also cites *In re Rose* for the proposition that denial of review has no precedential value. (AOB, at p. 46, n.15.) The passing comment from *In re Rose* Appellant refers to was only offered in explanation of why the Court does not issue full written opinions when denying a petition for review. (*In re Rose* (2000) 22 Cal.4th 430, 451.)

C. TO READ THE TAXPAYER REQUIREMENT OUT OF SECTION 526a WOULD ELIMINATE ALL STANDING REQUIREMENTS WHEN SUING A PUBLIC ENTITY, A RESULT THE LEGISLATURE COULD NOT HAVE INTENDED.

As the Court in *Cornelius* recognized, the practical ramifications that would flow from an expansion of taxpayer standing must be considered where a plaintiff urges a court to read Section 526a more broadly than the statute or cases support. (*Cornelius*, *supra*, 49 Cal.4th at 1778.) There, the court evaluated whether payment of state income tax conferred standing to challenge a non-state agency, an issue of first impression. The court noted that previous decisions had extended taxpayer standing to allow actions against the state (the statute's text applies only to local agencies) based on payment of state income tax. (See also *Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 252-54; *California State Employees' Assn. v. Williams* (1970) 7 Cal.App.3d 390, 395.) However, it concluded that further extending standing to allow actions against local agencies based upon payment of state income tax would have a deleterious impact on public policy because it would "permit the haphazard initiation of lawsuits against local public agencies." (*Id.* at 1778-79.) That same logic holds true here.

To find that Section 526a provides standing to challenge a local agency's policies based merely on the plaintiff placing money into the stream of commerce (some portion of which would eventually be used by someone else to pay a tax), or based upon payment of sales tax to the state,

would effectively remove *all* standing requirement for plaintiffs suing public entities.

Under Appellant's construction of Section 526a, a potential plaintiff could spend the afternoon driving across the state, buying a pack of gum or filling up his or her car in each city or county along the way, and by trip's end would have standing to challenge *any* policy of *any* local agency through which he or she had passed.[5] Moreover, if payment of state income tax conferred standing to challenge a local agency's policies under Section 526a, the road trip wouldn't even be necessary; a potential plaintiff who paid state income tax would automatically have standing to challenge *every* policy of *every* local agency in the state. The burden that such a change in the law would place on the limited fiscal resources of the courts, let alone cities and counties, would be tremendous.[6]

It seems unlikely, to say the least, that the Legislature intended Section 526a to provide standing to *every* plaintiff who sought to sue a local agency. Even if the language of the statute were ambiguous on this

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[5] Significantly, of the 7.5% statewide sales tax rate on most sales in California, no more than 1% may be obtained by the city or county in which the sale occurs. (Rev. & Tax Code § 7202(h)(1).)

[6] Appellant argues that a court must not consider the policy implications that a proposed expansion of taxpayer standing would cause. (AOB, at pp. 43-44.) However, Appellant's own statutory interpretation authorities show otherwise. (See AOB, at p. 10, citing *Alejo*, *supra*, 212 Cal.App.4th at p. 788 ("we must consider the consequences that will flow from a particular interpretation").)

point—which it is not—canons of statutory construction counsel strongly against assigning such an intent to the Legislature here. (See *Alejo*, *supra*, 212 Cal.App.4th at p. 787 (resort to canons of statutory construction appropriate if statute's plain meaning is ambiguous).) First, those canons forbid interpretation of a statute in a manner that would create an absurd result, such as interpreting a statute that allows limited standing in a manner that would provide unlimited standing. (*Comm'n on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 290 (statutes must not be given a meaning that would result in absurd consequences the Legislature did not intend).) Second, they also forbid interpretation in a manner that would impliedly repeal another legislative enactment, such as the requirement under Code of Civil Procedure section 1086 that a petitioner have a beneficial interest when bringing a petition for writ of mandate.[7] (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476-77 (courts must construe statutes in a manner that harmonizes them, and thus

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[7] Such an expansive interpretation of Section 526a would also do away with the common law concept of "public right" standing, a concept that has evolved as a compliment to taxpayer standing under Section 526a (and one that Appellant asserts as a alternative standing theory for the first time in her Reply Brief). (See *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29.) Indeed, the entire concept of "public right" standing would be unnecessary if taxpayer standing were applicable based upon payment of sales, gasoline, or state income tax. So too would other common law standing doctrines, such as standing to assert claims based upon the Public Trust Doctrine. (See *Nat'l Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 431, fn.11.)

does not imply repeal of one by the other).) And finally, the canons direct that statutes should be interpreted in a manner that does not render any word or provision as surplusage, such as the terms "assessed for" and "has paid" which are applied to the word "tax" in Section 526a. (*Weber v. County of Santa Barbara* (1940) 15 Cal.2d 82, 86 (statutory language shall not be treated as surplusage).)[8]

D. APPELLANT'S ARGUMENT THAT A TAXPAYER REQUIREMENT ONLY ALLOWS WEALTHY PLAINTIFFS TO SUE IS A RED HERRING.

Not only is there no evidence of legislative intent to eliminate standing requirements when suing local agencies, but it is unnecessary to read such a drastic change into the statute to fulfill the legislative intent that Section 526a allows a large body of the citizenry to avail themselves of its provisions. (See *Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-68.) Any argument that requiring actual payment of a tax would make Section 526a inaccessible to average citizens—as Appellant claims here—is wrong.

Looking to the City's Municipal Code, it is evident that an average citizen could establish taxpayer standing under Section 526a, regardless whether they own or rent their home. For example, under Section 6-

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[8] Appellant concedes that there is no legislative history that can be used in interpreting Section 526a, but completely fails to address the applicability of any of these canons of statutory interpretation. (AOB, at p. 17.) Her only argument regarding legislative intent is that Section 526a has consistently been interpreted broadly. (See AOB at pp. 33-34.) She acknowledges no limiting principle that would temper that general rule.

04.230, a person who enters the city to pick-up or deliver passengers, goods, wares, or merchandise, or who provides a service by use of a vehicle, must pay an annual tax based upon his or her gross receipts which begins at $30 (for up to 120 entries into the City). Under Section 6-04.220, a person who engages in business within the City must pay a business tax that begins at $25 (for gross receipts of up to $25,000). These are not taxes paid only by the wealthy, or even by those of more moderate means who maintain a retail business. (See ARB, at pp. 20-21.) These are taxes that average working citizens engaged in commerce would pay, even those who rent their homes.[9]

In short, Section 526a allows a broad range of taxpayers from various walks of life to challenge the actions of their local governmental when those actions are funded with their tax dollars. What it does not allow, however, is a blanket standing for *any* potential plaintiff to challenge *any* policy of *any* local agency without the need to show that their tax dollars funded the policy at issue.

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[9] The Court may take judicial notice of the City's Municipal Code provisions. They are "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code §§ 452(h), 459(a); *People v. Torres* (1961) 56 Cal.2d 864, 866.) They are also subject to judicial notice as legislative enactments of the City. (Evid. Code §§ 452(b), 459(a); *Beresford Neighborhood Assn. v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1190-91.)

V.

CONCLUSION

For the foregoing reasons, *amicus curiae* League of California Cities and California State Association of Counties urge the Court to uphold the decision of the trial court.

Dated: October 23, 2013

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

Thomas B. Brown
Matthew D. Visick
Attorneys for *Amicus Curiae*
LEAGUE OF CALIFORNIA CITIES
and CALIFORNIA STATE
ASSOCIATION OF COUNTIES

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionally double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 3,514 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on June 23, 2013.

Respectfully submitted,

By: _____
Matthew D. Visick

OAK #4842-6460-6230 v2

PROOF OF SERVICE

I, Teresa L. Beardsley, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On October 23, 2013, I served a copy of the within document(s):

APPLICATION OF THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT CITY OF SANTA ROSA;

PROPOSED BRIEF *AMICUS CURIAE* OF LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENT CITY OF SANTA ROSA

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Oakland, California addressed as set forth below.

☒ by placing the document(s) listed above in a sealed NORCO envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a NORCO agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below *or* via electronic submission per CRC Rules 8.212 and 8.70 at http://www.courts.ca.gov.

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Clerk of the California Supreme Court Earl Warren Building 350 McAllister Street San Francisco, CA 94102	*High Court* (Served per CRC R.8.212)
Clerk, Sonoma County Superior Court Hall of Justice 600 Administration Drive Santa Rosa, CA 95403	*Trial Court*

Hon. Nancy Case Shaffer Sonoma County Superior Court, Dept. 18 3055 Cleveland Avenue Santa Rosa, CA 95403	*Trial Judge*
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Ann Keck, Deputy County Counsel Office of the County Counsel County of Sonoma 575 Administration Drive, Rm. 105A Santa Rosa, CA 95403	*Attorney for Defendant/Respondent* County of Sonoma

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on October 23, 2013, at Oakland, California.

Teresa L Beardsley

Teresa L. Beardsley