D065153

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

RANCHO PAUMA MUTUAL WATER COMPANY,
Plaintiff and Respondent,
v.
YUIMA MUNICIPAL WATER DISTRICT
Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR SAN DIEGO COUNTY
HON. ROBERT DAHLQUIST, JUDGE • NO. 162650

PETITION FOR WRIT OF SUPERSEDEAS

CALIFORNIA APPELLATE LAW GROUP
William N. Hancock (No. 104501)
Audra Ibarra (No. 177464)
Ben Feuer (No. 247502)
ONE SANSOME STREET
SUITE 3670
SAN FRANCISCO, CA 94104
(415) 649-6700 • FAX: (415) 984-0651

KIDMAN LAW LLP
Arthur G. Kidman (No. 61719)
Andrew B. Gagen (No. 212257)
2030 MAIN STREET, SUITE 1300
IRVINE, CA 92614
(714) 755-3100 • FAX: (714) 755-3110

LAW OFFICES OF SCOTT & JACKSON
Jeffrey G. Scott (No. 98242)
James R. Dodson (No. 95401)
16935 WEST BERNARDO DRIVE
SUITE 170
SAN DIEGO, CA 92127
(858) 975-9896 • FAX: (858) 675-9897

ATTORNEYS FOR DEFENDANT AND APPELLANT
YUIMA MUNICIPAL WATER DISTRICT

Certificate of Interested Entities or Persons

Pursuant to Rules of Court, rule 8.208, appellant Yuima Municipal Water District discloses that it operates and maintains a "General District" and an "Improvement District A," both independently from one another.

Table of Contents

Table of Authorities

Page

Cases

Statutes

Rules of Court

Other Authorities

D065153

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

RANCHO PAUMA MUTUAL WATER COMPANY,

Plaintiff and Respondent,

v.

YUIMA MUNICIPAL WATER DISTRICT

Defendant and Appellant.

PETITION FOR WRIT OF SUPERSEDEAS

INTRODUCTION

Yuima Municipal Water District, a public entity charged with regulating the water needs for residents, businesses, and farms across more than 13,000 acres in southern California, petitions for a writ of supersedeas to enforce an automatic stay under Code of Civil Procedure section 916, subdivision (a), during Yuima's appeal of an

order conclusively interpreting a stipulated judgment involving water rights from the 1950s. Because the stipulated judgment is more than half a century old, the trial court's November 25, 2013 interpretation of that judgment – which came by way of an enforcement petition, brought under the court's continuing jurisdiction, by a private water company looking to exploit water that Yuima has drawn for the public's benefit for more than 45 years – radically upended the way the parties had interpreted that judgment in the past. That water company, Rancho Pauma Mutual Water Company, has now threatened Yuima more than 13 times with contempt proceedings based on the November 25 order, an impossible position for a public agency. Rancho Pauma has refused to acknowledge the existence of the automatic stay, and efforts in the trial court to enforce the automatic stay did not succeed.

As explained below, Yuima requests that this court grant its petition for writ of supersedeas for three reasons. *First*, the November 25 order does not fall within any of the enumerated exceptions to the section 916 automatic stay listed in Code of Civil Procedure sections 917.1 through 917.9 and 116.810. *Second*, the order operates as a declaratory judgment, interpreting and advising the parties in regard to the effect of the 1953 judgment, and such orders are always subject to a section 916, subdivision (a), automatic stay. *Finally*, the order is not a prohibitory injunction, because Rancho Pauma expressly disclaimed any request for an

injunction during the trial court proceedings, and the trial court stated that the order does not have an injunctive component.

Accordingly, Yuima requests this court grant its petition for writ of supersedeas, preventing Rancho Pauma from carrying out its threats to bring contempt proceedings against Yuima and its directors while Yuima's appeal, filed December 20, 2013, is pending. Alternatively, if an automatic stay does not apply, Yuima requests this Court grant its petition on the basis of a discretionary stay pursuant to Code of Civil Procedure section 923, because the balance of hardships weighs in Yuima's favor and the appeal presents substantial issues as discussed below.

PETITION FOR WRIT OF SUPERSEDEAS

I. Statement of the Case

1. In 1950, a group of landowners in Pauma Valley, California, led by Peter Strub (the "Strub Plaintiffs") sued the owners of the nearby Rincon Ranch and the private water company that managed the water rights for that ranch, the Palomar Mutual Water Company. (Exhs. A, B, C.) The Strub Plaintiffs sought to limit the defendants' rights to appropriate water from a groundwater basin in Pauma Valley. (Exh. A at pp. 26-27.) The parties settled the suit in 1953 by way of a stipulated judgment. (Exhs. C, D.) In relevant part, the 1953 judgment limited the number of wells the Rincon Ranch defendants could drill, and established they could

appropriate up to 1,350 acre feet per year of groundwater from an area in that basin that later became known as the "Strub Zone" for use on the Ranch. (Exh. C at pp. 66-71.)

2. Ten years later, in 1963, the voters in Pauma Valley established Yuima, a public agency created under the Municipal Water District Law of 1911, to manage local water resources and to import water into the Pauma Valley area. (Exh. E at p. 77.) Yuima's boundaries encompassed the Rincon Ranch but, for the first five years, the Ranch's private water company, Palomar Mutual Water Company, continued to hold and manage the Ranch's water rights. (*Ibid.*; Exh. F at p. 86; RT[1] 55:26-56:10.)

3. In 1968, Yuima created a separate division ("Improvement District A") to acquire Palomar Mutual's water rights and obligations. (Exhs. E at pp. 77-79, F, G, H, I, J.) Improvement District A, which has the same boundaries as the Rincon Ranch, is administratively and functionally independent from the rest of Yuima's territory. (Exhs. E at pp. 77-78, F at p. 86.) That territory is known as the "General District." (Exh. K at p. 124.)

4. To facilitate its acquisition by Yuima, Palomar Mutual petitioned the court in 1968 to amend the 1953 judgment in several ways, and the court did. (Exhs. E, F, H.) Yuima then took responsibility for Palomar Mutual's rights

---

[1] The Reporter's Transcript was filed in this court on March 27, 2014.

and obligations "on behalf of" Improvement District A. (Exh. E at p. 78.) As will be explained more fully in Yuima's forthcoming Opening Brief (which Yuima expects to file before June 5, 2014), the pleadings leading to the 1968 amendments, the circumstances surrounding the making of those amendments, and Yuima's post-amendment conduct, all establish that Palomar Mutual, Yuima, the trial court, and even the Strub Plaintiffs (who did not object to the petition) intended, in 1968, to leave the original Strub Plaintiffs and their successors in exactly the same position they occupied before those amendments were made.

5. For more than 45 years following the 1968 amendments, Yuima and all other parties adopted this interpretation of the 1953 judgment and its amendments, that Improvement District A served as the successor to Palomar Mutual distinctly from Yuima generally. To comply with that interpretation of the stipulated judgment, Yuima operated Improvement District A and the General District separately, and did so for decades without any issues. (Exh. K at p. 124.)

6. However, in 2010, Yuima began a venture with a company called V/O Pauma Development, L.P., to produce groundwater from V/O's wells within the Strub Zone and to deliver that water to the General District. (Exh. L at pp. 192-207.) In opposing that project, one of the successors to the Strub Plaintiffs, Rancho Pauma, asserted that the 1953 judgment should restrict all of Yuima's General District, even

though the judgment had always been understood only to apply to Yuima's separate Improvement District A. (*Id.* at pp. 203-212.)

7. To that end, in May 2013, Rancho Pauma filed a "Petition Under Continuing Jurisdiction of Court to Enforce Water Rights Judgment," naming both Yuima and V/O as parties. (Exh. L.) The petition contended that Yuima's General District is as bound by the 1953 judgment as is Improvement District A, and that Yuima therefore breached some of the restrictions the judgment placed on Palomar Mutual and its successors. (*Ibid.*)

8. After a two-day hearing based entirely on documentary evidence, on November 25, 2013, the trial court issued an order granting Rancho Pauma's petition. (Exh. M.) The trial court's order served to interpret the ambiguous provisions of the 1953 judgment, as amended in 1968, in the same way a declaratory judgment does. The court's interpretation effectively meant that Yuima's proposed venture with V/O would violate the 1953 judgment. (*Id.* at pp. 226-230.)

9. Among other findings, the order concluded that the 1,350 acre feet per year cap from water withdrawn from the Strub Zone applied to all of Yuima, and not just Improvement District A, which was the successor to Palomar Mutual Water Company. (Exh. M at pp. 225-226.) This finding differed from Yuima's understanding and practice for

the entire four-decade period following its acquisition of Palomar Mutual.

10. Misunderstanding what occurred in 1968, the trial court found that Yuima *as a whole* became bound by the 1953 judgment through the amendments that allowed Improvement District A to take on Palomar Mutual's water rights and obligations. (Exh. M at pp. 225-226.) This conclusion – which this court will review on appeal *de novo* – is incorrect. The conclusion is based on the trial court's failure to read the 1968 order amending the 1953 judgment in light of the extrinsic evidence (including the pleadings, statements, and conduct of the parties). The extrinsic evidence shows unequivocally that the 1968 court and all the parties, including the successors to the Strub Plaintiffs and the predecessor to Rancho Pauma, intended to bind only Improvement District A. Indeed, there would have been no need to create Improvement District A in 1968 at all, let alone maintain it as a separate entity for the past 45 years, if Yuima or any of the parties had contemplated that the stipulated judgment would not be applied solely to Improvement District A.

11. As soon as the trial court released its tentative decision, and continuing at a greater pace after the November 25 order, Rancho Pauma threatened Yuima with contempt proceedings no fewer than 13 different times. (See Exh. N at pp. 254-256, 278-283, 288-291, 301-306.) Although Yuima explained the nature of the automatic stay and its application

to the order, Rancho Pauma refused to recognize the stay. (*Id*. at pp. 297-306.)

12. Rancho Pauma's refusal to recognize the stay has, in the last few weeks, led to the collapse of the long-term groundwater development venture between Yuima and V/O. (See Exh. Y at p. 462, ¶¶ 5-6.) Rancho Pauma had initially sued V/O alongside Yuima in this action, but the trial court denied Rancho Pauma's motion as to V/O because it was not subject to the original stipulated judgment. Recently, Yuima learned that V/O has terminated their agreement and entered into a new venture, similar to the one they had planned, but now with a private company – respondent Rancho Pauma. (See *ibid*.)

13. On February 27, 2013, Yuima filed a motion in the trial court to acknowledge and enforce an automatic stay. (See Exh. N at pp. 241-253.) Rancho Pauma opposed and contended no automatic stay applies. (See Exh. P.) The trial court denied the motion on April 11, 2014. (See Exh. V.) The court held that the November 25 order was an "advisory opinion" and thus could not be stayed. (See Exh. W at pp. 430:2-3, 435:27-436:7.) The court also dismissed controlling Supreme Court authority, *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189-191 (*Varian*), as "not on point." (Exh. W at p. 435:27.) Finally, the trial court invited this court to correct it: "I acknowledge all of this is designed to protect the jurisdiction of the Court of Appeal, so the Court of Appeal at any time can tell me I'm wrong. If they

do, I'm wrong. I follow whatever I'm told to do." (See Exh. W at p. 430:17-21.)

II. Parties

14. The petitioner and appellant is Yuima, a public municipal water company that manages the water needs for residents, businesses, orchards, and farms across more than 13,000 acres in Pauma Valley, California, in northeast San Diego County. Yuima became a party to the action voluntarily in 1968, when it acceded to the court's jurisdiction "on behalf of" Improvement District A so it could manage the water rights previously belonging to Palomar Mutual Water Company while still complying with the stipulated judgment. (Exhs. E at p. 78, I.)

15. The respondent is Rancho Pauma Mutual Water Company, a private successor company to one of the original Strub plaintiffs, operating in an area of service less than one tenth the size of Yuima's.

III. Basis for Relief

16. Supersedeas is the appropriate remedy when a respondent refuses to acknowledge the applicability of statutory provisions imposing an automatic stay of trial court proceedings during the pendency of an appeal from a judgment or appealable order. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1405, fn. 6; *Nielsen v. Stumbos* (1990) 226 Cal.App.3d 301, 303.) The trial court's

November 25, 2013 order is automatically stayed pursuant to Code of Civil Procedure section 916, subdivision (a), because (1) the order is not subject to any of the exceptions to the section 916 stay listed in Code of Civil Procedure sections 917.1 through 917.9 or 116.810; (2) the order is akin to a declaratory judgment, which this court has held is always subject to an automatic stay; and (3) the order is not a prohibitory injunction.

17. Alternatively, supersedeas lies in the discretion of this court to stay the injunction during the pendency of the appeal if (1) the appeal presents substantial issues, and (2) failure to stay execution is more likely to injure the appellants than issuance of a stay is likely to injure the respondents. (*Davis v. Custom Component Switches, Inc*. (1970) 13 Cal.App.3d 21, 27-28; accord, *Estate of Murphy* (1971) 16 Cal.App.3d 564, 569.)

18. Here, the appeal presents substantial issues concerning the trial court's failure to consider extrinsic evidence making clear that all parties involved in the litigation in 1968, including the court, understood the stipulated judgment to restrict only Improvement District A, as successor to Palomar Mutual, and not all the lands that Yuima forever services. Additionally, the trial court failed to recognize that, in 1968, the court lacked jurisdiction to bind all of Yuima, as opposed to just Improvement District A. Further, failure to issue a stay would injure Yuima by subjecting the public agency and its directors to potential

contempt proceedings for acting in the best interests of the public, restricting Yuima's ability to meet water demands, especially in the upcoming summer months, and, as the collapse of Yuima's venture with V/O makes clear, unraveling long-term, carefully planned water development agreements. On the other hand, Rancho Pauma has never before, in the course of 45 years, been able to restrict Yuima's access to water in this manner, and it would not experience any adverse change if the parties were to maintain this multigenerational status quo.

IV. Authenticity of Exhibits

19. All exhibits accompanying this petition are true copies of original documents on file with the trial court, except for the declaration of Linden Burzell attached as Exhibit Y. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination.

PRAYER

Yuima prays this court:

1. Issue a writ of supersedeas directing the trial court and Rancho Pauma to cease all efforts to enforce the November 25, 2013 order and the portions of the 1953 judgment as interpreted in the November 25, 2013 order, pending resolution of this appeal;

2. Award Yuima its costs pursuant to California Rules of Court, rule 8.493; and

3. Grant such other relief as may be just and proper.

Dated: May 5, 2014

Respectfully submitted,

California Appellate Law Group
William N. Hancock
Audra Ibarra
Ben Feuer
Kidman Law LLP
Arthur G. Kidman
Andrew B. Gagen
Law Offices Of Scott & Jackson
Jeffrey G. Scott
James R. Dodson

By _____/s/_____
Ben Feuer

Attorneys for Petitioner and Appellant **Yuima Municipal Water District and Yuima Municipal Water District on behalf of Improvement District A (as successor in interest to Defendant, Palomar Mutual Water Company)**

VERIFICATION

I, Ben Feuer, declare as follows:

I am one of the attorneys for petitioner Yuima. I have read the foregoing Petition for Writ of Supersedeas and know its contents. The facts alleged in the petition are within my own knowledge, and I know these facts to be true. Based on my familiarity with these facts, I, rather than appellant, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on May 5, 2014, at San Francisco, California.

_____/s/_____

Ben Feuer

MEMORANDUM

I. Supersedeas Is Required to Enforce the Automatic Statutory Stay So Yuima Can Serve the Public During the Coming Summer Months, as It Has for More Than 45 Years, Without Being Held in Contempt.

A. An automatic stay applies to the November 25 order.

Code of Civil Procedure section 916, subdivision (a), states: "Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order . . . ." The automatic stay serves "to protect the jurisdiction of the appellate court" and "prevent[] the trial court from rendering the appeal futile" by pausing enforcement of the trial court's ruling until the reviewing court has an opportunity to fully consider the appellant's claims of error. (*In re Marriage of Horowitz* (1984) 159 Cal.App.3d 377, 381; see also *Varian*, *supra*, 35 Cal.4th 180, 189, 198.) The automatic stay "protect[s] the appellate court's jurisdiction by *preserving the status quo* until the appeal is decided." (*Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629, emphasis added; see also *Varian*, *supra*, 35 Cal.4th at p. 189; *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th

455, 482 [purpose of automatic stay "is to preserve the parties' positions pending the outcome of the appeal"].) "Essentially, the § 916(a) 'stay' means that, upon timely filing of a notice of appeal, the trial court is *divested of power* to act on matters 'embraced in' or 'affected by' the appealed judgment or order: Jurisdiction over the appealed matters *shifts to the court of appeal* and is *terminated in the trial court*; and the trial court's power to *enforce, vacate or modify* the appealed judgment or order is *suspended* while the appeal is pending." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2013) ¶ 7.2, emphasis in original.)

Here, the automatic stay of section 916 applies to the November 25 order for three reasons. *First*, the November 25 order does not fall within any of the enumerated exceptions to the section 916 automatic stay listed in Code of Civil Procedure sections 917.1 through 917.9 and 116.810. *Second*, the order operates as a declaratory judgment, interpreting and advising the parties in regard to the effect of the 1953 judgment, and such orders are always subject to a section 916, subdivision (a), automatic stay. *Finally*, the order is not a prohibitory injunction, because Rancho Pauma expressly disclaimed any request for an injunction during the trial court proceedings, and the trial court expressly stated that the November 25 order does not provide injunctive relief.

1. The November 25 order is not subject to any of the exceptions to the automatic stay found in Code of Civil Procedure sections 917.1 through 917.9, or section 116.810.

Under Code of Civil Procedure section 916, "*except* as otherwise provided by statute, perfection of an appeal *automatically* stays further trial court proceedings." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 7.70, emphasis in original.) The Code of Civil Procedure includes several exceptions at sections 917.1 through 917.9 to the automatic stay, but none of these exceptions apply to an appeal of an order such as this one. Rather, those sections release a judgment on appeal from section 916's stay *only* in specific, limited circumstances, where the order on appeal:

- is a money judgment (§ 917.1);
- directs the "assignment or delivery of personal property" (§ 917.2);
- directs "execution" of an "instrument" (§ 917.3);
- directs "the sale, conveyance or delivery of possession of real property" (§ 917.4);
- appoints a receiver (§ 917.5);
- involves child custody matters (§ 917.7);
- involves breach of public office (§ 917.8);
- addresses a combination of the above (§ 917.6); or
- otherwise involves a small claims court judgment (§ 116.810).

None of these situations describe the November 25 order. The order in this case interprets the language of the 1953 stipulated judgment to hold that the restrictions that applied to Palomar Mutual in 1968 are applicable to all the land within Yuima's jurisdiction, not just the land that is part of Improvement District A, which is Palomar Mutual's successor. Sections 917.1 through 917.8 simply do not describe an order like this. Additionally, the trial court did not exercise discretion, if it was within its discretion to do so, to require an undertaking as a condition of a stay pursuant to Code of Civil Procedure section 917.9.

Accordingly, because all orders are entitled to automatic appellate stays under Code of Civil Procedure section 916 unless an exception to the automatic stay under sections 917.1 through 917.9 or 116.810 applies, and none do, the November 25 order is automatically stayed pending resolution of the appeal.

2. The November 25 order is akin to a declaratory judgment, which this court has held is subject to an automatic stay.

The November 25 order is, essentially, a declaratory judgment. The order serves only one purpose: to declare Yuima and Rancho Pauma's respective rights under a written instrument, the 1953 stipulated judgment. (See Code Civ. Proc., § 1060 [providing that "[a]ny person interested under a written instrument . . . who desires a declaration of his or her

rights or duties with respect to another . . . may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties"].)

To that end, the order focuses entirely on the parties' prospective conduct. (See, e.g., *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403 ["declaratory relief "'operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them"'"].) Also, the order came about in the context of an actual controversy between Rancho Pauma and Yuima regarding the meaning of the 1953 judgment as applied to Yuima's venture with V/O. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 605 ["The existence of an 'actual controversy relating to the legal rights and duties of the respective parties,' suffices to maintain an action for declaratory relief"].) The order did not adjudicate a legal dispute for damages or injunctive relief, and did not determine one party's liability to another. (Cf. *Watson v. Sansone* (1971) 19 Cal.App.3d 1, 4 [claim not appropriate for declaratory relief if "the issue relates solely to a fully matured claim for money in an amount within the jurisdiction of the municipal court, where nothing remains to be done but the payment of money, and where no declaration of future rights

and obligations is sought, or necessary, or proper"].) Instead, it gave an interpretation of the 1953 judgment, as amended in 1968, that resolved the parties' disagreement about whether Yuima's groundwater development plans with V/O violated the judgment – and while in Yuima's view the trial court did so incorrectly, there is no dispute that the order accomplished exactly what a declaratory judgment does.

Admittedly, Rancho Pauma did not use the words "declaratory judgment" in its petition, and the trial court did not use them in its order. But the Supreme Court has held that a request for declaratory relief need not expressly so state, as long as it meets the necessary conditions under section 1060 for the court to grant declaratory relief. (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 807 ["plaintiff adequately pled a claim for declaratory relief under Code of Civil Procedure section 1060 even though she did not separately identify such a cause of action. [Citations.] The complaint asked the court to adjudge the rights and duties of plaintiff and defendants with respect to defendants' lien and alleged facts establishing an 'actual controversy' appropriate for declaratory relief"].) Likewise, that the trial court did not use the words "declaratory relief" is immaterial for two reasons: first, "'[i]t is not the form of the order on the first appeal that controls, but the substance of that order'" (*Stromer v. Browning* (1968) 268 Cal.App.2d 513, 519), and second, Yuima draws the comparison between the November 25 order and a declaratory judgment not to establish the two are

literally equivalent, but to demonstrate that the November 25 order is one that, like a declaratory judgment, is entitled to an automatic stay.

In *Williams v. Spence* (1956) 141 Cal.App.2d 213, 217, this court interpreted an ambiguous trial court order to determine whether it, in effect, constituted a declaratory judgment. If so, the court explained, the "appeal stays the judgment insofar as it declares the rights of the parties." (*Ibid.*) If not, however, the appeal would not be subject to a stay of any kind. The court then reviewed the order at issue, which involved contractual payments on the proceeds of a motion picture, and found that the order was, effectively, a declaratory judgment subject to an automatic stay. (*Ibid.*) The court reasoned that because the order did not actually direct a money judgment for one party or another, but merely stated the percentage breakdown of the proceeds between the parties facing a concrete disagreement, it met the requirements for a declaratory judgment. (*Id.* at pp. 217-218.)

That result accords with the rule identified in *Varian*, that the automatic stay "'protect[s] the appellate court's jurisdiction by *preserving the status quo* until the appeal is decided.'" (*Varian*, *supra*, 35 Cal.4th at p. 189, emphasis added.) An order that declares the meaning of a contract or stipulated judgment will always change the status quo where the judgment was at least subject to a different good faith interpretation prior to the order, as this one was. (RT

190:26.) Here, the November 25, 2013 order changed the status quo in an even more dramatic way, radically altering Yuima's 45-year, otherwise-unchallenged interpretation of the 1953 judgment and 1968 amendments, and thereby throwing all of Yuima's carefully developed, long-term plans for public water management into disarray.

Accordingly, because the November 25 order is essentially an order for declaratory relief, this court should find it is subject to the automatic stay.

3. The November 25 order is not a prohibitory injunction.

a. The order does not have an injunctive component.

In stay proceedings below, Rancho Pauma contended for the first time that the November 25 order constituted a prohibitory injunction, which is a type of order that is not stayed pending appeal. (*Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835 (*Paramount*); see Exh. P.) The trial court correctly refused to adopt this contention. The court explained, rather, that its order did not enjoin Yuima from any particular behavior, but instead "advised" the parties as to its interpretation of the meaning of the 1953 judgment so they could act accordingly. (See Exh. W at pp. 430:2-3, 435:27-436:7.)

Moreover, during the underlying hearing, Rancho Pauma's counsel twice expressly disclaimed any desire for an injunction, stating:

- "[D]efendants . . . are forbidden to enjoin from – there is your injunction. I am not asking for one." (RT 118:14-17), and
- "Now the rules essentially for injunctions of public agencies, we are not asking for one. We are asking for the court to enforce the existing judgment. There is already an injunction in there to enforce and effectuate the terms of the judgment." (RT 143:20-24.)

These statements not only define the scope of the relief Rancho Pauma requested, but they also operate to judicially estop Rancho Pauma from now contending that the November 25 order constituted an injunction. "'Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.'" (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986.) "The doctrine applies when '(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.'" (*Id.* at pp. 986-987.)

Here, Rancho Pauma's assertion that the November 25 order constitutes a prohibitory injunction: (1) is a different position from that which it took (2) in earlier judicial proceedings, during which it (3) successfully asserted that the Court should grant relief in part because it was not seeking an injunction, a position which (4) is totally inconsistent with its current contention that the November 25 order operated as an injunction. The transcript makes clear there was no (5) "ignorance, fraud, or mistake" in Rancho Pauma's earlier statements. Accordingly, Rancho Pauma is judicially estopped from challenging application of the automatic stay on the basis that the November 25 order is an injunction.

Since Rancho Pauma disclaimed any desire for an injunction, and this Court did not issue an injunction, the November 25 order is not an injunction. Rather, it provides Rancho Pauma with declaratory relief regarding the scope of the 1953 judgment.

b. If the order has an injunctive component, it is mandatory.

If, despite Yuima's analysis, this court concludes the November 25 order provided injunctive relief, then the injunction was mandatory and not prohibitory. That is because Rancho Pauma has interpreted the November 25 order in a way that requires Yuima to take numerous affirmative steps that alter the status quo. Under threat of contempt proceedings, Rancho Pauma has demanded Yuima

shut down active pumps; physically remove equipment from wells; and break contracts with entities like V/O.

Additionally, the November 25 order's interpretation of the 1953 judgment requires Yuima to surrender a position it has held since 1968 – that it is entitled to pump more than 1,350 acre-feet of water per year for use *outside* Improvement District A. This court has explained that "'[i]f an injunction compels a party to surrender a position he holds and which upon the facts alleged by him he is entitled to hold, it is mandatory.'" (*Paramount*, *supra*, 228 Cal.App.2d 827, 836.) This rule has been enunciated in at least a dozen published cases. (See, e.g., *Byington v. Superior Court of Stanislaus County* (1939) 14 Cal.2d 68, 71; *Clute v. Superior Court in and for City and County of San Francisco* (1908) 155 Cal. 15, 19-20 (*Clute*).)

The situation here is similar to the situation the Supreme Court evaluated in *Clute*, *supra*, 155 Cal. 15. In *Clute*, the defendant served as treasurer and manager of a hotel owned by the corporate plaintiff, whose board of directors voted to remove him. The defendant disputed the board's authority to oust him, the corporation sued, and the trial court issued an injunction temporarily restraining the defendant from acting as treasurer and manager. (*Id.* at pp. 17-19.)

On appeal by the defendant from a judgment of contempt for violating the injunction, where the plaintiff claimed the injunction was prohibitory and thus not stayed by

a prior appeal from the injunction itself (*Clute*, *supra*, 155 Cal. at p. 18), the Supreme Court rejected that argument because it "fail[ed] to take into account the very point that was in dispute in the court below" (*id.* at p. 19), which was whether the defendant was entitled to hold his position as treasurer and manager. The Court explained: "If the injunction compels him affirmatively to surrender a position which he holds, and which, upon the facts alleged by him, he is entitled to hold, it is mandatory." (*Id.* at p. 20.) Thus, for purposes of determining whether the injunction was mandatory or prohibitory, the Court assumed that the facts were as the defendant alleged – *i.e.*, that the board lacked authority to oust him as treasurer and manager and he was therefore entitled to hold those positions.

Likewise, Yuima is entitled, pending appeal, to hold fast to its 45-year interpretation of the 1953 judgment, because an injunction that requires the parties to affirmatively change their positions is mandatory and subject to an automatic stay.

In short, the November 25 order is not an injunction. However, if this court determines that it is an injunction, it is one that requires Yuima to take affirmative steps which will upend the status quo, and it is therefore a mandatory injunction subject to the automatic stay.

B. The automatic stay prohibits Rancho Pauma's threatened contempt proceedings.

Once it is established that the November 25 order is stayed pending appeal, Code of Civil Procedure section 916 describes the scope of that stay: "[T]he perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from *or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order*, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." (Emphasis added.) Less than a decade ago, in *Varian*, the California Supreme Court explained that perfecting an appeal from an order stays *all* proceedings in which: (1) the proceedings *directly* or *indirectly* seek to enforce the order; (2) the possible results in the proceeding are irreconcilable with the possible outcomes of the appeal; or (3) the very purpose of the appeal is to avoid the need for the trial court proceeding at issue. (*Varian*, *supra*, 35 Cal.4th at pp. 189-190; see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 7.9.1 ["effects" test established in *Varian* determines applicability of the automatic stay]; see also *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 890-891 [holding that an appeal precludes the trial court from issuing a subsequent order that effectively enforces the appealed order], cited with approval in *Varian*, *supra*, 35 Cal.4th at p. 189, fn. 6.)

Here, the central question presented on appeal is whether the limitations that bound Improvement District A in 1968 – that Improvement District A may not use more than 1,350 acre-feet of water per year from the Strub Zone, and that water cannot be drawn with more than five wells – also bind the rest of Yuima. The November 25 order held, contrary to Yuima's previous 45-year understanding, that it did. Should the trial court entertain contempt proceedings initiated by Rancho Pauma to enforce the amended 1953 judgment as interpreted by the November 25 order – proceedings it has expressly invited Rancho Pauma to bring (Exh. M at p. 231) – it would invoke each one of the three grounds given in *Varian* for a stay of enforcement proceedings.

First, any contempt proceedings Rancho Pauma might bring related to the November 25 order would, either directly or indirectly, seek to enforce provisions of the 1953 judgment that are "embraced in" or "affected by" that order. Indeed, that would be the point of any such proceedings.

For four-and-a-half decades, Yuima understood and applied the 1953 judgment solely to Improvement District A, but on November 25, 2013, the trial court declared that the 1953 judgment applies to Yuima's General District as well. Therefore, any contention by Rancho Pauma that Yuima is drawing more than 1,350 acre-feet per year of water from the Strub Zone for use in its General District would be predicated entirely on the November 25 order's interpretation

of the 1953 judgment. Likewise, any contention by Rancho Pauma that Yuima is utilizing more than five wells to draw water from the Strub Zone for use in its General District would rely on the November 25 order's interpretation of the 1953 judgment. (Both of these are topics of contempt proceedings Rancho Pauma has threatened and the trial court has invited. (Exhs. M at p. 231, N at pp. 278-283, 288-291, 301-306.)) Thus, direct or indirect enforcement of the November 25 order is *exactly* what Rancho Pauma has repeatedly threatened against Yuima, and it is exactly what *Varian* prohibits.

Second, by a similar principle, a finding of guilt of contempt is irreconcilable with this court's potential reversal of the November 25 order. The contempt would arise from the 1953 judgment as interpreted by the November 25 order. If this court then reverses or vacates the November 25 order, it will render the interpretation of the 1953 judgment on which the conviction is based incorrect. Thus, contempt and reversal are irreconcilable potential results. For that independent reason, contempt proceedings must be stayed under *Varian*.

Finally, Yuima's appeal seeks review of the November 25 order, which establishes the grounds for Rancho Pauma's threatened contempt proceedings based on the 1953 judgment. The purpose of the appeal is to avoid those potential contempt proceedings, because whether Yuima has or will violate the judgment, at least with regard to the 1,350

acre-feet per year and five well limitations, depends entirely on the November 25 order's interpretation of the 1953 judgment. Thus, the enforcement proceedings Rancho Pauma threatens are precisely what Yuima seeks to prevent by its appeal. Therefore, Yuima meets the third independent *Varian* ground for a stay of enforcement.

At the hearing on Yuima's request for acknowledgment of an automatic stay, the trial court stated that *Varian* does not apply because the injunction issued in 1953 remains in effect, fully enforceable by contempt proceedings. (Exh. W at p. 435:18-27.) The trial court was wrong on both *Varian*'s application and the 1953 injunction.

Varian is Supreme Court precedent that describes the scope of the automatic appellate stay; this court routinely relies on *Varian* in analyzing petitions for supersedeas writs, and should, of course, do so here. (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 7.1 [citing *Varian* as the primary authority on automatic stay requests]; see also *Young v. Tri-City Healthcare Dist.* (2012) 210 Cal.App.4th 35, 49 [District Four, Division One panel relying on *Varian* to determine application of automatic stay].) The trial court's point that the 1953 judgment is enforceable by contempt disregards the fact that, at least concerning the issues in contention in this litigation, the November 25 order interprets the 1953 judgment, and that interpretation would necessarily serve as the basis for a contempt claim.

Accordingly, Rancho Pauma may not seek to enforce the 1953 judgment to the extent it is interpreted in the November 25 order by any means – including contempt – and the trial court may entertain no such efforts. Such is the nature of the automatic stay.

C. Yuima's writ petition is ripe because Rancho Pauma has refused to acknowledge the automatic stay and repeatedly threatened to bring contempt proceedings.

The trial court concluded that no automatic stay applies because "I could well be wrong, but where there's a final judgment in place that is not subject to appeal, the appeal period has long since run, just because one side or the other asked for an interpretation of the judgment and the court gives an interpretation doesn't then stay that final judgment. [¶] That final judgment is still subject to being enforced. That's my view. If I'm wrong, I'm wrong." (Exh. W at pp. 435:28-436:7.) When Yuima's attorneys explained that the automatic stay applies not to the 1953 final judgment but to the court's November 25 "interpretation" of that judgment – which upended the status quo and which Rancho Pauma more than a dozen times has threatened to enforce via contempt – the court simply replied that its interpretation was "like an advisory opinion" (*id.* at p. 430:3): "The 2013 order in layperson's terms is just an advisory interpretation. The

parties have to comply with the 1953 judgment." (*Id.* at p. 433:21-23.)

As explained above at infra pp. 17-21, the trial court's "advisory opinion" was in fact an order akin to a declaratory judgment. It adjudged rights and responsibilities under a disputed written instrument with particular regard to a concrete disagreement, and its "interpretation" of the 1953 judgment is subject to enforcement through contempt. It is no more "advisory" than any other declaratory judgment order.

Indeed, it has been black letter law for decades that California courts are constitutionally incapable of rendering advisory opinions. (*People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912 ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].) If the November 25 order is truly "advisory," it is void, the trial court proceedings below are meaningless, and the order should be vacated.

Further, this court has held supersedeas is appropriate to enforce the automatic stay in cases like this one. "A writ of supersedeas is also appropriate to override the trial court's enforcement of an order or judgment that is *automatically* stayed . . . where a party simply refuses to acknowledge an automatic stay. Indeed, in these circumstances, appellant has an *absolute right* to supersedeas." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 7.272, emphasis added; see also *In re Dabney's Estate* (1951) 37

Cal.2d 402, 408 ["It is also established law that even where an appeal effects a statutory stay, the writ of supersedeas will issue 'in a corrective capacity' in case of a . . . threatened violation of such stay"]; *Chapala Management Corp. v. Stanton* (2010) 186 Cal.App.4th 1532, 1541, fn. 8 ["'Supersedeas' is the appropriate remedy for a refusal to acknowledge the applicability of statutory provisions automatically staying the judgment while an appeal is pursued"].)

In this case, Rancho Pauma has flatly refused to acknowledge the existence of the automatic stay and threatened to enforce the November 25 order's interpretation of the 1953 judgment at least 13 times. Supersedeas is therefore appropriate to enforce the automatic stay.

II. If An Automatic Stay Does Not Apply, this Court Should Issue a Discretionary Stay Because the Underlying Appeal Presents Substantial Issues and the Balance of Hardships Favors a Stay.

Finally, even if no automatic stay exists under section 916, this court should issue a *discretionary* stay pending appeal under Code of Civil Procedure section 923. As the Supreme Court has explained, the purpose of a discretionary stay, like an automatic stay, is to preserve the status quo pending appeal: "'[T]he rule now is that in aid of their appellate jurisdiction the courts will grant supersedeas in appeals where to deny a stay would deprive the appellant of the benefit of a

reversal of the judgment against him, provided, of course, that a proper showing is made.'" (*People ex rel. San Francisco Bay Conservation & Development Com. v. Emeryville* (1968) 69 Cal.2d 533, 537.) "'On principle, it would be a terrible situation if in a proper case an appellate court were powerless to prevent a judgment from taking effect during appeal, if the result would be a denial of the appellant's rights if his appeal were successful.'" (*Ibid.*)

Discretionary supersedeas is appropriate where (1) the appeal presents substantial issues, and (2) failure to issue a stay is more likely to injure the appellant than issuance of a stay is likely to injure the respondent. (*Davis v. Custom Component Switches, Inc.*, *supra*, 13 Cal.App.3d 21, 27-28; accord, *Estate of Murphy*, *supra*, 16 Cal.App.3d 564, 569.) Both factors are present here.

A. Yuima will raise substantial issues on appeal.

On appeal, Yuima will contend that the trial court prejudicially erred by failing to consider and weigh *any* of the significant extrinsic evidence Yuima proffered, which was *critical* to understanding the intentions of both the parties and the court in 1968 when Yuima voluntarily submitted to the 1953 stipulated judgment. It should have done so, because the 1968 order amending the 1953 judgment was ambiguous in light of the extrinsic evidence of the parties' and court's intent, and consideration of that extrinsic evidence would conclusively resolve the ambiguity. (See *Alameda County*

Flood Control v. Department of Water Resources (2013) 213 Cal.App.4th 1163, 1180.)

The extrinsic evidence established that the only reason Yuima submitted to the 1953 judgment, or that the parties sought to amend the 1953 judgment, or that the court approved the amendments to the 1953 judgment, was that Yuima had created, pursuant to statutory authority, an entirely distinct sub-entity, Improvement District A, to inherit both the rights and burdens under the 1953 judgment from Palomar Mutual. With borders drawn to include the Rincon Ranch, Yuima created Improvement District A and voluntarily availed itself of the *Strub* court's jurisdiction to meet its public mandate to manage the water resources in its service area. It would have been irrational, self-destructive, and reckless of Yuima to intentionally permit the 1953 judgment's limitations on groundwater production to apply to *all* of its lands, which are more than double the size of the Rincon Ranch/Improvement District A area.

The trial court ultimately based its decision on the fact that, in the final 1968 order, the earlier court held:

> YUIMA MUNICIPAL WATER DISTRICT is substituted as a defendant herein *in place of and instead of said PALOMAR MUTUAL WATER COMPANY* and is ordered to comply *with the terms and conditions of the judgment* of this Court dated November 10, 1953, as said judgment has been modified . . . .

(Exh. H at pp. 89-90, emphasis added.)

However, the extrinsic evidence would have made clear that:

- The parties never requested that relief in 1968; instead, Palomar Mutual requested an order "dismissing [the *Strub* action] as to [Palomar Mutual] and *substituting [Improvement District] 'A'* of Yuima in place and instead of [Palomar Mutual] and requiring Yuima, *for [Improvement District] 'A'*, to comply with and conform to all provisions of [the] judgment as it may be modified." (Exh. E at p. 83.)
- Palomar Mutual's pleadings described the narrow relief it sought throughout its 1968 application to amend the judgment, referring specifically and repeatedly to "Improvement District A" as Palomar Mutual's successor distinctly from Yuima in general. (Exh. E at pp. 75-83.)
- The acquisition agreement between Yuima and Palomar Mutual made clear that Yuima would not control Palomar Mutual's local water rights for its general account, but instead was acting only "on behalf of [Improvement District] 'A'." (Exh. E at p. 78.)
- The acquisition agreement also expressly noted that all of the rights and property Yuima acquired from Palomar Mutual would "be used and devoted solely to the benefit of the territory comprising Improvement District A." (Exh. E at p. 79.)

- The only reason Improvement District A was not made the named defendant in Palomar Mutual's place was that, under California's Municipal Water District Act, an Improvement District is not an entity that can legally be sued. (See Wat. Code, §§ 71120-71196.) But there is no statutory reason that the parties could not stipulate – as they did here – for a separately maintained subdivision of Yuima to inherit the rights and responsibilities of Palomar Mutual, even if Yuima as a whole must legally be subject to the judgment.

- Yuima's conduct for more than 45 years reveals it understood the 1968 amendments to bind only Improvement District A to the terms of the 1953 judgment. For more than two generations, Yuima maintained completely separate water delivery, accounting, and management systems for both Improvement District A and the General District. Moreover, it substantially met the 1953 judgment's limitations, utilizing no more than 1,350 acre-feet per year of water from the Strub Zone on Improvement District A. Yuima did so because it reasonably understood that Improvement District A was subject to the 1953 judgment, but the General District was not.

This result-determinative evidence was required reading for the trial court, and by failing to consider it, the court reached the anomalous result that (1) Improvement District A is and always has been meaningless, and (2) Yuima

may not use, in any part of its significantly broader service area, more than (a) 1,350 acre-feet of water per year from the Strub Zone, or (b) five wells in the Strub Zone.

Further, the trial court incorrectly rejected Yuima's explanation why the 1968 court did not have jurisdiction to bind all of Yuima to the 1953 stipulated judgment. As Yuima will demonstrate in its opening brief, the 1968 court's jurisdiction on a motion to amend or modify the judgment was limited to the issues and rights addressed in the original lawsuit leading to the 1953 judgment – which included lands belonging to Rincon Ranch, but *not* the many thousands of other acres that Yuima services, which constitute the General District. Thus, any order purporting to bind the General District to the 1953 judgment fell outside the scope of the court's retained jurisdiction in 1968.

Accordingly, the issues to be raised in Yuima's appeal are "substantial" and meet the first factor for a discretionary stay.

B. Failure to issue a stay is more likely to injure Yuima than issuance of a stay is likely to injure Rancho Pauma.

Yuima also meets the second criteria for a discretionary stay, because, as a public water agency, Yuima is statutorily obligated to provide sufficient drinking water for its residents and businesses, and agricultural water for its farmers and orchard growers, so the people of Pauma Valley do not suffer

from thirst and their crops and orchards do not wither and die.

Significantly, summer is fast approaching in a year that has seen one of the worst droughts in California's recorded history. Yuima needs the ability to continue functioning during these critical months as it has for almost a half-century. Moreover, to meet its statutory obligations, it needs to be able to pursue the water arrangements it has sought to develop for years, if not with V/O, than with companies like it. To do that, it needs to be able to interpret the 1953 judgment as it always has: as applying to Improvement District A *only*. That interpretation would restrict the water Yuima may access from the Strub Zone for use on Improvement District A, but it would not affect the General District, which had not even been conceived when the original *Strub* parties settled their dispute, and which no one sought to bind at the time of the 1968 amendments.

On the other hand, Rancho Pauma is a private mutual water company that serves water only to its own shareholders and has no public purpose or duty. After the trial court denied Yuima's motion to acknowledge an automatic stay, V/O terminated its long-term groundwater well development with Yuima – and, Yuima has learned, signed a new agreement with Rancho Pauma to produce water from the Strub Zone in order to serve Rancho Pauma's private ends. (Exh. Y at p. 463, ¶¶ 5-6.) Permitting Rancho Pauma to use the erroneous November 25 order to privately produce

groundwater from the very same Strub Zone that Yuima planned to produce in the public interest would cause irreparable injustice to both Yuima and the public it serves.

Further, the *maximum* amount of water Yuima would potentially draw for use on the General District during the pendency of the stay is exceedingly small (approximately 500 acre-feet per year) relative to the size of the basin (approximately 125,000 acre-feet of water). (See Exh. Y at p. 463, ¶ 9.) That works out to just four one-thousandths (less than one-half of one percent) of the water in the basin. Tests conducted by Yuima showed there would be no perceptible difference in the water drawn by Rancho Pauma or any other entity if the wells Yuima sought to develop with V/O came online. (*Id.* at ¶ 11) However, if Yuima cannot procure water for its General District from the *Strub* basin, it must pay exorbitant prices for water purchased and shipped from elsewhere. (*Id.* at ¶ 10) It is capturing that potential profit from Yuima's public constituents, and not any risk to its own water supply, that is motivating Rancho Pauma in this litigation.

Given that a stay pending appeal would allow Yuima to continue meeting the water needs of the public it serves, while Rancho Pauma's primary benefit from the trial court's ruling is gaining new and lucrative business opportunities for the benefit of its shareholders, the balance of hardships favors granting Yuima a discretionary stay.

CONCLUSION

For the foregoing reasons, this court should grant the petition and issue a writ of supersedeas, staying any proceedings to enforce the 1953 judgment as interpreted by the trial court's November 25, 2013 order.

Dated: May 5, 2014

Respectfully submitted,

California Appellate Law Group
William N. Hancock
Audra Ibarra
Ben Feuer
Kidman Law LLP
Arthur G. Kidman
Andrew B. Gagen
Law Offices Of Scott & Jackson
Jeffrey G. Scott
James R. Dodson

By ___/s/_____
Ben Feuer

Attorneys for Petitioner and Appellant **Yuima Municipal Water District and Yuima Municipal Water District on behalf of Improvement District A (as successor in interest to Defendant, Palomar Mutual Water Company)**

CERTIFICATE OF COMPLIANCE

Pursuant to subdivision (c)(1) of rule 8.204 of the California Rules of Court, I certify that this petition contains 8,588 words.

____/s/_____

Ben Feuer

PROOF OF SERVICE

I, A. Kathryn Parker, declare as follows:

I am employed in the County of San Francisco, State of California and am over the age of eighteen years. I am not a party to the within action. My business address is One Sansome Street, Suite 3670, San Francisco, California 94104. I am readily familiar with the practice of the California Appellate Law Group, Inc. for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. On May 6, 2014, I served the within document entitled:

PETITION FOR WRIT OF SUPERSEDEAS

on the parties in the action by placing a true copy thereof in an envelope addressed as follows:

Jeremy N. Jungreis
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Counsel for Rancho Pauma Mutual Water Co.

Hon. Robert Dahlquist
San Diego Superior Court
Department NC-29
325 S. Melrose Drive
Vista, CA 92081
Trial Judge

and, following ordinary business practices of the California Appellate Law Group, Inc. by sealing said envelope and depositing the envelope for collection and mailing on the aforesaid date by placement for deposit on the same day in the United States Postal Service at One Sansome Street, San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 6, 2014 at San Francisco, California.

/s/
A. Kathryn Parker