COPY

LAW OFFICES OF
BERNIE BERNHEIM
A PROFESSIONAL CORPORATION
4725 RUBIO AVENUE
ENCINO, CALIFORNIA 91436
TELEPHONE (818) 906-2545
FACSIMILE (818) 906-8418

November 10, 2004

VIA PERSONAL DELIVERY
Supreme Court of California
300 South Spring Street
Los Angeles, California 90013

Re: Request for Depublication – *Permanent General Assurance Corp. v. Superior Court* (2004) 122 Cal.App.4th 1493, 19 Cal.Rptr.3d 597
Court of Appeal, Fourth Appellate District, Case No. G033269

To the Chief Justice and Associate Justices:

This is on behalf of United Policyholders pursuant to California Rules of Court, Rule 979, to request depublication of the recent court of appeal decision in *Permanent General Assurance Corp. v. Superior Court* (2004) 122 Cal.App.4th 1493, 19 Cal.Rptr.3d 597 (filed on October 12, 2004).

Nature of Interest

United Policyholders is a non-profit organization founded in 1991 and dedicated to education and advocacy on insurance issues and consumer rights. United Policyholders advances and protects policyholders' interests in a number of ways, including by filing *amicus curiae* briefs in cases involving important insurance principles, testifying at legislative and other public hearings, and participating in regulatory proceedings on policy issues. United Policyholders monitors legal and marketplace developments affecting the interests of all policyholders, and acts to protect those rights where appropriate.

United Policyholders' interest in this case is an outgrowth of its activities advocating and protecting policyholders' interests. The court's decision in *Permanent General Assurance Corp.*, if it remains published, would have a significant, detrimental impact on existing insurance laws and lead to massive confusion.

Why the Opinion Warrants Depublication

Permanent General Assurance Corp. should be decertified for publication because it is an unwarranted restatement of the law inconsistent with established precedent. It misinterprets and misapplies long-standing authority established by this Court and will likely cause confusion.

Permanent General Assurance Corp. involved an insurance bad faith action arising out of a vehicle theft claim where the insured sought "discovery to show a pattern and practice of like conduct toward other insureds." (*Permanent General Assurance Corp.*, *supra*, 19 Cal.Rptr.3d at 599.) The trial court granted the discovery and the insurer sought appellate review through a petition for writ of mandate. (*Id.*)

In a very short, but nevertheless impactful, opinion the Fourth District addressed four arguments advanced for the pattern and practice discovery. The court allowed the discovery pursuant to the cause of action for breach of the implied covenant of good faith and fair dealing, stating that "evidence of repeated or habitual discriminatory denial or handling of claims could be used to support plaintiff's theory" of bad faith. (*Id.* at 601.) In so holding, however, *Permanent General Assurance Corp.* rejected the three other grounds advanced for the pattern and practice discovery: (1) that the discovery was authorized by *Colonial Life & Accident Insurance Company v. Superior Court* (1982) 31 Cal.3d 785; (2) that the discovery was proper in connection with the punitive damage claim; and (3) that the plaintiff's claim for Unfair Business Practices authorized the discovery. (*Permanent General Assurance Corp.*, *supra*, 19 Cal.Rptr.3d at 600-601.) The *Permanent General Assurance Corp.* rulings regarding these other grounds for pattern and practice discovery are inconsistent with long-existing law, and the decision will, accordingly, create confusion in an area that was heretofore clear.

A. Pattern and Practice Evidence Pursuant to *Colonial Life & Accident Insurance Company v. Superior Court*

Colonial Life, decided by this Court, involved an action against an insurer "for violation of Insurance Code section 790.03, subdivision (h), breach of contract, *and* breach of the duty of fair dealing and good faith." (*Colonial Life & Accident Insurance Company, supra*, (1982) 31 Cal.3d at 788 (emphasis added).) The plaintiff in *Colonial Life* sought "general and punitive damages. . ." (*Id.*) In addressing the plaintiff's request for pattern and pattern discovery, this court held that "[w]ithout a doubt, the [pattern and practice] discovery. . .is relevant to the subject matter of this action and may lead to admissible evidence." (*Id.* at 792.)

Permanent General Assurance Corp. opined, however, that the pattern and practice "evidence sought cannot be justified by reference to *Colonial Life* . . .[because *Colonial Life*] involved a private claim for insurance bad faith settlement practices as defined in Insurance Code section 790.03, subdivision (h), and such causes of action were eliminated in *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287. . ." (*Id.* at 600)

Permanent General Assurance Corp. concluded that because *Moradi-Shalal* ended private actions for violation of Insurance Code section 790.03(h) that means *Colonial Life* cannot support pattern and practice discovery. This is unwarranted. It is well established that "[t]he actionable wrong contained in Insurance Code section 790.03, subdivision (h), is merely a codification of the tort of breach of the implied covenant of good faith and fair dealing as applied to insurance." (*General Ins. Co. v. Mammoth Vista Owners' Assn.* (1985) 174 Cal.App.3d 810, 822.)[1] Indeed, "[t]he creation of section 790.03(h) did nothing either to expand or restrict the preexisting common law right of action." (*Zephyr Park v. Superior Court* (1989) 213 Cal.App.3d 833, 837-838.) Thus, while an insured may no longer enforce Section 790.03(h) directly against an insurer, proof that an insurer has violated Section 790.03(h) is evidence of the insurer's breach of the covenant of good faith and fair dealing. The *Colonial Life* court's holding that pattern and practice evidence is discoverable is applicable to a common law claim for breach of the duty of good faith and fair dealing, regardless of the fact that a direct cause of action under Section 790.03(h) was disallowed by *Moradi-Shalal*.

---

[1] *See also Zephyr Park v. Superior Court* (1989) 213 Cal.App.3d 833, 837 ("Section 790.03(h) has been termed 'a codification of the earlier tort of bad faith'").

Moreover, as indicated above, the plaintiff's action in *Colonial Life* was predicated on *both* Insurance Code Section 790.03(h) *and* common law bad faith, separately and independently. (*Colonial Life & Accident Insurance Company*, *supra*, (1982) 31 Cal.3d at 788.) The Court's decision to allow "pattern and practice" discovery in *Colonial Life* was, thus, no more predicated on the statutory cause of action than on the common law cause of action. Accordingly, the abolition of the statutory cause of action has *never* been understood, by any court, to abolish the right to discovery of pattern and practice evidence.

Indeed, since *Moradi-Shalal* was decided, California cases have cited to *Colonial Life*'s approval of pattern and practice discovery, without providing any indication that *Colonial Life*'s viability was in question.

- ◊ In *Griffith v. State Farm Mut. Auto. Ins. Co.* (1991) 230 Cal.App.3d 59, the court cited *Colonial Life* as holding that "in discovery a court may order an insurance carrier to release information about insureds not named in a bad faith lawsuit if the information is reasonably calculated to lead to admissible evidence and the court has established procedures to notify the insureds information is being sought and release." (*Griffith*, *supra*, 230 Cal.App. 3d. at 68, n.5.)

- ◊ In *Pollack v. Superior Court (Northwestern Mutual Life Ins. Co.)* (2001) 93 Cal.App. 4th 817, the court stated that in *Colonial Life* "our Supreme Court held that, in an action alleging an insurer's bad faith refusal to pay benefits under an accident policy, the plaintiff was entitled to discover the names and addresses of other claimants whose accident claims had been adjusted by the person who had adjusted the plaintiff's claim." (*Pollack*, *supra*, 93 Cal.App. 4th at 818.)

Moreover, the California Practice Guide, Insurance Litigation, citing *Colonial Life*, states that "in ***bad faith actions*** against an insurer alleging misconduct by a particular claims representative, other insureds' claim files may be relevant to other instances of misconduct in the past. . ." (*Rutter*, Cal. Practice Guide: Insurance Litigation CH. 15-G, G., 15-131, Discovery (2004).) Thus, the California Practice Guide, an authoritative legal resource, believes that the pattern and practice discovery authorized by *Colonial Life* remains viable, despite *Moradi-Shalal*.

Permanent General Assurance Corp.'s holding that the decision in *Moradi-Shalal* means that pattern and practice discovery cannot be justified under *Colonial Life* is unwarranted.

B. Pattern and Practice Evidence to Support a Punitive Damages Claim

Pattern and practice discovery is also warranted to support a claim for punitive damages. *Colonial Life* held as follows with respect to pattern and practice evidence to support a punitive damage claim:

> "Other instances of alleged unfair settlement practices may also be highly relevant to plaintiff's claim for punitive damages. . . Indirect evidence of punitive damages may be suggested by a pattern of unfair practices. . ." (*Colonial Life & Accident Insurance Company, supra*, 31 Cal.3d at 791-792.)

Other California courts have also endorsed the principle that punitive damages against an insurer are particularly appropriate where a pattern and practice of unfair claims handling has been shown. (*Mock v. Michigan Miller's Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 329 ("a central theme common to those cases which have sustained punitive awards is the existence of *established policies or practices* in claims handling which are harmful to insureds") (italics in original); and *Neal v. Farmers Ins. Exchange* (1978) 21 Cal.3d 910) (punitive damages warranted because insurer's wrongful conduct was "all part of a conscious course of conduct, *firmly grounded in established company policy*. . .") (italics added).)

Permanent General Assurance Corp. nevertheless holds as follows with respect to pattern and practice evidence and a claim for punitive damages:

> "[A]fter [*Campbell v. State Farm Mutual Automobile Ins. Co.* (2003) 538 U.S. 408], a defendant can be punished only for the harm done to the *plaintiff*. . . The pattern and practice evidence would be irrelevant to and inadmissible for the purpose of assessing punitive damages." (*Permanent General Assurance Corp., supra,* 19 Cal.Rptr.3d at 601 (italics in original).)

Permanent General Assurance Corp.'s holding that *Campbell* makes pattern and practice evidence irrelevant to a claim for punitive damages in an insurance bad faith action is incorrect.

Campbell did not hold that similar, wrongful conduct could *never* be considered in relation to a punitive damage claim. On the contrary, *Campbell* made clear that other wrongful conduct, of the type that injured the plaintiff, *could* be considered so long as "the conduct in question replicates the prior transgressions." (*Campbell, supra*, 538 U.S. at 423.) In so holding, *Campbell* noted that "evidence of other acts need not be identical to have relevance in the calculation of punitive damages." (*Id.*)

In making its ruling, *Permanent General Assurance Corp.* cited to *Campbell*'s statement that "[d]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis." (*Permanent General Assurance Corp., supra*, at 601.) This statement, however, was made in the context of *Campbell*'s finding that "[t]he courts awarded punitive damages to punish and deter conduct that bore ***no relation*** to the Campbell's harm." (*Campbell, supra*, 538 U.S. at 422.) Immediately prior to the statement relied on by *Permanent General Assurance Corp.*, the *Campbell* court stated that "[a] defendant's ***dissimilar*** acts, ***independent from the acts upon which liability was premised***, may not serve as the basis for punitive damages." (*Campbell, supra*, 538 U.S. at 422 (emphasis added).) And later in the opinion, Campbell again emphasized that the plaintiff "identified scant evidence of ***repeated misconduct of the sort that injured them***." (*Id.* at 423 (emphasis added).)

These statements make clear that *Campbell* prohibits consideration of *dissimilar* conduct while, at the same time, authorizing consideration of "conduct [that] replicates the prior transgressions." (*Campbell, supra*, 538 U.S. at 423.) Thus, *Permanent General Assurance Corp.*'s holding that, in light of *Campbell*, pattern and practice evidence can never be justified to prove liability for punitive damages is unwarranted.

C. Pattern and Practice Evidence to Support an Unfair Business Practices Claim

Permanent General Assurance Corp.'s holding that pattern and practice discovery cannot be justified by an unfair business practices cause of action is also unwarranted. (*Permanent General Assurance Corp., supra,* 19 Cal.Rptr.3d at 601.)

Permanent General Assurance Corp. bases its conclusion that an unfair business practices claim does not support pattern and practice discovery on the statement that "the Business & Professions Code provides no toehold for scaling the barrier of Moradi-Shalal." (*Id.*) Irrespective of *Moradi-Shalal*, however, breach of the duty of good faith and fair dealing supports an unfair business practices claim, even if the underlying conduct would also violate Insurance Code section 790.03, subdivision (h).

> "Plaintiffs do not seek to enforce section 790.03 claims, but rather are enforcing claims involving common law fraud and bad faith, both of which are independently actionable. It is not relevant that State Farm's alleged misconduct may *also* violate some of the provisions of section 790.03. Thus, the argument of State Farm, made in reliance on *Moradi-Shalal*, that recognition of plaintiffs' [section 17200] cause of action would create a claim which is *otherwise* barred is without merit; nor do plaintiffs' allegations amount to a mere 'relabeling.'" (*State Farm Fire & Casualty Co. v. Superior Court (Allegro)* (1996) 45 Cal.App.4th 1093, 1108.)[2]

Because a claim for unfair business practices based upon a breach of the duty of good faith and fair dealing is viable, *Moradi Shalal* poses no obstacle to pattern and practice discovery designed to support such a claim. *Permanent General Assurance Corp.* erred in concluding otherwise.

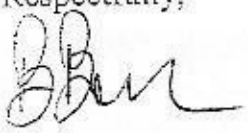
---

[2]But see conflicting opinion in *Textron Financial Corp. v. National Union Fire Ins. Co. of Pittsburgh* (2004) 118 Cal.App.4th 1061, 1070-1073.

Conclusion

The decision in *Permanent General Assurance Corp.* disallowing pattern and practice discovery on multiple grounds is unwarranted under California law. Accordingly, United Policyholders respectfully requests that this Court depublish *Permanent General Assurance Corp.*

Respectfully,



United Policyholders
By its counsel:
Bernie Bernheim, Esq.
Joshua H. Haffner, Esq.

cc: Client

19 Cal.Rptr.3d 597
122 Cal.App.4th 1493, 19 Cal.Rptr.3d 597, 4 Cal. Daily Op. Serv. 9185, 2004 Daily Journal D.A.R. 12,515
(Cite as: 19 Cal.Rptr.3d 597)

Court of Appeal, Fourth District, Division 3, California.

PERMANENT GENERAL ASSURANCE CORPORATION, Petitioner,
v.
The SUPERIOR COURT of California, County of Orange, Respondent;
Maria Luisa Hernandez, Real Party in Interest.

No. G033269.

Oct. 12, 2004.

Background: Insured filed bad faith action against insurer alleging discriminatory handling of her vehicle theft claim, and the Superior Court of Orange County, No. 02CC05511, Derek Guy Johnson, J., ordered insurer to produce files of similar claimants. Insurer petitioned for writ of mandate.

Holding: The Court of Appeal, Ikola, J., held that insured was entitled to discovery of the files provided she obtained authorization from those insureds.
Petition granted in part.

West Headnotes

[1] Pretrial Procedure ⇐381
307Ak381 Most Cited Cases
In insured's bad faith action against insurer alleging discriminatory handling of her vehicle theft claim, insured could not discover claims files of other insureds who had authorized their release in another case; insured's reuse of those authorizations for a new and different purpose would exceed the parameters of the other insureds' knowing consent, violate their right to privacy, and run counter to the purpose of the Insurance Code protections. West's Ann.Cal.Ins.Code § 791.13.

[2] Pretrial Procedure ⇐381
307Ak381 Most Cited Cases
In insured's bad faith action against insurer alleging discriminatory handling of her vehicle theft claim, insured was entitled to discovery of vehicle theft claims files of other insureds, based on theory that insurer had a pattern and practice of discriminatory claims handling of minority claimants; however, insured was required to first obtain authorization for release of the files from the insureds. West's Ann.Cal.Ins.Code § 791.13.
See 2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 521; Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2002) ¶ 15:58 (CAINSL Ch. 15-G).

*598 Law Offices of Adrienne D. Cohen and Adrienne D. Cohen for Defendant and Petitioner.

No appearance for Respondent.

The Quisenberry Law Firm, John N. Quisenberry, Long Beach, Anthony F. Witteman, Los Angeles, Heather M. McKeon and Daniel A. Crawford, Long Beach for Plaintiff and Real Party in Interest.

OPINION

IKOLA, J.

Permanent General Assurance Corporation (defendant) seeks relief from respondent's order compelling defendant to produce certain vehicle theft claims files to real party in interest, Maria Luisa Hernandez (plaintiff). We conclude plaintiff can discover the subject files because they could lead to information supporting plaintiff's discrimination theory, but she can do so only after obtaining authorizations from *all* of the insureds whose claims files are to be produced. Thus, we grant the petition in part, and issue a peremptory writ, directing the trial court to determine an appropriate procedure by which such authorizations may be obtained.

FACTS

Plaintiff is suing defendant for breach of insurance contract, breach of the implied covenant of good faith and fair dealing, and intentional and negligent

infliction of emotional distress. Plaintiff contends the insurer wrongfully denied her claim for theft of her vehicle and failed to pay for all damages to her vehicle. She alleges she suffered loss of contract benefits, interest, time, use of a replacement vehicle, and mental distress.

During the course of discovery, plaintiff propounded a request for production on defendant, seeking all claims files for all of defendant's insureds who had submitted a claim for vehicle theft since January 1, 1998. Defendant objected to the request as unduly burdensome, overbroad, harassing, not calculated to lead to the discovery of admissible evidence, and seeking information protected under Insurance Code section 791 et seq., which prohibits an insurance company from disclosing personal and private information regarding its insureds. Citing *599*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 123 S.Ct. 1513 (*Campbell*), defendant also argued that nothing about other insureds' claims and the handling of their files could be used to support plaintiff's punitive damages claim, and such evidence would not otherwise establish whether plaintiff's claim was denied in bad faith. Therefore, the materials were irrelevant and not designed to lead to the discovery of admissible evidence.

In her motion to compel production, and in response to defendant's objections, plaintiff argued defendant's counsel had a pattern of "stonewalling" which had been employed in the present case and in prior litigation "in an effort to hide evidence of [defendant's] racially discriminatory claims handling practices." Further, relying on *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 183 Cal.Rptr. 810, 647 P.2d 86 (*Colonial Life*), plaintiff contended the claims files for "other insureds with claims similar to [plaintiff's] are relevant to demonstrating [defendant's] bad faith conduct, and may demonstrate that [defendant] has a pattern and practice of bad faith conduct toward its insureds, including [plaintiff]." Plaintiff also asserted that to the extent the information was privileged, the Insurance Code provided express procedures for discovery of the claims files.

The court granted plaintiff's motion to compel production of the files. But it failed to condition the order on plaintiff obtaining authorizations from the nonparty insureds in general, and it impliedly ruled that plaintiff need not obtain authorizations specifically for files as to which her attorney had already obtained authorizations in prior litigation involving a different client, *Bell v. Permanent General Assurance Corporation* (Super. Ct. Los Angeles County, No. BC279237) (*Bell*). Plaintiff waived discovery with regard to all claims files from January 1, 1998, through June 1, 1999.

In connection with its petition for writ of mandate, defendant sought a stay of discovery of the subject files, which this court granted and has extended pending disposition of the petition. Defendant asks us to set aside the order granting the motion for production of all claims files concerning theft claims and direct the entry of an order denying the motion. As discussed more fully, *post*, plaintiff is entitled to discovery of the subject files, but must obtain authorizations for all files, including new authorizations for those files previously discovered in the *Bell* litigation.

DISCUSSION

Plaintiff seeks compensatory and punitive damages based on allegations of the insurer's bad faith handling of her claim. She intends the discovery to show a pattern and practice of like conduct toward other insureds. Inter alia, plaintiff believes, although she has not specifically alleged, that defendant discriminates against persons of minority background or low income by denying or unreasonably disputing their vehicle theft claims. She contends production of the claims files will produce evidence relevant to this claim.

Defendant asserts that in the wake of *Campbell, supra*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585, and *Romo v. Ford Motor Co.* (2003) 113 Cal.App.4th 738, 6 Cal.Rptr.3d 793 (*Romo*), evidence of a defendant's pattern and practice cannot be used to support a punitive damages award, and the records have no other arguable relevance to plaintiff's case. Defendant further challenges the order in that it allows plaintiff in this case to reuse written authorizations provided by defendant's insureds in the *Bell* case. Defendant argues Insurance Code section 791 et seq., governs the insurer's duty to protect the private *600

supra, 538 U.S. at p. 423, 123 S.Ct. 1513 ["Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis"]; see also *Romo, supra*, 113 Cal.App.4th at p. 749, 6 Cal.Rptr.3d 793 ["the result [of *Campbell*] is a punitive damages analysis that focuses primarily on what defendant did to the present plaintiff, rather than the defendant's ... general incorrigibility"]; and *Diamond Woodworks, Inc. v. Argonaut Ins. Co.* (2003) 109 Cal.App.4th 1020, 1054, 135 Cal.Rptr.2d 736 [under *Campbell*, the defendant's conduct toward others "cannot provide a legitimate basis for the plaintiff's punitive damages award"].) The pattern and practice evidence would be irrelevant to and inadmissible for the purpose of assessing punitive damages.

[2] However, plaintiff's fourth argument supporting discovery has merit. In large part, plaintiff's bad faith cause of action is predicated on an unpleaded theory that defendant has a pattern and practice of a discriminatory claims handling practice, under which the auto theft claims filed by Hispanic, African-American, and/or low income insureds are singled out for bad faith denial or extraordinary contest. Plaintiff contends production of the claims files is the only avenue by which she may discover evidence supporting her discrimination theory, and thus her bad faith cause of action. We agree that an insurer making decisions about auto theft claims on such bases may well be engaging in bad faith conduct, and that evidence of repeated or habitual discriminatory denial or handling of claims could be used to support plaintiff's theory that, as an Hispanic, she was subjected to the same bad faith practice. (See Evid.Code, § 1105.) We are not sure plaintiff can expect to find information about ethnicity, race, or income level set forth in the claims files. Nonetheless, plaintiff's counsel will no doubt have direct contact with those claimants who authorize release of their files, and such contacts may disclose the existence of a common thread of discrimination in defendant's claims, and thus support plaintiff's theory that she herself was the victim of discrimination.

DISPOSITION

The petition is granted in part. Let a writ of mandate issue directing respondent court to conduct a hearing to determine an appropriate procedure for plaintiff to obtain authorizations from California insureds [FN1] for release of their files pertaining *602 to auto theft claims, and for defendant's production of those files, and to determine, in view of this court's opinion that authorizations obtained in the *Bell* litigation may not be used in this case, whether claims made by other insureds during the period January 1, 1998, to June 1, 1999, are relevant to the subject matter of this action.

FN1. Respondent court's order does not expressly limit discovery to California insureds. However, we infer the limitation from the reference to the *Bell* order, which does so limit discovery. Since neither party has argued the issue on appeal or referenced it as having arisen in the court below, we presume plaintiff is seeking the files of California insureds only, and therefore we express no opinion on whether discovery can be ordered in other jurisdictions.

This court's order to show cause, and stay order, having served their purpose, are discharged and vacated.

In the interest of justice, each party shall bear its own costs incurred in this proceeding. (Cal. Rules of Court, rule 27(a)(4).)

WE CONCUR: RYLAARSDAM, Acting P.J., and BEDSWORTH, J.

122 Cal.App.4th 1493, 19 Cal.Rptr.3d 597, 4 Cal. Daily Op. Serv. 9185, 2004 Daily Journal D.A.R. 12,515

END OF DOCUMENT

PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 4725 Rubio Avenue, Encino, California 91436.

On November 10, 2004 I served the foregoing document described as:

REQUEST FOR DEPUBLICATION

on interested parties in this action by placing ( ) the original (X) a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

__X__ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondences for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California 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.

___ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee.

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

Executed on November 10, 2004 at Encino, California.

Print Name

Signature

SERVICE LIST

Adrienne D. Cohen, Esq. Law Offices of Adrienne D. Cohen 2677 N. Main Street, Suite 820 Santa Ana, California 92705-6631	John N. Quisenberry, Esq. Anthony F. Witteman, Esq. The Quisenberry Firm 2049 Century Park East, Suite 2200 Los Angeles, California 90067
Court of Appeal Fourth District Division 3 925 N. Spurgeon Street Santa Ana, California 92701-3724	