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*Via TrueFiling*

July 20, 2022

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

Re: *Norwalk Meadows Nursing Center v. S.C. (Arteaga)*  
Case No. S275019

Honorable Justices:

Under California Rules of Court, rule 8.500(g), the California Academy of Appellate Lawyers submits this letter in support of review. As set forth below, this case presents an opportunity to revisit, based on more than a decade of experience, important issues of appellate procedure that the Court considered in its 4–3 decision in *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233 (*Brown*).

## 1. INTEREST OF THE ACADEMY

The Academy's members are more than 125 experienced appellate practitioners whose common goals include promoting and encouraging sound appellate procedures that ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation. This case offers an opportunity to consider such an improvement to the fairness and efficiency of the appellate process.

2. SUGGESTIVE *PALMA* NOTICES AND *BROWN, WINFIELD & CANZONERI, INC. v. SUPERIOR COURT* (2010) 47 Cal.4th 1233

In *Brown, supra*, 47 Cal.4th 1233, this Court considered whether “suggestive” or “coercive” *Palma* notices are permissible. *Palma* notices notify the trial court and real party in interest that the Court of Appeal is considering issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) A suggestive *Palma* notice informs the parties and the trial court that the Court of Appeal intends to issue a peremptory writ in the first instance, states the court’s reasons for doing so, and gives the trial court limited jurisdiction to enter a new order consistent with the Court of Appeal’s reasoning. (*Brown, supra*, 47 Cal.4th at p. 1238.) They are, in short, invitations to the trial court to change its prior decision and act in accordance with the Court of Appeal’s stated view of the matter.

In *Brown*, this Court decided to permit suggestive *Palma* notices, but only on condition that the trial court give the parties an opportunity to be heard before deciding whether to change its ruling. (*Brown, supra*, 47 Cal.4th at p. 1250.) The opinion included a strong recommendation that Courts of Appeal give prior notice and invite preliminary opposition whenever they anticipate taking any action on writ petitions other than summary denial. (*Id.* at p. 1248.)

Three factual assumptions underlay *Brown*. First, that Courts of Appeal issue suggestive *Palma* notices only in rare circumstances. (*Brown, supra*, 47 Cal.4th at p. 1237.) Second, that far from intimidating or coercing trial courts to change their original orders, suggestive *Palma* notices would “fortify” the resolve of trial courts to stand by those decisions if they continued to believe them correct. (*Id.* at p. 1247, fn. 8.) Third, that the expedited procedure of suggestive *Palma* notices would avoid “further expenditure of the court’s scarce resources.” (*Id.* at p. 1246.)

The *Brown* dissent responded that, however rarely issued, suggestive *Palma* notices are “simply wrong” because in them, “the Court of Appeal—the decision maker on the writ—expresses an opinion on the merits without having ever heard from the opposing side.” (*Brown, supra*, 47 Cal.4th at p. 1253 (dis. opn. of Werdegar, J.)) That was, and is, the Academy’s view, as expressed in its amicus briefs in *Brown*.

But the dissent also challenged the majority’s factual assumptions.

First, Justice Werdegar stated her belief that “rare” is the trial court “that would adhere to its initial ruling in the face of a Court of Appeal’s written assessment that it was patently wrong.” (Brown, *supra*, 47 Cal.4th at p. 1254 (dis. opn. of Werdegar, J.).)

Second, the dissent concluded (citing the Academy’s amicus brief) that, far from conserving time and resources, the potential for issuance of a suggestive Palma notice would result in a waste of resources both for the parties and the courts. Such would be the result whenever attorneys for real parties in interest conclude that the only way to insure against the risk of “being returned to the trial court with the deck stacked against them” by a suggestive Palma notice is to respond to a writ petition immediately with a “full-blown preliminary opposition brief [ ] addressing the merits.” (Brown, *supra*, 47 Cal.4th at pp. 1255–1256 (dis. opn. of Werdegar, J.).)

Now, 12 years out from Brown, we join Petitioners (Petition 11–12, 26) in concluding that reconsideration is warranted to determine whether experience has borne out the majority’s assumptions in Brown.

Review should also be granted to consider whether the Brown majority’s encouragement of Courts of Appeal to issue prior notice and a request for preliminary opposition before taking action other than summary denial has proven sufficient. (Brown, *supra*, 47 Cal.4th 1233, 1248). This Court may conclude, after more than a decade of experience with that encouragement, that only a written policy requiring such prior notice will remove both the risk that appellate courts may take such action in every case and the consequent incentive to file a “full blown preliminary opposition” in response to all writ petitions. (Eisenberg, *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2021) ¶ 15:218f). For now, only the Fourth District has such a written policy. (Ct. App. Fourth Dist. Local Rules, rule 871(b)). Review here would allow this Court to reconsider whether such prior notice is a necessary constituent of “due notice” under Code of Civil Procedure section 1088, as well. (See Brown, *supra*, 47 Cal.th 1233, 1241).

Finally, in addition to seeking an end to suggestive Palma notices, Petitioners ask this Court to put an end to “Brown hearings”—in which parties can provide input before the trial court acts in response to appellate action on writ petitions. (Petition 11). While the Academy supports review here, it does not agree that the end of suggestive Palma notices will obviate the need for

such hearings. Fairness will still require “Brown hearings” before trial courts change their rulings in response to any Court of Appeal action on writ petitions other than summary denial. Granting review will allow this Court to reaffirm that aspect of Brown.

In sum, the Academy supports review here so this Court can reconsider whether, in light of the 12 years of experience since it decided Brown, suggestive Palma notices should continue. The Academy also supports review to reconsider whether prior notice and request for preliminary opposition are essential preliminaries to a Palma notice or an alternative writ, suggestive or not.

Respectfully submitted,

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NORWALK MEADOWS NURSING CENTER v. S.C. (ARTEAGA)  
*Sup. Court Case No.: 21STCV20738*

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 171 Pier Avenue, # 322, Santa Monica, CA 90405-5363.

On July 20, 2022, I served true and correct copies of the foregoing document described as **AMICUS LETTER** on the interested parties in this action addressed as follows:

**PLEASE SEE ATTACHED SERVICE LIST**

BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. I know that the correspondence is deposited with the U.S. Postal Service on the same day this declaration was executed and in the ordinary course of business. I know that the envelope was sealed, and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practice, at Los Angeles, California.

SUBMISSION OF AN ELECTRONIC COPY provided to the Court of Appeal for service on the Supreme Court is provided to satisfy the requirements under rule 8.212(c)(2).

BY ELECTRONIC MAIL: Via TrueFiling

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

Executed on this 20<sup>th</sup> day of July, 2022, at Los Angeles, California

/s/ Luda Rosenbaum  
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