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Appendix—1

Filed 6/19/19

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MICHAEL DEUSCHEL, Plaintiff and Appellant, v. CITY OF LONG BEACH, Defendant and Respondent.	B269341 (Los Angeles County Super. Ct. No. NC055567)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ross M. Klein, Judge. Affirmed.

Michael Deuschel, pro. per., for Plaintiff and Appellant.

Howard D. Russell, Deputy City Attorney, City of Long Beach, for Defendant and Respondent.

Michael Deuschel sued the City of Long Beach, asserting that his vehicle had been illegally towed, stored, and ultimately sold at auction. After Deuschel presented his case to the jury, the trial court granted the City of Long Beach's motion for non-suit and entered judgment. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Michael Deuschel (Deuschel) parked his vehicle near his home in November 2009; the City of Long Beach (City) ticketed and towed it. Deuschel challenged both the ticket and the legality of the towing and subsequent storage. When he failed to get relief from City, his vehicle was sold at auction. He sued the City.

Deuschel commenced his lawsuit in January 2011. After City answered, the court set the case for trial in February 2012. In January 2012, Deuschel moved for a continuance, citing health issues; City stipulated to his request and the trial court continued the trial date to April 2012. In March 2012, Deuschel filed an ex parte application to continue the trial again, based on his medical needs, requesting a trial date after May 12, 2012. The trial court set a new trial date of May 14, 2012.

In April 2012, Deuschel sought leave to file a First Amended Complaint, alleging a single cause of action for violation of Title 42 United States Code section 1983. In May, Deuschel filed another ex parte motion to continue the trial to September, again citing his medical condition; the trial court granted leave to amend and continued the trial to January 2013.

That January, Deuschel's counsel sought to withdraw from representation and to continue the trial; after counsel withdrew the request, the court continued the trial until February. In

February, Deuschel sent a letter to the court requesting another medical continuance until June; the court continued the trial to August. Deuschel substituted in new counsel in June. In August, counsel filed an ex parte application to continue the trial until December 2013, because Deuschel had surgery scheduled; the court continued the trial, with counsel's consent, to January, 2014. Deuschel brought in another new counsel in January, and the court continued the trial to September 2014.

In July 2014, Deuschel moved to re-open discovery, asserting that his prior counsel had failed to conduct discovery; the record demonstrates no discovery by Deuschel prior to this motion. The trial court denied the motion. The case was then transferred to another courtroom, and all dates were vacated; the trial was later reset for December 2014.

In October, then current counsel filed a motion to withdraw; the court set the motion for hearing on December 5, and vacated all other dates. Deuschel opposed the motion, and asserted that any further continuance would interfere with his on-going medical treatment. The trial court denied the motion and reset the trial date for December. City's motion to continue the trial to January 2015 was then granted.

On January 7, 2015, Deuschel delivered an ex parte letter to the trial court, which he characterized in his briefing to this Court as a request for accommodation of his disability. The trial court ordered the document sealed, unread.[1]

At the Final Status Conference, Deuschel reported that he had surgery scheduled, and the court continued the trial to April 2015. The parties later stipulated to continue the trial until

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[1] Pursuant to Deuschel's request, this Court has reviewed the letter. It will be discussed below.

August 2015, to allow Deuschel time to recover. Deuschel's counsel sought, and was granted, leave to withdraw in April; Deuschel substituted in new counsel in August. The parties stipulated to trail the trial from August 7 to August 18. After pre-trial proceedings, the parties picked a jury, and Deuschel testified. The trial court granted City's motion for non-suit (Code of Civ. Proc., § 581c)[2] on August 19, 2015, and entered judgment in October. Deuschel appealed.

DISCUSSION

On appeal, Deuschel raises a number of arguments. We will address those arguments concerning pre-trial and trial error: specifically, the court's denial of the motion to re-open discovery; the court's grant of motions in limine; and the court's grant of the City's non-suit motion. We will also discuss the court's treatment of Deuschel's requests to continue the trial. We cannot, however, address the significant arguments that counsel was ineffective, biased, or negligent in the performance of their professional duties, as those matters are not before this Court on the appeal of the judgment in this matter; the concerns appellant expresses concerning the inadequacy of his medical treatment are also not matters before this court.[3]

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2 Further statutory references, unless otherwise noted, are to the Code of Civil Procedure.

3 The record does not indicate whether Deuschel has filed any proceedings or claims in any forum against any of his counsel.

A. The Trial Court Did Not Abuse Its Discretion In Denying The Motion To Re-open Discovery

In January 2014, new counsel appeared for Deuschel. In March, that counsel requested that City stipulate to reopen discovery in the matter. The City declined to stipulate, and Deuschel filed a motion to reopen, citing section 2024.050. In that motion, Deuschel explained that he did not know why previous counsel had not conducted discovery. Although the trial date, at the time of the motion, was September 2014, Deuschel also requested a continuance of the trial.

The trial court, in denying the motion, discussed the procedural history of the case, including the number of continuances, transfers of proceedings, and substitution of counsel. The court found no good cause to grant the motion, concluding that there had been no bar to conducting discovery previously, and that reopening discovery after the case had been pending for more than three years would prejudice City.

We review the denial of a motion to reopen discovery for abuse of discretion. (§ 2024.050; *Roe v. Superior Court* (1990) 224 Cal.App.3d 642, 646, fn. 5.) An order denying a motion to reopen discovery cannot be reversed absent a clear abuse of discretion. (*Ibid.*) (See also *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1588 ["under section 2024.050, subdivision (b), the trial court's discretion to grant such a motion was not unfettered, but could be exercised only upon 'tak[ing] into consideration any matter relevant to the leave requested,' including, but not limited to ... [¶] '[t]he necessity and the reasons for the discovery' and '[t]he diligence or lack of diligence of the party seeking ... the hearing of

a discovery motion, and the reasons that ... the discovery motion was not heard earlier.'"].)

We cannot conclude, on this record, that the trial court abused its discretion. Deuschel was unable to explain why, in the more than three years that the case had been pending, he had taken no discovery. He also did not explain why a motion to reopen had not been made at the time of any of the previous continuances. Finally, appellant made no attempt to respond to the claim of prejudice asserted by City.

B. The Trial Court Did Not Abuse Its Discretion In Granting The Motions in Limine

1. City's Motions

City filed a motion in limine to exclude evidence of the administrative hearing at which the hearing officer determined that the parking citation and related tow of appellant's vehicle was improper. City argued that the evidence was irrelevant, but, even if it had some marginal relevance to the issues before the jury, it should be excluded under Evidence Code section 352. The City also sought to bifurcate damages from liability.

The trial court granted the request to bifurcate. With respect to the motion in limine, Deuschel's counsel stated that he did not intend to tender evidence concerning the administrative hearing unless the City adduced evidence of the underlying ticket. City acknowledged it did not intend to mention the ticket. The court precluded introduction of the evidence presented at the administrative hearing and the results; Deuschel did not object.

Prior to jury selection, City objected to admission of evidence on a theory of failure to train, arguing that the pleadings provided no notice of that theory of municipal liability.

The court asked Deuschel's counsel for an offer of proof, and counsel responded that Deuschel would testify that he had been told by two City employees that Maggie Everett, the employee responsible for post-storage hearings, "does it however she wants." Counsel argued that testimony demonstrated a failure to train Everett concerning the requirements of due process. The court, finding that such testimony was hearsay and insufficiently related to the issues, precluded the testimony.

2. Applicable Law

We generally review the trial court's rulings on motions in limine for abuse of discretion. (*Appel v. Superior Court* (2013) 214 Cal.App.4th 329, 336; *Condon-Johnson & Associates, Inc. v. Sacramento Municipal Utility Dist.* (2007) 149 Cal.App.4th 1384, 1392.)

The single cause of action in this case, a claim that City violated Deuschel's rights, asserts a violation of Title 42 United States Code section 1983. To establish municipal liability under this statute, Deuschel was required to prove that City adopted a policy, ordinance or regulation that caused the harm alleged. "Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." (*Monell v. New York City Dept. of Social Services* (1978) 436 U.S. 658, 691.) As the United States Supreme Court has explained, "*Monell* is a case about responsibility. In the first part of the opinion, we held that local government units could be made liable under § 1983 for deprivations of federal rights, overruling a contrary holding in *Monroe v. Pape* 365 U.S. 167 (1961). In the second part of the opinion, we recognized a limitation on this liability and concluded that a municipality cannot be made liable by application of the

doctrine of *respondeat superior*. See *Monell*, 436 U.S., at 691." (*Pembaur v. City of Cincinnati* (1986) 475 U.S. 469, 477-478.)

The requirement that a plaintiff demonstrate an official policy "was intended to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible. *Monell* reasoned that recovery from a municipality is limited to acts that are, properly speaking, acts 'of the municipality'—that is, acts which the municipality has officially sanctioned or ordered." (*Pembaur, supra,* 475 U.S. at pp. 479-480.)

The fact that an act or decision was taken by an officer of the municipality is not enough to establish municipal liability. Even where the official has, and exercises, his or her discretion in undertaking a function, this alone is insufficient to create municipal liability. (See, e.g., *Oklahoma City v. Tuttle* (1985) 471 U.S. 808, 822–824.)

Where, as here, a plaintiff seeks to impose municipal liability on the basis of a failure to train municipal employees, he or she must prove "that (1) he was deprived of a constitutional right, (2) the City had a training policy that 'amounts to deliberate indifference to the [constitutional] rights of the persons' with whom [its police officers] are likely to come into contact'; and (3) his constitutional injury would have been avoided had the City properly trained those officers. See [*Lee v. City of Los Angeles* (9th Cir. 1989) 250 F.3d 668], 681 (quoting *City of Canton v. Harris* (1989) 489 U.S. 378, 388–389)." (*Blankenhorn v. City of Orange* (9th Cir. 2007) 485 F.3d 463, 484.)

3. The Proffered Evidence Was Insufficient

Deuschel's offer of proof with respect to City employee Maggie Everett did not demonstrate that he could provide evidence to satisfy the legal standard. Her ability to exercise discretion, without the showing of a training policy demonstrating "deliberate indifference," and without a suggestion of training that could have avoided the injury, is insufficient to establish liability. (*Lee, supra,* 250 F.3d at p. 681 ["a plaintiff must show that his or her constitutional 'injury would have been avoided' had the governmental entity properly trained its employees. [Citations]"].)

Accordingly, the trial court did not abuse its discretion in granting the remaining motion in limine.

C. The Record Supports the Grant of Non-Suit

1. Deuschel's Evidence At Trial

Deuschel was the sole witness at trial. He testified that, in November 2009, he resided in Long Beach. On November 24, he parked his vehicle on the street; other cars were also parked there, and he did not observe any no parking signs. At 7 a.m. on November 25, his car, along with others, was still parked on the street; later that morning, his car was gone, and City workers were present. Those workers told him his vehicle had been towed.

Deuschel then went to City Hall, where he was directed to the Mayor's office; the Mayor's staff directed him to speak to Maggie Everett at the Police Department. He asked that his truck be returned, to which Everett responded "That's not going to happen. I've already made up my mind." Deuschel asked her to review a witness statement and to allow him to bring in

additional statements, asking for a hearing; she responded that "she had already made up her mind."

On December 6 or 7, Deuschel received a post-storage hearing notice from City, a copy of which was admitted at trial as the only exhibit offered. [4] Deuschel went to the City impound yard, where he was directed to return to the Police Department. At the Department, Deuschel spoke to Sargeant Conline, Everett's supervisor, requesting a post-tow hearing; Conline told Deuschel he had already had a hearing with Everett. Deuschel asked for an opportunity to provide evidence, and Conline asked for that evidence, but Deuschel did not have it available at that meeting. Following that meeting, Deuschel did not recover his vehicle; the City auctioned it.

After the conclusion of his testimony, Deuschel rested; City moved for nonsuit on the grounds that there was no evidence to support municipal liability. (§ 581c [trial court may enter judgment after the plaintiff has completed his or her opening statement or the presentation of his or her evidence].)

2. The Trial Court Did Not Err

"We independently review an order granting a nonsuit, evaluating the evidence in the light most favorable to the plaintiff and resolving all presumptions, inferences and doubts in his or her favor. (*Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830, 838–839, 206 Cal.Rptr. 136, 686 P.2d 656; *Margolin v. Shemaria* (2000) 85 Cal.App.4th 891, 895, 102 Cal.Rptr.2d 502; see generally *People v. Ault* (2004) 33 Cal.4th 1250, 1266, 17

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[4] At oral argument, Deuschel argued that the notice itself, because it directed him to a non-existent location, demonstrated an official policy to deny a hearing. The notice, however, directed him to the Police Department.

Cal.Rptr.3d 302, 95 P.3d 523 ['[A]ppellate review of trial court orders granting nonsuits, directed verdicts, or judgments notwithstanding the verdict—orders that finally terminate claims or lawsuits—is quite strict. All inferences and presumptions are against such orders.'].) 'Although a judgment of nonsuit must not be reversed if plaintiff's proof raises nothing more than speculation, suspicion, or conjecture, reversal is warranted if there is "some substance to plaintiff's evidence upon which reasonable minds could differ. . . ."' (*Carson,* at p. 839.) In other words, '[i]f there is substantial evidence to support [the plaintiff]'s claim, *and* the state of the law also supports that claim, we must reverse the judgment.' (*Margolin,* at p. 895.)" (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1124–1125.)

A trial court properly grants a motion for nonsuit where, as a matter of law, the evidence is not sufficient to support a jury finding in the plaintiff's favor. The trial court, in making its ruling, may not make credibility determinations or weigh the evidence; instead it must interpret all evidence in the light most favorable to the plaintiff. (*Allgoewer v. City of Tracy* (2012) 207 Cal.App.4th 755, 761 [motion for nonsuit raises issue of law; considering all evidence in plaintiff's favor, defendant is entitled to judgment if there is not substantial evidence to support claim]; *Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448, 1458 [same].)

Here, in granting the motion, the trial court concluded that, even completely crediting all of Deuschel's testimony, there was no evidence of an official pattern, custom, policy or practice to deny a hearing. The trial court further reasoned that even if there were such a policy, there was no evidence that any official

policy maker sanctioned the denial of the hearing. The court did not err in this conclusion. While the evidence in this case demonstrates an unfortunate series of events, that evidence does not establish a violation of section 1983, the only claim remaining in the case at the time of trial. Neither Deuschel's testimony nor his exhibit demonstrated the existence of any City policy to deny a hearing; moreover, he did not demonstrate either a lack of training, or suggest training that would have avoided the injury he claims. The record here shows no "substance to plaintiff's evidence upon which reasonable minds could differ."

D. The Trial Court Did Not Abuse Its Discretion In Responding to Deuschel's Medical Needs

Deuschel asserts that the trial court abused its discretion in denying his requests for accommodation of his disability, and in failing to grant his requests under the Americans With Disabilities Act of 1990 (42 U.S.C., § 12101 et. seq.) (ADA).

California Rules of Court, rule 1.100 (b) provides that "It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system." The Rule requires that a request for accommodation must describe the accommodation being sought, and the medical condition on which it is based. Requests must be made in advance, no fewer than five court days before the relevant date, although the court has discretion to waive this requirement. (Rule 1.100 (c)(2), (3).) As Deuschel correctly asserts, an accommodation may be a trial continuance; "the cost to the public of multiple continuances[ ]must be accepted under certain circumstances as necessary for effective access to judicial services

for disabled persons." (*In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1275.)

In this case, the trial court granted multiple trial continuances. The record demonstrates that, given multiple changes of representation, and multiple transfers of courtrooms, every request for continuance was granted, with the length of the extension equal to or greater than the time requested. The only exception was the final trial setting; in that case, Deuschel's physician, in February, estimated a six-month recovery period ending August 24; the trial took place six days prior to the end of that period, a date to which Deuschel's counsel stipulated.

Deuschel asserts that the trial court improperly ignored a request for accommodation which he filed, ex parte, directly with the trial department in January 2015, eight months before the trial. At his request, we have reviewed the letter.[5] While it does describe medical conditions justifying a continuance, it also raises many issues unrelated to any request for accommodation. The letter was not presented in compliance with Rule 1.100, which requires filing through the ADA coordinator. In any event, the trial court did not order Deuschel to commence trial within the period discussed in the letter. Deuschel has failed to demonstrate any violation of the ADA or Rule 1.100.

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[5] During the course of this appeal, Deuschel filed a number of motions with this court. The motions to take judicial notice dated January 25, 2018, February 8, 2018, and June 26, 2018 are denied, as the matter contained in the requests is not proper for judicial notice. (Evid. Code, §§ 451, 453.)

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.

Appendix—2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MICHAEL DEUSCHEL,

Plaintiff,

vs.

CITY OF LONG BEACH,

Defendants.

Case No.: NC055567

Honorable Ross M. Klein, Judge
Department S27/Long Beach

NOTICE OF RULING ON NON-SUIT

Complaint Filed:January 18, 2011
Trial Date: **August 18-19, 2015**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 19, 2015, the Court (Hon. Ross M. Klein, Judge presiding) granted non-suit in favor of defendant CITY OF LONG BEACH following presentation of plaintiff's evidence.

The Court's ruling and order is set forth in the portion of the trial transcript attached hereto as Exhibit "A."

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

DATED: September 25, 2015

CHARLES PARKIN, City Attorney

By: _____
HOWARD D. RUSSELL,
Deputy City Attorney
Attorneys for Defendant
CITY OF LONG BEACH

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
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EXHIBIT "A"

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT S27 HON. ROSS M. KLEIN, JUDGE

MICHAEL DEUSCHEL,

PLAINTIFF(S),

VS. NO. NC055567

CITY OF LONG BEACH,

DEFENDANT(S).

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, AUGUST 19, 2015

APPEARANCES:

FOR PLAINTIFF(S): LAW OFFICE OF CLIFF DEAN SCHNEIDER
BY: CLIFF DEAN SCHNEIDER
ATTORNEY AT LAW
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FOR DEFENDANT(S): OFFICE OF THE CITY ATTORNEY
BY: HOWARD D. RUSSELL
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LONG BEACH, CALIFORNIA 90802

RHONDA NORBERG, CSR NO. 9265
CCRR NO. 185
OFFICIAL REPORTER

THE COURT: EXHIBIT 1 IS NOW ADMITTED INTO EVIDENCE.

(RECEIVED IN EVIDENCE, EXHIBIT NO. 1, DOCUMENT.)

MR. SCHNEIDER: AND PLAINTIFF RESTS.

THE COURT: THANK YOU.

MR. RUSSELL: YOUR HONOR, THERE'S SOMETHING WE NEED TO DISCUSS OUTSIDE THE JURY'S PRESENCE.

THE COURT: ALL RIGHT. AND MAY WE GIVE OUR HARDWORKING JURORS A 15-MINUTE BREAK, PLEASE?

NORMALLY WE WORK A LITTLE BIT LONGER BEFORE WE TAKE A BREAK, BUT I DO WANT TO ADDRESS THIS ISSUE NOW, SO PLEASE ENJOY YOUR BREAK. LEAVE YOUR NOTEBOOKS, DON'T TALK ABOUT THE CASE.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT, OUTSIDE THE PRESENCE OF THE JURORS:)

THE COURT: AND WE REMAIN ON THE RECORD. OUR JURORS AND ALTERNATE HAVE LEFT. REMAINING IN THE COURTROOM ARE BOTH COUNSEL AND THE PLAINTIFF.

MR. RUSSELL, GO AHEAD.

MR. RUSSELL: THANK YOU, YOUR HONOR.

YOUR HONOR, THE DEFENDANT MOVES FOR NONSUIT UNDER CODE OF CIVIL PROCEDURE SECTION 581(C).

AS WAS STATED ON THE RECORD EARLIER IN THE CASE AND CONSISTENT WITH THE CITY'S TRIAL BRIEF THAT WAS FILED, THE ONLY CAUSE OF ACTION IN THIS CASE IS A CAUSE OF ACTION FOR MUNICIPAL LIABILITY AGAINST THE CITY OF LONG BEACH ALLEGING THAT THERE IS AN UNCONSTITUTIONAL POLICY, PRACTICE OR PROCEDURE -- MUNICIPAL POLICY, PRACTICE OR PROCEDURE THAT DENIES PEOPLE THE RIGHT TO A POST-TOW HEARING.

BASED ON THE EVIDENCE, FIRST OFF, THERE WAS NO EVIDENCE PRESENTED DURING THE PLAINTIFF'S CASE THAT EVEN IF SUCH A POLICY, PRACTICE OR CUSTOM EXISTS, IT WAS APPROVED BY THE FINAL POLICY MAKER FOR THE CITY OF LONG BEACH. THERE'S NO EVIDENCE AS TO WHO THAT PERSON IS; BUT UNDER THE CASE LAW, IT'S TYPICALLY THE CHIEF OF POLICE OR A CITY MANAGER, NOT A POLICE SERGEANT.

SECOND, THAT THE FINAL POLICY MAKER WAS DELIBERATELY INDIFFERENT TO KNOWING THAT THE POLICY, PRACTICE OR CUSTOM EXISTED, THEY WERE DELIBERATELY INDIFFERENT TO THE POTENTIAL CONSTITUTIONAL RAMIFICATIONS OF ALLOWING THAT POLICY, PRACTICE OR PROCEDURE TO CONTINUE.

SO EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH A CUSTOM, POLICY OR PRACTICE, THEY FAILED TO PUT ON ANY EVIDENCE REGARDING THE FINAL POLICY MAKER KNOWLEDGE AND APPROVAL. BUT THERE IS NO EVIDENCE WHATSOEVER THAT THERE WAS AN OFFICIAL POLICY, PRACTICE OR CUSTOM THAT WOULD LIKELY LEAD TO THE DEPRIVATION OF CONSTITUTIONAL

RIGHTS.

IN FACT, THE EVIDENCE WAS EXACTLY THE OPPOSITE. THE EVIDENCE IS THAT THE CITY HAS SOMEBODY DESIGNATED TO PROVIDE POST-TOW HEARINGS; THAT PEOPLE IN THE CITY WERE AWARE OF WHO THAT PERSON WAS AND WOULD DIRECT CITIZENS TO THAT PERSON; THAT THE PERSON WOULD MEET WITH THE CITIZEN WHO CAME TO DISCUSS IT.

THE CITIZEN COULD TALK TO THEM ABOUT THE CASE. IF THE CITIZEN HAD EVIDENCE, THEY COULD PRESENT THE EVIDENCE; IF THEY DIDN'T HAVE THE EVIDENCE, THEY DIDN'T HAVE THE EVIDENCE; THAT THE CITY SENT NOTICES TO PEOPLE ADVISING THEM OF THEIR RIGHTS TO HAVE THE HEARING.

AND WHILE EXHIBIT 1 IS A PREPRINTED FORM THAT REFERENCES A STORAGE OFFICE, IT'S CLEAR FROM THE FORM THAT THE AGENCY INVOLVED IS THE LONG BEACH POLICE DEPARTMENT; AND IN THIS CASE, THE PLAINTIFF ACTUALLY WENT AND SPOKE TO THE LONG BEACH POLICE DEPARTMENT.

HE WENT THERE; HE MET WITH THE PERSON DESIGNATED; AND WHILE HE DIDN'T LIKE THE RESULT, HE HAD AN OPPORTUNITY TO OFFER EVIDENCE AT THAT TIME. HE WENT BACK TO MEET WITH SERGEANT CONLINE, WHO IS THE SUPERVISOR; AND HE HAD AN OPPORTUNITY TO PRESENT EVIDENCE THERE IF HE WANTED TO.

HE CHOSE NOT TO. AND THEN DESPITE GATHERING, PER HIS TESTIMONY, STATEMENTS, HE NEVER WENT BACK TO SEEK ANY ADDITIONAL HEARING ON THE TOWING. THERE IS NO INDICATION THAT -- OR EVIDENCE THAT EVEN IF

EVERYTHING THE PLAINTIFF SAYS IS TRUE, EVEN IF THAT IS SOMEHOW A CONSTITUTIONAL DEPRIVATION, THAT THAT HAPPENED IN ANYONE ELSE'S CASE.

AND IN THE TRIAL BRIEF, THE CITY CITES THE CASE OF CITY OF OKLAHOMA VERSUS TUTTLE, A 1985 UNITED STATES SUPREME COURT CASE AT 471 U.S. 808, AND DAVIS VERSUS CITY, IS A NINTH CIRCUIT CASE FROM 1989, 869 F.2D 2230, THAT STAND FOR THE PROPOSITION THAT THE PLAINTIFF CANNOT PROVE THE EXISTENCE OF A MUNICIPAL POLICY AND CUSTOM BASED SOLELY ON THE OCCURRENCE OF A SINGLE INCIDENT OF UNCONSTITUTIONAL ACTION BY A NON-POLICY-MAKING EMPLOYEE.

ELSEWHERE IN THE BRIEF WE TALK ABOUT THE MONELL (PHONETIC) CASE AND THAT THERE IS NO RESPONDEAT SUPERIOR; AND THE CASE THAT STANDS FOR THAT PROPOSITION IS CANTON VERSUS HARRIS, 1989, U.S. SUPREME COURT CASE, 489 U.S. 378, AND PEMBAUR VERSUS CITY OF CINCINNATI, WHICH IS A 1986 SUPREME COURT CASE, 475 U.S. 469.

THE SUPREME COURT STATED THE OFFICIAL POLICY REQUIREMENT WAS INTENDED TO DISTINGUISH THE FACTS OF THE MUNICIPALITY FROM ACTS OF EMPLOYEES OF THE MUNICIPALITY AND THEREBY MAKE CLEAR THAT MUNICIPAL LIABILITY IS LIMITED TO ACTION FOR WHICH THE MUNICIPALITY IS ACTUALLY RESPONSIBLE.

MONELL REASONED THAT RECOVERY FROM A MUNICIPALITY IS LIMITED TO ACTS THAT ARE, PROPERLY SPEAKING, ACTS OF THE MUNICIPALITY; THAT IS, ACTS WHICH THE MUNICIPALITY HAS OFFICIALLY SANCTIONED OR ORDERED.

AND FOR THOSE REASONS, YOUR HONOR, THERE IS A FAILURE OF PROOF BY THE PLAINTIFF.

EVEN TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE NONMOVING PARTY, EVEN DRAWING EVERY REASONABLE INFERENCE FROM THAT EVIDENCE, THERE IS NOT SUFFICIENT EVIDENCE FOR THIS CASE TO GO TO THE JURY ON THE SINGLE CLAIM OF MUNICIPAL LIABILITY.

THE COURT: AND BEFORE I HEAR FROM PLAINTIFF, THE CITATION FOR MONELL VERSUS DEPARTMENT OF SOCIAL SERVICES IS 426 U.S. 658 FROM 1978; CITY OF OKLAHOMA VERSUS TUTTLE IS A 1985 CASE, 471 U.S. 808; THE DAVIS CASE, THE NINTH CIRCUIT 1989 CASE, CAN BE FOUND AT 869 F.2D 2230.

AND, MR. SCHNEIDER, DID YOU WISH TO SAY ANYTHING AND ADDRESS THE ISSUES RAISED BY MR. RUSSELL?

MR. SCHNEIDER: YES; YOUR HONOR.

MR. RUSSELL CHARACTERIZED THIS AS ONLY HAVING ONE THEORY BY WHICH MUNICIPAL LIABILITY CAN BE FOUND, AND PLAINTIFFS HAVE ARGUED THAT TWO THEORIES EXIST. AND ONE WOULD BE THE OFFICIAL POLICY OR CUSTOM, AND SECOND IS FAILURE TO TRAIN.

UNDER OFFICIAL POLICY OR CUSTOM, THE CACI JURY INSTRUCTION 3002, THIRD PRONG, SAYS OFFICIAL POLICY OR CUSTOM MEANS A CUSTOM THAT IS A PERMANENT WIDESPREAD OR WELL-SETTLED PRACTICE OF THE CITY. AND AS YOU KNOW, THE STANDARD FOR THESE MOTIONS IS WHETHER ANY REASONABLE JURY COULD FIND, BASED ON THE EVIDENCE THEY CURRENTLY HAVE, WHETHER -- IN FAVOR OF THE NONMOVING.

AND HERE THE QUESTION IS WHETHER ANY

REASONABLE JURY COULD FIND THAT THE -- EITHER THE -- THE DENIAL OF THE HEARING OR THE DENIAL OF THE FAIR HEARING IS A CUSTOM THAT IS A PERMANENT WIDESPREAD OR WELL-SETTLED PRACTICE IN THE CITY.

OUR ARGUMENT IS VERY SIMPLE; THAT MR. DEUSCHEL MET WITH THREE SEPARATE PEOPLE WHO HAD NEVER EVEN HEARD THE -- THE TERM "STORING OFFICE"; AND THAT THEIR FORM, THEIR OFFICIAL FORM, DIRECTED MR. DEUSCHEL ON A WILD GOOSE CHASE TO TRY TO FIND THIS PLACE.

AND OUR FIRST ARGUMENT, OUR PRIMARY ARGUMENT, IS THAT THAT IS AN ATTEMPT TO DENY PEOPLE POST-TOW HEARINGS. ON TOP OF THAT, BASED ON THE FAILURE TO TRAIN JURY INSTRUCTIONS, CACI 3003, THE FIRST ELEMENT OF THAT IS THAT THE CITY OF LONG BEACH'S TRAINING PROGRAM WAS NOT ADEQUATE TO TRAIN ITS EMPLOYEES.

WELL, THERE'S THREE EMPLOYEES WHO DON'T KNOW WHERE THIS OFFICE IS. ALL THEY KNOW IS THAT MAGGY EVERETT HANDLES IT. NONE OF THEM SEEM TO KNOW WHAT THE PROCESS SHOULD BE BECAUSE NONE OF THEM HAVE GIVEN HIM AN OPPORTUNITY OR 48 HOURS TO PREPARE OR ANYTHING FOR THIS HEARING.

THE SECOND PRONG OF THAT -- THAT FAILURE TO TRAIN IS THAT THE CITY OF LONG BEACH KNEW BECAUSE OF A PATTERN OF SIMILAR VIOLATIONS OR IT SHOULD HAVE BEEN OBVIOUS TO IT THAT THE INADEQUATE TRAINING PROGRAM WAS LIKELY TO RESULT IN A DEPRIVATION OF A RIGHT TO A POST-STORAGE HEARING.

THEY SHOULD HAVE CERTAINLY KNOWN THAT GIVING A NOTICE THAT DOESN'T TELL THEM WHERE TO GO WOULD NOT ONLY DEPRIVE THEM OF THE RIGHT TO A HEARING BUT THE RIGHT TO A FAIR HEARING. THEY SHOULD HAVE ALSO KNOWN THAT THE FAILURE TO TRAIN PEOPLE ON WHERE THIS OFFICE IS AND WHO HANDLES IT AND HOW IT'S SUPPOSED TO BE HANDLED WOULD RESULT IN VIOLATIONS OF THE 14TH AMENDMENT.

AND THE REST OF THOSE ELEMENTS IN THERE THAT MAGGY EVERETT VIOLATED MICHAEL DEUSCHEL'S RIGHT TO A FAIR POST-STORAGE HEARING AND ALL OF THAT, THAT'S STILL AN ISSUE AND I DON'T BELIEVE THAT THE DEFENDANT IS ARGUING THAT WE HAVEN'T PRESENTED EVIDENCE OF THE OTHER ELEMENTS.

AND I WOULD ARGUE AND -- AND MR. DEUSCHEL WOULD ARGUE THAT -- THAT WE HAVE ESTABLISHED ENOUGH FOR A JURY TO MAKE A REASONABLE INFERENCE THAT THE CITY, A., EITHER HAD AN OFFICIAL POLICY OF INTENTIONALLY MISLEADING PEOPLE TO THE WRONG LOCATIONS, OR TRAINING THEIR -- OR BY TRAINING THEIR PEOPLE TO GIVE EITHER INADEQUATE HEARINGS OR TO -- NOT TRAINING THEM, BEING DELIBERATELY INDIFFERENT IN TRAINING, SO THAT THEY WOULD NEVER END UP IN THE RIGHT PLACE TO GET A POST-TOW HEARING.

AND I BELIEVE THAT WE HAVE GIVEN ENOUGH EVIDENCE THAT A JURY CAN INFER THAT. NOW, HAVING SAID ALL OF THAT, IN LIGHT OF YOUR HONOR'S RULING YESTERDAY EXCLUDING CERTAIN EVIDENCE THAT I BELIEVE WAS HIGHLY PROBATIVE AND ONLY MINIMALLY PREJUDICIAL, AND I BELIEVE

FELL UNDER HEARSAY EXCEPTIONS 10- -- I'M SORRY -- 1220 AND 1222, WE SUBMIT TO THE COURT AT THIS POINT.

THE COURT: GIVE ME A SECOND, PLEASE.

MR. RUSSELL, DID YOU WISH TO RESPOND?

MR. RUSSELL: JUST BRIEFLY ON THE FAILURE TO TRAIN ISSUE, YOUR HONOR.

THERE'S NO EVIDENCE AT ALL ON FAILURE TO TRAIN. THERE'S NO EVIDENCE THAT ANY FINAL POLICY MAKER WAS AWARE OF THE WORDING ON THE FORM, APPROVED OF THE WORDING ON THE FORM, THOUGHT THAT THE WORDING ON THE FORM MAY BE MISLEADING IN ANY WAY, SHAPE OR FORM.

AND ULTIMATELY, IT IS AN ARGUMENT OF FORM OVER SUBSTANCE BECAUSE EVERYBODY KNEW WHO WAS RESPONSIBLE TO CONDUCT THE HEARINGS. THE PLAINTIFF WAS DIRECTED TO THAT PERSON; AND THE PLAINTIFF SPOKE TO THAT PERSON ABOUT THE SUBJECT MATTER, WHICH WAS THE TOW.

SO THERE IS NOT ANY INFERENCE THAT CAN BE REASONABLY DRAWN THAT THE CITY INTENTIONALLY MISLED PEOPLE BASED ON THE FORM TO DENY THEM THE RIGHT TO A HEARING. THEY SEND THE FORM, IT SAYS CONTACT THE POLICE DEPARTMENT, AND THAT'S WHAT THEY DID IN THIS CASE.

THE COURT: THANK YOU.

MR. SCHNEIDER, DID YOU WISH TO SAY ANYTHING FURTHER, SIR?

MR. SCHNEIDER: NO, YOUR HONOR.

THE COURT: ALL RIGHT. SO THAT THE RECORD IS CLEAR FOR REVIEW BY ANY OTHER COURT, I DID READ AND RELY UPON THE CASES THAT WERE SPECIFICALLY CITED IN THIS

ARGUMENT, MONELL, M-O-N-E-L-L, VERSUS DEPARTMENT OF SOCIAL SERVICES; CANTON, C-A-N-T-O-N, VERSUS HARRIS; PEMBAUR, P-E-M-B-A-U-R, VERSUS CITY OF CINCINNATI; CITY OF OKLAHOMA VERSUS TUTTLE, T-U-T-T-L-E; AND DAVIS, D-A-V-I-S, VERSUS CITY.

I AM STARTING MY ANALYSIS BY GIVING COMPLETE CREDIT TO THE TESTIMONY OF MR. DEUSCHEL AND THE PHYSICAL EVIDENCE, EXHIBIT NUMBER 1. I AM AT A LOSS TO SEE HOW THE TESTIMONY AND WRITTEN EVIDENCE DENOTES AN OFFICIAL PATTERN, CUSTOM, POLICY OR PRACTICE TO DENY INDIVIDUALS A RIGHT TO A HEARING.

EVEN ASSUMING FOR ARGUMENT'S SAKE THAT THERE WAS SUCH A PATTERN, CUSTOM, POLICY OR PRACTICE, THERE WAS NO EVIDENCE THAT ANY OFFICIAL POLICY MAKER RATIFIED OR OFFICIALLY SANCTIONED OR ORDERED THE DENIAL OF THE RIGHT TO A HEARING.

TAKING ALL OF THE EVIDENCE AT FULL FACE VALUE, I, AS THE COURT, FIND THAT NO REASONABLE FACT FINDER -- THAT'S OUR JURY -- COULD FIND AND REACH ANY OTHER CONCLUSION OTHER THAN THE ONE THAT THE COURT IS DRAWING DURING THIS HEARING.

FOR ALL OF THESE REASONS, THE COURT FINDS THAT THE DEFENSE MOTION IS WELL TAKEN AND THE COURT WILL GRANT THE MOTION MADE BY THE DEFENDANT. I WILL BRING IN THE JURY WHEN THEY HAVE CONCLUDED THEIR BREAK AND TELL THEM THAT THEIR SERVICES ARE APPRECIATED AND ARE NOW OVER IN THIS CASE.

THE CITY IS TO PREPARE A NOTICE OF THIS

RULING, GIVE THAT NOTICE TO THE PLAINTIFF THROUGH COUNSEL, AND ALSO PREPARE A PROPOSED JUDGMENT FOR THE COURT'S REVIEW AND SIGNATURE.

MR. RUSSELL: YOUR HONOR, CAN I -- WHAT I'D LIKE TO DO IS ATTACH THE COURT REPORTER'S TRANSCRIPT OF THE HEARING AND YOUR RULING AS PART OF THE NOTICE, SO THERE MAY BE A SLIGHT DELAY IN ME PROVIDING THE NOTICE BECAUSE I'D LIKE THE TRANSCRIPT.

MR. SCHNEIDER: NO OBJECTION TO THAT.

THE COURT: I THINK THAT'S A GOOD IDEA, SO WE HAVE A FULL AND COMPLETE RECORD, AND I THINK WE ARE -- WE ARE ALL UNDER THE IMPRESSION THAT THAT WILL BE PROVIDED WITHIN A REASONABLE TIME. NO ONE IS TRYING TO RUSH OUR EXCELLENT AND HARDWORKING COURT REPORTER TO DROP ALL OF HER OTHER WORK TO GIVE THIS PRIORITY.

MR. SCHNEIDER: CAN I PLEASE ASK THAT, DEPENDING ON THE DELAY, WE RESERVE THE RIGHT TO -- TO EXTEND THE TIME TO FILE AN APPEAL BASED ON THAT?

THE COURT: WELL, HERE. PERHAPS WE DON'T EVEN NEED TO REACH THAT ISSUE. LET ME ASK OUR COURT REPORTER IF SHE HAS A TIME FRAME WHEN SHE BELIEVES SHE WILL BE ABLE TO PROVIDE THE TRANSCRIPT.

THE REPORTER: IN APPROXIMATELY TWO WEEKS, YOUR HONOR.

THE COURT: THE COURT REPORTER INDICATED TWO WEEKS, SO I DON'T THINK WE NEED TO ADDRESS OR ADJUST THE APPELLATE TIMELINE AT THIS POINT.

MR. RUSSELL: AND IF IT COMES TO THAT, YOUR HONOR,

THE DEFENSE WOULD NOT OBJECT TO A SHORT EXTENSION OF TIME AND WE'RE ALSO WILLING TO ATTACH JUST A PORTION OF THE TRANSCRIPT THAT APPLIES TO THE HEARING IF THAT WILL GET US THAT SOONER RATHER THAN WAIT FOR THE REPORTER TO COMPLETE THE TRANSCRIPT OF THE ENTIRE TRIAL.

THE COURT: I APPRECIATE YOUR KIND OFFER. I DON'T KNOW -- AND I WILL STAND CORRECTED -- IF YOU CAN OFFER THAT. I THINK IT MAY BE A JURISDICTIONAL -- PURSUANT TO THE STATUTE.

MR. SCHNEIDER: I BELIEVE YOU'RE CORRECT, JUDGE. I BELIEVE ONLY YOUR HONOR COULD ORDER THAT. BUT AT THIS POINT, IT SOUNDS LIKE DEFENDANT WOULD NOT BE AGAINST STIPULATING TO SUCH AN ORDER IF IT CAME DOWN TO IT.

MR. RUSSELL: RIGHT.

MR. SCHNEIDER: AND IF YOU CAN SEND ELECTRONIC COPIES, THAT MIGHT MAKE THE PROCESS EVEN QUICKER AND MAKE IT EASIER FOR YOU.

THE COURT: IT SOUNDS LIKE WE'RE ALL GOING TO WORK TOGETHER TO MAKE SURE THAT IT'S DONE IN A TIMELY FASHION SO THAT IF MR. DEUSCHEL CHOOSES, HE MAY PURSUE ANY FURTHER RIGHTS OR REMEDIES.

MR. SCHNEIDER: THANK YOU.

THE COURT: THANK YOU.

AND LET'S HAVE OUR JURORS AND ALTERNATE COME IN.

///

///

///

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and I am not a party to the within entitled action. My business address is 333 W. Ocean Blvd., 11th Floor, Long Beach, California 90802-4664.

On September 25, 2015, I caused to be served the within: **NOTICE OF RULING ON NON-SUIT**

on all interested parties in said action, by placing a true copy and/or original thereof enclosed in sealed envelopes address as follows:

Cliff Dean Schneider, Esq.
THE LAW OFFICE OF CLIFF DEAN SCHNEIDER
8939 S. Sepulveda Blvd., Suite 102
Los Angeles, CA 90045

Tel: (310) 560-1518

X **BY MAIL**: I am "readily familiar" with the **firm's practice** of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Long Beach, 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 to be delivered such document(s) by hand to the person(s) stated above.

☐ **BY FEDERAL EXPRESS**: I caused said envelope(s) to be sent by Federal Express to the addressee(s).

☐ **BY FACSIMILE MACHINE**: In addition to the above service by mail, hand delivery or Federal Express, I caused said document(s) to be transmitted by facsimile machine to the addressee(s).

Executed on September 25, 2015, at Long Beach, California.

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

Sandy Yepez

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MICHAEL DEUSCHEL, Plaintiff, vs. CITY OF LONG BEACH, Defendants.	Case No.: NC055567 Honorable Ross M. Klein, Judge Department S27/Long Beach ~~[PROPOSED]~~ JUDGMENT FOLLOWING GRANTING OF NON-SUIT Complaint Filed:January 18, 2011 Trial Date: August 18-19, 2015

The above-entitled action came on regularly for trial on August 18 and 19, 2015 in Department S27, South District of the Los Angeles Superior Court, 415 West Ocean Boulevard, Long Beach, California, before Honorable Ross M. Klein, Judge Presiding. Cliff Dean Schneider, Esq., appeared on behalf of Plaintiff, Michael Deuschel. Deputy City Attorney, Howard D. Russell, appeared on behalf of Defendant, City of Long Beach.

A jury of 12 persons was impaneled and sworn. Witnesses were sworn and testified. After hearing Plaintiff's case, defendant City of Long Beach made a motion for non-suit, which was granted.

///

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED:

1. That Judgment shall be entered in favor of defendant CITY OF LONG BEACH and against plaintiff MICHAEL DEUSCHEL;

2. Plaintiff MICHAEL DEUSCHEL shall recover nothing from defendant CITY OF LONG BEACH; and

3. Defendant CITY OF LONG BEACH is awarded costs of suit following timely filing of a Memorandum of Costs.

///

DATED: 10-5-, 2015.

Hon. ROSS M. KLEIN
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and I am not a party to the within entitled action. My business address is 333 W. Ocean Blvd., 11th Floor, Long Beach, California 90802-4664.

On September 25, 2015, I caused to be served the within: **NOTICE [PROPOSED] JUDGMENT FOLLOWING GRANTING OF NON-SUIT**

on all interested parties in said action, by placing a true copy and/or original thereof enclosed in sealed envelopes address as follows:

Cliff Dean Schneider, Esq.
THE LAW OFFICE OF CLIFF DEAN SCHNEIDER
8939 S. Sepulveda Blvd., Suite 102
Los Angeles, CA 90045

Tel: (310) 560-1518

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Executed on September 25, 2015, at Long Beach, California.

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

Sandy Yepez

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

Appendix—3

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 7

MICHAEL DEUSCHEL,
Plaintiff and Appellant,
v.
CITY OF LONG BEACH,
Defendant and Respondent.

B269341
Los Angeles County Super. Ct. No. NC055567

THE COURT:*

Appellant's petition for rehearing is denied.

* Perluss Zelon Tam

Appendix—4

Court of Appeal, Second Appellate District, Division Seven - No. B269341

S257161

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MICHAEL DEUSCHEL, Plaintiff and Appellant,

v.

CITY OF LONG BEACH, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

Appendix—5

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 22, 2019

Mr. Michael Deuschel
P.O. Box 1694
El Segundo, CA 90245

Re: Michael Deuschel
v. City of Long Beach, California
Application No. 19A584

Dear Mr. Deuschel:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kagan, who on November 22, 2019, extended the time to and including February 15, 2020.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Clara Houghteling
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Michael Deuschel
P.O. Box 1694
El Segundo, CA 90245

Clerk
Court of Appeal of California, Second Appellate District
300 South Spring, 2nd Floor
North Tower
Los Angeles, CA 90013

Additional material from this filing is available in the Clerk's Office.