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No. S284584

In the
Supreme Court of the United States

CONSUELO SALDANA and IVA DOMINGUEZ,

Petitioners,

vs.

WILLIAM CAMPANA,

Respondent.

On Petition for Writ of Certiorari to the
Second Appellate District, Court of Appeal of the State of
California, After Denial of Review by the California
Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May California arbitrarily deny a civil jury trial to indigent litigants in violation of the Seventh Amendment to the U.S. Constitution and article I § 16 of the California Constitution, and of California's own other statutory and case law?
2. May a California appellate court in its final decision suddenly, in violation of California law, infer waiver of jury trial, a new issue not previously raised by either party or any Court and not allowed to be inferred under California law?

PARTIES TO THE PROCEEDING

96-year-old Consuelo Saldana, and her daughter Iva Dominguez, constitute the petitioners before this Court.

William Campana, step-brother of Petitioner Iva Dominguez, is the respondent before this Court. Following the Los Angeles Superior Court's denial of a jury trial, Campana obtained a judgment for the partition and sale of Petitioners' home.

STATEMENT OF RELATED PROCEEDINGS

There was currently one related appeal, filed on August 8, 2023, under California Appeal Case B332152, captioned *Iva Dominguez Et Al. V. William Campana*.

After almost all of the claims of the entire underlying case giving rise to this Petition, five of the seven counts, were dismissed after Respondent admitted under oath that they were all false, and the facts devised by his counsel who had suborned Respondent's testimony about the claims, petitioners sued Respondent for malicious prosecution, abuse of process and elder abuse by Respondent. The lower court dismissed the case on the main grounds that the malicious prosecution case was premature, because the dismissal of the perjured counts was not final, and that the case had not been fully adjudicated in petitioners' favor, unless this pending appeal is successful. Affirming on October 28, 2024, the California Appellate Court

declined to hold that case in abeyance pending the outcome of this Petition.

There are no additional litigation proceedings in any court that are directly related to this case.

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Statutes, Rules & Regulations Cited

Seventh Amendment to the U.S. Constitution	2,10,21
California Constitution Article I § 16	2,11,21,22,28,31
California Code of Civil Proc Code §631	21,22,30,31
California Jury Instructions, CACI 4900	23

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional and statutory provisions involved include the Seventh Amendment to the U.S. Constitution, which states that "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law"; and Article I § 16 of the California Constitution (reproduced at App. 26), which states in relevant part that: "Trial by jury is an inviolate right and shall be secured to all."

**STATEMENT OF THE CASE, INCLUDING
FEDERAL QUESTIONS RAISED IN THE STATE
COURT**

Petitioners were denied, in state court, a jury trial to defend their home of 37 years against a civil claim by a predatory relative to sell the home and pocket the proceeds.

The Courts of the State of California, invoking an exception to the right to jury in civil cases where allegedly only equitable and no legal issues are involved, denied Petitioners a jury trial. The decision was erroneous, in large part because legal issues requiring a jury were involved and in fact took up almost all of the six-day trial.

The California appeal court ignored that fact, and instead, despite the issue never having been argued or even previously raised, in its final decision suddenly decided to infer that Petitioners had waived their right to jury.

California has strict criteria prerequisite to jury waiver, which must be express and cannot be inferred; and

those criteria were not met.

The California Supreme Court, after considering the matter *en banc*, denied Review.

Grant of certiorari by this Court is necessary to settle an important question of law, of California and federal constitutional dimension, involving the inviolate Constitutional right to a jury.

Certiorari should issue, in part because this is an issue of national importance. Review by this Court would help determine whether California courts may disregard the California and United States Constitutions and deny citizens such as the indigent petitioners a civil jury trial to save their home from a marauding family member.

OPINIONS BELOW

The California Supreme Court's denial of review is reproduced at App. 3. The California Court of Appeal's opinion is reproduced at App. pp 5-24.

JURISDICTION

The California Court of Appeal issued its opinion on March 5, 2024. The California Supreme Court denied review on June 12, 2024. This Court has jurisdiction under 28 U.S.C. section 1257.

ARGUMENT

A. Factual background.

Petitioners comprise an indigent 95-year-old illiterate woman and her family, struggling against the claim of a relative to seize and sell their home, which the 95-year-old had purchased and paid for 37 years ago and in which they have resided since.

Petitioner Consuelo Saldana, a former immigrant from Peru who worked as a housemaid for 60 years, purchased the modest home in 1987. Ms. Saldana now suffers from Alzheimers.

Respondent's, and Appellant Iva Dominguez's, father, Consuelo's former lover, Mario Campana, had in 1987 lent Consuelo \$10,000 towards the down payment, because Mario, who was married and had other mistresses while supporting Respondent, his son, had never paid

support for their then-16-year-old daughter Iva Dominguez.

Mario arranged that the home was placed in both his and Consuelo's names, explaining to the illiterate and gullible Consuelo that this was because he said he needed security for repayment of his loan. Although the \$10,000 loan was promptly repaid, he never signed over his recorded half title in the home back to Consuelo.

Appellants are indigent. The only former breadwinning member of the Petitioners' household, Petitioner Miguel Dominguez, suffers from diabetes, and, since filing of this lawsuit, has had amputation and a stroke, and is incapable of participating in this appeal.

In 2013, Mario Campana, who had made continuous promises to honor his legal obligation to sign back to Petitioners the recorded half title which he had wrongly retained, instead surprisingly transferred it to

Respondent. In 2016, he died. Respondent promptly in 2017 sued Petitioners, Consuelo and her daughter Iva, who is Respondent's stepsister, along with Iva's husband, to sell the home and take half the proceeds. Respondent claimed the remainder of the home proceeds, and more, as legal fees and damages, including punitive damages, based on several counts falsely alleging a fantastic imaginary concept of a complex business partnership between the late father and the illiterate Consuelo.

Petitioners countersued to protect their home.

B. Procedural History.

- 1. Almost The Entirety Of The Complaint Against Petitioners Was Adjudged And Admitted To Constitute A Farce And Eventually Dismissed.**

The lower Court adjudged the key allegation of Respondent's complaint (App.148-161) a sham,¹ due in part to Respondent lying under oath about most of the claims therein², five of which were dismissed in September of 2021³, with the later admission under oath by Respondent, both in his deposition and at trial, that his attorney had dreamed them up without any evidence and that Respondent had testified falsely under oath about their veracity⁴.

The lower court also specified that Respondent's sole claim which would survive to trial, arose out of an alleged partnership agreement, so that even that constituted a legal issue that would also have required a jury⁵.

¹ App 138-146, at. App. 142, 2nd par. "Based on the foregoing, the Court finds the elements of a sham pleading are satisfied."

² Ibid.

³ App 163.

⁴ App. 164 through 168

⁵ App 138-146, Minute Order at page 142, 2nd par.: The *partnership agreement is Plaintiff's authority for requesting sale of the subject property*. (Emphasis supplied).

2. However, Petitioners Were Then Improperly Denied A Jury Trial To Defend Their Home.

The lower court denied Petitioners' demand for jury, then ignored the evidence presented at trial and ordered partition and sale of Petitioners' home.

The trial Court's judgment (app. 130 to 136) after a bench trial, occurred despite that Court having previously correctly ruled that partition by sale is generally not permitted by California law against a relative in possession of a home.

And, the trial court in the bench trial apparently considered irrelevant the fact that Respondent had admitted to devising imaginary claims comprising almost the entirety of his complaint and falsely testifying repeatedly under oath, while Petitioners had spent almost all of the six-day trial establishing their own legal claims,

with numerous witnesses providing largely unchallenged testimony that the trial court ignored.

3. Petitioners Appealed, Arguing In Part Their Right To A Jury Trial. The Lower Court's Ruling Was Confirmed on Appeal and Rehearing Denied.

The Appeal Court affirmed. While traversing some of the issues thoroughly, the appellate Court ruling did not evaluate the primary, essential issue, of the right to a jury on legal claims in the pleadings. This rule of law, inviolate and emanating from the Constitution, should indisputably allow Petitioners the jury they have consistently demanded, and the right to which they have never waived.

On March 20, 2024, Petitioners sought rehearing of the court's opinion in the above case, which opinion had been filed on March 5, 2024, on the grounds that the March 5, 2024 appellate ruling (1) did not traverse the Petitioners' right to a jury trial upon all legal non-equity

claims raised in the cross-complaint; and (2) suddenly and gratuitously raised a legal and factual issue of inferred waiver during trial of the right to jury, that was not raised nor argued by any party nor included in any brief during the appeal.

Petitioners contend that, because this sudden raising of a new legal issue had first occurred only in the final appellate ruling, they had an automatic right to rehearing. However, their Petition for Rehearing (App. 30-62) was denied on March 25, 2024 (App. 64), with no explanation.

The Court of Appeal had apparently fashioned a novel rule "out of the ether," allowing jury trial in California to be waived by inference or implication; and, as noted above, that court refused to consider the petition pointing out the impropriety of that.

The California opinion was deemed unfit for

publication when it was issued.

Petitioners filed their petition for review to the California Supreme Court on April 13, 2024, pointing out the legal insufficiency of the Appeal Court ruling. The California Supreme Court, after *en banc* consideration, denied review on June 12, 2024. (App. 3.)

This petition for a writ of certiorari is timely under U.S. Supreme Court Rules rule 13.

REASONS WHY THIS PETITION SHOULD BE GRANTED

**A. A Jury Trial, Where Demanded And Not
Waived, Must Be Granted Where, As
Here, The Gist Of The Action,
Irrespective Of The Nomenclature, Is
Legal**

In addition to the Seventh Amendment to the U.S. Constitution, and Article I § 16 of the California Constitution, Section 631(a) of the California Code of Civil Procedure guarantees the right to a jury trial in civil cases. The right of a jury trial in California is legally inviolate; when in doubt, it is necessary to resolve the issue in favor of allowing a jury trial.⁶

And, civil actions of a legal nature entitle a party to a trial by jury. *Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990); *Davis v. Security-First Nat. Bank* (1934) 1 Cal.2d 541, 542 [36 P.2d 649].

⁶ In *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 950, 956-958, 961, 967, 32 Cal.Rptr.3d 5, 116 P.3d 479 (*Grafton*), our Supreme Court held that, the waiver methods specified in section 631 are exclusive because our state Constitution identifies the right to jury trial as "inviolate". *Grafton* cites California Constitution, Art. I, § 16): any ambiguity or doubt concerning the waiver provisions of section 631 must be "resolved in favor of according to a litigant a jury trial." (*Loranger v. Nadeau*, 14*14 supra, 215 Cal. at p. 368, 10 P.2d 63; *Cohill v. Nationwide Auto Service*, 16 Cal.App.4th at p. 699, 19 Cal.Rptr.2d 924; *Byram v. Superior Court*, 74 Cal.App.3d at p. 654, 141 Cal.Rptr. 604."

A jury trial must be granted where the gist of an action, irrespective of the nomenclature, is legal.

As noted above, the appellate ruling in this case addresses at length the California rule that a quiet title claim for possession of one's home, when filed by the occupants, does not require a jury trial (as opposed, curiously, to a claim filed by a non-occupant, which does).

However, Petitioners' Cross-Complaint (App.71-83), albeit collectively entitled quiet title, alleges counts for adverse possession, in addition to waiver and fraud, in support of the claim to quiet title. These are all clearly and indisputably legal claims requiring a jury.

This rule also includes Petitioners' adverse possession claim. California jury instructions, CACI 4900,⁷ states that:

⁷ Actually cited by Respondent's counsel. While the Constitution allows no inferred *waivers* of the right to a jury trial, California law does allow a party to concede, as he did, Petitioners' *right* to a jury.

“A claimant for a prescriptive easement is entitled to a jury trial. (*Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 124 [21 Cal.Rptr.2d 127]; see CACI No. 4901, Prescriptive Easement.) Therefore, the same right would apply to a claim for adverse possession. (See *Kendrick v. Klein* (1944) 65 Cal.App.2d 491, 496 [150 P.2d 955] [whether occupancy amounted to adverse possession is question of fact].)”

The lower court’s ruling that “The Court does not find legal issue that require a jury trial and this case should be a non jury trial” (App. 66), cited in this appellate court’s decision, is transparently erroneous.

So, the California appellate ruling ignores the governing rule that *any action, whether entitled for title or not, that has as its content legal issues, entitles a party to a jury on those legal issues.* (*Helpers Local No. 391 v. Terry*, 494 U.S. 558, *supra*).

This was the determinative issue in this case, was addressed in Petitioners Opening Brief (App.90-129), and was the only issue on which Petitioners focused at oral hearing.

Per *Donahue v. Meister* (1891), 88 Cal. 121, at page 127:

“But it is clear that the right to a jury trial cannot be avoided by merely calling an action equitable. If that were so, the legislature, by providing new remedies and new kinds of judgments and decrees in form equitable, could in all cases dispense with juries, and thus entirely defeat the constitutional provision on the subject. If a claim “has to do with ordinary common-law rights clearly cognizable in courts of law, it is to that extent an action at law.”

At page 126:

“It does not follow from the fact that the suit is brought in equity that the determination of questions purely of a legal character in relation to the title will necessarily be withdrawn from the ordinary cognizance of a court of law.”

Even if the cross-complaint had been essentially equitable, “[If a party] requests legal relief, the parties are entitled to a jury trial on the legal issue[s].” (*Hutchason v. Marks* (1942) 54 Cal.App.2d 113, 119.)

**B. Almost All Of The Evidence Adduced
During The Six-Day Trial Focused On
Petitioners’ Legal Claims**

While one count of the plaintiff’s action, albeit stated, and previously adjudged by the lower court (See fn. 5 above), to be based on a partnership claim, was later ruled to constitute an equitable action not requiring a jury, the defendants’ cross-action (App. 71 through 82) indisputably contained legal claims entitling them to a jury.

The appellate court decision, which traversed fully the plaintiff’s adjudged-equitable claim, did not meaningfully address Petitioners’ legal counterclaims.

Because the appellate ruling indicates that the court read the entire transcript, the ruling could then perhaps have pointed out that **the only other issue in the entire trial, the single equitable issue of recorded title, was stipulated to**, so that virtually the entire remainder of the trial testimony covered Petitioners' legal issues that allowed Petitioners the right to have that testimony heard by a jury of their peers, instead of a judge. That applies particularly when petitioners' voluminous and undisputed evidence stood unchallenged, as opposed to the testimony of Respondent, who, as noted above, had confessed under oath to multiple instances of perjury.

Those legal facts and issues of the case, which took up most of the testimony of the six-day trial, separately gave Petitioners a right to a jury; and the appellate court did not address that issue, which was also the sole issue orally argued at the hearing, in its ruling.

C. The Appellate Court Erred In Suddenly, For The First Time In Its Ruling, Raising An Issue Not Previously Addressed By The Parties Or The Court, Namely Inferred Waiver Of The Right To Jury Trial, And Not Granting Re-Hearing On The Issue

Article I § 16 of the California Constitution states that: “In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.” The record shows that Appellants timely posted jury fees, and demanded and did not waive a jury⁸ (App. 70: Minute Order dated April 11, 2022: “Counsel for defendant/cross-complaint indicates that he is not willing to waive jury...”) so that the order denying the jury was not based upon Appellants’ consent.

At least as significantly, the appellate decision raises for the first time a new legal and factual issue, of an apparently garbled and/or mis-transcribed word in the transcript

⁸ App. 70: Minute Order dated April 11, 2022: “Counsel for defendant/cross-complaint indicates that he is not willing to waive jury...”

purportedly giving rise to the appellate court's sudden and unjustified inference, not before its final ruling and despite no one having raised the issue, that Petitioners had waived their right to a jury.

The appellate court suddenly referred (for the first time in its ruling, after neither any party nor the court nor the appellate court had raised the issue before) to a garbled portion of the transcript, as the Court itself conceded, in which the reporter quoted defense counsel as using the word "unnecessary" with regard to jury trial. That would have been unlikely and was contradicted by the body of the transcript, which contained multiple repeated statements, *in the same paragraph*, of "Unintelligible." The remainder of the transcript for that day, which the appellate court asserts acknowledges it read, contains numerous references to the court reporter claiming inability to hear words or even sentences spoken by

defense counsel, due, perhaps, to his English South African accent.⁹

Even, for the sake of argument, had Petitioners' counsel in fact stated that a jury was "unnecessary," then, pursuant to *Grafton* and Code of Civil Procedure Section 631, that should have been construed as a waiver only if the Court had proceeded to say something to the effect of: "Counsel, does that mean that you are withdrawing your demand for a jury and consenting to a bench trial?" and if Petitioners' counsel had responded in open court: "Yes."¹⁰ Nothing of the sort

⁹ See also, RT page 10, line 35 through 11, line 2:

Mr. Geselowitz: There are two issues I wanted to raise. One is a specific concern of the reporter. As The court indicated, she had trouble hearing me. I want to make sure she can now hear me.

The Court: *I think she has a little bit of difficulty understanding your [South African] accent.* (Emphasis supplied).

¹⁰ *Grafton* at page 10: "The [California] Supreme Court concluded that our Constitution forbids the creation of judicial rules of waiver, even if such rules are promulgated pursuant to a legislative

happened, as the appellate Court could have judicially noticed, having stated that it had read the trial transcript.

Contrary to the arguments in the appellate Court's decision, waiver of a demanded jury trial can never be inferred and can occur only as specifically set forth in section 631.¹¹

delegation of such power to the judiciary. The court interpreted the phrase 'prescribed by law' within Article I, section 3, of the California Constitution of 1849, to mean that the Legislature, alone, had the power to determine the circumstances under which a jury could be waived. 'The Constitution has imposed the power as well as the necessity upon the Legislature, of determining in what cases a jury trial may be waived, which cannot be transferred or delegated to any other department of Government. The words "prescribed by law," look to actual legislation upon the subject, and in no just sense can be extended to a permission of the exercise of this power to others. [¶] . . . [T]he power to "prescribe by law" is legislative and cannot be conferred on judicial officers. . . .' (Emphasis supplied).

¹¹ See, for example, Grafton at page 10: "[This] [c]ourt has, on numerous occasions, stricken trial court rules and *disapproved of appellate court decisions creating nonstatutory waivers.*"

...
The current jury waiver provision, now contained in Article I, section 16 of the California Constitution, retains this language. "Hence, California constitutional history reflects an unwavering commitment to the principle that the right to a civil jury trial may be waived *only as the Legislature prescribes*, even in the face of concerns that the interests of the parties and the courts would

Thus, the statement in the appellate decision¹² that "it [the lower court's April 18, 2022 minute order] does not reflect that Appellants objected when the court subsequently ordered a bench trial at the April 18 hearing," in addition to the fact that the document also did not indicate that Petitioner's counsel had *not* objected, does not reflect California law as expressed in the Constitution and Supreme Court authority.¹³ Moreover, a subsequent, April 25, 2022 minute order, the day before trial commenced, stated that the trial was still to be a jury trial (App. 68): "On the Court's own motion, the Jury Trial (5 Days) scheduled for 04/25/2022, and Final Status Conference

benefit from a relaxation of this requirement." (Emphasis supplied).

¹² Page 11, lines 6-8

¹³ *Cooks v. Superior Court* (1990) 224 Cal.App.3d 723, 727, 274 Cal.Rptr. 113.) There "can be no waiver by implication." (7 Witkin, Cal. Procedure (3d ed. 1985) Trial, § 102, p. 100.) And "[n]o waiver results from going to trial after the erroneous denial of a jury. . ." (Id. at p. 101.) As to any requirement of repetition of demands for a jury, "the law does not require the performance of an idle act. (Civ. Code, § 3532.)" (*Robinson v. Puls* (1946) 28 Cal. 2d 664, 667, 171 P.2d 430.)

scheduled for 04/25/2022 are trailed to 04/26/2022 at 10:00 AM in Department 76 at Stanley Mosk Courthouse.”),¹⁴ so that any objection on April 18, 2022 would have been superfluous. Petitioners had demanded, and not waived, a jury; and *Grafton* explains clearly, *supra*, that it is not up to judicial officers to infer waivers.¹⁵ In *Cooks v. Superior Court* (1990) 224 Cal.App.3d 723, 727 it was held that a court improperly struck a jury request based on a defendant’s failure to prepare proposed jury instructions: the failure to submit jury instructions within the specified time was ruled not a waiver of the right to jury trial. Here, Petitioners and Respondent were

¹⁴ App.68: “On the Court’s own motion, the Jury Trial (5 Days) scheduled for 04/25/2022, and Final Status Conference scheduled for 04/25/2022 are trailed to 04/26/2022 at 10:00 AM in Department 76 at Stanley Mosk Courthouse.”

¹⁵ See fn. 7, *supra*. Also see *Cohill v. Nationwide Auto Service* (1993) 16 Cal. App. 4th 696, 700, 19 Cal. Rptr. 2d 924: Plaintiffs cite no authority requiring defendant to renew the jury demand at the commencement of the court trial. There can be no waiver of jury trial by implication.

preparing jury instructions, and counsel were even discussing them at trial.

Nor is that even inferable from the facts. Respondent's counsel was still discussing what testimony he did not want a jury to hear, during the trial itself; and, as just noted, Petitioner's counsel was referring to the jury instructions in his opening address.¹⁶ Regardless, as noted above, a jury trial cannot be waived on inferences.¹⁷

D. Denial Of The Right To Jury Constituted Reversible Error Per Se

California statutory and case law specifies that the erroneous denial of the right to a jury trial in this case is

¹⁶ Petition for Rehearing, App 30-62.

¹⁷ (*Grafton Partners v. Superior Court*, *supra*, 36 Cal.4th at p. 953.) "[O]ur Constitution forbids the creation of judicial rules of waiver." Pursuant to the authority conferred by the Constitution, "the Legislature, alone, has the power to determine the circumstances under which a jury could be waived."

reversible per se¹⁸. Federal law is in accord: See *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986), which applied to unfair jury instructions, let alone the complete denial of a jury as in the instant case; with *Rose* citing at p. 578 *Duncan v. Louisiana*, 391 U. S. 145 (1968): “Where that right [to jury] is altogether denied, the State cannot contend that the deprivation was harmless . . . the error in such a case is that *the wrong entity judged the defendant* . . . “

Petitioners respectfully submit that denying them a jury trial to hear their case to defend the home they bought 37 years ago and have lived in and paid for since, constitutes reversible error per se.

¹⁸ *People v. Collins* (2001) 26 Cal.4th 297, 313: “[W]here a case improperly is tried to the court rather than to a jury, there is no opportunity meaningfully to assess the outcome that would have ensued in the absence of the error.”

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

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Respectfully submitted,

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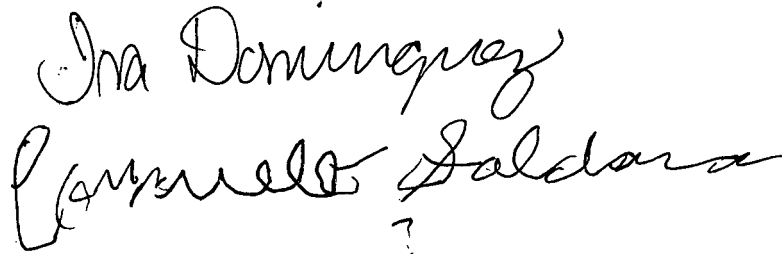
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Petitioners

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, the undersigned hereby certifies that the complete text of this Petition For Certiorari contains 4,830 words as counted by Microsoft Word.

The block contains two handwritten signatures in black ink. The first signature, 'Iva Dominguez', is written in a cursive style. The second signature, 'Consuelo Saldana', is also in cursive and appears to be written over the first signature.

Respectfully submitted,

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