No. S227786
(Court of Appeal No. F068477)
(Fresno County Super. Ct. No. 12CECG03718)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

STEPHEN K. DAVIS,
Plaintiff and Appellant,

v.

FRESNO UNIFIED SCHOOL DISTRICT, ET AL.,
Defendant/Respondent and Petitioner

After a Decision By the Court of Appeal,
Fifth Appellate District

ANSWER TO PETITION FOR REVIEW BY HARRIS CONSTRUCTION COMPANY, INC.

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I. INTRODUCTION

This answer brief by appellant Stephen K. Davis ("Taxpayer") addresses the petition for review filed by respondent Harris Construction Co, Inc. ("Contractor"). A separately filed answer brief by Taxpayer addresses a separate petition for review filed by respondent Fresno Unified School District ("District").

As with the petition filed by the District, Contractor's petition should also be denied since there is no disharmony among the California Courts of Appeal regarding California Government Code section 1090.

As to Contractor's second issue presented, the matter of "lenity" is posed as a distraction without a full explanation of the term's meaning or proper utilization. In short, lenity has no application to interpretation of section 1090 in the civil context based on the very cases cited by Contractor. (*see* e.g. *Harrott v. Cnty. of Kings* (2001) 25 Cal.4th 1138; *United States v. Thompson/Ctr. Arms Co.* (1992) 504 U.S. 505).

Finally, there is no categorical rule mandating uniform application of a statutory term in different contexts (e.g. civil v. criminal). As discussed *infra*, numerous cases from the United States Supreme Court recognize as much.

Consequently, there is no reason for this Court to grant Contractor's petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

On September 26, 2012, District's Board of Education awarded to Contractor a Site Lease (1 AA 31–39) and Facilities Lease[1] with construction provisions (1 AA 41–112) (collectively hereinafter Lease Leaseback

[1] Commonly referred to as a sublease such that the terms are used interchangeably herein.

Contracts) for construction of the Rutherford B. Gatson, Sr., Middle School Building, Phase II Project (hereinafter Project). (1 AA 26–29.)

On March 19, 2013, Taxpayer filed his First Amended Complaint ("FAC") (1 AA 1–129) seeking disgorgement and recovery to District of all monies paid by District to Contractor under the Lease Leaseback Contracts on the grounds they were ultra vires, illegal, void and/or unenforceable because they fail to comply with California law.

On April 22, 2013 and May 2, 2013, District and Contractor demurred pursuant to Code of Civil Procedure section 430.10(e) to each cause of action in Taxpayer's FAC asserting he failed to state facts sufficient to constitute a cause of action. (1 AA 130–33; 2 AA 277–302.) In support of their Demurrers, District and Contractor filed memorandums of points and authorities and requests for judicial notice. (1 AA 134–2 AA 276; 2 AA 277–306.)

On June 19, 2013, Taxpayer filed a notice of lodgment, a request for judicial notice and an opposition to District's and Contractor's Demurrers. (2 AA 317–3 AA 416.)

On August 7, 2013, the Superior Court, by and through the Honorable Donald Black, (Superior Court), held a hearing on the above referenced matters and confirmed its written tentative ruling sustaining the Demurrers of Contractor and District and making such other orders as are stated therein. (3 AA 463–468.)

On September 25, 2013, the Superior Court signed and entered a Judgment of Dismissal After Sustaining Demurrers to the FAC.

On October 17, 2013, Taxpayer timely filed and served a Notice of Appeal with the Fresno Court. (3 AA 540–542.)

In its decision, the Fifth District Court of Appeal sustained the demurrer as to (1) the breach of fiduciary duty claim; (2) the violation of Political Reform Act of 1974; and (3) the fifth cause of action alleging the

use of the lease leaseback arrangement is improper where funds are available to a school district from another source. The demurrer was overruled as to all other causes of action, including Taxpayer's fourth cause of action for alleged violations of California Government Code section 1090 and common law conflict of interest prohibitions. (Modified Opinion, 3 [hereinafter "Mod. Opn."].)

III. ARGUMENT

A function of the California Supreme Court is "to secure harmony and uniformity in the [Courts of Appeal's] decisions, their conformity to the settled rules and principles of law, a uniform rule of decision throughout the state, a correct and uniform construction of the Constitution, statutes, and charters, and in some instances a final decision by the court of last resort of some doubtful or disputed question of law." (*People v. Davis* (1905) 147 Cal. 346).

Contractor's petition should not be granted, as there is no conflict in law pursuant to California Rules of Court, rule 8.500(b)(1) and the Fifth District's decision was based on well-established case law interpreting California Government Code section 1090 as applying to consultants and independent contractors in regard to conflict of interest prohibitions.

A. THERE IS NO CONFLICT OF LAW WARRANTING SUPREME COURT REVIEW

The Superior Court sustained the Demurrers of District/Contractor to Taxpayer's claim which alleged the Lease Leaseback Contracts were void and illegal due to a conflict of interest on the part of Contractor created by its prior Preliminary Services Agreement with District relative to the Project. (Mod. Opn. 2.)

The Fifth District reversed the Superior Court's ruling as to that cause of action pursuant to Government Code section 1090 and common law conflict of interest prohibitions. (Mod. Opn. 2–3.)

1. THE FIFTH DISTRICT HERE AND THE COURT IN *PEOPLE V. CHRISTIANSEN* EXPLICITLY STATED THEIR RESPECTIVE DECISIONS WERE NOT IN DISAGREEMENT

In its petition, Contractor correctly explains that the Fifth District agreed with the Fourth and Second Districts' decisions in *California Hous. Fin. Agency v. Hanover/California Mgmt. & Accounting Ctr., Inc.* (2007) 148 Cal.App.4th 682 and *Hub City Solid Waste Servs., Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114. In those matters, the Fourth and Second Districts held that the term "employees" in California Government Code section 1090 applied to independent contractors and consultants hired by a public agency. Likewise here, the Fifth District held that section 1090 encompasses consultants hired by a local government. (Mod. Opn. 40.) In interpreting section 1090, these Courts relied in large part on this Court's reasoning in *Stigall v. City of Taft* (1962) 58 Cal.2d 565.

As the District attempted in its companion petition, Contractor tries to create a conflict of law where none exists. This is particularly unusual since the decisions purportedly in "conflict" expressly state they are not in discord with each other.

The case relied on by Contractor in its effort to establish a conflict of law is *People v. Christiansen* (2013) 216 Cal.App.4th 1181. In that case, the Court of Appeal concluded that in the criminal context, the term "employees" in section 1090 could not be expanded beyond the term's common law meaning. (*Christiansen supra*, 216 Cal.App.4th at 1190).

Notwithstanding that conclusion, the Court of Appeal in *Christiansen* expressly noted that its decision was not in conflict with civil cases *Hanover* and *Hub City*. To quote the *Christiansen* decision:

> No published criminal case has so held. Rather, respondent's argument is based on two civil cases involving section 1090, *HUB*...and [*Hanover*]...We express no opinion on the soundness of those opinions in the civil context, but we hold that their expansion of the statutory term "employees" to apply to independent contractors does not apply to criminal prosecutions for violation of section 1090.

(*Id.* at 1189.) (emphasis added). Thus, far from being in conflict, the *Christiansen* court went out of its way to ensure the contrary.

The Fifth District here also eliminated the possibility of any discord, declining to disavow *Christiansen*. Per the *Davis* decision:

> We conclude that the stricter definition of the statutory terms adopted by the court in *People v. Christiansen*, *supra* 216 Cal.App.4th at 1181 . . . is appropriate in the context of criminal prosecution, but is not appropriate in the context of civil actions seeking to invalidate a contract with a public entity.

(Mod. Opn. 39.) (emphasis added)

As such, both the Fifth District in *Davis*, which adopted the conclusions of *Hanover* and *Hub City*, and *Christiansen* are in accord. The Fifth District explicitly agreed with *Christiansen's* narrower construction of the statute in the criminal context, and *Christiansen* explicitly refused to express any opinion either way as to the statute's construction in the civil context. The Courts of Appeal are therefore in harmony on the issue.

Moreover, after agreeing with the conclusion of *Christiansen* in the criminal context, the Fifth District proceeded to explain why its concurrence with *Hanover* and *Hub City* was faithful to this Court's ruling in *Stigall*. To that end, the Fifth District stated:

> In *Stigall*, a civil action, the Supreme Court interpreted the statutory terms broadly to implement [the] objectives of the conflict of interest statute and did not rely on technical definitions or rules to limit the reach of the statute. Similarly, we conclude that technical definitions of the term "employee"

> taken from other areas of law should not be used to limit the scope of Government Code section 1090.

(Mod. Opn. 39.) Immediately thereafter, the Fifth District expressly concurred with the *Hub City* and *Hanover* courts that the term "employees" in Government Code section 1090 encompasses consultants hired by local government. (Mod. Opn. 39–40.)[2]

Furthermore, as noted by outside counsel for the Beverly Hills Unified School District in its amicus curiae letter urging this Court to reject Contractor's petition, the Fifth District did not set out to settle an important issue of law but rather to clarify its import and application. Specifically, the Fifth District, in agreeing with *Hanover* and *Hub City*, went on to address the issue of whether corporate consultants could be considered "officers" or "employees" under section 1090. (Mod. Opn. 40.)

Again alluding to this Court's decision in *Stigall*, the Fifth District reasoned that a corporate consultant is as capable of influencing a decision as an individual consultant, and because section 1090's object is to limit the mere possibility of any such influence—either direct or indirect—that might bear on an official's decision, Taxpayer's allegations that Contractor served as a corporate consultant in relation to the design and planning of the Project prior to being awarded the no bid contract constituted a cause of action for

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[2] Prior to Davis, *Hanover* and *Hub City* both clarified the scope of section 1090 consistent with this Court's decision in *Stigall*. As stated in Hanover, "in *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569, the California Supreme Court. . .explained that applying the general rule that a contract is not "made" until the parties mutually agree would frustrate section 1090's purposes. Accordingly, in construing section 1090 in any particular situation, '[w]e must disregard the technical relationship of the parties and look behind the veil which enshrouds their activities in order to discern the vital facts.'" (*Hanover*, 148 Cal.App.4th at 691 [citations omitted]).

conflict of interest under section 1090. (Mod. Opn. 40 [citing *Stigall*, 58 Cal.2d at 570].)

In sum, the Fifth District here, as well as the courts in *Hanover* and *Hub City*, are in accord with the California Supreme Court, and are simultaneously aligned with the Court of Appeal in *Christiansen*. Contrary to Contractor's assertion, there is no conflict of law as the express statements in *Davis* and *Christiansen* make clear. (*See supra.*) Thus there is no basis for review pursuant to California Rules of Court, rule 8.500(b)(1).

B. THERE IS NO CATEGORICAL PROHIBITION REGARDING DIFFERENTIAL APPLICATION OF LAW IN CIVIL AND CRIMINAL CONTEXTS

Finally, notwithstanding the Fifth District's express agreement with *Christiansen*, as well as *Christiansen*'s refusal to take a position on application of section 1090 in the civil context, Contractor argues that existing precedent stands for the proposition that the rules of statutory construction must be the same for both civil and criminal cases. (Petition, p. 5, Section 2 [hereinafter "Pet."].) Contractor asserts the different standards set forth in *Hanover/HubCity/Davis* and *Christiansen* violate this principle and Supreme Court review is thus warranted. As discussed below, there is no such prohibition and the cases relied on by Contractor do not support that proposition.[3]

1. LENITY RULE, GENERALLY

In its petition, Contractor invokes the rule of lenity to create a purported conflict of law warranting review. To Taxpayer's knowledge, this

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[3] It should not be lost on anyone that Contractor attempts in its petition to essentially undue over a half century of statutory construction in relation to California Government Code section 1090 with reference to one criminal case in 2013, a case which explicitly makes no comment on application of the statute in the civil context.

is the first time Contractor has ever raised this "issue," as there appears to be no record of such argument in the Fifth District proceedings. Moreover, Contractor makes passing reference to the rule without explaining its true nature and scope. Regardless, lenity has no application here for the reasons stated below.

Under the general principle of lenity, "courts must resolve doubts as to the meaning of a statute in a *criminal defendant's* favor." (*People v. Avery* (2002) 27 Cal.4th 49, 57) (emphasis added). Thus when a statute defining a crime or punishment is susceptible to two reasonable interpretations, the appellate court should ordinarily adopt that interpretation more favorable to the defendant." (*Id.*)

It is not entirely clear if the Court in *Christiansen* was relying on lenity principles in construing section 1090 in that criminal case, as there did not appear to be any express reference to the concept. Nevertheless, *Christiansen* adopted a narrower construction of the statute consistent with lenity principles set forth in *Avery*, *supra*.[4]

In seeking review, Contractor argues that lenity principles mandate that the stricter construction of section 1090 be applied in both civil and criminal contexts, thereby invalidating the decisions in *Hanover, Hub City*, and *Davis*, etc. which expressly relied on this Court's previous interpretation of section 1090. However, the authority cited by Contractor does not support this legal contention.

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[4] As an aside, one could argue that applying lenity principles in the *Christiansen* decision would have been unnecessary since lenity is only required when there is an ambiguity in the potential criminal liability imposed by a statute. (*People ex rel. Lungren v. Sup. Ct.* (1996) 14 Cal.4th 294, 312). Prior to *Christiansen*, the California Supreme Court in *Stigall* and subsequently the Courts of Appeal (*see* e.g. *Hanover, Hub City*) made explicit that section 1090's scope was not to be limited by technical definitions, such as common law definitions of "employees."

2. LENITY IS ONLY APPROPRIATE IN THE CIVIL CONTEXT WHEN A STATUTE'S CRIMINAL APPLICATION CARRIES NO ADDITIONAL REQUIREMENTS OF "WILLFULNESS"

Contractor asserts that when a statute gives rise to both criminal and civil liability, as section 1090 does, "the most limited application of the statute applies in both contexts." (Pet. 5). Contractor cites to this Court's decision in *Harrott v. Cnty. of Kings* (2001) 25 Cal.4th 1138, 1154, but it does so without expanding on *Harrott* in any manner. As the adage goes, the *devil is in the details*.

In *Harrott*, this Court explained the rule of lenity may apply outside the criminal context when a statute nonetheless imposes criminal penalties. (*Id.* at 1154). "[When] the governing standard is set forth in a criminal statute, it is appropriate to apply the rule of lenity in resolving any ambiguity in the ambit of the statute's coverage." (*Id.*). For that proposition, this Court in *Harrott* cited to *United States v. Thompson/Center Arms Co.* (1992) 504 U.S. 505, 517–518, the same case also cited by Contractor in its petition independent from its reference to *Harrott*. *Thompson*, however, actually puts to rest concerns of lenity regarding section 1090.

In *Thompson*, the United States Supreme Court applied the rule of lenity in a civil tax action because the statute in question had criminal applications in addition to civil penalties. (504 U.S. at 517–518). In so doing, the Court made clear that the "key to resolving the ambiguity lies in recognizing" that although the statute was being construed in the civil setting, the statute also had "criminal applications that carr[ied] no additional requirements of willfulness." (*Id.* at 517) (emphasis added). In *Thompson*, the United Supreme Court proceeded to apply the rule of lenity in that civil action because the statute in question carried no additional "willfulness" requirement for criminal prosecutions. (*Id.* at 517–518). In other words,

lenity was appropriate because the criminal penalties required no additional *mens rea* in relation to civil liability under the statute.

In contrast, California Government Code section 1090, *et seq.* specifically requires "willfulness" before any criminal sanction may be imposed. (*See* Cal. Govt. Code § 1097). Civil penalties under section 1090, meanwhile, require no element of willfulness pursuant to the well-established policy concerns set forth by this Court in *Stigall* and *Thompson v. Call* (1985) 38 Cal.3d 633, and faithfully adhered to in *Hanover, Hub City*, and now *Davis*, among others.[5]

3. CALIFORNIA GOVERNMENT CODE SECTION 1090, *et seq.* EXPRESSLY REQUIRES WILLFULNESS FOR CRIMINAL APPLICATION WHEREAS CIVIL LIABILITY REQUIRES NONE

There can be no mistake, California Government Code section 1090, *et seq.* expressly requires an element of willfulness as a prerequisite to criminal liability under the statute. This is in stark contrast to civil liability under section 1090, *et seq.* which requires no *mens rea* component at all on grounds of public policy. (*See Stigall,* 58 Cal.2d at 570).

To quote section 1097:

> 1097. (a) Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of those laws, is

[5] In invoking lenity, this Court in *Harrott* also relied on *Crandon v. U.S.* (1990) 494 U.S. 152, which was decided two years prior to *Thompson*. In *Crandon*, the Court applied the lenity rule because, unlike here, the governing standard was set forth in a criminal statute. (*Id.* at 158). By contrast, section 1090, *et seq.* clearly differentiates the civil and criminal penalties for violation of the statute's conflict of interest prohibitions. (*See* further discussion, *infra*).

> punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.
>
> (b) An individual who willfully aids or abets an officer or person in violating a prohibition by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, is punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

(emphasis added).

The above language in section 1097 makes clear that any criminal liability thereunder is contingent on a finding of willfulness. The California Supreme Court echoed the criminal penalties for violation of section 1090 in *Thompson v. Call* (1985) 38 Cal.3d 633, fn. 28). "Where the official commits fraud or conspires to violate section 1090, he will, of course, also be subject to criminal sanctions under section 1097." (*Id.* at 652, fn. 28) (emphasis added).

Compare the above with civil liability under section 1090, *et seq.*, "As we have seen, *civil liability* under section 1090 is not affected by the presence or absence of fraud, by the official's good faith or disclosure of interest, or by his nonparticipation in voting. . ." (*Id.*) (emphasis in original).

In *Call*, this Court invoked its prior decision in *Stigall*, explaining the rationale for imposing civil penalties under section 1090 even when the parties involved have nothing but the best of intentions. (*Id.* at 648). In *Stigall*, the California Supreme Court discussed section 1090's civil scope with reference to the United States Supreme Court's discussion of a similar federal statute:

> The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.

(*Stigall*, *supra* 58 Cal.2d at 570 [*citing United States v. Mississippi Valley Generating Co.,* 364 U.S. 520, 549–550]) (emphasis added). Based on the foregoing, this Court made clear that contracts should be invalidated under section 1090 in a civil context even when a *potential* for conflict is present. No willfulness is required at all.

A remedy for violation of any provision of section 1090 is set forth in section 1092(a):

> Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.

(emphasis added). In its decision, the Fifth District itself notes that "one of the consequences for a civil violation of this rule is set forth in Government Code section 1092" which provides that every contract made in violation of section 1090 may be avoided by "any party except the officer interested therein." (Mod Opn. 35.)

This Court in *Call* also discussed invalidation and forfeiture as potential remedies in relation to civil liability under section 1090. (*See Call*, 38 Cal.3d at 650). "California courts have also consistently voided such

contracts where the public officer was found to have an *indirect* interest therein." (*Id.* at 645.)

In this case, a civil action, Taxpayer has merely sought invalidation and disgorgement of profits back to the school district, consistent with the statutes and case law cited above. Because section 1090, *et seq.* requires willfulness for imposition of criminal penalties - e.g. imprisonment – (*see* § 1097; *Call*, 38 Cal.3d at 652, fn. 28), application of lenity in this case would have been improper pursuant to the very cases cited by Contractor for that proposition. (*See* e.g. *Harrott*, *supra* 25 Cal.4th at 1138; *Thompson/Ctr. Arms Co.*, 504 U.S. 505). As such, *Hanover*, *Hub City*, and the Fifth District here in *Davis* and *Christiansen* remain in harmony, with the latter two cases explicitly stating so.[6]

4. STATUTES ARE ROUTINELY APPLIED DIFFERENTLY IN CIVIL AND CRIMINAL CONTEXTS

Finally, as general matter, there is no categorical prohibition against varying applications of statutes in the civil and criminal contexts.

Contractor briefly alludes to other cases—*Clark v. Martinez* (2005) 543 U.S. 371 and *United States v. Santos* (2008) 553 U.S. 507—for the proposition that a term must be given the same meaning whether a statute is

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[6] It should also be noted that the contours of liability under section 1090, in both the civil and criminal context, had been well established when *Christiansen* was decided in 2013. This Court in *Stigall* (1962) explained that technical definitions were not to be used in interpreting section 1090 and that even those with no ill intentions could be civilly liable for policy reasons (*see supra*). That reasoning was reaffirmed by this Court again in *Call* (1985), where it noted the additional scienter required for criminal liability in section 1097. Subsequently, *Hanover* (2007) and *Hub City* (2010) interpreted section 1090 as applying to independent contractors and consultants with reference to this Court's decision to *Stigall* and its prohibition on using technical definitions.

invoked in either a criminal or civil proceeding. However, the cases do not set forth a categorical rule to this effect. The cases also do not stand for the proposition that a statutory term *must* be given the same meaning in criminal and civil contexts.

The decision in *United States v. Santos*, for example, involved whether a statutory term could be given different meanings in exclusively criminal contexts; the decision did not involve whether the term in question had different meanings in civil and criminal contexts. (*Santos*, *supra* 553 U.S. at 514 at 522).[7] As such, that decision does not support Contractor's plea for Supreme Court review of its second issue presented.

The decision in *Clark* is also inapposite. The *Clark* court did not hold that a statutory term *must* be given the same meaning in civil and criminal applications. Further, *Clark* made clear that statutory terms should be construed consistently when necessary to avoid "rais[ing] a multitude of constitutional problems."

In other words, the cases cited in the petition do not stand for the proposition that there is a categorical bar on interpreting the same statutory terms differently in criminal and civil contexts. To the contrary, and as the court here in *Davis* recognized, there are important differences in construing statutes in criminal and civil applications that can justify giving the same term different meanings based on its application. (Mod. Opn. 39–40).

Indeed, there are numerous examples of differential application of statutes. For instance, in *FCC v. Pacifica Foundation* (1978) 438 U.S. 726, 729–30, the United States Supreme Court had to construe the statutory prohibition of "indecent" radio broadcasts. In construing the meaning of "indecent," the Court remarked that "the validity of the civil sanctions is not

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[7] Justice Stevens, who concurred in the judgment, noted that statutory terms could have different meanings in different applications. (*Id.* at 525.)

linked to the validity of the criminal penalty. . . . [W]e need not consider any question relating to the possible application of [the statute in question] as a criminal statute." (*Id.* at 739, n.13.)

Similarly, in *Vermont Agency of Natural Resources v. United States ex rel Stevens*, 529 U.S. 765, 788–89 (2000), Justice Ginsburg wrote in her concurring opinion that a state was not a "person" in a qui tam suit filed under the False Claims Act, but that the question of whether a state was a "person" in a False Claims Act suit filed by the federal government remained open.

To conclude, there is no categorical prohibition against divergent application of a statute based on the circumstances of the case. As explained above, however, *Davis*—and by extension, *Hanover* and *Hub City*—are expressly in accord with *Christiansen*. Contractor's argument that Supreme Court review is warranted on this basis is therefore without merit.

IV. CONCLUSION

Based on the foregoing, Taxpayer respectfully requests that Contractor's petition be denied in its entirety.

Dated: August 3, 2015 CARLIN LAW GROUP, APC

By: 

Kevin R. Carlin
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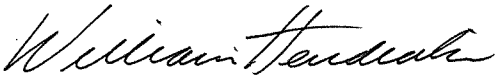
Stephen K. Davis

CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. RULES OF COURT, RULE 504(d)(1)

Pursuant to California Rules of Court, Rule 8.504(d)(1), and in reliance upon the word count feature of the software used to prepare this document, I certify that the foregoing Answer contains 4,405 words, exclusive of those materials not required to be counted under Rule 8.504(d)(3).

DATED: August 3, 2015 CARLIN LAW GROUP, APC

By: 

William A. Hendricks
Attorney for Plaintiff/Appellant
and Respondent
Stephen K. Davis

PROOF OF SERVICE

STATE OF CALIFORNIA)
) **SS**
COUNTY OF FRESNO)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen (18) years and not a party to the within-entitled action. My business address is 4452 Park Boulevard, Suite 310, San Diego, CA 92116. On August 3, 2015, I served the within document(s):

ANSWER TO PETITION FOR REVIEW BY HARRIS CONSTRUCTION COMPANY, INC.

☒ **BY MAIL**: By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California, addressed as set forth below.

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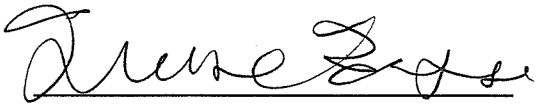
I am readily familiar with the firm's practices of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 3, 2015, at San Diego, California.



Duane Besse