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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF
7 LOS ANGELES –CENTRAL CIVIL WEST COURTHOUSE
8
9

10 TARA R. BURD, on behalf of herself and
all others similarly situated,

11 Plaintiff,

12 vs.

13 BARKLEY COURT REPORTERS, INC., a
14 California Corporation; and Does 1 through
20,

15 Defendants.
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Case No.: 1-14-CV-258886

**AMICUS CURIAE BRIEF OF DEPOSITION
REPORTERS ASSOCIATION OF
CALIFORNIA IN SUPPORT OF
DEFENDANT'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

Motion Date: October 23, 2015

Time: 10:00am

Department: 307

Complaint Filed: September 12, 2014

Trial Date: None set
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

4 The Deposition Reporters Association of California (“DRA”) hereby submits this *amicus*
5 *curie* brief in support of Defendant Barkley Court Reporters, Inc.’s (Defendant”) Motion for
6 Judgment on the Pleadings (“motion”).

7 Current law carefully distinguishes between “official” court reporters – those who are
8 salaried and full-time employees of county courts -- and “official reporters *pro tempore*” – those
9 who are retained to report civil proceedings on a temporary, *ad hoc* basis. When the Legislature
10 intends a statute to apply only to official reporters, the statute mentions only official reporters.
11 When the Legislature intends a statute apply only to official reporters *pro tempore*, the statute
12 mentions only official reporters *pro tempore*. And, when the Legislature intends a statute apply
13 to both, both are mentioned.

14 As detailed below, Plaintiff Tara R. Burd’s (“Plaintiff”) suit alleges that the statute that
15 establishes a per-page price-cap for official reporters’ transcripts also applies to official reporters
16 *pro tempore* even though only official reporters are mentioned in, and thus governed by, the
17 price-cap statute.

18 Not only does Plaintiff by her lawsuit seek by to over-ride the policy judgments of the
19 Legislature, Plaintiff’s suit if successful would cause the very same disastrous consequences for
20 the administration of justice in this State the Legislature sought to avoid by omitting the words
21 “official reporter *pro tempore*” from the price-cap statute in the first place. Applying the same
22 price-cap page rate applicable to an official reporter, where the transcript charges offer the official
23 reporter compensation in addition to the salary and benefits she enjoys as a court employee, to a
24 freelance independent contractor reporter *pro tempore* who must rely on transcripts *for her entire*
25 *income*, will be that licensed court reporters will not agree to report civil proceedings on a *pro*
26 *tempore* basis because the job will earn the freelance reporter far less than the minimum wage.

27 In contrast, the DRA has reviewed Defendant’s’ motion for judgment on the pleadings,
28 and, believes that not only are the arguments and positions well taken, but believes that if Plaintiff

1 was to prevail, such a ruling would drastically impact DRA’s members, as well as every civil
2 litigant’s opportunity to have a record of court proceedings.

3 The DRA understands that in addition to her own misinterpretation of Government Code
4 Sections 69950 and 69954, Plaintiff will seek to rely upon an interpretation of these statutes
5 offered in a letter by the Court Reporters Board of California (“Board”), dated May 14, 2012,
6 addressed to court reporters and county court officials.¹ However, as detailed below, the
7 interpretation of these statutes offered by the Board (i) forgets to cite or analyze the pivotal statute
8 and is therefore legally incorrect; (ii) is owed no judicial deference; (iii) enjoys no legal dignity;
9 (iv) raises constitutional issues; and (v) if adopted would disrupt and harm the reasoned and
10 ordered administration of justice throughout the State.

11 For these reasons, as discussed below, the Defendant’s motion should respectfully be
12 granted.

13 14 **II. BACKGROUND**

15 **A. Official Court Reporters and Freelance Court Reporters: Who They Are And** 16 **What They Do.**

17 The term “court reporter” broadly refers to two kinds of licensees: those licensees who are
18 full-time, salaried employees working in courtrooms, reporting and transcribing official judicial
19 proceedings (called “officials”), and those licensees who are hired by attorneys to report
20 depositions and other out-of-court proceedings (called “freelancers”).² When a freelancer – that
21 is to say, a non-court employee – temporarily performs the functions of an official reporter in a
22 courtroom on an *ad hoc* basis, she is referred to as an “official reporter *pro tempore*.” (“ Pursuant
23 to the newly adopted policy of the Los Angeles Superior Court, when an official court reporter is
24
25

26 ¹ See: <http://www.courtreportersboard.ca.gov/serp.shtml?q=official+transcripts&cx=001779225245372747843%3Arq9uaq4cv8m&cof=FORID%3A10&ie=UTF-8>.

27 ² The Codes in California will often refer to court reporters in different ways. The CCP, for
28 instance,, uses the words “deposition officer (see, e.g., CCP section 2025.320) whereas the
Business & Professions Code uses the term “shorthand reporter.” (See, e.g., Business &
Professions Code section 8027). This memo uses the more familiar term “court reporter.”

1 not available, parties may by stipulation arrange for the appointment of a privately retained
2 certified shorthand reporter to serve as an official court reporter *pro tempore* for a hearing or
3 trial.”³⁾

4 Like a license to practice law, a court reporter’s license is a general one, permitting a court
5 reporter to work, for example, as either an official or a freelancer.

6
7 Long a recognized, upwardly mobile career path for women, more than 90 percent of the
8 licensees are women and, hence, a comparable number of the licensee-owned firms are owned by
9 women who are small businesspeople. There are approximately 7,000 licensed court reporters in
10 California.⁴ Like accountants, physicians and surgeons, engineers, and many other professions,
11 court reporters are regulated by a board of gubernatorial and legislative appointees housed within
12 the California Department of Consumer Affairs.⁵

13
14 The California Legislature’s Joint Committee on Boards, Commissions, & Consumer
15 Protection correctly elaborated on the importance of this frequently taken-for-granted profession
16 in 2005 when it wrote:

17 An accurate written record of who said what in court is essential if the outcome of
18 a judicial proceeding is to be accepted by the litigants and the public as non-
19 arbitrary, fair, and credible.

20 In criminal cases, for example, courts of appeal rely exclusively upon [] written
21 briefs and a written transcript to adjudicate the lawfulness of what occurred at trial.
22 A conviction – and thus in some instances the life or death of an accused – can
23 stand or fall based entirely upon what a witness said, what a lawyer said, what a
24 juror said, or what a judge said, as solely reflected in the written transcript.

25 ³ See *Superior Court Of California, County Of Los Angeles Guide For Official Reporters Pro*
Tempore (December 19, 2014)

26 ⁴ “As of January 1, 2012, there are 7,316 licensed CSRs in California.” Background Paper for the
27 Court Reporters Board (Oversight Hearing, March 12, 2012, Senate Committee on Business,
28 Professions and Economic Development, *available at*
<http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/Court%20Reporters%20BACKGROUNDER%20%282012%29.pdf> (last accessed April 8, 2015).

⁵ See, list of DCA boards and bureaus at http://www.dca.ca.gov/about_dca/entities.shtml

1 In civil cases, millions of dollars, life-long careers, and the fate of whole
2 business[] enterprises can hinge on what was said or what was not said in a
3 deposition or at trial...⁶

4 A common misperception is that court reporters simply and passively take dictation; that
5 they are therefore fungible. This is very wrong. Take freelancers as an example. As officers of
6 the court who administer oaths, as the custodians of the judicial record during and after a
7 deposition (when critical corrections are made by the witness) or hearing, freelance court
8 reporters who transcribe, manage, and oversee depositions and the transcript are required to
9 ensure that the transcript is accurate, and that often means intervening without the presence of a
10 judge in the deposition proceeding to ensure that the words witnesses speak can accurately be
11 heard, understood, and reported.

12 Just as no two lawyers will write a brief in the same way, no two licensed freelance
13 reporters will organize (for example) a passionate colloquy between counsel the same way, or
14 intervene in the same fashion, to ensure the best transcript is produced. Add to this that every
15 court reporter must, in every proceeding, in essence “speak” two languages simultaneously, and it
16 becomes unsurprising that the passage rate for the court reporter’s exam is frequently lower than
17 the passage rate of the Bar exam, in no small part because reporters prior to licensure must
18 demonstrate both knowledge of the law and the practical ability to perform their jobs with a
19 minimum competence and effectiveness on their first day as a licensee.

20 This is all done in a tightly regulated setting⁷ and under sometimes extraordinarily
21 stressful circumstances, with highly technical jargon, emotional and heavily accented witnesses
22 and sometimes furious attorneys jockeying for any advantage during the deposition.
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26 ⁶ Background Paper for the Court Reporters Board (Oversight Hearing, March 12, 2012, Senate
27 Committee on Business, Professions and Economic Development, *available at*
28 <http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/Court%20Reporters%20BACKGROUNDER%20%282012%29.pdf> (last accessed April 8, 2015).

⁷ The Code of Civil Procedure contains many statutes governing their conduct (*see, e.g., CCP*
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1 Relevant to this lawsuit, the lines between official court reporters and freelance deposition
2 reporters are blurring. In many counties such as Los Angeles County, budget constraints have
3 regrettably resulted in salaried official court reporters in courtrooms being discharged, resulting in
4 private court reporting firms being retained by the parties to transcribe civil trials and law and
5 motion matters, performing tasks that used to be performed by full-time and salaried court
6 reporters employed by the courts.⁸

7
8 **B. Amicus Curie DRA.**

9 DRA represents more freelance court reporters than any other organization in California.
10 DRA is, in fact, the largest organization in the nation devoted solely to representing such licensed
11 freelance professionals. DRA was founded in 1995 by freelance deposition reporters seeking to
12 preserve the impartiality and independence of their profession. In the early 1990s certain
13 deposition companies and firms began the practice of offering certain services or prices to one
14 party but not others. DRA was founded to combat such practices, condemned by such authorities
15 as the American Judges Association.
16

17 DRA spearheaded the efforts to work with National Association of Court Reporters to
18 establish and fund Citizens for Impartial Justice, a nationwide organization that coordinated
19 successful legislative efforts across the country to preserve the impartiality of the profession. As
20 a result of this organization's efforts, court rules or laws were passed in fourteen including
21 Hawaii, Texas, Minnesota, Utah, West Virginia, New Mexico, Georgia, Louisiana, Nevada,
22 Kentucky, Michigan, Arkansas, Indiana, and North Carolina.
23

24 Thus, DRA supports laws and regulations that ensure the even-handed treatment of parties
25 by deposition officers, whether those officers are hired by firms operated by licensees or
26

section 2025.210-2025-290) as does the Business & Professions Code (*see, e.g., Business & Professions Code sections 8020-8047*).

27
28 ⁸ *See Superior Court Of California, County Of Los Angeles Guide For Official Reporters Pro Tempore* (December 19, 2014.)

1 corporations. In point of fact, DRA was founded to ensure such fairness and, by doing so, ensure
2 the enduring credibility and impartiality of deposition professionals regardless of the form of the
3 entity that retains their services.

4 DRA has as well has been the single most active organization in the State on the topic of
5 freelancers having to assume the role in court that used to be occupied by full-time court reporter
6 employees. Thus, only DRA – not the State Bar, not the Judicial Council -- sponsored training
7 seminars throughout the State to educate freelancers on the different rules, customs, laws, and
8 practices of court proceedings as opposed to depositions.

10 **III. THE PLAINTIFF’S AND BOARD’S INTERPRETATION OF SECTIONS**
11 **69950 AND 69954 IS LEGALLY INCORRECT.**

12 Contrary to the Board’s and Plaintiff’s contention, the Legislature intended Government
13 Code sections 69950 and 69954⁹ to apply only to official reporters employed by the court rather
14 than freelance official reporters *pro tempore*.

15 The chief statutes the Board and the Plaintiff rely upon are sections 69950 and 69954.
16 Section 69950 addresses the cost of paper transcripts. Section 69954 addresses the cost of
17 computer-readable and computer-generated transcripts. Unlike other statutes that specify
18 “official” reporters or “official reporters *pro tempore*,” these two statutes do not mention the court
19 reporter at all. Whose prices, then, did the Legislature mean to regulate?
20

21 The answer comes first from recognizing that official reporters and official reporters *pro*
22 *tempore* are not the same thing in the eyes of the policymaking branches of government. The
23 statutes in Title 8, Chapter 5, Article 9 of the Government Code entitled “Official Reporters
24 Generally” mention “official” reporters when they mean “official” reporters and “official
25 reporters *pro tempore*” when they mean “official reporters *pro tempore*.”
26
27

28 ⁹ All “section” references are to the Government Code unless indicated otherwise.
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1 For example, the very first statute in the chapter (section 69941) differentiates between the
2 two: “A superior court may appoint as many competent phonographic reporters, to be known as
3 official reporters of such court, and such official reporters *pro tempore*, as are deemed necessary
4 for the performance of the duties and the exercise of the powers conferred by law upon the court
5 and its members.”

6
7 The next statute (section 69942) singles out official reporters and only official reporters
8 for special treatment (official reporters *pro tempore* are not mentioned) when it comes to their
9 qualifications to report: “No person shall be appointed to the position of official reporter of any
10 court unless the person has first obtained a license to practice as a certified shorthand reporter
11 from the Court Reporters Board of California” This is not an oversight, for the very next statute
12 (69944) again mentions by title both official reporters and official reporters *pro tempore*: “ Until
13 an official reporter of any court or official reporter *pro tempore* has fully completed and filed all
14 transcriptions of the reporter’s notes in any case on appeal which the reporter is required by law
15 to transcribe, the reporter is not competent to act as official reporter in any court ...”

16
17 With this understanding that the statutes in the Chapter do not use the phrase “official
18 reporter” as embracing both officials and officials *pro tempore*, the language of section 69947, *a*
19 ***statute the Board failed to cite, discuss or consider***, simply and entirely disposes of this case.
20 Section 69947 provides: “Except in counties where a statute provides otherwise, **the official**
21 **reporter** shall receive for his services the fees prescribed in this article.” (Emphasis added)
22

23 As stated, this pivotal statute was not cited or analyzed by the Board. The statute simply
24 does not mention official reporters *pro tempore*. It only mentions official reporters. The intent of
25 the Legislature is obvious. The “fees prescribed in this article” – including the fees for transcripts
26 set by sections 69954 and 69950 -- apply to “official reporters” because that is who state law says
27 they apply to. Likewise, the “fees prescribed in this article” do not apply to classes of persons
28

1 who are not mentioned in the statute, and that includes the freelance official reporters *pro*
2 *tempore* retained by the Defendant to provide services to the Plaintiff. “Where the language of the
3 statute is unambiguous, the Legislature is presumed to have meant what it said and the plain
4 meaning of the statute governs.” (*Tucker Land Co. v. State of California* (2001) 94 Cal.App.4th
5 1191, 1198.)

6
7 Indeed, no statute addresses in any fashion the fees that may be charged by official
8 reporters *pro tempore*.

9 By her lawsuit, then, the Plaintiff requests the Court to read into statute words that do not
10 appear there. Courts are rightly reluctant to do this, even when the consequences of such a plain
11 reading are troubling. “Although legitimate policy questions are raised by the legislative decision
12 ... we decline to rewrite the statutory language and depart from governing principles of statutory
13 construction to reach the result [plaintiff and appellant] seeks. That is a task for the Legislature.”
14 *Brandon S. v. State of California* (2009) 174 Cal.App.4th 815, 830.

15
16 Yet, here, the Plaintiff invites this Court to insert words into a statute ***when the result***
17 ***would be no less than to impose price-cap regulation upon thousands and thousands of private,***
18 ***mostly small, businesspeople operating in a competitive and private market when they operate***
19 ***as official reporters temporarily and have no salaried source of income to earn their living and***
20 ***pay their overhead.***

21
22 The wisdom of legislatively enacted price-control regulation is a matter of intense and
23 enduring controversy, long dividing both economists and policymakers. If the Legislature in fact
24 intended to impose such controls on those appearing temporarily as court reporters in civil
25 proceedings it is highly unlikely that its intent to do so would be murky.¹⁰ To risk a colloquialism,

26
27 ¹⁰ Without taking a position on the merits or demerits of such schemes generally, the arguments
28 of those that oppose such measures are indicative of the fierce opposition they engender when
proposed, and underscore the unlikelihood that judicial inferring of legislative intent would be
required to divine the establishment of such a divisive scheme: “History has shown that price-
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1 imposing one-size-fits-all, statute-mandated price-controls upon private actors in a competitive
2 market is politically a very big deal, would be a controversial proposal, because it raises a
3 panoply of ideological, practical, and political issues (e.g., will the quality and supply of private
4 actors diminish if the price-caps are too low?) that are the core province of the policy-making,
5 value-balancing Legislature.

6
7 Moreover, legislatively imposing price-controls upon private actors in a competitive
8 market always raises serious constitutional issues, and, if section 69947 is re-written to the
9 Plaintiff's preference, the statute itself is likely facially unconstitutional, meaning the Board's and
10 Plaintiff's interpretation would violate the canon of construction that requires courts to construe
11 statutes if possible in such a way as to avoid casting doubt upon their constitutionality. "If a
12 statute is susceptible of two constructions ... the court will adopt the construction which, without
13 doing violence to the reasonable meaning of the language used, will render it valid in its entirety,
14 or free from doubt as to its constitutionality[]." *Miller v. Municipal Court* (1943) 22 Cal. 2d 818,
15 828.

16
17 The Fourteenth Amendment to the United States Constitution provides in relevant part
18 that "[no] state [shall] deprive any person of ... property, without due process of law ...The
19 standard for determining whether a state price-control regulation is constitutional under the Due
20 Process Clause is well established: 'Price-control is "unconstitutional ... if arbitrary,
21 discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt" (*20th*
22

23
24 controls are, at best, effective only on a very short-term basis. Over the long term, they can lead
25 to shortages, rationing, quality deterioration and black markets. Consider the price-controls
26 placed by the Nixon and Carter administrations on gasoline, which led to long lines at the pump
27 and restrictions on how much gas could be purchased during the 1970s. Rent control provides
28 another example of the ineffectiveness of price-controls. Rent controls, such as those used in New
York City, are intended to keep housing prices affordable. Instead, they decrease the supply of
rental housing and thereby raise prices of existing rental housing" Price-controls Definition |
Investopedia <http://www.investopedia.com/terms/p/price-controls.asp#ixzz3la4RyF2c>

1 *Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216 quoting *Pennell v. San Jose* (1988) 485 U.S.
2 1, 11.) The Takings Clause limits the power of the states to regulate, control, or fix prices that are
3 charged to consumers for goods or services. (*See, e.g., Duquesne Light Co. v. Barasch* (1989) 488
4 U.S. 299, 307-308.)

5 "Rate-making is indeed but one species of price-fixing. The fixing of prices, like other
6 applications of the police power, may reduce the value of the property which is being regulated.
7 But the fact that the value is reduced does not mean that the regulation is invalid." (*Power*
8 *Comm'n v. Hope Gas Co.* (1944) 320 U.S. 591, 601 fn. 17.)

9 For price regulation applied to freelancer reporters working in a *pro tempore* capacity to
10 be non-arbitrary, the regulation should reflect at least a consideration of the different costs of
11 private versus court employee actors and the other real-world differences between freelancers
12 and officials. ("[T]he regulations incorporate multiple company-specific factors into the rollback
13 formula, and then are applied in individual adjudicatory hearings. The company-specific hearings
14 allow further tailoring to a company's situation." *20th Century Ins. Co. v. Garamendi* (1994) 8
15 Cal.4th 216, 257.)

16 The statutes that the Plaintiff seeks to have judicially applied to private actors in a
17 competitive market make no such distinctions because the statutes only apply to official reporters,
18 just as section 69947 plainly says. And, the reason the Legislature did not include the words
19 "official reporters *pro tempore*" in section 69947 is because it is senseless and arbitrary to do so,
20 ignoring as it does how official and official reporters *pro tempore* get paid differently in the real-
21 world: one kind of reporter (*pro tempore*) is not salaried and entirely depends upon the
22 compensation she receives for her transcripts for her entire living while the other (official) is paid
23 a full-time salary by the court and depends upon the transcript charges as a supplement to her
24 predictable salary.

1 Price regulation should likewise strive to ensure a reasonable rate of return and provide an
2 opportunity to obtain individualized relief, especially from a one-size-fits-all rate regulation.

3 (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805.)

4 In sum, courts are “not at liberty to insert into the statute a term the Legislature chose to
5 omit.” (*Azusa Land Partners v. Dept. of Indus. Relations* (2010) 191 Cal.App.4th 1, 19.) For the
6 reasons discussed above, accepting the Plaintiff’s invitation to insert the words “official reporter
7 pro tempore” into section 69947 would be an especially dramatic departure from this maxim; one
8 intended to ensure that controversial policy questions like price regulation are resolved by the
9 policymaking arms of government.

10 As for the Board’s correspondence, it regrettably failed to cite or consider the pivotal
11 statute, failed to acknowledge the applicable constitutional law implicated by its interpretation,
12 failed to cite any indicia of legislative intent that might support its conclusion, and failed to weigh
13 the consequences of its interpretation. It is not persuasive.

14
15
16 **IV. THE BOARD’S INTERPRETATION OF SECTIONS 69950 AND 69954 IS**
17 **OWED NO DEFERENCE.**

18 The Board’s interpretation of 69950 and 69954 is owed no deference by this Court, which
19 should exercise its independent judgment on the meaning and applicability of all of the statutes
20 at-issue.

21 Interpretations of law, even ones that have formal legal dignity such as regulations,¹¹ are
22 invalid if they conflict with enactments of the Legislature. *California Welfare Rights Org. v.*
23 *Carleson*, 4 Cal. 3d 445, 455 (1971); *Morris v. Williams*, 67 Cal. 2d 733, 748 (1967); section
24 11342.2. *See also*, section 11342.2 (regulations must be “consistent and not in conflict with the
25 statute”)

26 Because courts are the final arbiters of statutory meaning, “the judiciary independently
27

28 ¹¹ As discussed immediately *infra*, the Board’s pronouncements on this topic have no legal
dignity at all.

1 reviews the administrative regulation for consistency with controlling law.” *Communities for a*
2 *Better Environment*, 103 Cal. App. 4th at 108 (footnote omitted). As the Court of Appeal has
3 explained:

4
5 The question is whether the regulation alters or amends the governing statute or
6 case law, or enlarges or impairs its scope. In short, the question is whether the
7 regulation is within the scope of the authority conferred; if it is not, it is void. This
8 is a question particularly suited for the judiciary as the final arbiter of the law, and
9 does not invade the technical expertise of the agency.

10 *Id.* at 108-109 (emphasis added) (footnotes omitted).

11 It is true that, in some circumstances, courts properly defer to a regulator’s interpretation
12 of law when the statutory language in question contains words that are technical or complex
13 requiring the expertise of the regulator to make sense of them. But, here, none of the words of
14 these particular statutes have a special meaning that would prompt deference by this Court to the
15 Board’s interpretation. Instead, as the statutes here involve the governance of court proceedings,
16 this Court is at least as well-positioned as the Board to review and interpret the Government Code
17 sections at-issue, for “the meaning of the applicable statutory language and its legislative history
18 is accessible (and hence intelligible) to judges.” *California Beer & Wine Wholesalers Ass’n v.*
19 *Dep’t of Alcoholic Beverage Control*, 201 Cal. App. 3d 100, 107 (1988). *See also, California*
20 *Veterinary Medical Assn. v. City of West Hollywood*, 152 Cal. App. 4th 536, 556 (2007) (When
21 language of statute is neither technical nor complex, an agency “enjoys no comparative advantage
22 over a generalist court in interpreting the legal text at issue.”); *California Ass’n of Health*
23 *Facilities v. Kizer*, 178 Cal. App. 3d 1109, 1113 (1986) (interpretation of statutory language “is a
24 classic question of law within the sole purview of the courts”).¹²

25
26 ¹² The Plaintiff may rely upon language in *Moore v. California State Bd. of Accountancy*, 2 Cal.
27 4th 999, 1015 (1992) for the proposition that courts should defer to administrative agency
28 interpretations no matter the technical character of the words in the statute. However, the
Supreme Court in *Yamaha*, 19 Cal. 4th at 11 n.4, criticized the “freighted with the strong
presumption of regularity” language as “overstate[d]” and reaffirmed that “[a] court does
not...defer to an agency’s view when deciding whether a regulation lies within the scope of the
authority delegated by the Legislature.”

1 **V. THE BOARD’S INTERPRETATION OF SECTIONS 69950 AND 69954**
2 **HAS NO LEGAL DIGNITY.**

3 Not only is the Board’s correspondence unpersuasive for failing to cite and analyze the
4 critical statute, not only is it owed no deference, it enjoys no legal dignity. It is not a formal legal
5 opinion. It is not a regulation and it has not been reviewed by any other state agency, not the least
6 the Office of Administrative Law that is charged with reviewing and approving all regulations for
7 “consistency” with statute. Section 11349.1(a)(4).

8 Unlike regulations that must be vetted through a public process under the Administrative
9 Procedures Act (*see*, sections ,11346-11348) the letter was reviewed by no stakeholder or
10 member of the public prior to being included in the newsletter. Indeed, the correspondence itself
11 may be deemed to be an unlawful “underground” regulation, and the Board thus forbidden from
12 enforcing it. “If a state agency issues, enforces, or attempts to enforce a rule without following
13 the APA when it is required to, the rule is called an ‘underground regulation.’ State agencies are
14 prohibited from enforcing underground regulations.”¹³

15 None of the employees of the Board are attorneys. The Executive Officer who signed the
16 letter is not an attorney.¹⁴ And, while the Board, like all boards within the Department of
17 Consumer Affairs, has access to counsel, there is no evidence that the newsletter opinion was
18 authored by such counsel.

19
20 **VI. THE BOARD’S AND THE PLAINTIFF’S INTERPRETATION OF**
21 **SECTIONS 69950 AND 69954 WILL DISRUPT AND HARM THE**
22 **ADMINISTRATION OF JUSTICE THROUGHOUT THE STATE.**

23 If this Court accepts the Board’s and Plaintiff’s invitation to insert words into a statute that
24 are not there, and extend price regulation applicable to full-time salaried employees for transcripts
25 that supplement their income to freelancers who have no such salary and who depend upon
26

27
28 ¹³ http://www.oal.ca.gov/Underground_Regs.htm

¹⁴ <http://www.courtreportersboard.ca.gov/about-us/exec-officer.shtml>

1 transcript fees for their entire income, no licensed reporter will accept such jobs. The following
2 hypothetical example explains why.

3 Consider a Los Angeles-area reporter who has been asked to act by the Defendant in this
4 case to act as an official reporter *pro tempore* for the hearing on this motion.

5 Assume generously the oral argument in this matter lasts 45 minutes. That would generate
6 a transcript of approximately 30 pages in length. Under an interpretation of the law that inserts
7 “official reporters *pro tempore*” into the price-cap statute of \$3.00 a page, the reporter’s gross
8 compensation for this 45-minute job would be \$90.

9
10 First, let’s calculate the reporter’s most obvious out-of-pocket costs.

11 Parking at the courthouse currently costs \$15 an hour. Assume conservatively she must
12 wait only an hour until this matter is called¹⁵ and then report the hearing for another 45 minutes.
13 Add fifteen minutes to get to and from her car, plus a likely 30 minutes to go through the security
14 line and then make her way to the appropriate department in the courthouse, and under this
15 optimistic scenario, 2.5 hours of parking would cost her \$37.50.

16
17 Assume the reporter travels to and from a home in the San Fernando Valley to do the job,
18 a distance of approximately 20 miles. The average price of a gallon of gas in Los Angeles as of
19 September 20, 2015 is \$3.21.¹⁶ Assuming her car earns 20 miles to the gallon, that is
20 approximately \$12 out of the reporter’s pocket in gas just to get the job and home.

21
22 Gross pay: \$90. Gas: \$12. Parking: \$37.50. **Net pay: \$40.50.**

23 Second, let’s calculate the number of hours the reporter would spend on the job.

24 Her commute from the Valley to the courthouse could easily add two hours of travel time
25 to the reporter’s work assignment.

26
27 ¹⁵ Of course, neither the reporter nor counsel nor even this Court knows when during the calendar
28 this matter will be heard. Just as the lawyers must arrive at the beginning of the court day, so too
must the reporter hired to report the hearing on this motion.

¹⁶ <http://www.latimes.com/business/autos/la-fi-hy-gas-prices-standing-htmlstory.html>

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We estimated 2.5 hours at the courthouse when we estimated parking.

Following the court hearing, at least two hours may be needed to complete the transcription, proofreading and completion of the final preparation of the original transcript file of the court proceedings.

Total hours spent on the job: 6.5.

The reporter's hourly pay here is a paltry \$6.23 an hour (\$40.50/6.5=\$6.23), far less than California's current minimum wage of \$9.00 an hour.¹⁷

This absurd result for a licensed professional *is exactly why the Legislature elected not to impose a fixed cost per page price-cap onto freelance official reporters pro tempore*, whose costs are unpredictable and variable, who enjoy no baseline salary or benefits, and who can elect other opportunities such as depositions that will allow them to earn a wage at least comparable to the dignity of their professional license.

CONCLUSION

For the reasons discussed above, it is important that the Defendant's motion be granted.

Respectfully submitted: September 21, 2015



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¹⁷ This hypothetical indicates that the page rates are too low even for official reporters, but this, too, is a matter for the Legislature.
**AMICUS CURIE BRIEF OF DEPOSITION REPORTERS ASSOCIATION IN SUPPORT OF
DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**