



**Association of Defense
Counsel of Northern
California and Nevada**



August 5, 2022

Chief Justice Tani G. Cantil-Sakauye
Justice Carol A. Corrigan
Justice Goodwin Liu
Justice Leondra R. Kruger
Justice Joshua P. Groban
Justice Martin J. Jenkins
Justice Patricia Guerrero
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Support for petition for review in No. S275134,
Pacific Fertility Cases

Honorable Justices,

Pursuant to Rule 8.500(g) of the California Rules of Court, the Association of Defense Counsel of Northern California and Nevada (“ADC-NCN”) and the Association of Southern California Defense Counsel (“ASCDC”) write jointly to urge the Court to grant the petition for review in this case.

Interest of the Requesting Organizations

ADC-NCN numbers approximately 600 attorneys primarily engaged in the defense of civil actions. Members represent civil defendants of all stripes, including businesses, individuals, HOAs, schools and municipalities and other public entities. Members have a strong interest in the development of substantive and procedural law in California, and extensive experience with civil matters generally, including settlements and actions between defendants. ADC-NCN’s Nevada members are also interested in the

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development of California law because Nevada courts often follow the law and rules adopted in California.

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. The ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in appellate matters, the ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

Although ASCDC and ADC-NCN are separate organizations, they coordinate from time to time on matters of shared interest, such as this letter. Together and separately, they have appeared as *amicus curiae* in many cases before both the California Supreme Court and Courts of Appeal across the state to express the interests of their members and their members' clients, a broad cross-section of California businesses and organizations.

No party has paid for or drafted this letter.

Why the Court should grant review

This Court should grant review because of the important issue presented and the need for a single rule. (Cal. Rules of Court, rule 8.500(b)(1).)

Parties and their counsel need certainty about the appropriate means for appellate review of good faith settlement determinations under Code of Civil Procedure section 877.6.

As this decision frankly addresses, there is a split in the Courts of Appeal on this issue. Some, like *Pacific Fertility*, hold that a good faith settlement determination is reviewable only by a timely petition for writ of

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mandate, as set forth in section 877.6. (E.g., *Housing Group v. Superior Court* (1994) 24 Cal.App.4th 549, 552; *O’Hearn v. Hillcrest Gym & Fitness Center, Inc.* (2004) 115 Cal.App.4th 491, 499; *Main Fiber Products, Inc. v. Morgan & Franz Ins. Agency* (1999) 73 Cal.App.4th 1130, 1136.) Others have ruled that a good faith settlement determination may also be reviewed in an appeal from a final judgment. (E.g., *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; *Wilshire Ins. Co. v. Tuff Boy Holding, Inc.* (2001) 86 Cal.App.4th 627, 636; *Maryland Casualty Co. v. Andreini & Co.* (2001) 81 Cal.App.4th 1413, 1423.)

There could hardly be a starker lack of uniformity, and the need for uniformity is great. Section 877.6 determinations are common in cases involving multiple defendants. Defendants need to know whether they must pursue the always long shot of an immediate discretionary writ or may wait, as with other pre-trial orders, and appeal after a final judgment.

This is an issue that affects only defendants, hence the special significance to these organizations and its members. It is important because it affects whether defendants can get contribution or indemnity from other, perhaps even more culpable parties, consistent with the general policy favoring assignment of liability and damages by fault. (Compare Code Civ. Proc., § 877.6, subd. (c) [“A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault”] with Civ. Code, § 1431.2 subd. (a) [“Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant’s percentage of fault.”])

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This Court should grant review to address this important issue and
pronounce a single rule.

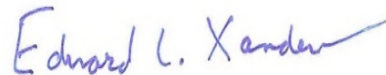
Respectfully submitted,

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PROOF OF SERVICE

Pacific Fertility Cases

Case No. S275134

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 1111 Broadway, Suite 1700, Oakland, CA 94607; email: espier@grsm.com. On the date below, I served the within document(s):

LETTER SUPPORTING REVIEW

- VIA E-SERVICE (TrueFiling) on the recipients designated on the electronic service list generated by TrueFiling system.
- VIA U.S. MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at Oakland, addressed as set forth below.

Clerk, Court of Appeal
First Appellate
District, Div. 1
350 McAllister
San Francisco, CA 94102

Clerk for delivery to
Hon. Andrew Y.S. Cheng
San Francisco Superior Court
400 McAllister
San Francisco, CA 94102

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

Executed on August 5, 2022 at Walnut Creek, California.

/s/ Eileen Spiers
Eileen Spiers