ASCDC
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March 14, 2017

The Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

Re: *Stueve et al. v. Nemer et al.*
California Supreme Court Case No. S240316
Fourth Appellate District, Division Three
Case No. G052779

Dear Honorable Justices:

We write on behalf of the Association of Southern California Defense Counsel (ASCDC) to request that the Court grant the petition for review filed in this case on February 28, 2017. The issue presented—when is a civil action "brought to trial" for purposes of Code of Civil Procedure section 583.310—is a pure question of law that demands a clear, uniform answer, one only this Court can provide.

Interest of the Requesting Organization

ASCDC is an association of approximately 1,100 leading attorneys who specialize in defending civil actions in Southern and Central California. ASCDC is actively involved in assisting courts on issues of interest to its members. ASCDC also affords professional education, fellowship and advancement for its members. It acts as a liaison between the defense bar and the courts and the Legislature. It is actively involved in matters of interest to the judiciary and bar. It has appeared as amicus curiae in numerous cases before both this Court and Courts of Appeal across the state.

ASCDC members try cases. They try a lot of cases. ASCDC has a profound interest in ensuring that the rules governing trials, including those regarding Code of Civil Procedure 583.310, are clear. The need for clear trial rules is not just a defense issue. It is important for *all* counsel, *all* litigants and *all* courts.

Why Review Should Be Granted

Code of Civil Procedure section 583.310, known as the five-year statute, requires that a civil action "be brought to trial within five years after the action is commenced against the defendant." The statute "expedite[s] the administration of justice by compelling every person who files an action to prosecute it with promptness and diligence." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 332.) Determining when a case has been "brought to trial" is an "important question of law" of statewide interest. (Cal. Rules of Court, rule 8.500(b)(1).) The issue potentially affects every civil case in California.

It is also a question that demands a clear, uniform answer. The petition already explains in detail how the "brought to trial" case law remains unsettled. That uncertainty led the trial court to determine, based upon this Court's precedent, that this case was *not* brought to trial within five years because the five-year period ran before a jury trial panel (the jurors who actually will decide the case) was sworn. But the Court of Appeal found that impaneling a voir dire panel suffices to bring the case to trial. It relied primarily on two Supreme Court cases that do not actually address the issue, *Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717 and *Hartman v. Santamarina* (1982) 30 Cal.3d 762. Until this Court resolves the question presented by this case, litigants will remain subject to disparate results in different courts.

Such confusion and uncertainty poses a dual public-policy threat. It creates traps for unwary attorneys and their clients who might rely on the opinion here or another opinion, only to have the trial or appellate court reach a different conclusion as to timeliness. And it potentially undermines the statutory goal of protecting parties from dormant claims by allowing cases to linger longer than the Legislature actually intended.

ASCDC is not presently advocating which construction this Court should adopt. Its point, rather, is that courts and litigants need a clear, definitive answer. This Court should grant review to provide that answer.

Respectfully submitted,

ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSEL COUNSEL

By: Edward L. Xanders

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cc: Proof of Service

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On March 14, 2017, I served the foregoing documents described as: **ASCDC LETTER DATED MARCH 14, 2017 TO SUPREME COURT IN SUPPORT OF GRANTING PETITION FOR REVIEW** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

I deposited such envelope(s) in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 14, 2017, at Los Angeles, California.

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

Charice L. Lawrie

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