

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

**California Physicians' Service d/b/a  
Blue Shield of California,**

Plaintiff and Respondent,

v.

**Michael Johnson,**

Defendant and Appellant.

Case No. B279183

Los Angeles County Superior Court, Case No. BC600453  
Honorable Samantha P. Jessner, Judge

**APPLICATION OF THE CALIFORNIA  
DEPARTMENT OF INSURANCE TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF  
DEFENDANT-APPELLANT;  
[PROPOSED] ORDER**

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Received by Second District Court of Appeal

Pursuant to California Rules of Court, rule 8.200, subdivision (c), the California Department of Insurance respectfully requests permission to file an amicus curiae brief supporting Defendant-Appellant Michael Johnson.<sup>1</sup> In this case, California Physicians' Service, which does business as Blue Shield of California, alleges that Johnson, a former company employee, breached contractual and other legal duties by disclosing sensitive information outside the company. The record before the trial court indicates that Johnson shared information not only with the press and public but also with state agencies with direct oversight responsibility for Blue Shield's activities: the Department of Insurance and the Department of Managed Health Care.

Any effort to challenge a whistleblower's voluntary reports to state oversight agencies raises serious concerns for the Department. As the State's largest consumer-protection agency with responsibility for overseeing over 1,300 insurance companies and 400,000 licensed agents, brokers, and adjusters, the

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<sup>1</sup> Pursuant to California Rules of Court, rule 8.200(c)(3), the Department states that no party or counsel for a party authored the proposed amicus brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. The Department further states that no person or entity made a monetary contribution intended to fund the preparation or submission of the brief other than the Department or its counsel.

Department has a significant interest in ensuring that whistleblowers and other members of the public can freely communicate with the agency when they learn facts suggesting that an insurance company is failing to meet its statutory or regulatory obligations. Employee confidentiality agreements and the threat of litigation seeking to enforce such agreements risk chilling whistleblowers' willingness to come forward and report their concerns. Such a result could threaten the Department's ability to uncover and put a stop to insurance industry practices that may harm consumers or the insurance market as a whole. Such risks pose particular concerns with respect to the health insurance sector, where illegal practices can directly jeopardize the health and safety of Californians who rely upon their insurers' integrity to obtain honest and competent medical services.

The Department's proposed amicus brief explains why unencumbered whistleblower reporting supports state regulators' ability to effectively enforce the law. The brief also provides arguments and citations, not addressed by either party, explaining why confidentiality agreements that purport to prohibit employees or former employees from cooperating with state oversight agencies are contrary to public policy and unenforceable. For these reasons, the Department respectfully submits that the proposed brief will assist the Court in

determining, at the second step of the anti-SLAPP analysis, whether Blue Shield can demonstrate a probability of prevailing on any claim that seeks to impose liability for voluntary disclosures to state regulators.

The Department of Insurance respectfully requests that the Court accept the proposed amicus brief for filing.

Dated: June 25, 2018

Respectfully submitted,

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**[PROPOSED] ORDER**

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Honorable Samantha P. Jessner, Judge

IT IS ORDERED that the application of the California  
Department of Insurance to file an amicus curiae brief is hereby  
granted.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice

## CERTIFICATE OF SERVICE

Case Name: **California Physicians' Service d/b/a Blue Shield of CA v. Johnson**  
No. **B279183**

I hereby certify that on **June 25, 2018**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### **APPLICATION OF THE CALIFORNIA DEPARTMENT OF INSURANCE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT; [PROPOSED] ORDER**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On **June 25, 2018**, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Hon. Samantha P. Jessner  
Department 31  
Los Angeles Superior Court  
111 No. Hill Street  
Los Angeles, CA 90012

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 25, 2018**, at Los Angeles, California.

\_\_\_\_\_  
K. Jeffers  
Declarant

\_\_\_\_\_  
*/s/ K. Jeffers*  
Signature