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

AMICUS CURIAE BRIEF OF CALIFORNIA DEPARTMENT OF INSURANCE IN SUPPORT OF DEFENDANT-APPELLANT

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
DIANE SHAW
Senior Assistant Attorney General
*AIMEE FEINBERG (SBN 223309)
Deputy Solicitor General
MOLLY K. MOSLEY
Supervising Deputy Attorney General
1300 I Street, Suite 125
Sacramento, CA 94244-2550
(916) 210-6003
Aimee.Feinberg@doj.ca.gov
Attorneys for the California Department of Insurance

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION

California law broadly protects whistleblowers' ability to report suspected misconduct to state regulators. This protection reflects the Legislature's determination that a company's employees are often in a unique position to know if their employer is failing to meet its statutory or regulatory responsibilities and potentially putting the public at risk.

In this case, respondent California Physicians' Service, which does business as Blue Shield of California, alleges that its former employee, appellant Michael Johnson, breached contractual and other legal duties by sharing sensitive Blue Shield information outside of the company. The record before the trial court indicates that, among his disclosures, Johnson reported to the Department of Insurance and the Department of Managed Health Care information about Blue Shield's activities that he believed violated the law.

It is well established that California courts will decline to enforce a contract that is contrary to public policy. An employment agreement that would prohibit a former employee from volunteering to state oversight agencies information he reasonably believes indicates misconduct by his employer conflicts with state policy and is unenforceable.

The government's important interest in receiving information concerning potential wrongdoing also bars the

imposition of any tort liability for providing information to state officials. Under the *Noerr-Pennington* doctrine, petitioning activities, such as whistleblower communications to state regulatory entities, are protected. This doctrine safeguards not only individual expressive interests but also the government's powerful interest in the free communication of information from the public.

Under these principles, Blue Shield cannot demonstrate a probability of prevailing on any claim that challenges disclosures to state agencies or that seeks to enjoin future cooperation with government regulators. In addressing the merits of Blue Shield's claims at the second step of the anti-SLAPP analysis, the Court should make clear that any claim targeted at such activities cannot proceed.

ARGUMENT

I. WHISTLEBLOWER REPORTS HELP STATE REGULATORS PROTECT THE PUBLIC

The California Insurance Code comprehensively regulates insurance companies doing business in the State. Among other things, the statutes establish financial reserve requirements, require insurance companies and brokers to be licensed, prohibit unreasonable or excessive rates for certain types of insurance, and forbid insurers from engaging in unfair or deceptive practices.

(Ins. Code, §§ 1631, 923.5, 1861.05, subd. (a), 790.04.)[1] These statutory standards help ensure that consumers are able to obtain the insurance products they need and that insurance policies deliver their promised benefits.

The Insurance Code vests the California Insurance Commissioner with broad enforcement authority. The law directs him to "require from every insurer a full compliance with" the law (§ 12926); and it empowers him to "enforce the execution" of its provisions (§ 12921, subd. (a)). The Commissioner may "examine and investigate" insurance companies' activities to ensure they are not engaged in unfair or deceptive practices (§ 790.04); must perform regular market conduct examinations to verify that insurers' underwriting, claims-handling, and other practices comply with the law (§ 730); and may issue subpoenas to compel testimony or the production of documents "on any subject touching insurance business, or in aid of his duties" (§ 12924).

Reports from whistleblowers and members of the public play an important role in the Commissioner's ability to discharge his enforcement responsibilities. California's insurance market is the largest in the United States and the fourth largest in the world. (See http://www.insurance.

[1] All further statutory references are to the Insurance Code unless otherwise stated.

ca.gov/0500-about-us/02-department/index.cfm.) More than 1,300 insurance companies and over 400,000 licensed agents, brokers, and adjusters do business in the State. (*Ibid.*) To oversee a market of this size and scale, the Department of Insurance needs ready access to information about insurance company practices.

Although the Commissioner has substantial investigative tools at his disposal, reports from whistleblowers and members of the public are an important source of information. Each year, the Department receives more than 170,000 consumer assistance calls and investigates more than 37,000 consumer complaints. (http://www.insurance.ca.gov/0500-about-us/02-department/index.cfm.) It receives and processes tens of thousands of referrals regarding suspected fraud against insurers and others. (*Ibid.*) These reports alert the Department to instances of possible misconduct that may otherwise remain hidden from view, allowing the Department to investigate and, when wrongdoing is found, take necessary corrective action. As a result of these communications, the Department has been able to obtain more than $84 million annually for consumers, and authorities have made thousands of arrests for suspected criminal violations. (*Ibid.*)

Company insiders have also brought forward information concerning improper activities. As an example, a former employee of a pharmaceutical company surfaced allegations that

his employer was promoting a prescription drug for unapproved uses in violation of the Insurance Frauds Prevention Act. (http://www.insurance.ca.gov/0400-news/0100-press-releases/2017/release088-17.cfm.) As a result of the employee's whistleblower action, the Commissioner was able to reach a sizeable settlement with the company. (*Ibid.*)

Private contractual arrangements that purport to block whistleblowers from alerting state regulators to possible insurance company misconduct raise serious concerns. Enforcement of such contracts could cut off a source of information essential to the Department's ability to oversee the State's vast insurance market. If those with knowledge of improper practices fear legal liability for volunteering information to state regulators, state oversight agencies may never learn about activities that pose threats to consumers or the insurance market. Such a result would undermine the Department's ability to investigate and take corrective action to protect consumers.

II. COURTS MAY NOT IMPOSE LIABILITY FOR VOLUNTARY WHISTLEBLOWER REPORTING TO STATE OVERSIGHT AGENCIES

California's anti-SLAPP statute, Code of Civil Procedure section 425.16, creates a procedure for dismissing meritless claims challenging protected speech or petitioning activity. (E.g., *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.) At the first step of

the analysis, a court considers whether the plaintiff's claim arises from protected activity. (*Ibid.*) At the second step, the court determines whether the plaintiff can demonstrate a probability of prevailing on its claim. (*Ibid.*) Here, Blue Shield concedes that its claims challenging Johnson's disclosures outside the company are based on protected activity. (Respondent's Br. 29, fn. 3.) Blue Shield cannot demonstrate a probability of prevailing on any claim challenging his disclosures to state regulators.

A. Contractual Arrangements that Purport to Prohibit Communications to, or Cooperation with, State Regulators Are Unenforceable

Blue Shield alleges that Johnson breached his contractual confidentiality obligations by revealing sensitive Blue Shield information outside the company. (Clerk's Transcript 11-15.) The record before the trial court indicates that, in addition to his disclosures to the media, Johnson provided information about Blue Shield's activities to two state agencies with direct oversight responsibility over the company. First, in June 2015, Johnson revealed to the state Department of Managed Health Care that Blue Shield had made representations to the Franchise Tax Board that conflicted with information the company had provided to DMHC in connection with DMHC's review of Blue Shield's proposed acquisition of another health plan, Care1st. (CT 150-151.) In a submission to DMHC, Blue Shield stated that it was permitted to distribute assets to its members upon dissolution

and asserted that such authority demonstrated that it lacked charitable trust obligations. (CT 150.) Johnson informed DMHC that Blue Shield had represented to FTB that it had no legal authority to distribute its assets to private parties in the event of dissolution. (CT 150-151.) Second, in August 2015, Johnson informed both the Department and DMHC that Blue Shield had paid its former CEO $20 million upon his departure from the company. (CT 1312, 1321.) Johnson stated that he made both of these disclosures "to alert government regulators to regulatory violations that [he] believed [Blue Shield] was committing: misrepresenting material facts in connection with the DMHC's review of its proposed acquisition of Care1st Health Plan and failing to report in public rate filings the total compensation paid to its top ten executives." (CT 1312.)[2]

Blue Shield cannot prevail on any breach-of-contract claim that challenges these disclosures. "It is well established that [California] courts … may, in appropriate circumstances, void contracts on the basis of public policy." (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777, fn. 53.) This authority

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[2] The trial court read Blue Shield's complaint as not raising issues respecting disclosures to public agencies. (CT 1779, 1780.) As the above citations indicate, however, the record shows that Johnson shared information with state regulatory entities, and Blue Shield does not dispute on appeal that its claims involve such disclosures. (Respondent's Br. 69-72.)

reflects the longstanding principle that a party may not enlist a court's assistance to enforce a contract term that offends state policy. (See, e.g., *Kremer v. Earl* (1891) 91 Cal. 112, 117 ["'No court will lend its aid to give effect to a contract which is illegal, whether it violate[s] the common or statut[ory] law, either expressly or by implication'"]; *Kashani v. Tsann Kuen China Enterprise Co., Ltd.* (2004) 118 Cal.App.4th 531, 540.) This rule is designed "not to secure justice between the parties but to promote a societal recognition that certain types of transactions should be discouraged." (*Dunkin v. Boskey* (2000) 82 Cal.App.4th 171, 183; see also *Kashani*, *supra*, at p. 558, quoting *Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 150 ["'Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place'"].)

In determining whether a contract conflicts with state policy, courts examine relevant statutes, regulations, and case law to ascertain the policies they embody. (See *Cariveau v. Halferty* (2000) 83 Cal.App.4th 126, 132 [contract provisions may be voided based on a policy expressed in a statute or implied from its language]; Civ. Code, § 1667 ["not lawful" contracts are "[c]ontrary to an express provision of law," "[c]ontrary to the policy of express law, though not expressly prohibited," or "[o]therwise contrary to good morals"].) If the interest in

enforcement of a contract "'is clearly outweighed in the circumstances by a public policy against the enforcement'" of such an agreement, a court will not give it effect. (*Dunkin*, *supra*, 82 Cal.App.4th at p. 183, quoting Rest.2d Contracts § 178(1).)

There are, of course, legitimate interests in enforcing employment confidentiality agreements. Such agreements protect trade secrets, private personnel information about fellow employees, or other sensitive business information. (E.g., *DVD Copyright Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 880-881 [discussing government interests in trade secret protection].) California law also generally favors parties' ability to enter into, and seek judicial enforcement of, private contractual arrangements. (*Carma Developers (Cal.), Inc. v. Marathon Dev. California, Inc.* (1992) 2 Cal.4th 342, 363.)

But where an employer seeks to enforce a general confidentiality agreement to prohibit disclosures of suspected wrongdoing to government regulators, the balance of interests tips decisively against enforcement in those circumstances. California statutes reflect a strong public policy protecting employees' and former employees' ability to freely share information about their employer's potential misconduct with government authorities. For decades, state law has prohibited employers from adopting or enforcing "any rule, regulation, or policy preventing an employee from disclosing information to a

government or law enforcement agency" when the employee reasonably believes that the information discloses a violation of state or federal law. (Lab. Code, § 1102.5, subd. (a); see Stats. 1984, ch. 1083, § 1.) Labor Code section 1102.5 "reflects the broad public policy interest in encouraging workplace whistle blowers to report unlawful acts without fearing retaliation." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 77.)

When the Legislature amended section 1102.5 in 2003 to strengthen its protections, the Legislature expressly found that whistleblower reports are essential to protecting the public from corporate malfeasance. The Legislature determined that "unlawful activities of private corporations" may injure not only shareholders and employees but also "the public at large." (Stats. 2003, ch. 484, § 1 [uncodified].) It concluded that such harm "may be prevented by the early detection of corporate wrongdoing" and that "employees of a corporation are in a unique position" to alert government officials to these threats. (*Ibid.*) Accordingly, the Legislature expressly "declare[d] that it is the public policy of the State of California to encourage employees to notify an appropriate government or law enforcement agency when they have reason to believe their employer is violating laws enacted for the protection of corporate shareholders, investors, employees, and the general public." (*Ibid.*)

The Insurance Code likewise expresses a policy favoring voluntary reporting of potential insurance company misconduct. Although that statute vests the Commissioner with broad enforcement authority (e.g., §§ 12926, 12921; see *ante* at p. 9), it also recognizes that adequate supervision of the State's insurance market depends on information from the public. Among other things, the statute requires the Commissioner to establish a formal mechanism for receiving complaints about insurance company practices. (§ 12921.1.) This statutorily mandated program ensures that the Commissioner is made aware of possible wrongdoing so that he may investigate, determine whether the data show patterns of improper behavior, and take enforcement action when appropriate. (See § 12921.3.) In addition, state insurance laws expressly empower the Commissioner to perform additional or more frequent market conduct examinations when he receives information indicating a possible violation of certain underwriting requirements or other complaints from the public. (§ 730, subds. (a), (b).) Other state statutes also recognize that information from whistleblowers helps ensure adequate enforcement of the law. (E.g., Rev. & Tax. Code, § 19525 [authorizing FTB to create reward program to incentivize individuals to report underreporting or non-reporting of income].)

Enforcing a confidentiality agreement to bar communications with state oversight agencies like the Department would be directly contrary to the policies expressed in these statutes. If employers were permitted to prevent employees or former employees from communicating with the Department, the Commissioner might never learn about potential misconduct. That result would stand in conflict with the legislative recognition that whistleblower reports help to protect the public and the Commissioner's authority and mandate to uncover and remedy instances of wrongdoing.

Prior Court of Appeal decisions confirm that confidentiality agreements that purport to bar voluntary disclosures to government regulators are void as contrary to public policy. In *Cariveau v. Halferty*, *supra*, 83 Cal.App.4th 126, a securities dealer and her client entered into a settlement agreement to resolve claims that the dealer had made inappropriate investment recommendations and violated various ethical standards. (*Id.* at pp. 128-129.) The agreement provided that the dealer's alleged misconduct "'shall remain private and confidential in all respects and shall not be disclosed by any party hereto, for any reason whatsoever, to any public or private person or entity, or to any administrative, law enforcement or regulatory agency.'" (*Id.* at p. 129, quoting agreement, ellipses omitted.) When the dealer sued the client for breaching this confidentiality

provision, the Court of Appeal held that it was unenforceable. (*Id.* at pp. 137-138.) The court explained that securities laws and regulations embodied policies favoring consumer protection, high ethical standards for dealers, and effective oversight of dealers' conduct. (*Id.* at pp. 133-134.) By shielding the dealer's misconduct from regulatory scrutiny and "encourag[ing] future … violators to hide their misdeeds in a secret agreement," the confidentiality agreement ran directly counter to these policies and risked undermining "the public's confidence in the integrity of securities oversight." (*Id.* at p. 137.) Because the policies expressed in securities laws and regulations outweighed the general interest in carrying out settlement agreements, the contractual confidentiality provision could not be enforced. (*Ibid.*; see also *Allen v. Jordanos' Inc.* (1975) 52 Cal.App.3d 160, 166 [contract to withhold information from, and provide false information to, state agency void].)

The Court of Appeal in *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790 applied similar reasoning in declining to enforce a contractual provision that purported to block a union from cooperating with the state Agricultural Labor Relations Board. There, an employer and union entered into a stipulated settlement under which the union agreed not to "'assist in pursuing [an unfair labor practices charge] in any fashion whatsoever.'" (*Id.* at p. 796, quoting

agreement, alteration omitted.) When the union cooperated with the Board in connection with the Board's pursuit of an unfair labor practices charge, the employer sued the union for breach of contract. (*Id.* at pp. 800-801.) The court held that the employer's claim could not proceed because the enforcement of any agreement prohibiting assistance to the Board would be "contrary to the public policy inherent" in the state Agricultural Labor Relations Act. (*Id.* at p. 803.) The ALRA was designed to protect workers' right to organize, free from interference from employers. (*Id.* at p. 804.) "This public interest," the court concluded, "is not advanced if private agreements between employer and employee are allowed to obstruct [the Board's] prosecution of [unfair practices] complaints." (*Ibid.*) At the same time, the court reasoned that the ALRB should not have to resort to the use of its subpoena powers to obtain necessary information. (*Ibid.*) The policies expressed in the ALRA require witnesses to feel free to come forward voluntarily, not only after a court issues an order enforcing a subpoena. (*Id.* at pp. 804-805; see also *EEOC v. Astra USA, Inc.* (1st Cir. 1996) 94 F.3d 738, 745 ["most peculiar to insist" that EEOC resort to its subpoena power, when "public policy so clearly favors the free flow of information" between the agency and victims of employment discrimination].)

The principles enunciated in *Cariveau* and *D'Arrigo* apply with equal force here. Established state policy favors voluntary

reporting of suspected corporate misconduct to state oversight agencies. If private employment agreements like that alleged here could be enforced to block insurance company employees or former employees from providing information about potential wrongdoing to state insurance regulators, the policies favoring whistleblower reporting and the rigorous oversight of insurance company practices would be impaired.

Blue Shield claims that its interest in protecting information covered by the attorney-client privilege prevails over any countervailing public interest in the revelation of suspected wrongdoing to state regulators. (RB 71.) Although disclosures of genuinely privileged information may raise different issues and concerns, none of the communications to state regulators here was covered by the attorney-client privilege. Blue Shield concedes that the fact that it paid a substantial sum to a departing executive was not covered by the attorney-client privilege. (RB 47.) The information Johnson disclosed to DMHC concerning Blue Shield's inconsistent statements to FTB also was not subject to the attorney-client privilege: Blue Shield's statements were made to a state regulatory agency, not to an attorney in confidence for the purpose of obtaining legal advice. (See Evid. Code, §§ 952, 954 [defining attorney-client privilege].) The privilege does not support Blue Shield's effort to enforce

Johnson's claimed confidentiality obligations with respect to his disclosures to state regulators.

Blue Shield is also wrong in suggesting that Johnson's disclosures were not relevant to any regulatory interest or proceeding and therefore fall outside the broad public policy supporting whistleblower reports to state oversight agencies. (RB 69-70, 71.) As an initial matter, it is not correct that only information that reveals an actual violation of law is protected. To the contrary, if an employee reasonably believes his employer has engaged in potential wrongdoing, public policy supports that disclosure, even if the employee is incorrect or in some sense can be said to be "over-reporting." In any event, information concerning large and undisclosed bonus payments to a health insurance company executive is relevant to the Department under its authority to assure that insurance companies remain financially solvent and have appropriate reserves. (§§ 717, 923.5.) The same is true for DMHC, which is responsible for overseeing the solvency of health plans like Blue Shield. (Health & Safety Code, § 1375.1; Cal. Code Regs., tit. 28, § 1300.75.1, subd. (a) [requiring health plans to demonstrate "fiscal soundness"].) Whistleblower reports suggestive of unsound management practices, including out-sized or inappropriate compensation for company executives, may alert state agencies to possible risks to a company's fiscal health and enable the agency to take any

necessary corrective action. In addition, compensation paid to certain insurance company executives is relevant to the Department's consideration of whether a rate increase is unreasonable. (See Dept. of Ins. Guidance 1163:2 (Apr. 5, 2011), reprinted at CT 37-42.)

Johnson's report to DMHC that Blue Shield made inconsistent statements to FTB was also relevant to DMHC's regulatory oversight of Blue Shield, specifically its review of Blue Shield's proposed acquisition of Care1st. Under the Knox-Keene Act, a health plan must obtain prior approval by filing a Notice of Material Modification with DMHC when it proposes to make a "material modification of its plan or operations" such as by purchasing another health plan. (Health & Safety Code, § 1352.) Health plan filings with DMHC must be accompanied by a certification stating that the submission is true and correct. (See Cal. Code Regs., tit. 28, § 1300.41.8.) In addition, it is unlawful for any person to make an untrue statement of material fact in a submission to DMHC. (Health & Safety Code, § 1396.) Further, for a Notice of Material Modification involving a non-profit health plan, DMHC reviews the proposed transaction to determine whether article 11 of the Knox-Keene Act applies; if it does, it significantly affects the transaction, including requiring a plan for public benefits. (Health & Safety Code, § 1399.71.) Whether a plan holds assets subject to a charitable trust obligation is

relevant to whether article 11 applies. (Health & Safety Code, § 1399.75.) In light of these regulatory requirements, information suggesting that a health plan seeking approval to modify its operations had made inconsistent statements to state regulators or had a charitable trust obligation would be relevant to DMHC's oversight responsibilities.

Because private contractual agreements that restrict communications with state oversight agencies are against public policy and unenforceable, Blue Shield cannot demonstrate a probability of prevailing on any breach-of-contract claim challenging Johnson's disclosures to the Department or DMHC.

B. Disclosures to State Regulators Also Cannot Form the Basis for Any Tort Liability

Blue Shield also cannot demonstrate a probability of prevailing on any of its other claims that seek to impose liability for Johnson's disclosures to state agencies. (CT 13-15 [causes of action for claimed breach of fiduciary duty, breach of the duty of loyalty, and violations of Labor Code section 2860 and Business and Professions Code section 17200].) The *Noerr-Pennington* doctrine, which is based on the First Amendment right to petition, precludes liability for communications with government actors such as whistleblower reports. (See *Premier Med. Mgmt. Sys., Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 478-479.) Importantly, the doctrine's purpose is not limited

to safeguarding individuals' constitutional right to express their views to public officials. It also ensures that government agencies have access to information they need to make decisions that serve the public.

In *Forro Precision, Inc. v. International Business Machines Corp.* (9th Cir. 1982) 673 F.2d 1045, the Ninth Circuit recognized the importance of "the public policies served by ensuring the free flow of information" to law enforcement officials. (*Id.* at p. 1060.) "[I]t would be difficult indeed," the court explained, "for law enforcement authorities to discharge their duties if citizens were in any way discouraged from providing information." (*Ibid.*) Accordingly, the court held that, under the *Noerr-Pennington* doctrine, a company's reports to, and cooperation with, law enforcement officials could not serve as the basis for an antitrust claim. (*Id.* at pp. 1058, 1061.) Other courts have reached the same conclusion, holding that claims seeking to impose liability for voluntary reports to law enforcement officials are barred. (E.g., *Ottensmeyer v. Chesapeake & Potomac Telephone Co. of Maryland* (4th Cir. 1985) 756 F.2d 986, 994 [phone company communications to law enforcement regarding fraudulent use of phone service cannot be basis for liability]; *William Villa v. Heller* (S.D.Cal. 2012) 885 F.Supp.2d 1042, 1051 [claim based on reports to California Department of Corporations and local law enforcement officials precluded under *Noerr-Pennington*].)

These principles make clear that Blue Shield may not pursue any of its tort claims insofar as they challenge Johnson's disclosures to state agencies. As explained above, Johnson approached state regulatory agencies with information that he believed indicated a violation of law. He stated that he volunteered this information for the purpose of alerting government officials to possible wrongdoing. The information provided was directly relevant to the receiving state agencies' regulatory authority. Under these circumstances, allowing a claim challenging communications to state authorities would undermine regulators' ability to obtain information necessary to the discharge of their oversight responsibilities. Under the *Noerr-Pennington* doctrine, such a claim cannot proceed.

CONCLUSION

At the second step of the anti-SLAPP analysis, the Court should make clear that Blue Shield cannot prevail on any claim that seeks to impose liability for voluntary reports to state oversight agencies.

Dated: June 25, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
DIANE SHAW
Senior Assistant Attorney General

/s/ Aimee Feinberg
AIMEE FEINBERG
Deputy Solicitor General
MOLLY K. MOSLEY
Supervising Deputy Attorney General
Attorneys for the California Department of Insurance

CERTIFICATE OF COMPLIANCE

I certify that the attached **AMICUS CURIAE BRIEF OF CALIFORNIA DEPARTMENT OF INSURANCE IN SUPPORT OF DEFENDANT-APPELLANT** contains 4,097 words as counted by the word-processing program used to create the document and excluding the caption page and the parts of the brief excluded under Rule 8.204, subdivision (c)(3).

Dated: June 25, 2018

XAVIER BECERRA
Attorney General of California

/s/ Aimee Feinberg
AIMEE FEINBERG
Deputy Solicitor General
Attorneys for the California Department of Insurance

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:

AMICUS CURIAE BRIEF OF CALIFORNIA DEPARTMENT OF INSURANCE IN SUPPORT OF DEFENDANT-APPELLANT

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	***/s/ K. Jeffers***
Declarant	Signature

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