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November 13, 2019

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

Re: *Sturtevant Farms and State Compensation Insurance Fund v. Workers' Compensation Appeals Board and Javier Lopez*
California Supreme Court Case No. S258513

To the Chief Justice and the Honorable Associate Justices:

The City of San Diego respectfully submits this *amicus curiae* letter pursuant to the California Rules of Court, Rule 8.500(g) in support of the Petition for Review referenced above.

The City of San Diego has over 11,000 employees and administers its own workers' compensation program. Both the City and its employees need certainty in the amount of permanent disability when employees have multiple awards to the same body region. Previous Workers' Compensation Appeals Board panel decisions upheld a 100 percent cap on permanent disability for each of seven different body regions under California Labor Code section 4664(c)(1).

The issue in this case is the interpretation of California Labor Code section 4664(c)(1) when there are multiple workers' compensation claims. Specifically, whether an injured worker can collect more than 100 percent permanent disability over his/her lifetime for injuries to his/her spine?

The Legislature enacted the lifetime permanent disability cap in 2004 in response to a workers' compensation crisis.¹ Under Labor Code section 4664(c)(1), the accumulation of all permanent disability awards with respect to any one region of the body shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character.² The 100 percent cap applies to each of seven defined body regions.

The Workers' Compensation Appeals Board (WCAB) issued four cases upholding the lifetime cap by limiting the permanent disability to 100 percent. The first case was an *en banc* WCAB decision³ that explained the new 2004 Labor Code section 4664. The next three panel decisions upheld the 100 percent cap.⁴ The instant case, *Lopez v Sturtevant Farms*, did not uphold the 100 percent cap, but instead imposed a new condition by requiring the defendant to prove overlap of permanent disabilities.⁵

The lifetime cap is potentially at issue in every workers' compensation case where there are multiple awards. With the confusion in the interpretation of the law, the amount of permanent disability paid to injured workers is uncertain. Injured workers may accumulate over 100% permanent disability for each particular body region, which can be a substantial increase in the amount of permanent disability.

¹ *Brodie v. Workers' Comp. Appeals Bd.*, 40 Cal. 4th 1313, 1329-30 (2007).

² California Labor Code section 4664(c)(1).

³ *Sanchez v. County of Los Angeles*, 70 Cal. Comp. Cases 1440 (2005).

⁴ *Gordon v. County of Los Angeles*, 2010 Cal. Wrk. Comp. P.D. LEXIS 581, *McGowan v. City of Los Angeles*, 2015 Cal. Wrk. Comp. P.D. LEXIS 24, *Gibbs v. Cal. Dept. of Corrections and Rehabilitation*, 2016 Cal. Wrk. Comp. P.D. LEXIS 90.

⁵ *Lopez v. Sturtevant Farms*, 84 Cal. Comp. Cases 433 (2018).

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The City of San Diego respectfully requests a grant of review to give uniformity to the interpretation of Labor Code section 4664(c)(1).

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By

Diana Y. Adams
Chief Deputy City Attorney

DYA:rmc:Civ.

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and the Associate Justices of the
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CALIFORNIA SUPREME COURT

STATE OF CALIFORNIA

DECLARATION OF) Sturtevant Farms and State Compensation Insurance Fund v.
SERVICE BY MAIL) Workers' Compensation Appeals Board and Javier Lopez
) California Supreme Court Case No. S258513

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101. I served the following document(s):

**Letter to the Chief Justice Tani Cantil-Sakauye
and the Associate Justices of the California Supreme Court**

by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

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I then sealed each envelope and placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices.

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

Executed on November 13, 2019, at San Diego, California.

PROOF OF SERVICE BY MAIL
C.C.P. §§ 1013(a); 2015.5

Rosie Caudillo

Tani Cantil-Sakauye, Chief Justice
and the Associate Justices of the
California Supreme Court

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SERVICE BY MAIL) Workers' Compensation Appeals Board and Javier Lopez
) California Supreme Court Case No. S258513

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