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February 4, 2019

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REQUEST FOR PUBLICATION
California Rules of Court, rule 8.1120

Hon. Laurie D. Zelon, Acting Presiding Justice
Hon. John L. Segal, Associate Justice
Hon. Gail Ruderman Feuer, Associate Justice
California Court of Appeal
Second Appellate District, Division 7
300 S. Spring Street, 2nd Floor, North Tower
Los Angeles, California 90013

Re: *Jahanbani v. Sugar*
2d Civil Case No. B277322

Honorable Justices:

Pursuant to rule 8.1120(a) of the California Rules of Court, amicus curiae Association of Southern California Defense Counsel (“ASCDC”) writes to respectfully request that this Court order published its recent unpublished opinion in *Jahanbani v. Sugar* (Jan. 14, 2019, No. B277322) (the “Opinion”).

ASCDC is the nation’s largest and foremost regional organization of defense attorneys. Comprised of approximately 1,200 attorneys in Southern and Central California, ASCDC is actively involved in assisting courts on issues of interest to its members and has appeared as amicus curiae in many cases before this Court. Our members, and the broader legal community, regularly confront issues of civil procedure like that involved in *Jahanbani v. Sugar*, so ASCDC has a significant interest in developments affecting this area of the law.

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The Opinion addresses the jurisdictional deadline for filing a motion for new trial. The Opinion begins by noting that California Code of Civil Procedure section 659 sets the deadline for filing on the earliest of three dates, including 15 days from the date the clerk mails notice of entry of judgment “pursuant to Section 664.5.” (Opn. at p. 8.) The Opinion then thoroughly explains what it means to be service “pursuant to Section 664.5”: notice of entry of judgment mailed by the clerk must “affirmatively state it is given upon order by the court or under section 664.5.” (*Ibid.*, internal quotation marks omitted.) Ultimately, the Opinion holds that the 15-day deadline to file a motion for new trial was not triggered in this case because the clerk’s minute order did not include that requisite language. (Opn. at pp. 8-9.)

An opinion “should be certified for publication in the Official Reports” if it meets any of the nine separately listed criteria in California Rules of Court, rule 8.1105(c). ASCDC believes that the Opinion squarely meets at least two such criteria:

- (1) It “explains . . . an existing rule of law”; and
- (2) It “reaffirms a principle of law not applied in a recently reported decision.”

(Cal. Rules of Court, rule 8.1105(c)(3), (8).)

The Opinion explains an existing rule of law (rule 8.1105(c)(3)). The Opinion is helpful in explaining the rule from our Supreme Court’s decision in *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 64 (*Van Beurden*): “when the clerk of the court mails a file-stamped copy of the judgment, it will shorten the time for ruling on the motion for a new trial only when the order itself indicates that the court directed the clerk to mail ‘notice of entry’ of judgment.”

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Technically, *Van Beurden* dealt with the deadline to *rule* on a motion for new trial (Civ. Code Proc., § 660), not the deadline to *file* a motion for new trial (Civ. Code Proc., § 659). The Opinion correctly recognizes that the rule from *Van Beurden* applies here, because both deadlines are triggered by “notice of entry of judgment by the clerk of the court pursuant to Section 664.5.” (See Opn. at 8, citing *Van Beurden* and *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1277 (*Palmer*) [addressing what act triggers the jurisdictional deadline when the clerk does not mail notice of entry of judgment and concluding that “the time limits for bringing and ruling on motions for a new trial and for judgment notwithstanding the verdict start to run either on the date of the court clerk’s mailing or on the date of service on the moving party of notice of entry of judgment”].)

Van Beurden took the first step in answering “what constitutes evidence sufficient to establish” that the clerk mailed notice of entry of judgment upon order of the court. (*Van Beurden, supra*, 15 Cal.4th at p. 61.) But neither *Van Beurden* nor *Palmer* explain what specific language “indicates that the court directed the clerk to mail ‘notice of entry’ of judgment.” (*Id.* at p. 64.) The instant Opinion does. In explaining why the clerk’s minute order in this case did not trigger the deadline to file a motion for new trial, the Opinion points out that the order did not include the “usual language indicating court-ordered notice, ‘The clerk is to give notice.’” (Opn. at p. 9.) Accordingly, the Opinion goes further than prior published opinions by giving an example of what language the clerk’s notice must include to trigger the jurisdictional deadline to file a new trial motion.

The Opinion reaffirms a principle of law not applied in a recently reported decision (rule 8.1105(c)(8)). As noted, the Opinion reaffirms a principle of law from our Supreme Court’s 1997 and 2003 opinions in *Van Beurden* and *Palmer*. A more recent opinion from this Court,

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Maroney v. Jacobsohn (2015) 237 Cal.App.4th 473, summarizes *Van Beurden* but does not technically apply its rule because the issue in *Maroney* was whether service of notice of entry of judgment *by the party moving for new trial* triggers the jurisdictional deadline for the court to rule on the motion.

* * *

The Opinion's comprehensive treatment of Code of Civil Procedure sections 659 and 664.5 will afford substantial guidance if published. By clarifying what type of language indicates that a clerk's notice of entry of judgment was "upon order of the court," the Opinion will eliminate uncertainty as to the time limit for filing a motion for new trial, which, in turn, will avoid the unnecessary expenditure of resources litigating this issue. The Opinion's guidance on this important area of civil procedure will benefit the broader legal community, so ASCDC respectfully urges this Court to publish its opinion in this matter.

Respectfully submitted,

ASSOCIATION OF SOUTHERN CALIFORNIA
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By: /s/ Geoffrey B. Kehlmann

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/s/ Pauletta L. Herndon
Pauletta L. Herndon

Jahanbani v. Sugar, et al.
Court of Appeal, Second Appellate District, Case No. B277322

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