No. 99-55000

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANTHONY BURTON,

Petitioner-Appellant,

v.

J.W. FAIRMAN, Warden, et al.,

Respondents-Appellees.

SUPPLEMENTAL REPLY BRIEF FOR PETITIONER-APPELLANT IN RESPONSE TO THE TWO ADDITIONAL QUESTIONS CERTIFIED IN THE COURT'S ORDER OF JANUARY 9, 2001

Appeal from the United States District Court for the
Central District of California (CV 98-3915-ABC (SH)
The Honorable Audrey B. Collins, District Judge

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I. INTRODUCTION

To recapitulate, the district court denied petitioner-appellant Anthony Burton's habeas corpus petition on the ground that it was time-barred under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. §2244(d)(1), but failed to consider the impact of *Schlup v. Delo*, 513 U.S. 298 (1995), upon that question. This Court then issued a Certificate of Appealability, framing two questions presented under *Schlup*. However, after both sides filed their briefs on the *Schlup* questions, the Court issued its Order of January 9, 2001, postponing oral argument and directing the parties to file supplemental briefs on two additional questions. This is petitioner-appellant's supplemental Reply Brief under that Order.

II. REPLY ARGUMENT

A. Anthony Burton Filed his Federal Habeas Corpus Petition Within the Limitation Period of 28 U.S.C. §2244(d)(1)(D)

1. The "Factual Predicate" Date Under §2244(d)(1)(D) Should Coincide with the State Pleading Obligations that Inform "Factual Development" Under §2254(e)

Both sides now agree that—absent *Schlup* or any "tolling" principles—the timeliness of appellant's federal petition turns upon the meaning of "factual predicate" date in §2244(d)(1)(D).[1] The State for its part insists that the "factual predicate" date was the date of Mr. Burton's wife's receipt of what the State repeatedly labels an "undated, unaddressed, unsworn, almost unintelligible letter purportedly written by Ronald W." (ER. 169)—a letter that the State *also* insists *never* would have justified *any* collateral relief in state court under *People v. Duvall*, 9 Cal.4th 464, 474, 37

[1] The full text of Section 2244 appears in the Statutory Addendum to our Opening Brief.

Cal.Rptr.2d 259 (1995), and *People v. Martinez,* 36 Cal.3d 816, 822, 205 Cal.Rptr. 852 (1984). *See* ER 172-75 (State's Informal Response in the California Supreme Court, citing both decisions).

In our Supplemental Brief, we urged the Court to reject this construction in favor of a practical bright-line rule: The "factual predicate" date is the date upon which the prisoner has enough admissible evidence to file a state habeas petition that will avoid summary dismissal under the *Duvall* and *Martinez* standard. This construction also harmonizes §2244(d)(1)(D) with a prisoner's equally-important AEDPA obligation "to develop the factual basis of his claim in State court" before seeking federal relief. *See* 28 U.S.C. §2254(e) and, *e.g.*, *Baja v. Ducharme,* 187 F.3d 1075 (9th Cir. 1999), cited approvingly in *Bragg v. Galaza*, ___ F.3d ___, 2001 U.S. App. LEXIS 3779 (9th Cir. 2001).

This construction of "factual predicate" date is both consistent with—and necessary to avoid an untenable conflict with—AEDPA's requirement that habeas corpus petitioners fully develop their claims in state court. In *Williams v. Taylor*, 529 U.S. 420 (2000), the Court stressed the importance of §2254(e) as a rule of comity, "limit[ing] the scope of federal intrusion into state criminal adjudications and safeguard[ing] the States' interests in the integrity of their criminal and collateral proceedings." The statute therefore accords state courts "their rightful opportunity to adjudicate federal rights" in the first instance, and prohibits "[f]ederal courts sitting in habeas" from becoming "an alternative forum for trying facts and issues which a prisoner made insufficient effort to pursue in state proceedings." *Id.* at 436, 437.

In *Baja v. Ducharme, supra,* this Court stressed that "failure to develop" focuses particular attention on the state's procedural rules governing the presentation

of evidence in support of the initial petition for collateral relief, and that these are rules to which federal courts are obliged to defer under §2254(e). Thus:

> "The [Washington] state Court of Appeal properly found that ... Baja could make a prima facie case by supporting his allegation with evidence in the record, or by demonstrating that there was *competent, admissible evidence* with respect to facts outside the record that would support his allegations. * * * * State law not only permitted *but required* Baja to come forward with *affidavits* or other evidence outside the trial record. * * * * He therefore failed to develop the factual basis of this claim in a state court proceeding within the meaning of 28 U.S.C. §2254(e)." (187 F.3d at 1079, emphasis added).

Here, California law is the same as that of Washington. As the State itself has repeatedly argued in the case now at bench, the "undated, unaddressed, unsworn, almost unintelligible letter purportedly written by Ronald" (ER. 169) would not satisfy the pleading and evidentiary requirements of California law. Like Washington and many other states, California requires state habeas petitioners to plead the facts of their claims with particularity, supported by firm evidence. As the California high court stated in *People v. Duvall, supra*, 9 Cal.4th at 474:

> "[t]o satisfy the initial burden of pleading adequate for [habeas corpus] relief … the petitioner should both (i) state fully and with particularity the facts on which relief is sought … as well as (ii) include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of the trial transcript and *affidavits or declarations.* * * * * Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing."

The Supreme Court of California also stressed the importance of affidavits or declarations in *People v. Martinez, supra,* saying that in a motion for new trial based upon evidence *dehors* the record, *"the facts must be shown by the best evidence of which the case admits."* 36 Cal.3d at 822. *See* ER 173 (State's Informal Response in the California Supreme Court, arguing that the state habeas corpus standard "should

be no less stringent" than that of *Martinez*.). As explained in *Durdines v. Superior Court*, 76 Cal.App.4th 247, 252-53, 90 Cal.Rptr. 217 (1999), California has adopted these stringent standards of pleading and "best evidence" because the number of state habeas petitions filed by "artful petitioner[s]" has "grown dramatically," and a "screening capability is essential"; hence, a "heavy-burdened court may simply refuse to credit uncorroborated or suspect allegations."

Viewed in this light, the declarations of investigator Kurta, and handwriting expert Fox, that accompanied Mr. Burton's state habeas petition, were absolutely crucial to his obligations to meet *both* state-law pleading and evidence requirements *and* the "factual development" requirement of federal law. Here, the original, uncorroborated letter from "Ronald W." would not have passed muster under the very standard that California has selected, and to which California expects federal deference under §2254(e). Indeed, it is precisely because Mr. Burton presented the declarations of Kurta and Fox to the California court that the State did not (and cannot) assert "failure to develop" as a ground for denying the federal petition.

This Court should therefore reject the State's position on "factual predicate," because the State simply is not entitled to have it both ways under AEDPA, thereby placing habeas petitioners in an impossible position in having to either

- Proceed in state court based on uncorroborated evidence and risk: (1) being dismissed in state court for not satisfying state habeas corpus pleading requirements; and then (2) being dismissed in federal court under §2254(e) for failure to develop the claim in state court; or

- Verify the authenticity of the evidence and provide corroboration—in order to comply with the rules of the state forum and satisfy §2254(e)(2)—and risk being time barred in federal court under §2244(d)(1)(D).

Respectfully, nothing in the language or history of AEDPA remotely suggests that Congress meant to place habeas corpus petitioners in such an untenable position, trying to juggle state pleading obligations and the factual development requirement in §2254(e)(2), with the limitation period in §2244(d)(1)(D). Thus, "factual predicate" must mean something more than the receipt of unverified evidence that—if confirmed—would form the basis of a well-pleaded state court habeas claim. We therefore submit that the "factual predicate" date in the case at bench is November 19, 1996, the date on which the report of handwriting expert Richard Fox (ER. 119-46) established that the "undated, unaddressed, unsworn, almost unintelligible letter purportedly written by Ronald W." (ER. 169) was, in fact, signed by Ronald Washington.

2. *Bunney* Does Not Require Any Different Result

In its Response to Petitioner's Supplemental Brief ("SRB"), the State does not even discuss the necessity of construing §§2244(d)(1)(D) and 2254(e) *in pari materia*, and much less does it suggest any policy argument against such a harmonious construction. Instead, the State simply cites *Bunney v. Mitchell*, ___ F.3d ___, 2001 U.S. App. LEXIS 3348 (9th Cir. 2001) (to be published at 241 F.3d 1151),[2] for the proposition that the "development of sufficient evidentiary support to prove [a] claim" falls outside the definition of "factual predicate." SRB 7. Yet, *Bunney* and the present case

[2] *Bunney* was decided on March 5, 2001, after Mr. Burton filed his Supplemental Brief.

are poles apart in one crucial respect: Anthony Burton had no personal knowledge of the prosecutor's deal with Ronald Washington, nor could he authenticate Ronald's recantation without the assistance of the volunteer lawyer and the two volunteer experts who stepped forward to assist him. Petitioner Bunney, on the other hand, personally knew many of the facts that supported her petition, and thus the delay in her case might well be attributed to her efforts to gather corroborating evidence. Mr. Burton, on the other hand, needed to authenticate Ronald's recantation to get in the door in state court because he could not personally supply any of the relevant facts to support his claim.

The facts of *Bunney* make this critical distinction absolutely clear. Ms. Bunney was convicted in 1982 of murdering her ex-boyfriend, and "she alleged at trial that, because of her mental condition, she was unable to premeditate, deliberate, or harbor malice. She presented expert testimony about her mental condition: the government presented expert testimony in response." *Bunney, supra,* 2001 U.S. App. LEXIS 3348, at * 2. Thirteen years after her trial, Ms. Bunney retained new counsel to represent her in a parole hearing, and counsel in turn hired a new expert, who reviewed the psychological reports from her trial and opined that she suffered from Battered Women's Syndrome (BWS). Parole was denied following a hearing in March 1996. After that she took almost a year to collect additional evidence before filing her state and federal habeas corpus petitions, claiming that her original trial counsel was ineffective because he failed to present expert testimony of BWS. *Id*., at *2-*3.

This Court affirmed an order dismissing the petition as untimely. As the State pointed out in her appeal, Bunney—unlike Mr. Burton—personally knew many of the facts of her claim. She certainly was aware of her history of domestic violence and, as

noted, she placed her mental condition in evidence at trial, supported by expert testimony. Thus, as the State explained to this Court:

> "at trial petitioner knew she had been battered, knew counsel knew she had been battered, and knew counsel did not present a BWS defense. Petitioner has known the factual predicate of her claim since 1982." (*See* Appellee's Brief in *Bunney*, 9th Cir. No. 00-15432, at 19).

Even so, a fair reading of *Bunney* is that this Court nevertheless afforded her time to obtain the assistance of a new psychological expert to make sense of the facts that were indisputably within her own knowledge, saying that "the precise factual predicate of [Bunney's] habeas claim" was known when petitioner "knew enough facts to tell a state parole board (1) that she had suffered from BWS when she killed [her ex-boyfriend]…and (2) that her condition was not investigated or revealed at trial." 2001 U.S. App. LEXIS 3348, at *8. Moreover, the psychologist's testimony evaluating and establishing her BWS claim was in hand at the time of the March 1996 parole hearing, yet still Ms. Bunney did not file her federal habeas petition until September 1977. *Id.*

Bunney therefore in no way undermines the conclusion that §2244(d)(1)(D) must be read in light of the "factual development" obligations imposed by §2254(e). A petitioner must be afforded the opportunity to gather sufficient admissible evidence to file a non-frivolous state habeas petition that will avoid summary dismissal. And where—as here—the critical facts underlying the claim are not within the petitioner's own personal knowledge, *Bunney* supports the conclusion that a reasonable period of time ought to be afforded a petitioner to collect and authenticate the evidence required to meet the *Duvall* and *Martinez* standard. Marcia Bunney certainly had that information in hand at the time of her parole hearing in March 1996; she knew the

facts of her relationship with the victim and she had the help of a psychologist. Anthony Burton, on the other hand, could not hope to avoid summary dismissal until he authenticated Ronald Washington's letter of recantation. The authentication was critical because the facts were completely outside of his own personal knowledge.

Flanagan v. Johnson, 154 F.3d 196 (5th Cir. 1998), cited in *Bunney*, underscores this point. The petitioner in *Flanagan* sought federal habeas corpus relief more than one year after AEDPA's effective date, claiming that he was denied due process because he was "called to testify on his own behalf without being informed of his constitutional right not to testify." *Id*. at 197. Flanagan argued that the "factual predicate" date was November 1996—the date he received an affidavit from his trial lawyer stating that he did "not remember whether he and Flanagan discussed the concept that Flanagan could refuse to testify." *Id*. at 198. The Fifth Circuit held that the "lawyer's affidavit formed no part of the factual predicate…" because "the fact that he was called to testify and did not know he had the right to refuse, was actually known to Flanagan no later than November 11, 1992," when Flanagan was tried. *Id*. at 199. Flanagan delayed his petition to seek corroborating evidence when he already had personal knowledge of credible facts and admissible evidence to support his claim. Anthony Burton, on the other hand, could make no credible claim at all because he could not personally authenticate Ronald Washington's statement.[3]

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[3] Proceeding as did the petitioner in *Flanagan*, Ms. Bunney attempted to explain her delay because of her unsuccessful efforts to obtain a declaration from her trial counsel, but as the State argued to this Court in its Appellee's Brief in *Bunney* (at 17-18), "such a declaration was neither essential to the factual or legal predicate for the claim, as evidenced by the fact that petitioner filed her state and federal petitions without such a declaration." This is a *de facto* admission by the State that, had she filed promptly in state court, her petition would have satisfied the pleading and evidentiary requirements of California law. Here in contrast, the State's position is

Finally, in citing *Bunney*, the State misapprehends our position under the "factual predicate" provision of §2244(d)(1)(D). We do not contend that the statute is tolled for howsoever long it may take a prisoner to obtain *all* the admissible evidence to prove *every* factual element of his claim, *viz.*, "every possible scrap of evidence that might support his claim," as *Flanagan* phrased it, 154 F.3d at 199. Rather, under §2244(d)(1)(D), the one year limitations period begins to run when the factual predicate "could have been discovered *through the exercise of due diligence*" (emphasis added). The "factual predicate" date here was November 19, 1996, when handwriting expert Richard Fox issued his report. On this record, there can be no question but that Mr. Burton acted with the requisite due diligence. He earnestly and steadfastly sought a lawyer to help him, as a superior court judge advised him to do. (ER. 180) His lawyer found an investigator and a handwriting expert who donated their time to his cause. The declarations of experts Kurta and Fox cannot be denigrated as mere "scraps of evidence;" they were the *sine qua non* of both Mr. Burton's obligations under California law and his "factual development" obligations under federal law. *Ante*, part A-1. Surely the State does not come to this Court with very good grace in faulting Mr. Burton for "spen[ding] much of his time seeking [] free legal services" (*see* SRB at 11), while the State transferred Mr. Burton from prison to prison, including to Corcoran, which did not have a working law library.

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just the reverse; a petition "supported" only by the "unsworn [etc.] letter of Ronald W." would not have entitled Mr. Burton to a hearing or indeed any collateral relief in state or federal court.

B. Equitable and Statutory Tolling of the Limitation Period Also Make the Petition Timely

In petitioner-appellant's Supplemental Brief (at 9-14), we presented five grounds upon which this Court could find equitable or statutory tolling.[4] The State's response (SRB 8-14) is not persuasive, and much of it is simply wrong.

1. Resignation of Habeas Counsel

Calderon v. District Court (Beeler), 128 F.3d 1283, 1289 (9th Cir. 1997) squarely holds that resignation of habeas counsel was "a turn of events over which Beeler had no control," and that this was an "extraordinary circumstance which justified tolling." The State suggests that *Beeler* was wrongly decided (SRB 8-9), but it is way too late in the day for that. There is also no merit in the argument that counsel's resignation was *not* "extraordinary" (even though *Beeler* holds that it was) because habeas petitioners are not "entitled" to counsel as of right. *See* SRB 11. The plain facts are that volunteer counsel are no less important to the administration of justice just because they step forward without the necessity of judicial appointment, and that whenever an indigent prisoner is without counsel, the State is greatly advantaged. Here, the State impermissibly seeks a double-dip.

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[4] This Court, of course, need not reach these issues if it agrees with either of our submissions that (1) under *Schlup v. Delo, supra*, Mr. Burton's claims of actual innocence and constitutional error are sufficient to overcome the AEDPA's one-year time bar (COA at 1, addressed in the original briefs); and (2), even if not, the "factual predicate" date for AEDPA purposes was November 19, 1996, when handwriting expert Fox submitted his report, because otherwise, inmates will be forced to file state habeas corpus petitions whenever they merely surmise or suspect any facts to support a constitutional claim, and all of the comity that informs "failure to develop" will have to be jettisoned. (*Ante*, Part A).

2. Lack of Meaningful Library Access and Assistance

In *Whalem/Hunt v. Early*, 233 F.2d 1146, 1148 (9th Cir. 2000) (*en banc*), this Court held that the lack of meaningful access to library resources may excuse a petition otherwise untimely under AEDPA, either as an "impediment" to filing sooner (28 U.S.C. §2244(d)(1)(B)), or under equitable tolling. Here, the State now admits that the prison's "Facility C library was not open for inmate use until June, 1998," but argues that the "hot and uncomfortable" window service surroundings were nevertheless "adequate" because "access was not completely denied." SRB 12-13. This is all an *ipse dixit*, and wrong in many of its particulars.

- The State asserts that Mr. Burton submitted only "one" request for library services. *Id.* Even if that be true, he requested and was denied *the most basic and important* tools of self-help, namely, the District Court's mandatory form for *pro-se* petitions, and the most basic federal habeas reference books, which even months later, the prison librarian admitted "were not and still are not available. The new edition has been ordered."[5] If meaningful access means anything, it means that if a State chooses not to provide resources that a *pro se* litigant *must* have to "discover[] the most basic procedural rules essential to avoid being summarily thrown out of court," *Whalem-Hunt, supra*, 233 F.3d 1148 (Tashima, J, concurring), then the State must accept full responsibility for the consequences of that deliberate choice. Blaming Mr. Burton for the prison library's inadequacies simply will not do.
- The State is simply wrong in asserting that Mr. Burton's supposed "one" request for legal assistance supports an "inference" that he "did not make

[5] See App. B, page 2, to petitioner-appellant's Supplemental Brief.

effective use of his time or the services available to him." SRB 13. Mr. Burton made numerous requests for assistance, but received none. He then filed a motion in the District Court, seeking production of documents to "demonstrate that there was no law library nor anyone trained in the law to assist with the preparing [of] legal documents."[6] The Magistrate granted the motion only in part (Clk. Dkt. 12), but Mr. Burton "did not receive no other requested books or assistance, and was therefore compelled to seek the help of his wife and friends" in order to file his federal petition. ER 86.

- Then Mr. Burton wrote the Magistrate's clerk on September 26, 1998, still trying to obtain production of documents necessary to address the Magistrate's preliminary report, recommending dismissal in part on the ground that "nor does petitioner provide this court with any specific dates that he allegedly requested law library access of legal materials." ER 66. Evidently, this letter bore no fruit either, because on October 29, the Magistrate filed his Final Report, containing the same language as before (ER 102), and the District Court dismissed the petition the same day. ER 105. The Magistrate's clerk did not reply until January 13, 1999, in a letter curtly saying "this case was closed on November 12, 1998, so this court can not entertain your request for a court order for production of documents."[7]

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[6] See Petitioner's Motion for Court Order for Production of Documents and Affidavit in Support (Clerk's Dkt. Item 12, August 3, 1998), at 2.

[7] As we are not sure whether the Clerk transmitted these two letters (petitioner's of September 26, 1998, and the Magistrate's clerk's reply of January 13, 1999) as part of the Record, we attach copies as Appendices C and D to this Supplemental Reply Brief.

- Meanwhile, having heard nothing from the Magistrate as late as December 1998, Mr. Burton again asked the librarian to provide prison records "to show the court that I made attempts to obtain legal services, and because I did not have a verifiable [court] deadline I was not considered a priority." This request was flatly rebuffed, a prison official saying "I do not have the authority to provide the materials which you have above requested." A few days later, another prison official explained why the State was unwilling to cooperate: "Under the direction of the Attorney General and in the absence of a court order, your request for documents has been denied."[8]

In sum, the State has not covered itself with much distinction on this entire subject, and habeas jurisprudence will not be ennobled by rewarding such conduct.

3. Equitable Tolling Under "Relation-Back" Principles

On this subject, the State argues only that *Anthony v. Cambra*, 236 F.3d 576 (9th Cir. 2000) did not, in and of itself, "create a new basis for equitable tolling" (SRB 14), but we never said that it did. What we said was this: (1) "The Court held that no legitimate state interest would be compromised by allowing relation-back, because 'the state clearly had prior notice of the claims and Anthony's intention to raise them at the earliest possible time,' *id*. 236 F.3d at 577" (Supp. Br. 12); and (2) this same principle does not evaporate simply because F.R.Civ.P. Rule 15(c) does not tech-

[8] See Inmate Request for Interview (12/1/98) and response thereon (12/10/98); and Memorandum to Inmate Anthony Burton, dated December 15, 1998, copies of which are Appendices E and F to this Supplemental Reply Brief. They were filed in this Court as Exhibit F to Petitioner's Application for Certificate of Appealability.

nically address pleadings filed in different forums where, as here, the State is on notice of the claims to be raised in Mr. Burton's follow-on federal petition.[9]

Indeed, this brings the case full-circle: Sitting in a prison cell, Mr. Burton obtained the assistance of a volunteer counsel and two volunteer experts, who marshaled the evidence and presented it to the California court in the detailed and admissible declarations that California demands under *People v, Duvall* and *People v. Martinez, supra*. He therefore complied meticulously with the state procedural rules that comity *requires* federal judges to respect under the "failure to develop" principles of 28 U.S.C. §2254(e). *See Baja v. Ducharme, supra*, 187 F.3d at 1079. Having done *precisely* what our federal system intends, expects and indeed even demands of a prisoner in Mr. Burton's shoes, there is no reason why Mr. Burton then should be faulted for filing a federal petition a short while after the state court turned a deaf ear.

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[9] See our prior Supplemental Brief, at 12-13, where we elucidated:

> "In rejecting Mr. Burton's plea for tolling on the basis of lack of prison library facilities, the Magistrate below observed that 'the claims petitioner is seeking to raise in the instant Petition are the same claims petitioner raised before the California Supreme Court.' ER. 102. But as we have already said in our Opening Brief (at 22), this assertion proves to much, for it shows that the statute's object of providing prompt notice to the State was completely fulfilled by the filing of Mr. Burton's state court petition in 1997. If 'relation-back' is not technically available under F.R.Civ.P. 15(c), still its application as an equitable principle would neither defeat any legitimate interest of the State, nor be inconsistent with F.R.Civ.P. 81(a)(2), which provides that the Rules of Civil Procedure are applicable to habeas corpus proceedings to the extent not otherwise described by statute. Permitting equitable tolling in this setting would result in an outcome quite like that approved in *Mt. Hood Stages v. Greyhound Corp.*, 616 F.2d 394, 400-01 (9th Cir. 1980) (complaint filed in the district court after the plaintiff first exhausted its administrative remedies is timely under the statute of limitations, because the administrative agency petition gave the defendant ample notice and an opportunity to muster its defenses)."

If ever there were an occasion for equitable tolling under "relation-back" principles, this case is it.

Finally, as the State has chosen not to respond to other of the points made in our Supplemental Brief, there is no occasion for any further reply.

III. CONCLUSION

The judgment below, dismissing the petition with prejudice, should be reversed. The petition was timely filed, and the case should be remanded for a hearing on the merits of the claims presented in the petition. Alternatively, the cause should be remanded for a hearing on both factual innocence under *Schlup* and the merits of the petition.

DATED: April 12, 2001

Respectfully submitted,

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On April 12, 2001, I served two copies of the attached

SUPPLEMENTAL REPLY BRIEF FOR PETITIONER-APPELLANT IN RESPONSE TO THE TWO ADDITIONAL QUESTIONS CERTIFIED IN THE COURT'S ORDER OF JANUARY 9, 2001

on the parties in this action by placing them in a sealed envelope, addressed as follows:

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I placed each such sealed envelope, with charges fully prepaid for express, overnight delivery by Federal Express, for collection and mailing at Brobeck, Phleger & Harrison LLP, San Francisco, California, following ordinary business practices. I am readily familiar with Brobeck, Phleger & Harrison LLP's practice for collecting and processing of correspondence, said practice being that in the ordinary course of business, correspondence (with Federal Express charges thereon fully prepaid) is delivered to a Federal Express office located in our building the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 12, 2001 at San Francisco, California.

_____
Lynda Rosenblatt