

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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Docket No. 660 CD 2024

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**FRANK'S GUN SHOP & SHOOTING RANGE LLC and MAD MINUTE  
ENTERPRISES, LLC d/b/a DELIA'S GUN SHOP INC.,  
Petitioners,**

**V.**

**CITY OF PHILADELPHIA and WRT MANAGEMENT, INC. f/k/a  
TANNER'S SPORT CENTER, INC.,  
Respondents,**

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**RESPONDENT CITY OF PHILADELPHIA'S  
ANSWER IN OPPOSITION TO PETITION FOR REVIEW OF THE TRIAL  
COURT'S ORDER DENYING REQUEST TO CERTIFY AN ORDER FOR  
IMMEDIATE PERMISSIVE INTERLOCUTORY APPEAL**

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CITY OF PHILADELPHIA LAW DEPARTMENT  
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Dated: June 17, 2024

## COUNTERSTATEMENT OF THE CASE

Respondent/Plaintiff the City of Philadelphia (the “City”) seeks to hold three local gun stores accountable for their repeated violations of federal and Commonwealth firearms laws, causing harm to the City and its residents. Petitioners/Defendants Frank’s Gun Shop & Shooting Range LLC (“Frank’s”) and Mad Minute Enterprises, LLC d/b/a Delia’s Gun Shop (“Delia’s”) are two of these stores.<sup>1</sup> The Amended Complaint describes how each store unlawfully sold dozens of firearms to individuals engaged in flagrant straw purchasing—meaning that they were buying the guns for others in violation of both Pennsylvania and federal law. It details how many of those straw-purchased guns were used in crimes throughout the City, often within mere days or weeks.

After Petitioners filed preliminary objections, the Court of Common Pleas overruled their objections and declined to certify its interlocutory orders for appeal. Petitioners now seek extraordinary review of this denial and the underlying interlocutory orders, claiming blanket immunity from any form of accountability for their misbehavior. While this appeal is wrong on the merits, Petitioners fail to satisfy even the threshold elements necessary for an interlocutory appeal: the existence of a controlling question of law whose resolution would materially advance the ultimate

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<sup>1</sup> The third store, WRT Management, Inc. f/k/a Tanner’s Sport Center, Inc., did not seek review of the trial court’s order overruling its preliminary objections, and is named as a nominal respondent here. *See* Pa.R.A.P. 1312(b).

termination of this litigation. As this Answer makes clear, even if Petitioners were correct that Section 6120(a) of the Uniform Firearms Act (“UFA”) would normally bar common-law claims brought by the City against a gun industry defendant, the instant lawsuit alleges violations of 18 Pa.C.S. § 6111(g)(6), which permits civil claims against gun stores that knowingly violate the law “[n]otwithstanding any act or statute to the contrary.” Furthermore, Petitioners’ sole ‘support’ for their argument—*City of Philadelphia v. Beretta U.S.A., Corp.* (“*Beretta I*”)—explicitly disclaims its applicability to cases such as this one. 126 F. Supp. 2d 882, 902 (E.D. Pa. 2000) (explaining that the “[t]he City may still sue . . . rogue firearms dealers” who violate the law). Finally, Petitioners fail to explain how the lower court’s decision constituted an egregious abuse of discretion. This petition is an unwarranted diversion from the normal course of litigation and should be denied.

## **I. Statement of the Facts**

Frank’s and Delia’s are federally licensed retail firearms stores (known as “federal firearms licensees,” or “FFLs” for short) located in Philadelphia. Am. Compl. ¶¶ 13-14. The City filed the operative complaint against them and a third defendant on October 31, 2023. The City’s lawsuit is predicated on Frank’s and Delia’s knowing facilitation of straw purchases, which are illegal transactions in which a sham buyer pretends to purchase firearms for themselves, but in reality purchases the guns to sell or transfer to others. *Id.* ¶ 23. This diverts guns from legal

commerce—where sales are subject to a background check and other public safety requirements and must be recorded in a licensed dealer’s books and records—into the unregulated criminal market. *Id.* Once diverted into the black market, many straw-purchased guns are trafficked to convicted criminals, underage users, and other dangerous possessors who are prohibited from owning or buying a gun themselves. *Id.*

In a straw purchase, the sham buyer breaks Commonwealth and federal law by (among other things) certifying that they are the “actual transferee/buyer” of the gun on federal and state transaction forms. *See, e.g.*, Am. Compl. ¶¶ 23, 31-32, 35-36, 43-45. A gun dealer who accepts this misrepresentation with knowledge of its falsity breaks the law by falsely certifying their belief that the transaction is lawful. *Id.* ¶¶ 33-34. The dealer also breaks the law by submitting false information for a background check, failing to conduct a background check on the actual purchaser, and recording the fictitious buyer into their books and records, among other violations. *Id.* ¶¶ 31, 38, 41-42.

In this case, the City alleges that each defendant engaged in dozens of illegal straw sales despite actual or constructive knowledge that its customers were straw buyers. *See id.* ¶¶ 65-80 (allegations of illegal sales by Frank’s); *id.* ¶¶ 81-95 (allegations of illegal sales by Delia’s). The City’s pleading details several of the 48 known straw purchases at Frank’s, including 15 firearms that it sold to a pair of straw

purchasers in 2020, ignoring obvious warning signs like the orchestration of purchases by a third person (who accompanied the straw purchasers to the store) and repeat purchases of the same handguns. *Id.* ¶¶ 66-71. This one example alone led to three firearm recoveries by Philadelphia police, which were linked to three separate shootings, a domestic violence incident, and possession by minors. *Id.* ¶¶ 72-73.

The Amended Complaint likewise details some of the 31 known straw transactions by Delia’s, including the sale of seven handguns to a straw purchaser in under a month, where the store accepted false identification that employees admitted did not closely resemble the straw buyer. *Id.* ¶¶ 82-84. In a separate example, Delia’s sold six 9mm Taurus handguns to a straw purchaser who was accompanied into the store by an accomplice who selected the guns, *id.* ¶¶ 87, 89—the textbook example of an illegal straw purchase that stores know to look out for and reject. *Id.* ¶¶ 37, 47, 71 (describing Bureau of Alcohol, Tobacco, and Firearms (“ATF”) training for gun stores to detect and prevent straw purchases). At least five of the guns from these two examples at Delia’s have likewise been recovered in Philadelphia, including two in connection with narcotics busts and another in the hands of an underage possessor. *Id.* ¶¶ 85-86, 91.

These examples likely represent just the tip of an iceberg, which will be more

fully revealed during discovery.<sup>2</sup> Frank’s and Delia’s are each among the principal sources of crime guns recovered in the City, with 803 crime guns attributed to Delia’s and 264 crime guns attributed to Frank’s between 2015 and 2019 (the last years for which data is available). *Id.* ¶ 28. By comparison, other dealers averaged just five crime guns apiece in that time frame. *Id.*

To hold Frank’s, Delia’s, and the third defendant accountable for this misconduct, the City brings claims for public nuisance, negligence, negligence per se, negligent entrustment, and a violation of the UFA—specifically 18 Pa.C.S. § 6111(g)(6). Am. Compl. ¶¶ 96-145. The Section 6111(g)(6) statutory claim provides for liability on the part of licensed firearms dealers “notwithstanding any other act or statute to the contrary” when the dealer knowingly and intentionally sells a firearm in violation of the UFA and has reason to believe that the firearm is intended to be used in the commission of a crime. All of the City’s claims are premised on Delia’s and Frank’s alleged knowing and intentional illegal sales to straw purchasers in violation of various provisions of the federal Gun Control Act and the UFA, including 18 U.S.C §§ 4, 922(m), 922(t)(1), 924(a)(1)(A), and 924(a)(3); 27 C.F.R. 478.102, 478.124, 478.125(e), and 478.128; 18 Pa.C.S. §§ 6111(b)(1), 6111(b)(2)-(5), 6111(g), 6113(a)(4)-(5), and 6504; and 37 Pa. Code

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<sup>2</sup> *See id.* ¶ 3 & n. 1 (noting that several public criminal case filings identify people who straw purchased guns at Frank’s and Delia’s, but do not specify the number of guns they bought or provide identifying information for the guns).

§ 33.111(b) and (d). Am. Compl. ¶¶ 96-145. The City has requested injunctive relief, as well as damages.

## **II. Procedural History**

Frank's and Delia's filed their preliminary objections in November 2023. On March 19, 2024, the Philadelphia Court of Common Pleas overruled these objections in substantively identical orders. Although it did not issue a written opinion, the trial court added a footnote to each order specifically distinguishing the case that Frank's and Delia's assert is "identical" to this one, *City of Philadelphia v. Beretta U.S.A., Corp.*, 277 F.3d 415 (3d Cir. 2002) (*Beretta II*). See Pet'rs' Ex. A; Ex. B; Pet. ¶ 10. The trial court noted that, unlike here, the *Beretta* case contained no claim that the gun industry defendants violated laws regulating the sale and distribution of firearms. Pet'rs' Ex. A; Ex. B.

On April 11, 2024, Frank's and Delia's filed a joint motion to amend the trial court's March 19, 2024 orders to certify them for interlocutory appeal. The trial court denied that motion on May 3, 2024. See Pet'rs' Ex. C.

### **COUNTERSTATEMENT OF THE QUESTIONS INVOLVED**

1. Does this case contain a controlling question of law as to which there is a substantial ground for difference of opinion?

*Suggested answer: No.*

2. Would an interlocutory appeal materially advance the ultimate termination of this

matter?

*Suggested answer: No.*

3. Does the decision by the Philadelphia Court of Common Pleas not to certify its order overruling Frank's and Delia's preliminary objections for interlocutory appeal constitute an abuse of its discretion that is so egregious as to justify prerogative appellate correction?

*Suggested answer: No.*

**ARGUMENT WHY THE TRIAL COURT PROPERLY DENIED  
PETITIONERS' REQUEST TO CERTIFY THE ORDERS FOR  
INTERLOCUTORY APPEAL**

Frank's and Delia's ask this Court to save them from the consequences of their own misconduct by accepting a petition for an extraordinary review of an interlocutory order that the trial court declined to certify under 42 Pa.C.S. § 702(b). In this posture, Pa. R.A.P. 1312 requires the Petitioners to show three things: "(1) '[W]hy the order involves a controlling question of law as to which there is a substantial ground for difference of opinion'; (2) 'that an appeal from the order may materially advance the ultimate termination of the matter'; and (3) 'why the refusal of certification was an abuse of the trial court's ... discretion that is so egregious as to justify prerogative appellate correction[.]'" *Cavallo Min. Partners, LLC v. EQT Prod. Co.*, 298 A.3d 413, 421 (Pa. Super. 2023) (quoting Pa. R.A.P. 1312(a)(5)(ii)). Frank's and Delia's petition does not carry their burden on any of



these required elements. There is no basis for this Court to engage in a piecemeal appeal that will not fully resolve the case, and that will only reward Petitioners' dilatory behavior. The petition should be rejected.

**I. This Case Does Not Contain a Controlling Question of Law as to Which There is a Substantial Ground for Difference of Opinion**

First, Frank's and Delia's are not appealing a controlling question of law. In a proposed question that runs to more than a page in length, Petitioners ask the Court to determine whether the City's claims are an attempt to "in any manner regulate" certain firearm-related activities under UFA Section 6120(a), or constitute an action concerning "the lawful marketing or sale of firearms" under Section 6120(a.1). *See* Pet. ¶ 10. They contend that these two UFA provisions bar the City's common-law claims for "nuisance, negligence, negligence per se, and negligent entrustment," *id.*, and that a decision interpreting Section 6120 in their favor on these points would result in an immediate dismissal.

This is incorrect, because even if the Court were to find that the City's common-law claims fell within the UFA's preemption language, Section 6111(g)(6) would nonetheless allow them to proceed. This provision of the UFA provides that when a gun dealer sells a firearm in violation of the UFA with reason to believe that it is intended for use in a crime, the seller is civilly liable to the party it harmed even if other laws might otherwise cut off liability:

*Notwithstanding any act or statute to the contrary*, any person, licensed importer, licensed manufacturer or licensed dealer who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by any person so injured by such crime or attempted crime.

18 Pa.C.S. § 6111(g)(6) (emphasis added).<sup>3</sup>

Here, each of the City’s claims—public nuisance, negligence, negligence per se, negligent entrustment, and a statutory violation of 18 Pa.C.S. § 6111(g)(6)—is premised on transactions that contravene this section, because each straw sale constituted a knowing violation of the UFA and was done with reason to believe that the purchaser intended to divert the firearm to the black market in violation of multiple criminal laws. *See* Am. Compl. ¶¶ 102, 115, 121 (citing UFA provisions that Petitioners’ straw sales violated); *see also id.* ¶¶ 140-41 (alleging state of mind concerning downstream criminal use).

In other words, Petitioners knew that they were selling guns to straw purchasers, and they knew that the object of a straw purchase is to subsequently transfer the gun to someone else outside the parameters of lawful commerce. This downstream sale or transfer of a firearm violates a host of criminal statutes<sup>4</sup> and

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<sup>3</sup> The City is a “person” under Commonwealth law. *See* 1 Pa.C.S. § 1991 (“Person includes a ... government entity other than the Commonwealth”) (cleaned up).

<sup>4</sup> Straw purchasers who resell or transfer firearms in Pennsylvania violate federal and Commonwealth laws that prohibit unlicensed dealing in firearms (18 U.S.C. §§ 922(a)(1), 923(a); (footnote continued on next page)

constitutes “use” of the firearm in the commission of a crime. *See, e.g., Smith v. United States*, 508 U.S. 223, 225 (1993) (exchanging firearm for narcotics constitutes “use” of a firearm during and in relation to drug trafficking). And as Petitioners themselves acknowledge, straw purchased guns are often intended for prohibited persons, *see* Pet. ¶ 9; *see also* Am. Compl. ¶ 23—and such transfers are also a crime, *see* 18 U.S.C. §§ 922(d)(10)-(11), 932(b), 933(a); 18 Pa.C.S. § 6111(g)(2).

While Petitioners barely acknowledge Section 6111(g)(6) in their entire filing, the “notwithstanding” clause of Section 6111(g)(6) nullifies any impact Section 6120 could have on the City’s claims. As this Court recently explained, “a clause of this nature . . . constitutes a clear and unequivocal expression by our General Assembly that the statutory section supersedes and completely displaces any and/or all laws that state, or could be interpreted to state, a contrary proposition of law.” *Abington Heights Sch. Dist. v. Pa. Lab. Rels. Bd.*, 274 A.3d 775, 2022 WL 401191, at \*10 (Pa. Commw. Ct. 2022) (unpublished); *see also Pleasant Hills Constr. Co. v. Pub. Auditorium Auth.*, 784 A.2d 1277, 1282 (Pa. 2001) (notwithstanding clause has “straightforward” meaning: “regardless of what any other law provides”) (quoting *City of Philadelphia v. Clement & Muller, Inc.*,

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18 Pa.C.S. § 6112), firearm sales without a background check (18 U.S.C. § 922(t)(1), 27 C.F.R. 478.102, 478.124(a), 18 Pa.C.S. § 6111(c)), and unregistered private sales (18 Pa.C.S. § 6111(c)).

715 A.2d 397, 399 (Pa. 1998)). Thus, even if Section 6120 would otherwise preempt the City’s public nuisance, negligence, negligence per se, and negligent entrustment claims—and it does not—Section 6111(g)(6) would save them, and this case would continue.

Moreover, the City has also specifically pled a violation of Section 6111(g)(6) as a standalone claim (Count 5), that will survive even if the common-law claims were dismissed. Am. Compl. ¶¶ 137-145. The trial court overruled Frank’s and Delia’s preliminary objections to this claim, but Petitioners do not challenge that determination here. This claim provides a further, independent basis for the City’s lawsuit to continue even if Frank’s and Delia’s were to prevail on their interlocutory appeal and obtain a ruling that Section 6120 preempts the City’s common-law claims.

Setting aside whether Petitioners articulate a controlling question of law, they have also failed to demonstrate that there is substantial ground for difference of opinion on the application of the UFA’s preemption provisions to the City’s claims. They argue that UFA Section 6120 insulates gun dealers from accountability to the City when they knowingly violate state and federal gun laws, and that the “identical” case of *City of Philadelphia v. Beretta U.S.A., Corp.* supports this position. Pet. ¶¶ 10-11 (citing 126 F. Supp. 2d 882 (E.D. Pa. 2000), *aff’d* 277 F.3d 415 (3d Cir. 2002)). But as the trial court here—and even the

District Court in *Beretta I*— recognized, the *Beretta* case is readily distinguishable.

Critically, in *Beretta* the City did not allege that the gun manufacturer defendants violated any state or federal laws and also did not bring a claim under Section 6111(g)(6). *See Beretta II*, 277 F.3d at 419 (“Plaintiffs do not contend that defendants violated any of the federal or state laws specifically regulating the sale and distribution of firearms in the United States and in the Commonwealth of Pennsylvania.”); *see also Beretta I*, 126 F. Supp. 2d at 890 n.6 (stating that “the gun manufacturers’ conduct [wa]s not unlawful” and thus that the Court “ha[d] no further reason to address” the proper application of UFA Section 6120(a.1) to unlawful conduct). And *Beretta* involved gun manufacturers selling firearms legally to distributors far up the stream of commerce, not retailers selling directly to straw purchasers. Thus, the case involved differently situated defendants and fundamentally different conduct. It does not control the outcome here, nor does it provide support for Petitioners’ contention that Section 6120 shields gun dealers who operate in knowing violation of the law. Indeed, *Beretta I* erases any doubt on this point, acknowledging that despite its holdings “[t]he City may still sue . . . rogue firearms dealers” who violate the law. *Beretta I*, 126 F. Supp. 2d at 902. That is exactly what the City is doing with this lawsuit.

Moreover, Petitioners grossly misrepresent the Third Circuit’s decision in *Beretta II*, claiming that “holdings of the district court *and Third Circuit* in the

*Berretta* matters reinforces petitioners’ position.” Pet. ¶ 11 (emphasis added). Far from it. Instead, the Third Circuit expressly declined to reach the question of preemption or endorse the district court’s misguided ruling on this issue, instead affirming on other grounds. In language that is both unequivocal and unmentioned in Petitioners’ filing, the Third Circuit stated as to preemption that “[w]e need not address these alternate grounds for dismissal, because, as stated *infra*, plaintiffs fail to state [a] claim[.]....” See *Beretta II*, 277 F.3d at 420 n.4. As a result, both the *Beretta I* and *Beretta II* decisions make clear that they provide no support whatsoever for Petitioners’ radical contention that the UFA shields them from accountability for breaking the law.

## **II. An Interlocutory Appeal Will Not Materially Advance the Ultimate Termination of the Matter**

As discussed in Section I, *supra*, even if Section 6120 of the UFA preempted the City’s common-law claims, discovery and motion practice would proceed regarding the City’s statutory claim under Section 6111(g)(6). The trial court overruled Petitioners’ preliminary objections to this statutory claim and Petitioners do not challenge that ruling here. Thus, a permissive appeal of the City’s common-law claims would not advance the ultimate termination of this matter.

“The purpose of the interlocutory procedure rule to secure immediate appellate review is not designed to encourage or authorize the wholesale appeal of difficult issues when appellate review would be better served by having all issues

that are raised in a trial initially reviewed by the trial court and then subject to one review if necessary.” *Kensey v. Kensey*, 877 A.2d 1284, 1289 (Pa. Super. 2005) (citing *Kaiser v. Meinzer*, 414 A.2d 1080, 1086–87 (Pa. Super. 1979)); *see also Penn. Bankers Ass’n v. Penn. Dep’t of Banking*, 948 A.2d 790, 798-99 (Pa. 2008) (recognizing Pennsylvania Supreme Court’s “well-documented efforts of avoiding piecemeal litigation.”).

Here, the Petitioners ask this Court to address whether Section 6120 bars the City’s common-law claims. Pet. ¶ 10. Petitioners have made no argument—nor could they—that Section 6120 bars the City’s statutory claim, which provides for liability “[n]otwithstanding any act or statute to the contrary[.]” 18 Pa.C.S. § 6111(g)(6). Thus, Petitioners do not present this Court with an appeal that will fully resolve this litigation.

Any appellate review will be most efficient and effective at the end of this case. A piecemeal appeal would not only fail to advance this lawsuit towards conclusion, but it would also likely have the opposite effect on the speed of litigation because “the losing party is likely to seek further review ... further delaying a final order by the trial court.” *Kensey*, 877 A.2d at 1289 (declining to accept permissive appeal that would not materially advance the ultimate termination of the matter). This Court should not reward Petitioners’ efforts to forestall accountability.

### **III. The Trial Court’s Refusal to Certify Its Orders for a Permissive Interlocutory Appeal Was Not an Egregious Abuse of Discretion**

While Frank’s and Delia’s argue that having to proceed through the normal course of litigation would be “catastrophic” for them, they have failed to demonstrate that the trial court abused its discretion. First, the fact that Petitioners will have to spend time and resources defending the current lawsuit is not grounds for the extraordinary relief requested here. A defendant could *always* argue that an appellate decision in its favor would speed up the case and save resources, but the Supreme Court has established a strong preference against piecemeal litigation. *See Miller v. Krug*, 386 A.2d 124, 127 (Pa. Super. 1978) (finding permission to appeal was improvidently granted and stating “[t]o be sure, some time would be saved . . . but that may be said of any interlocutory ruling that may potentially be reversed on direct appeal.”); *see also Kaiser v. Meinzer*, 414 A.2d 1080, 1087 (Pa. Super. 1979) (quoting *Miller*, 386 A.2d at 127).<sup>5</sup>

Second, “abuse of discretion is not merely an error of judgment, but rather a misapplication of the law or an unreasonable exercise of judgment.” *Page Publ’g, Inc. v. Hemmerich*, 287 A.3d 948, 955 (Pa. Super. 2022) (quotation omitted).

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<sup>5</sup> In any case, the unsupported claim that ongoing litigation would be “catastrophic” for the Petitioners is particularly ill-suited here because all federally licensed firearms dealers are already required to maintain all relevant sales data in readily accessible and organized form. *See* 27 C.F.R. § 478.121(c). In fact, firearms dealers are required to maintain their transaction records such that they can review, identify, and produce records of specific transactions within 24 hours of receiving a law enforcement inquiry. 18 U.S.C. § 923(g)(7); 27 C.F.R. § 478.25a.



“Thus, there is no abuse of discretion merely because the trial court ‘reached a decision contrary to the decision that the appellate court would have reached.’” *Id.* (quoting *B.B. v. Dep’t of Pub. Welfare*, 118 A.3d 482, 485 (Pa. Commw. Ct. 2015)). While Frank’s and Delia’s may disagree with the trial court’s decision to deny their preliminary objections, they fail to identify how the trial court misapplied the applicable law.

### **CONCLUSION**

Frank’s and Delia’s, two Philadelphia firearms dealers that are alleged to have violated their federal and Commonwealth statutory obligations dozens of times, ask this Court to intervene in an interlocutory decision by the trial court and grant them immunity from suit. But they have not met their high burden of demonstrating that the trial court “egregious[ly]” abused its discretion by overruling their preliminary objections. Nor do they raise a controlling question of law or marshal even cursory support for their extreme and dangerous position that the UFA protects gun dealers who knowingly break the law. This Court should deny Frank’s and Delia’s petition for permission to appeal.

Dated: June 17, 2024

Respectfully submitted,

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*/s/ Melissa Medina*

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## CERTIFICATE OF SERVICE

I, Melissa Medina, hereby certify that I caused to be served a true and correct copy of the foregoing **Answer In Opposition To Petition For Review** upon the person(s) and in the manner indicated below:

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Dated: June 17, 2024