IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S240918

RANA SAMARA,
Plaintiff and Appellant,

v.

HAITHAM MATAR,
Petitioner, Defendant and Respondent.

Court of Appeal of California
Second District, Division Seven
B265752

Superior Court of California
Los Angeles County
EC056720
Hon. William Stewart

Answer to Petition for Review

Alexis Galindo (SBN # 136643)
agalindo@cgsattys.com
Tracy Labrusciano (SBN # 314300)
tlabrusciano@cgsattys.com
Curd, Galindo & Smith, LLP
301 E. Ocean Blvd Ste 1700
Long Beach, CA 90802
Tel: (562) 624-1177
Fax: (562) 624-1178

Attorneys for Plaintiff and Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S240918

RANA SAMARA, *Plaintiff and Appellant,* v. HAITHAM MATAR, *Petitioner, Defendant and Respondent.*	Court of Appeal of California Second District, Division Seven B265752 Superior Court of California Los Angeles County EC056720 Hon. William Stewart

Answer to Petition for Review

Alexis Galindo (SBN # 136643)
agalindo@cgsattys.com
Tracy Labrusciano (SBN # 314300)
tlabrusciano@cgsattys.com
Curd, Galindo & Smith, LLP
301 E. Ocean Blvd Ste 1700
Long Beach, CA 90802
Tel: (562) 624-1177
Fax: (562) 624-1178

Attorneys for Plaintiff and Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Statutes:

Constitutions:

Other:

ANSWER TO PETITION FOR REVIEW

I. INTRODUCTION

Review is not necessary as the Court of Appeal reached the correct conclusion in the matter at hand. Skidmore need not be disturbed as it is limited by its own specific facts nor does its progeny as those cases have been ruled upon correctly based on their own specific facts and procedural status.

II. STATEMENT OF THE CASE

Petitioner brought his Petition for Review after the second appeal arising from one lawsuit for personal injuries brought by Plaintiff/Appellant, Rana Samara (hereinafter Samara) who sustained injuries after a tooth implant procedure. The Respondent is Defendant/Respondent, Haithman Matar, D.D.S. (hereinafter Dr. Matar) a dentist.

Samara's First Amended Complaint was originally against both Dr. Nahigian, an oral surgeon, and Dr. Matar, a general dentist, for damages based on theories of professional negligence. [CT 000065–000072]. Samara alleged that Dr. Nahigian was the agent or employee of Dr. Matar and that Dr. Nahigian's negligence was imputed to Dr. Matar as Dr. Matar recommended Nahigian, Matar provided the office space, staff and equipment and Dr. Matar billed Samara's insurance company for the dental implant procedure performed by Nahigian. (See Plaintiff's

SSUMF #18–27). [CT 000402–000403]. In discovery, facts were developed that would also support an allegation of joint venture between Dr. Nahigian and Dr. Matar. [Id.]

Both Dr. Nahigian and Dr. Matar filed Motions for Summary Judgment, Samara opposed the motions and Dr. Nahigian's Motion for Summary Judgment was granted. [CT 000503–000509.] Judgment was entered in favor of Dr. Nahigian on February 6, 2013. [CT 000061–000062]. The single lawsuit against Dr. Matar was stayed pending the first appeal. Dr. Nahigian argued in his Motion, through the declaration of Bach Le, DDS, that his conduct did not fall below the standard of care and that he did not cause the injuries to Samara. [CT000054–000058].

Samara opposed the Motion for Summary Judgment and submitted as evidence a declaration of her expert Dr. Doumanian. Dr. Doumanian opined that Dr. Nahigian's treatment and care fell below the standard of care and that Dr. Nahigian's negligence was the cause of Samara's injury. Dr. Doumanian's declaration stated specific facts and basis for his opinions on standard of care and causation but it did not state the words "my opinions are within a reasonable degree of medical probability". Although the trial court found that triable issues were raised as to negligence, the trial judge ruled that there was no triable issue as to causation. [CT000507–000508.] On February 6, 2013, the court granted judgment in favor of Stephen Nahigian, D.D.S., on the alternative grounds of the statute of limitations and causation.

Samara filed her first appeal and the Court of Appeal affirmed the judgment; however, it did so by confirming that Samara's

case against Dr. Nahigian was time barred. The Court of Appeal in its ruling determined that it did not reach the trial court's alternative ground of lack of causation for granting summary judgment. [CT 000497–000500.] The Court of Appeal issued its Remittitur. [CT 000356–000359.]

Dr. Matar filed his second Motion for Summary Judgment, which was stayed pending appeal. [CT 000009–000041.] Samara filed her opposition on April 3, 2015. [CT 000360–000379.] Dr. Matar argued in his motion that the negligence of Dr. Nahigian could not be imputed to him based on collateral estoppel and res judicata, as the trial court had already determined that there were no triable issues of fact as to whether Nahigian's negligence caused Samara's injuries. However, the reviewing court in the first appeal did not reach the trial court's alternative ground (causation) for granting summary judgment. The reviewing court relied on *Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 86–88 (*Zevnik*), *Newport Beach Country Club, Inc v. Founding Members of Newport Beach Country Club* (2006) 140 Cal.App.4th 1120, 1132 (*Newport Beach*). These cases provide that if a court of first instance makes its judgment on alternative grounds and the reviewing court affirms on only one of those grounds, declining to consider the other, the second ground is no longer conclusively established. (See also Restatement Second of Judgments, section 27, comment *o*; *Butcher v. Truck Ins. Exch.* (2000) 77 Cal.App.4th 1442, 1460.)

After the Remittitur and at the hearing for Dr. Matar's Motion for Summary Judgment, the trial court failed to follow the reviewing court's ruling for the Matar motion and instead ruled that the trial court had previously found that Nahigian was not

negligent which is entirely not correct. [CT 000543–000547.] The same trial court in Nahigian's Motion for Summary Judgment found that there were triable issues as to negligence but that causation could not be established. [CT000507–000508.] In Matar's second Motion for Summary Judgment, Samara submitted the revised declaration of Gregory Doumanian, D.D.S. which provided facts which would establish a triable issue of fact as to causation and which established that the relationship between Nahigian and Matar was a joint venture. [CT000408–000412.]

The trial court nevertheless did not even consider Dr. Doumanian's declaration. The trial court rejected Samara's causation argument and concluded that the negligence and causation of Nahigian had already been decided applying res judicata. However, Nahigian's judgment was granted and affirmed on the basis of the statute of limitations, an alternative ground, and negligence and causation was never determined. [CT 000497–000500.]

III. ARGUMENT

A. THE COURT OF APPEAL CORRECTLY REVERSED THE TRIAL COURT'S SUMMARY JUDGMENT AS IT WAS IMPROVIDENTLY GRANTED AND REVIEW IS NOT NECESSARY BECAUSE CURRENT CASE LAW IS CLEAR ON RES JUDICATA AND COLLATERAL ESTOPPEL

1. The Requirements for Application of the Doctrines of Res Judicata and Collateral Estoppel Have Been Expressed by This Court in No Uncertain Terms.

Petitioner does not cite to and appears to ignore recent decisions by This Court expressly delineating the requirements for claim or issue preclusion to apply.

Res judicata, or claim preclusion, "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 *(DKN Holdings)*, quoting *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 *(Mycogen).* "Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit." (*DKN Holdings*, *supra*, at p. 824.) Both *DKN Holdings* and *Mycogen* are clear that a "second suit" is required for claim preclusion to apply.

Issue preclusion, historically referred to as collateral estoppel, "prevents relitigation of previously decided issues." (*DKN Holdings*, *supra*, 61 Cal.4th at p. 824.) Under issue preclusion,

"the prior judgment conclusively resolves an issue actually litigated and determined in the first action" and, to comport with due process, issue preclusion can only be asserted against a party to the first lawsuit, or one in privity with that party. (*Ibid.*) "[I]ssue preclusion applies (1) afer final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Id.* at p. 825; see also *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) As stated in *DKN Holdings*, issue preclusion does not seem to apply to parties in the same lawsuit, either.

Moreover, because Samara had asserted that Dr. Nahigian and Dr. Matar were joint venturers in a business, neither claim nor issue preclusion would apply, even if all other requirements were met, which they were not. Two defendants would not be considered "the same party" for preclusion purposes. And "business partners are not in privity for purposes of preclusion." (See *DKN Holdings*, *supra*, 61 Cal.4th at p. 825, citing *Dillard v. McKnight* (1949) 34 Cal.2d 209, 214.)

Thus, even if a "second suit" were not required for preclusion principles to apply, Nahigian and Matar would not be considered in privity as joint venturers in the same business enterprise, who were concurrently sued in one lawsuit brought by Samara.

2. The Applicability of *Skidmore* Should Be Confined to the Facts and Issues Presented in the Case, if it is Still Good Law.

Petitioner's reliance on *Skidmore* as applicable to this case is misguided. "It is elementary that the language used in any opinion is to be understood in light of the facts and the issue then before the court." (*McDowell & Craig v. Santa Fe Springs* (1960) 54 Cal.2d 33, 38, citing *Eatwell v. Beck* (1953) 41 Cal.2d 128, 136.) "Further, cases are not authority for propositions not considered." (*McDowell & Craig v. Santa Fe Springs*, *supra*, at p. 214, citing *People v. Banks* (1959) 53 Cal.2d 370, 389; see also *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1268.)

Skidmore can be distinguished from the instant case for several reasons aside from the fact that it was decided over 150 years ago.

First, *Skidmore* involved two successive lawsuits identical in subject matter and parties. In this case, Samara filed one lawsuit against both Dr. Matar and Dr. Nahigian; no successive suit has been filed.

Second, the Supreme Court in *Skidmore* ordered a new trial after judgment had been entered for the People as plaintiffs in a second lawsuit, after a demurrer or motion for judgment on the pleadings was granted by a referee based on the misjoinder of legal and equitable causes of action against multiple parties in the first lawsuit. Here, Matar is petitioning for review of the appellate court's reversal of summary judgment, an entirely different proceeding, as Samara has not had judgment entered in her favor and still must go to trial on the issues.

Third, the prior Supreme Court in *Skidmore* had affirmed the first appeal in its entirety, by direct expression, finding no error in the record, and the Supreme Court in stating its reasons behind the *Skidmore* opinion at issue noted that the first judgment was affirmatively based on the merits of the claim. As further discussed below, in the instant case the appellate court did not directly affirm the trial court's judgment for Nahigian in its entirety; rather, it expressly declined to and did not rule on the issue, affirming on statute of limitations grounds personal to Nahigian only.

i. Separate or Successive Lawsuits Are Required for Claim Preclusion or Issue Preclusion to Apply.

Under the doctrine of claim preclusion, judgment in favor of one defendant bars a second action against a second defendant in privity with the first. (*DKN Holdings*, *supra*, 61 Cal.4th at pp. 827–828; see also *Clark v. Lesher* (1956) 46 Cal.2d 874, 880 [a prior judgment precludes a "second suit between the same parties."].)

Procedural requirements also intimate that a second suit is required in order for res judicata to apply. In order for a party to avail himself of the defense of res judicata, he must affirmatively allege the judgment in his pleading. (*Madruga v. Borden Co.* (1944) 63 Cal.App.2d 116, 146; see also *Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1158 ["an objection based on the doctrine of res judicata must be specially pleaded or it is waived."] If res judicata must be affirmatively pled, as in a complaint or answer,

this requirement necessarily means that the claim a party seeks to preclude was already decided, or may subsequently be decided, in a separate suit.

In *Skidmore*, the defendants were originally sued by the People as plaintiffs in an action upon a recognizance entered into by defendant sureties to secure the appearance of a defendant offender who was charged with murder. (*People v. Skidmore* (1865) 27 Cal. 287, 289.) After judgment was entered against the People, the People again brought the same action against the same defendants, with the exception of leaving out the defendant against whom equitable relief was sought in the second suit. (*Ibid.*) Further, the defendants in the second suit affirmatively pled claim preclusion in their answer, which "set up a judgment in a former suit as a bar to the action." (*Ibid.*)

Here, however, as previously discussed, both Dr. Nahigian and Dr. Matar were sued in the same lawsuit and no second suit was filed. In *Skidmore,* the judgment in the first suit was entered as to *all* defendants, whereas here, the summary judgment was entered in favor of Nahigian alone, with the remainder of the lawsuit against Dr. Matar intact as he had been denied summary judgment.

ii. This Case Involves an Appeal from Summary Judgment, an Issue Distinct from the Appeal After a Motion for New Trial Based on the Trial Court Granting Demurrer or Motion for Judgment on the Pleadings in *Skidmore.*

The instant case brought by Petitioner for review by This Court seeks to apply *Skidmore* to an appellate court's affirmance of a motion for summary judgment. A motion for summary judgment tests whether there is a triable issue of material fact exists. (Code Civ. Proc., § 437, subd. (c).) In other words, this type of motion asks the trial court to decide whether evidence is sufficient such that the finder of fact could reasonably find for either party. Denial of a Motion for Summary Judgment brought by a defendant only means further factfinding is proper.

By contrast, both a demurrer and motion for judgment on the pleadings are determined by assuming all facts alleged in the pleadings are true, and no further factfinding is necessary. (Code Civ. Proc., § 438.)

iii. The Supreme Court in *Skidmore I* Did Review the Judgment on the Merits, whereas the Court of Appeal in This Case Expressly Declined to Do So.

In *Skidmore*, the Supreme Court in the first affirmance of the referee's judgment simply stated as the whole of its opinion: "We affirm the judgment upon the demurrer for this misjoinder. The effect of the judgment will not be to preclude the plaintiff from suing again *when the cause of action can be more formally set out.*

Judgment is affirmed." (*People v. Skidmore*, *supra*, 27 Cal. at p. 292 (emphasis added).) The plain language of the underlying opinion does not indicate that the reviewing court either declined to or did not rule on the merits of the judgment. Rather, in impliedly stating the cause of action could plausibly be "more formally set out," the Court was indicating that the pleadings were indeed not – at that time – sufficient to overcome a demurrer or judgment on the pleadings, as the referee had previously ruled. This interpretation is consistent with the published *Skidmore* opinion, as it reasoned "[t]he Supreme Court found no error in the record, and therefore not only allowed it to stand, but affirmed it as an entirety, and by direct expression." (*Id.* at pp. 292–293.)

By contrast, in the instant case the Court of Appeal impliedly stated in its opinion in *Samara I* that preclusive effect should *not* be given to its affirmance of the judgment in favor of Dr. Nahigian. That opinion notes that Samara did not challenge the trial court's ruling that her action against Dr. Nahigian was time-barred, "expressly limiting her appeal to its alternate ruling on the issue of causation." [CT 000499]. In affirming the trial court's judgment on the statute of limitations ground, the Court of Appeal stated "[w]e need not, and do not, reach the court's alternative ground for granting summary judgment." [CT 000499]. Footnote 2 of the opinion states:

"[b]ecause the question is not before us, we also do not address whether collateral estoppel may be used with regard to an alternative ground for judgment not reviewed by the appellate court. (See generally *Zevnik v. Superior Court* (2008) 159

Cal.App.4th 76, 86–88; *Newport Beach Country Club, Inc. v. Founding Members of Newport Beach Country Club* (2006) 140 Cal.App.4th 1120, 1132.)" [CT 000499–000500.]

The Court of Appeal was aware that Nahigian was not the only defendant in the single suit brought by Samara. A closer look at the case law cited by the Court of Appeal in *Samara I* provides insight as to the intended effect of declining to rule on causation, affirming the judgment as to Nahigian on procedural grounds only.

Page 86 of the *Zevnik* opinion begins by stating: "We decline to follow the authorities suggesting that each of the alternative grounds relied upon by the trial court is collateral estoppel after an appellate court affirmed the decision on only one ground and declined to decide the others." *Zevnik* declined to follow *Skidmore* for issue preclusion, noting that "*Skidmore* involved only res judicata, or claim preclusion." (*Zevnik v. Superior Court*, *supra*, 159 Cal.App.4th at p. 88.) In a footnote, *Zevnik* highlighted the fact that the California Supreme Court "has never cited or relied upon *Skidmore*" and referred to *Martin v. Martin* (1970) 2 Cal.3d 752, 762–763, wherein the Supreme Court "expressly declined to decide whether an alternative ground for an order by a bankruptcy referee that was affirmed by the district court on another ground was collateral estoppel, without mentioning *Skidmore*." (*Ibid.*)

Immediately after discussing the California Supreme Court's aforementioned current lack of precedent referring to *Skidmore,* page 1132 of *Newport Beach* begins by asserting that *Skidmore*'s "traditional rule is inconsistent with an appellate court's duty under the California Constitution, article VI, section 14 to set

forth its decisions in writing 'with reasons stated.'" *Newport Beach* goes on to reason that the "traditional rule" of *Skidmore* "thus results in judicial inefficiency" by requiring the appellate court to address "every ground recited in a judgment, even though a decision on one ground would resolve the dispute before the court" in order to avoid unintended collateral estoppel consequences. (*Newport Beach Country Club, Inc v. Founding Members of Newport Beach Country Club*, *supra*, 140 Cal.App.4th 1120.) The court in *Newport Beach* believed that the California Supreme Court would adopt the "modern rule" as expressed in comment *o* to the Restatement Second of Judgments, section 27, agreeing with the court in *Butcher* and holding that where a trial court makes its judgment on alternative grounds "and the reviewing court affirms on only one of those grounds, declining to consider the other, the second ground is no longer conclusively established." (*Newport Beach Country Club, Inc v. Founding Members of Newport Beach Country Club*, *supra*, citing *Butcher v. Truck Ins. Exch.*, *supra*, 77 Cal.App.4th at p. 1460; see also Restatement Second of Judgments (1982) section 27, comment *o*.)

The Court of Appeal in *Samara I* therefore cited to two cases adopting the "modern rule" in the Restatement Second of Judgments, section 27, comment *o*, in expressly stating that it "need not" and "do[es] not" reach the trial court's alternative ground for the judgment in favor of Dr. Nahigian only; in other words, it did not review the merits as urged by Samara upon appeal. The first reviewing court in *Skidmore*, by contrast, *did* provide a basis for the Supreme Court to find that it had actually considered the alternative grounds on the merits, by intimating

in dicta that the government plaintiff could bring a subsequent suit against the defendants when it could properly amend the pleadings.

B. THE COURT OF APPEAL WAS CORRECT IN DENYING REHEARING IN ORDER TO FILE SUPPLEMENTAL BRIEFING BECAUSE ALL CLAIMS BROUGHT BY PLAINTIFF WERE BROUGHT IN A SINGLE CAUSE OF ACTION AND DEFENDANT MATAR ONLY MOVED FOR SUMMARY JUDGMENT, WITHOUT GIVING NOTICE OF MOVING FOR SUMMARY ADJUDICATION

A Petition for Rehearing should only be granted pursuant to Government Code section 68081 where a party did not have the opportunity to brief every issue raised in the appeal, including any issues fairly included in those actually raised. This Court has held:

> "Section 68081 does not require that a party actually have briefed an issue; it requires only that the party had the opportunity to do so. By requiring the parties to file opening and responding briefs, the California Rules of Court automatically give the parties the opportunity to brief every issue that is raised in the appeal. (Cal. Rules of Court, rule 8.200(a)(1).) Further, we hold that this also gives the parties the opportunity to brief any issues that are fairly included within the issues actually raised."

(*People v. Alice* (2008) 41 Cal.4th 668, 677.)

Matar's Petition asserts that he did not have the opportunity to brief the point made by the Court of Appeal that preclusion

principles "did not apply because the claims or issues were not asserted in a separate lawsuit or that applying preclusion principles would be splitting a cause of action." (Petition for Review, p. 31.) But Petitioner was well aware that only one lawsuit was originally brought against both Dr. Nahigian and Dr. Matar. (See FAC, CT 000065–000072.) In her Opening Brief, Samara cited case law discussing primary rights and different legal theories arising from a single cause of action. (See Appellant's Opening Brief, pp. 19–20.) Samara further argued that there was a triable issue of material fact "as it relates to both Dr. Nahigian's and Dr. Matar's breach of the standard of care." (Id. at p. 22.) Moreover, Petitioner's own Respondent's Brief stated:

> "Defendant Matar contends the trial court's ruling should be affirmed on the following grounds: 1) the trial court's application of the res judicata doctrine and/or issue preclusion principles was correct not because this Court affirmed the Judgment in Samara I but because all of the elements of res judicata and/ or collateral estoppel were met..."

(Respondent's Brief, p. 10.)

In asserting that all of the elements of res judicata and/or collateral estoppel were met, then, Petitioner had ample opportunity to brief all of the elements of claim and/or issue preclusion principles, including whether the claims were asserted in separate or successive lawsuits. Thus, the issue of separate lawsuits for preclusion principles to apply was fairly included within the issues actually raised.

Matar either knew or should have known that Plaintiff asserted theories of both direct and vicarious liability against him.

Matar in his notice of motion for summary judgment (and other moving papers) failed to give plaintiff notice whether he sought summary judgment and/or summary adjudication of the one cause of action, and granting summary adjudication in this situation would have violated Plaintiff's constitutional due process rights.

The rule that a trial court may only consider the grounds specified in a notice of motion is especially true in the case of motions for summary adjudication of issues. (*Gonzales v. Superior Court* (1987) 189 Cal.App.3d 1542, 1545.) Code of Civil Procedure section 437c "makes it clear that a motion for summary adjudication cannot be considered by the court unless the party bringing the motion duly gives notice that summary adjudication is being sought." (*Gonzales v. Superior Court*, *supra*, at pp. 1545–1546.)

Matar captioned his motion as a motion for summary judgment and did not include or mention summary adjudication. [CT 000009–000010.]

Now in his Petition for Review, Matar argues that the reviewing court should have mandated the trial court to grant summary adjudication on the direct negligence claim against Matar. [Petition, p. 32.] However, in his notice of motion, Matar stated that he moved the Court for summary judgment, and made no request for summary adjudication at all. [CT 000009–000010.] The reviewing Court cannot deny plaintiff's due

process rights to be given notice and an opportunity to be heard concerning all claims and causes of action that Matar only now seeks to summarily adjudicate.

The Court of Appeal has recognized that "it is elemental that a notice of motion must state in writing the grounds upon which it will be made." (*Gonzales v. Superior Court*, *supra*, 189 Cal.App.3d at p. 1545.) A trial court may only consider the grounds specified in a notice of motion. (*Ibid.*) This rule is especially true in the case of motions for summary adjudication of issues. (*Ibid.*, citing *Homestead Sav. v. Superior Court* (1986) 179 Cal.App.3d 494, 499.) The language in Code of Civil Procedure section 437c "makes it clear that a motion for summary adjudication cannot be considered by the court unless the party bringing the motion duly gives notice that summary adjudication is being sought." (*Gonzales v. Superior Court*, *supra*, at pp. 1545–1546, citing *Homestead Sav. v. Superior Court*, *supra*, at pp. 497–498.)

There is a sound reason for the rule that a party seeking summary adjudication of particular issues must make its intentions clear: the opposing party may have decided to raise only one triable issue of fact to defeat the motion without intending to concede other issues, and it would be unfair to grant summary adjudication unless the opposing party had notice that if summary judgment was denied, an issue-by-issue summary adjudication might be granted. (*Gonzales v. Superior Court*, *supra*, 189 Cal.App.3d at pp. 1545–1546, citing Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (1986) §§ 10:21, 10:43.)

C. BECAUSE THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT AS TO THE SOLE REMAINING DEFENDANT IN THE ACTION PURPORTED TO DISPOSE OF ALL CAUSES OF ACTION IN THE CASE, THE ORDER WAS APPEALABLE AND THUS THE ISSUE SHOULD NOT BE REVIEWED

A reviewing court has jurisdiction over a direct appeal only where there is (1) an appealable order or (2) an appealable judgment. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.) A superior court judgment, unless it is interlocutory, is normally appealable. (Code Civ. Proc., § 904.1.) On appeal from a superior court judgment, "the reviewing court may review ... any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party ...." (§ 906.) Here, the trial court entered "Judgment Pursuant to Order of the Court Granting Defendant Haitham Matar, DDS' Motion for Summary Judgment" on July 9, 2015. [CT 000552–000553.] This final superior court judgment is typically appealable.

A judgment is a final determination of the rights of the parties. (Code Civ. Proc., § 577.) The trial court's judgment in this case purported to be a "final determination of the rights of the parties" by stating, in pertinent part:

> "THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Dr. Matar's Motion for Summary Judgment is GRANTED as to Plaintiff's entire action against Dr. Matar. Plaintiffs shall take nothing by virtue of Plaintiff's First Amended Complaint..."

[CT 000553.]

The trial court thus purported to dispose of "Plaintiff's entire action," or all causes of action in the single suit Samara brought against Dr. Matar. Petitioner's claim that the summary judgment order was no longer appealable because Samara had claimed violations of two primary rights by Matar is without merit.

IV. CONCLUSION

Based upon the foregoing analysis, Rana Samara requests that this Court deny Dr. Matar's Petition for Review.

Curd, Galindo & Smith, LLP

Respectfully submitted,

Dated: May 4, 2017

By: /S/ Tracy Labrusciano

Tracy Labrusciano

Attorney for Plaintiff and Appellant

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **4,350** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.504(d) or by Order of this Court.

Curd, Galindo & Smith, LLP

Dated: May 4, 2017

By: /S/ Tracy Labrusciano

Tracy Labrusciano

Attorney for Plaintiff and Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S240918

PROOF OF SERVICE

I declare:

At the time of service I was at least 18 years of age and not a party to this legal action. My business address is 301 E. Ocean Blvd Ste 1700, 301 E. Ocean Blvd Ste 1700, Long Beach, CA 90802. I served document(s) described as Answer to Petition for Review as follows:

By U.S. Mail

On May 4, 2017, I enclosed a copy of the document(s) identified above in an envelope and deposited the sealed envelope(s) with the US Postal Service with the postage fully prepaid, addressed as follows:

Los Angeles County Superior Court
Attn: Hon. William Stewart
Los Angeles Superior Court
P.O. Box 750
Burbank, CA, 91502

Katherine Marie Harwood
Ford, Walker, Haggerty & Behar
One World Trade Center, 27th Floor
Long Beach, CA 90831
(for Haitham Matar)

Neil S. Tardiff
Ford, Walker, Haggerty & Behar
P.O. Box 1446
San Luis Obispo, CA 93406
(for Haitham Matar)

Clerk of the Court of Appeal
Second Appellate District
Ronald Reagan State Bldg
300 S. Spring Street
2nd Fl North Tower
Los Angeles, CA 90013

I am a resident of or employed in the county where the mailing occurred (Long Beach, CA).

By overnight delivery

On May 4, 2017, I enclosed a copy of the document(s) identified above in an envelope and deposited the sealed envelope in a box or other facility regularly maintained by FED EX, with overnight delivery fees paid or provided for, addressed as follows:

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

I am a resident of or employed in the county where the mailing occurred (Long Beach, CA).

By e-filing

On May 4, 2017, I served via the Court's e-file system, and no error was reported, a copy of the document(s) identified above on:

Clerk of the Court of Appeal

By e-submission

On May 4, 2017, I served via the Court's e-submit system, and no error was reported, a copy of the document(s) identified above on:

Supreme Court of California

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

Curd, Galindo & Smith, LLP

Dated: May 4, 2017 By: /s/ Irene Duran

Irene Duran