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2nd Civil No. **B204943**

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IN THE

SUPREME COURT

STATE OF CALIFORNIA

IN RE BAYCOL CASES I AND II

DOUGLAS SHAW, on behalf of himself an all others similarly situated,

Plaintiff and Petitioner

v.

BAYER CORPORATION,

Defendant and Respondent.

AFTER ORDER BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT,
ON APPEAL FROM THE SUPERIOR COURT FOR LOS ANGELES COUNTY
HONORABLE WENDELL MORTIMER, JR., JUDGE
LASC Case Nos. JCCP 4217 and JCCP 4223

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeal correctly applied long-settled law in holding that an order finally dismissing class claims is immediately appealable, even where the same order dismisses the individual class representative's claims.

STATEMENT OF THE CASE

Petitioner does not want this Court to overturn *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 699 (1967), or its long-standing rule that an order that determines the legal insufficiency of the case as a class action is immediately appealable because that order is tantamount to a final judgment as to the class. What petitioner doesn't like is that the result of applying the class action one-final-judgment rule in his case was to render a portion of his appeal untimely, and so he asks this Court to create a special exception to *Daar* that will reinstate his untimely appeal. This Court, however, should not overturn almost a half-century of precedent, or the procedural framework that supports it, to save petitioner from his poor strategic decision.

Daar establishes the one-final-judgment rule for class actions: that an order that has the effect of ending a class action case is an immediately appealable order. That bright-line rule derives from and supports the important principle of finality. Petitioner, however, wants to create a two-final-judgment rule for class actions, that depends entirely on how the trial court treats the named class representative(s). Not only would such a rule violate the principle of finality, it would inject uncertainty and ambiguity into what is now clear and unambiguous, and would result in substantial litigation as the courts and litigants try to clarify how such a rule would

work. This Court should reject petitioner's attempt to save his late appeal, and affirm the Court of Appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The drug cerivastatin, marketed in the United States as Baycol, was a member of a class of cholesterol-reducing prescription medicines called statins. AA53. Statins are highly successful in lowering the lipid levels of persons with high cholesterol. AA7. High cholesterol, if left untreated, can lead to heart attack, stroke, and death.

Following approval in 1997, Bayer processed and distributed Baycol pursuant to licensure by the U.S. Food and Drug Administration until August 8, 2001. AA53-54. Baycol was first approved in 0.2 mg and 0.3 mg doses. *In re Baycol Prods. Litig.*, 218 F.R.D. 197, 201 (D. Minn. 2003). FDA approved a 0.4 mg dose in May 1999 and a 0.8 mg dose in July 2000. AA14, 18. Bayer distributed all four doses until August 8, 2001. AA59.

From Baycol's first release, every label and package insert contained an FDA-approved warning regarding the risk of rhabdomyolysis (a condition resulting in the breakdown of muscle fibers and skeletal muscle tissue), as well as the risk of using another class of lipid-lowering drugs (fibrates such as gemfibrozil) concurrently with Baycol. AA9, 12. As knowledge evolved about these risks, Bayer obtained approval from FDA to amend Baycol's labeling. AA12, 13. The warnings became stronger and more specific over time, including a specific contraindication against prescribing Baycol together with gemfibrozil. AA19. Bayer communicated safety and efficacy information regarding Baycol to healthcare providers. AA20. Nevertheless, Bayer continued to receive reports of rhabdomyolysis in patients when gemfibrozil was prescribed as a

co-medication with Baycol. AA59. Therefore, on August 8, 2001, Bayer voluntarily decided, with the approval of FDA, to withdraw Baycol from the market. *In re Baycol Prods. Litig.*, 218 F.R.D. at 201.

Following the highly-publicized withdrawal of Baycol from the US market, thousands of plaintiffs filed lawsuits alleging that Baycol caused an array of physical injuries and economic losses in both state and federal courts. *See id.* The federal cases were coordinated in a multidistrict litigation in the United States District Court for the District of Minnesota (*In re Baycol Products Liability Litigation*, MDL-1431). AA1. Ultimately, approximately 22,590 plaintiffs filed cases in federal court and 17,500 in state court, including 350 cases in the California coordinated proceedings. Bayer settled the claims of more than 3,100 persons who suffered rhabdomyolysis, the side effect that led to the withdrawal of Baycol, for $1.17 billion, and vigorously contested the lawsuits of tens of thousands of plaintiffs who did not suffer that side effect. Virtually all of the latter cases have been terminated without compensation, including the California cases. AA546-865. The six Baycol cases tried to juries all resulted in defense verdicts.

Petitioner Douglas Shaw was one of the first plaintiffs to file suit, commencing his action on September 5, 2001 in state court. *See* AA140. His complaint alleged claims of unjust enrichment and violations of the California Unfair Competition Law on behalf of a class of "all other California residents who purchased or ingested the drug Baycol." AA141. The complaint further alleged that Bayer misrepresented the risks and benefits associated with Baycol as compared to other statins. AA143-144.

Bayer timely removed Shaw's case to federal court and transferred it to MDL-1431. AA41-42. The MDL proceedings included more than a

hundred overlapping class action cases (including petitioner's). *In re Baycol Prods. Litig.*, 218 F.R.D. at 201. To avoid multiple motions for class certification, the Plaintiffs' Steering Committee in MDL-1431 directly filed and later amended a master class action complaint in the MDL proceedings to cover all pending class actions.[1] AA1. The amended master complaint alleged various causes of action on behalf of three potential classes: a personal injury class, a medical monitoring class, and an economic loss class. The economic loss class was defined as "all persons who purchased Baycol for personal or family use." AA22. That class definition included petitioner and all members of the class – California residents who purchased or ingested Baycol – that petitioner proposed to represent in his original complaint. AA22. Petitioner had notice of the master class proceedings and never asserted that his interests were inadequately represented in the master complaint or the proceedings. *In re Baycol Prods. Litig.*, 218 F.R.D. at 201; AA32, 42. Nor did he renew his motion to remand at that time (AA46), or otherwise assert that the MDL lacked subject matter jurisdiction over his claims.

Following class discovery, extended briefing, and oral argument, the MDL court carefully considered certification of each of the classes, including the economic loss class. *In re Baycol Prods. Litig.*, 218 F.R.D. 197 (D. Minn. 2003). Like petitioner, the MDL plaintiffs alleged that Bayer knew Baycol was "less effective than other statins" and was linked to "deaths worldwide," yet engaged in "aggressive marketing" and provided

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[1] The Plaintiffs' Steering Committee is the group of plaintiffs' counsel who were appointed by the MDL court to represent the interests of *all* plaintiffs, including Shaw, in MDL-1431. *In re Baycol Prods. Litig.*, 218 F.R.D. at 201.

"inadequate" warnings. *Id.* at 201-02. Like petitioner's putative class, the economic loss class, or "refund class," in the MDL sought restitution or disgorgement of profits. *Id.* at 213.

The MDL court determined that "to succeed on either the unjust enrichment or breach of warranty claims, Plaintiffs would have to demonstrate that they were either injured by Baycol, or that Baycol did not provide them any health benefits." *Id.* at 213-14. In light of this, the MDL court ruled that individual issues would "predominate, rendering class certification unwarranted" for alleged economic losses, and denied certification. *Id.* [2]

With that bad news, petitioner decided to take his chances in state court, and, twenty-three months after transfer to MDL-1431, moved for remand on the basis of lack of diversity for failure to meet the statutory minimum. AA169, 171. As added insurance that the MDL court would accept his argument, he also moved to dismiss his unjust enrichment claim. AA204. His case was remanded on November 29, 2004. AA43.

Meanwhile, approximately 350 California state court cases (including several class actions) had been coordinated in a Judicial Council Coordinated Proceeding in the Los Angeles Superior Court before the Hon.

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[2] Economic loss classes brought in the Baycol litigation also were denied certification in other jurisdictions. *See Lewis v. Bayer AG*, 70 Pa. D.&C.4th 52, 2004 WL 1146692, at *18-19 (Pa. Com. Pl. 2004) (denying certification of nationwide and statewide economic loss classes, *inter alia*); *Jensen v. Bayer AG*, No. 01 CH 13319, 2003 WL 22962431, *5 (Cir. Ct. Cook Co., Ill. Dec. 13, 2003) (denying certification of nationwide personal injury, medical monitoring, and economic loss class); *DeBouse v. Bayer AG*, 922 N.E.2d 309, 313-19 (Ill. 2009) (ordering trial court to vacate certification of Illinois economic loss class and enter summary judgment against named plaintiff).

Wendell Mortimer, Jr. AA546. As in the MDL, the JCCP court required that the class actions be replaced with a master class complaint, which was filed on August 5, 2002. AA632. After petitioner's case was remanded from the MDL, it was identified as an add-on action to the JCCP, and was coordinated with that litigation on February 4, 2005. AA80.

During the twenty-six months following remand and transfer to the California coordinated proceeding, petitioner did nothing to pursue his case. After nearly all of the personal injury cases in California were resolved in Bayer's favor by summary judgment, petitioner moved to amend his complaint to add factual allegations and causes of action, including yet another unjust enrichment claim. With that amendment, petitioner's complaint replaced the master class complaint in the JCCP. AA590.

In the amended complaint, petitioner alleged that he took Baycol from April 2001 until August 2001, when it was voluntarily withdrawn from the market. AA60. He did not allege that he experienced adverse side effects while taking Baycol or that he saw, heard, or relied upon any representations by Bayer. He alleged that he took different statins at various times (AA60), but not that Baycol proved less effective than those statins or that he personally experienced any side effect compared to those statins. He asserted claims under the UCL, the CLRA, and unjust enrichment, and defined the putative class as "[a]ll persons or entities who purchased or paid for the drug *Baycol* between February 18, 1998 and August 8, 2001 (the 'Class Period'), to be used by California Consumers, and not for resale." AA60.

Petitioner's amendments to his complaint included adding allegations to conform his complaint to the economic loss allegations in the

MDL class complaint. In particular, he added the allegations regarding the regulatory history of the medication (*compare* AA53, 56, 58-59 *with* AA7, 14-16, 19, 20-21), the statin market and Bayer's promotional activities (*compare* AA53-54, 59 *with* AA8, 12, 16, 18-19), the withdrawal of Baycol (*compare* AA54-55, 59 *with* AA8-9, 20), what Bayer was alleged to have known (and when) about side effects and what it disclosed (*compare* AA55, 57, 58 *with* AA9-10, 13-14, 20), the labeling history (*compare* AA56-57 *with* AA12-13), and Bayer's alleged misrepresentations and omissions (*compare* AA59-60 *with* AA10-12).

Bayer demurred to the class allegations in petitioner's amended complaint on three grounds: (1) petitioner was estopped from relitigating class certification because the MDL court had considered and rejected the same "economic loss" class of which he was a member; (2) there was no reasonable possibility of establishing a community of interest based on the allegations in the complaint; and (3) petitioner was an inadequate class representative as a matter of law. AA68-97. Bayer also demurred to petitioner's individual claims as failing to state a claim, and as barred both by the statute of limitations and for failure to comply with statutory pre-filing requirements for the CLRA. AA91-94. Petitioner opposed the demurrer, except as to his unjust enrichment claim, which he voluntarily abandoned yet again. AA246 n.2.

On April 27, 2007, the trial court held oral argument on Bayer's demurrer. AA353. The trial court sustained the demurrer without leave to amend, by way of a minute order, disposing of both the class and individual claims. AA353-354. The trial court first dismissed the class claims without leave to amend as "barred by collateral estoppel and/or res judicata principles." AA353-54. The trial court then ruled the class claims were

subject to dismissal on the "separate and distinct" ground that "[i]ndividual issues predominate." AA353-54. The court also disposed of petitioner's individual claims, concluding both that petitioner had not alleged a basis for relief under the UCL and that he could not seek monetary relief under the CLRA (because he had not complied with the CLRA's prefiling notice requirements). AA354. Notice of entry of the order was served by the clerk of the court on April 27, 2007, and also by Bayer on May 2, 2007. AA354, AA422-428.

An unusual set of procedural circumstances followed. On May 14, 2007, petitioner filed a motion for reconsideration. AA356-373. Apparently unaware of the pending motion, the court entered a judgment on May 25, 2007. AA383-385. The trial court subsequently took the motion for reconsideration off calendar because the entry of judgment deprived it of jurisdiction to consider the matter. AA384-385.

On June 7, 2007, petitioner filed a motion to set aside the judgment and reset the motion for reconsideration for hearing. AA386-400. On July 13, 2007, with the consent of the parties, the Court set aside the judgment and re-calendared the motion for reconsideration for hearing. AA466. After additional briefing (on a lengthened schedule requested by petitioner) and oral argument, the trial court denied the motion on September 21, 2007. AA525-526. Although petitioner waived notice at the hearing, Bayer served notice of entry of the order on October 5, 2007. AA526-531. The trial court entered a judgment of dismissal on October 24, 2007, and Bayer served notice of entry of that judgment on October 29, 2007. AA533-537.

On December 20, 2007, petitioner filed a notice of appeal from (1) the April 27, 2007 order sustaining the demurrer to the class allegations and his individual claims; (2) the September 21, 2007 order denying his

motion for reconsideration; and (3) the October 24, 2007 judgment. AA538-540. Petitioner subsequently abandoned his purported appeal from the September 21, 2007 order denying his motion for reconsideration (although an earlier date may have applied). Bayer moved to dismiss the appeal from the April 27, 2007 order as untimely to the extent petitioner sought to challenge the ruling as to the class claims, because the notice of appeal was filed more than 180 days after the date of the order. Cal. R. Ct. 8.108(e) (listing various periods of time within which to file notice of appeal of order on which a motion for reconsideration is pending, but no later than 180 days after date of order). The Court of Appeal consolidated the hearing on Bayer's motion to dismiss with the hearing on the merits.

In an unpublished opinion, the Court of Appeal dismissed as untimely the appeal from the order sustaining the demurrer to the class claims. Opinion, at 2 (Oct. 20, 2009). The Court of Appeal recognized that an order sustaining a demurrer without leave to amend is not itself ordinarily appealable, but, because the order fully and finally disposed of the class allegations, it was the final judgment as to the class. *Id.* at 8-9. The Court declined to invent an exception to the class action one-final-judgment rule for the peculiar circumstances of this case:

> We are reluctant to carve out exceptions to the rule and thus introduce an element of uncertainty into what has otherwise been the established rule. Would the exception apply only where, as here, a single order sustains the demurrer without leave to amend as to both the class and individual claims? Would it apply where separate orders address the class and individual claims? A bright-line rule would eliminate any uncertainty. Accordingly, we adhere to the rule that "in a class action if the legal effect of the order is 'tantamount to a dismissal of the action as to all

> members of the class other than plaintiff,' and if the order 'has virtually demolished the action as a class action,'" the order is immediately appealable.

Id. at 9.

Petitioner sought review from this Court for the limited purpose of determining whether his Notice of Appeal as to the dismissal of the class claims was timely.

ARGUMENT

Petitioner, in his Opening Brief, does not contest (or seek to overturn) three basic principles of California procedure:

1. Under the "final judgment rule," most interlocutory orders of a trial court are not immediately appealable. *See* Code Civ. Proc. § 904.1; 9 Witkin California Procedure § 95 (5th ed. 2008). This includes, in most cases, an order sustaining a demurrer. *See Agard v. Valencia*, 39 Cal. 292, 297 (1870).

2. Notwithstanding the final judgment rule, some trial court orders are immediately appealable. Code Civ. Proc. § 1294(a) (order dismissing or denying a petition to compel arbitration); *id.* § 904.1 (a)(3) (orders quashing service of summons or dismissing action for inconvenient forum); Cal. R. Ct. 8.104(f) (recognizing that that the term "judgment" "includes an appealable order"). This includes, as this Court held in *Daar*, a trial court order sustaining a demurrer to class allegations. 67 Cal. 2d at 699.

3. For those trial court orders that are immediately appealable, the aggrieved party cannot wait until after final judgment to appeal. The deadlines set forth by the California

> Rules of Court are mandatory and jurisdictional. *See, e.g.*, Cal. R. Ct. 8.104(a), 8.108. "If a notice of appeal is filed late, the reviewing court must dismiss the appeal." Cal. R. Ct. 8.104(b); *see also* Code Civ. Proc. § 906 (prohibiting later appellate review of "any decision or order from which an appeal might have been taken").

The Court of Appeal correctly applied these three undisputed, bright-line rules and dismissed petitioner's appeal.

Rather, petitioner's sole argument is that the rule of *Daar* – that an order sustaining a demurrer to class allegations is immediately appealable – applies only when there is a "divergence" between the interests of the plaintiff class representative and the members of the putative class. Opening Br. at 11-12 ("The fact that individual claims persist ... [and that] the individual and class claims have been treated differently" is the "central ingredient of the holding in *Daar*"). Petitioner thus asks the Court to declare an exception to the rule of *Daar* that would require practitioners and appellate courts to consider the degree to which the interests of class members and the class representative overlap or diverge in order to determine if appellate jurisdiction may attach. If enough "divergence" were perceived, then the order would be appealable; if not, the order would not be appealable and the plaintiff would be required to wait until entry of judgment (or perhaps some intermediate event that would create the required "divergence") to appeal.

Neither precedent nor common sense supports creating such an exception to the rule of *Daar*. As Bayer demonstrates below, (a) nothing in *Daar* itself compels, or even supports, the conclusion that petitioner seeks to draw; (b) petitioner cannot find any support for his argument in the more

than forty years of case law since *Daar*; (c) the rule proposed by petitioner would be unworkable, replacing a bright line test with an amorphous and ambiguous evaluation that will animate litigation for years to come; and (d) the "parade of horribles" that petitioner trots out to support his notion that the Court should create an exception to *Daar* is entirely illusory.

I. THE COURT OF APPEAL APPLIED THE *DAAR* CLASS ACTION ONE-FINAL-JUDGMENT RULE, WHICH HAS BEEN THE SETTLED LAW FOR MORE THAN FORTY YEARS.

A. This Court's Opinion in *Daar* Itself Does Not Support Petitioner's "Divergence" Theory.

In *Daar v. Yellow Cab Company*, 67 Cal. 2d 695, 699 (1967), the plaintiff brought a putative class action against a taxicab company to recover allegedly excessive charges made by the company during a four year period. The defendant demurred to both the individual and class claims, arguing that (1) the plaintiff could not, as a matter of law, properly maintain a class action; and (2) the plaintiff's individual claim did not meet the amount in controversy requirement for Superior Court (as compared to then-Municipal Court) jurisdiction. *Id.* at 698 n.1; Cal. Const. Art. VI, § 5 (1966) (establishing jurisdictional requirements for divided Superior and Municipal Courts).

The Superior Court agreed with the defendant and sustained the demurrer to *both* the individual *and* the class claims. *Daar,* 67 Cal. 2d at 698 n.1. The Superior Court then *sua sponte* transferred the plaintiff's individual claims to Municipal Court pursuant to statutory authority permitting such transfers, thereby reviving the case as to the individual claims. *Id.* Although "no formal judgment" was entered by the Superior Court, *id.*, plaintiff appealed from the "order of the superior court

sustaining defendant's demurrer to plaintiff's complaint without leave to amend and transferring the cause to the municipal court." *Id.* at 698. Thus, the threshold issue facing the Court in *Daar* was whether the Superior Court's order was appealable.

In analyzing the issue, this Court recognized the general rule that "an order sustaining a demurrer with or without leave to amend is not the final judgment in the case and is non appealable." *Id.* at 699 (citations omitted). Nonetheless, the Court reaffirmed its long-held view that "the question, as affecting the right of appeal, is not what the form of the order or judgment may be, but what is its legal effect." *Id.* at 698-99 (quoting *Howe v. Key Sys. Transit Co.*, 198 Cal. 525, 531 (1926)).

Looking at the effect of the order, the Court stated that the Superior Court had made a final determination of "the legal insufficiency of the complaint as a class suit," *id.* at 699, and thus the order "virtually demolished the action as a class action." *Id.* (citing *McClearen v. Super. Ct.*, 45 Cal. 2d 852, 856 (1955); *Bowles v. Super. Ct. of Tulane Cnty.*, 44 Cal. 2d 574, 582 (1955); *Herrscher v. Herrscher*, 41 Cal. 2d 300, 303 (1953)). As such, the Court held, the order "is in legal effect a final judgment from which an appeal lies." *Id.*

Nowhere in *Daar* is there any reference to the concept of "divergence" that petitioner here relies upon so heavily in his Opening Brief. Nonetheless, petitioner argues that although the concept of "divergence" is not explicit in *Daar*, it must be there implicitly, and so the rule of *Daar* should not apply when a single order resolves the class claims and the individual claims together. Opening Br. at 12. But the facts of *Daar* expose this argument as a fallacy. In *Daar*, the Superior Court entered a single order sustaining a demurrer to both the class and individual

claims for lack of subject matter jurisdiction. 67 Cal. 2d at 698 n.1. Because the Superior Court treated the class and individual claims in the same way – sustaining demurrers to both in a single order – *Daar* itself rebuts petitioner's theory that an order sustaining a demurrer to class claims is immediately appealable only if the class and individual claims are treated differently.

The critical point is that, contrary to petitioner's argument, there is nothing in *Daar* that states or suggests that the Court's ruling was based, in whole or in part, on a showing of any "divergence" between the claims of the individual plaintiff and those of the class. Rather, the Court's analysis is based upon the *finality* of the order as to the class. Because the order fully resolved and disposed of the class claims in the action, the Court reasoned, the order was immediately appealable. *Id.* at 699.[3]

In this way, the holding in *Daar* itself fits comfortably within a line of cases applying the final judgment rule in the context of multi-party cases. Long before *Daar*, the courts of this state had recognized that in multi-party cases, "separate judgments are often entered at different times," and thus "there can be a separate, final, and appealable judgment for each" party at different times. 9 Witkin California Procedure § 109 (discussing the "[g]eneral rule" of appealability). As this Court explained nearly a century ago, "to hold the person bound to wait until the final judgment against the other party before taking an appeal from the judgment ... already

[3] That is also the rationale of the Pennsylvania Supreme Court, which has a similar rule and permits immediate appeals from orders dismissing class claims. *See, e.g., Bell v. Beneficial Consumer Discount Co.*, 348 A.2d 734, 736 (Pa. 1975) ("An order dismissing the class aspects of a suit puts the class members out of court, is a final order for those parties and is therefore appealable").

rendered is wholly unreasonable." *Rocca v. Steinmetz*, 189 Cal. 426, 428 (1922).

In short, *Daar* is a specific application of the "final judgment rule" in the context of class actions – and not, as petitioner would have it, an exception to the rule. Under *Daar*, an order sustaining a demurrer to class claims without leave to amend is final as to the class and therefore an appealable order. 67 Cal. 2d at 698-99; *see also* 9 Witkin California Procedure § 112 ("an order, whatever its form, that has the effect of denying certification as a class action disposes of that action and is an appealable final judgment").

B. Nothing in the Forty Years of Case Law Since *Daar* Supports Petitioner's "Divergence" Theory.

Petitioner has not been able to point to a single instance in which a California court – at any level – followed the rule he urges this Court to accept. This Court should not overturn decades of settled law to rescue petitioner's untimely appeal.

1. The Courts Consistently Apply the Class Action One-Final-Judgment Rule.

Four years after *Daar*, in *Vasquez v. Superior Court*, 4 Cal. 3d 800 (1971), this Court made clear that the rule of *Daar* applied only where the Superior Court's order disposed of all of the class claims – that is, there is only one class action final judgment. *Id.* at 806-07 & n.4. Where a trial court order sustained a demurrer to only one of the two class claims in a complaint, the Court held in *Vasquez*, the order was not immediately appealable and was reviewable, if at all, only by a petition for a writ of mandate. *Id.* The difference between *Daar* and *Vasquez* was, as the Court explained, a difference of finality: in *Vasquez* the class continued to litigate

potentially viable claims, whereas in *Daar* the court had sustained a demurrer to all of the class claims without leave to amend. *Id.* at 807 n.4.

This Court's cases after *Vasquez* make clear that the rule of *Daar* – that is, the class action one-final-judgment rule that orders that finally resolve all class claims are immediately appealable – remains good law. For example, this Court has at least twice expressly stated that an order finally disposing of class claims by denying certification to an entire class is an immediately appealable order. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000); *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 470 (1981). In addition, just last year, this Court implicitly reaffirmed the rule of *Daar* by permitting plaintiffs to appeal from an order that decertified an entire class. *In re Tobacco II Cases*, 46 Cal. 4th 298, 306 (2009).

Throughout the past four decades, the Courts of Appeal have also consistently followed the rule of *Daar* – again, focusing on finality, not divergence. As one Court of Appeal stated recently, echoing *Daar*:

> Although an order sustaining a demurrer without leave to amend is not an appealable order, "an order, whatever form it may take, which has the effect of denying certification as a class action, is an appealable order."

Alvarez v. May Dep't Stores, 143 Cal. App. 4th 1223, 1228 n.2, 1231 (2006) (holding that an appeal from an order sustaining a demurrer to all class claims in a complaint was proper) (quoting *Morrissey v. San Francisco*, 75 Cal. App. 3d 903, 907 (1977); *see also, e.g., Alch v. Super. Ct.*, 122 Cal. App. 4th 339, 360-61 (2004) (appeal from order sustaining demurrer to class complaint was proper because "the trial court's order was plainly 'tantamount to a dismissal' of and 'virtually demolished' every class claim that the [plaintiffs] sought to bring"); *Kennedy v. Baxter*

Healthcare Corp., 43 Cal. App. 4th 799, 806-07, 806-09 (1996) (appeal proper from order sustaining demurrers to all of the class claims, and some, but not all, of the individual claims). *Kennedy* is particularly instructive, because there the court held that appellate jurisdiction attached to the order sustaining demurrers to the class complaints without regard to the fact that demurrers to individual claims were also sustained. 43 Cal. App. 4th at 806-807 & n.2.

2. The Courts Consistently Hold Appellants to the Jurisdictional Timeliness Requirements of the Class Action One-Final-Judgment Rule.

The Courts of Appeal have also recognized that because *Daar* sets forth the rule that an order that finally resolves all class claims is immediately appealable, the logical consequence of *Daar* is that an untimely appeal must be dismissed.

The first case to consider the question was *Morrissey v. San Francisco*, 75 Cal. App. 3d 903 (1977). There, a plaintiff, after final judgment, sought to challenge on appeal the trial court's earlier order denying her class certification motion. *Id.* at 906. The Court of Appeal first explained that the class certification denial was immediately appealable because, under *Daar*, "an order, whatever form it may take, which has the legal effect of denying certification as a class action, is an appealable order." *Id.* at 907. The Court of Appeal further recognized that "[t]he law of this state does not allow, on an appeal from a judgment, a review of any decision or order from which an appeal might previously have been taken." *Id.* at 906 (quoting *Woodman v. Ackerman*, 249 Cal. App. 2d 644, 648 (1967)). Given both considerations, the court held that the plaintiff "may not litigate, on her appeal from the judgment of June 8,

1976, the legality of the superior court's order [denying class certification] of July 29, 1975. That order, unappealed, is now final and binding upon plaintiff Morrissey, and upon us." *Id.* at 908.

A similar result was reached in *Guenter v. Lomas & Nettleton Co.*, 140 Cal. App. 3d 460 (1983). In that case, the trial court denied plaintiff's motion for class certification by a minute order in November 1976. *Id.* at 464. Three years later, in June 1979, a "formal order denying class certification" was entered. *Id.* The Court of Appeal held that plaintiff's notice of appeal, filed in October 1979, was untimely. *Id.* at 464-465. As the court explained, plaintiff "had 180 days from the time the minute order was entered in the permanent minutes (November 23, 1976) to file a timely notice of appeal." *Id.* at 465. "Since [plaintiff] did not [timely] appeal from the November 23, 1976 order, that order is now final and binding upon [plaintiff] and upon this court." *Id.*

Likewise, in *Stephen v. Enterprise Rent-A-Car of San Francisco*, 235 Cal. App. 3d 806, 811 (1991), the Court of Appeal stated that "[b]ecause California allows direct appeals of death-knell orders, a plaintiff who fails to appeal from one loses forever the right to attack it. The order becomes final and binding." Like petitioner here, in *Stephen* the plaintiff filed a motion for reconsideration of the trial court's appealable order denying certification. The Court of Appeal held that the date of entry of the order denying class certification, not the date that the reconsideration motion was denied, triggered the right to appeal. Because the plaintiff failed to file a timely appeal from the earlier order, he "forfeited his right to

appeal and with it his right to complain of any conceivable unfairness in the court's handling of the matter." *Id.* at 816.[4]

This case is no different. Here, the Superior Court sustained Bayer's demurrer to all of the class claims on April 27, 2007. AA353-354. Under *Daar* and its progeny, the legal effect of that order was the equivalent of a final judgment as to the class and so was immediately appealable. *Daar*, 67 Cal. 2d at 699. Even though petitioner filed a reconsideration motion, AA356-373, the deadline for him to file a notice of appeal was no later than October 24, 2007 (*i.e.,* at most, 180 days from the entry of the appealable order). Cal. R. Ct. 8.108(e)(3); *see also* Cal. R. Ct. 8.104(a), (f). But petitioner did not file his notice of appeal until December 20, 2007 (AA538-540) – nearly two months after the last possible date. Confronted with these facts, the Court of Appeal properly dismissed petitioner's appeal of the order sustaining the demurrer to the class claims. Op. at 8-9.[5]

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[4] These cases are entirely consistent with, and indeed directly follow from, this Court's decision in *Hollister Convalescent Hospital, Inc. v. Rico*, 15 Cal. 3d 660 (1975), the holding of which was later codified in California Rule of Court 8.104(b). In *Hollister*, this Court held that when a notice of appeal "has not in fact been filed within the relevant jurisdictional period ... the appellate court, absent statutory authorization to extend the jurisdictional period, lacks all power to consider the appeal on its merits and must dismiss, on its own motion if necessary." *Id.* at 674. This is because "the timely filing of an appropriate notice of appeal or its legal equivalent is an absolute prerequisite to the exercise of appellate jurisdiction." *Id.* at 670. The time period may not be extended or shortened "even to relieve against mistake, inadvertence, accident, or misfortune." *Id.* at 666.

[5] *Lavine v. Jessup*, 48 Cal. 2d 611, 615 (1957) is not to the contrary. In that case, the trial court sustained a demurrer without leave to amend and also granted a superfluous motion to dismiss the complaint. This Court held that the order granting the motion to dismiss was equivalent to the order sustaining the demurrer and that neither one was appealable until judgment. Nothing in *Lavine* impacts this case.

3. *Farwell v. Sunset Mesa Property Owners* Does Not Support Petitioner's Proposed Rule.

Against the weight of all this authority, petitioner relies upon stray dicta in one inapposite appellate case – *Farwell v. Sunset Mesa Property Owners Assn., Inc.*, 163 Cal. App. 4th 1545 (2008) – to support his argument that the rule of *Daar* applies only when there is a "divergence" between the interests of the individual plaintiff and the class.

Farwell involved a complaint alleging claims against a defendant class. The trial court sustained the defendants' demurrer *with leave to amend*, "finding that the individual directors of the Association could not serve as representatives." *Id.* at 1547. Plaintiffs appealed, but the Court of Appeal – not surprisingly – held that the order sustaining a demurrer with leave to amend was not appealable. *Id.* at 1551-52. Although plaintiffs in *Farwell* argued that the "death knell" doctrine applied, the court noted that plaintiffs had been given leave to amend and that plaintiffs maintained that they could amend their complaint to allege an ascertainable class. In this posture, the Court of Appeal easily rejected plaintiffs' argument that the "*effect* of [the trial court] order is to terminate the class," describing the argument as being "not sound" either "in the abstract" or under "the particular facts and circumstances of this case." *Id.* at 1551 (emphasis in original). The holding of *Farwell*, thus, has no bearing on this case.

Although the Court of Appeal could have stopped there, the court went on to observe that, in any event, the "death knell doctrine" would not apply because the case involved a defendants' class action. Because the pursuit of a separate action against each individual defendant was merely inconvenient, not inconceivable, there was no danger that "the denial of class action certification is the death knell of the action itself." *Id.* at 1552.

The *Farwell* court described its view of the rationale underlying the rule of *Daar* as follows: "an appeal is allowed because the action has in fact and law come to an end, as far as the members of the alleged class are concerned." *Id.* at 1547. The court drew a parallel between the multi-party one-final-judgment rule and the *Daar* class action one-final-judgment rule, explaining that "the death knell doctrine fits comfortably into the exception to the 'one final judgment' rule that arises when parties have separate and distinct interests; when this is true, there can be a final and appealable judgment for each such party." *Id.* (citing 9 Witkin Cal. Procedure (4th ed. 1997) Appeal, § 69, p. 126).

Petitioner seizes upon these dicta, focusing upon the passage in *Farwell* regarding "separate and distinct interests" to serve as the hook for his theory that only orders that treat the class differently from the named representative are immediately appealable. Opening Br. at 12. Petitioner misreads the dicta he relies on. *Farwell* does not state or even imply that "separate and distinct" treatment is *required* to trigger the rule of *Daar*, which in any event involved an order dismissing both class and individual claims. At most, *Farwell* says that the rule of *Daar* is consistent with the rule in other multi-party appeals, where, under certain circumstances, there may be separate judgments for or against parties with separate and distinct interests.

Petitioner's reliance on *Farwell* thus is entirely misplaced. Indeed, far from supporting his theory, *Farwell* makes clear that class actions should be treated like other multi-party actions, where multiple appeals are contemplated and separate judgments (or appealable orders) may be entered when the claims involving any one party are fully and finally resolved.

C. The Rule Proposed By Petitioner Would Be Unworkable and Illogical

In dealing with a rule of appellate procedure, especially one that establishes the jurisdictional limits of appellate courts, bright line rules are favored. Petitioner's "divergence" theory, however, would inject uncertainty and shades of grey into what should be, and has been since *Daar*, a black-and-white, bright-line rule.

To determine whether an order resolving class claims is appealable under the rule of *Daar*, litigants and judges have needed to consider only one, relatively straightforward question: did the order fully and finally resolve the claims of the class? If so, then the order is appealable. 67 Cal. 2d at 699. Since *Daar*, the courts have had no difficulty answering that question. *See, e.g., Alvarez*, 143 Cal. App. 4th at 1228 n.2, 1231; *Morrissey*, 75 Cal. App. 3d at 907; *Alch*, 122 Cal. App. 4th at 360-61; *Kennedy*, 43 Cal. App. 4th at 806-07, 807-09; *Guenter*, 140 Cal. App. 3d at 465; *Stephen*, 235 Cal. App. 3d at 811, 816.

Under petitioner's proposed new rule, litigants and judges would have to consider a second, much murkier question: is there a sufficient degree of "divergence" between the interests of the named plaintiff and the unnamed class members to allow an appeal? In some cases, of course, the answer to that question may be straightforward, such as when a judge sustains a demurrer to class claims but overrules a demurrer to individual claims. But in many other cases, there may be some "divergence" that is not complete, and petitioner's proposed rule would saddle both litigants and judges with the responsibility to make uncertain determinations regarding what is enough "divergence" for the rule of *Daar* to apply or not apply,

with the very real possibility of losing the opportunity for appellate review if litigants guess wrong.

Petitioner's proposed new rule would give rise to a myriad of other circumstances in which its application under the framework set out in Rules 8.104 and 8.108 would be difficult to assess. For example:

1. Would an order sustaining a demurrer to the class claims without leave to amend be appealable if the trial court also sustained the demurrer to the named plaintiff's individual claims but granted the plaintiff leave to amend as to his individual claims only? Is there enough "divergence" in that circumstance? Would the appealability of the order as to the class turn on whether the plaintiff chose to amend his individual claims – or whether the amendment was successful? Would it matter if the trial court expressed great skepticism about the ability of the individual plaintiff to cure the pleading defect but gave the plaintiff an opportunity to do so out of an abundance of caution?

2. Would an order sustaining a demurrer to the class claims without leave to amend be appealable if the trial court took under submission the demurrer to the named plaintiff's individual claims and did not issue a ruling for 60 days? Is there enough "divergence" in that circumstance? What if the trial court issued an order overruling the demurrer to the individual claims 61 days later? Would the ability of the plaintiff to appeal on behalf of the class be lost forever? Alternatively, if an appeal were filed and the trial court sustained the demurrer to the individual claims 61 days later, would appellate jurisdiction be lost?

3. Would an order sustaining a demurrer to the class claims without leave to amend be appealable if the trial court also sustained the demurrer to the individual claims – but the named plaintiff subsequently

filed a motion for reconsideration as to the individual claims only? Is there enough "divergence" in that circumstance? If not, what would happen if the trial court, more than 60 days later, granted the reconsideration motion? Would the ability of the plaintiff to appeal on behalf of the class be lost forever? Alternatively, if an appeal were filed and the trial court, more than 60 days later, denied the reconsideration motion, would appellate jurisdiction be lost?

These, and many other, difficult questions would be the inevitable by-product of the new "divergence" rule that petitioner proposes. It would replace the bright-line rule of *Daar* with an amorphous test that would introduce unnecessary uncertainty into the question of appellate jurisdiction in class action litigation that would vex litigants and courts for years to come.

In its decision, the Court of Appeal correctly recognized that adopting petitioner's rule would create numerous ambiguities and introduce uncertainty into the jurisdictional time periods for appeal. Op. at 9 ("We are reluctant to carve out exceptions to the rule and thus introduce an element of uncertainty into what has otherwise been an established rule"). Petitioner pays little heed to the Court of Appeal's warning and fails to address the ambiguities that would be created by departing from the "bright line" rule of *Daar*.

II. THE PARADE OF HORRIBLES OFFERED BY PETITIONER IS ILLUSORY.

Petitioner asserts that the application of the *Daar* rule when both class claims and individual claims are dismissed in the same order is "pernicious" and would result in "deleterious consequences." Opening Br. at 17-18. Petitioner cites four such "consequences": (1) duplicative and

unnecessary appeals; (2) preclusion of trial court jurisdiction over prejudgment motion practice; (3) improper burden on representative and class litigation; and (4) subversion of legislative and judicial intent. Opening Br. at 18-24 (citing *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725, 741 n.9 (1994)). None of petitioner's concerns has merit. Indeed, they apply equally when class claims are dismissed in a separate order from individual claims – the specific application of the *Daar* rule that petitioner does not challenge.

Duplicative and unnecessary appeals. Petitioner first asserts that the class action one-final-judgment rule would result in "multiple, duplicative appeals" because class and individual claims may be appealed separately. Opening Br. at 18. In essence, petitioner complains that when a demurrer is sustained as to both individual and class claims in the same order, a plaintiff may file two notices of appeal because the time to appeal may run from two different dates.

It is hard to understand the "pernicious" nature of such a result. In the situation where class and individual claims are dismissed on the same day, and the judgment is entered soon after, there will be a substantial overlap of time during which a notice of appeal can be filed that would be timely as to both sets of claims. This would result in single, not multiple, notice of appeal. Nothing in the rules or statutes suggests that a plaintiff should wait until the last day of each period to file a notice of appeal – and a prudent appellant would not. *See Hollister Convalescent Hosp., Inc. v. Rico*, 15 Cal. 3d 660, 676 n.1 (1975) (Tobriner, J., dissenting) ("One wonders why appellants' counsel delayed until what he thought was [the last day] before filing the notice of appeal; presumably careful counsel do not walk so near the edge of the cliff").

But even if a party files multiple notices of appeal, there is a well-established procedural framework for consolidating appeals. *See, e.g.*, *Alch*, 122 Cal. App. 4th at 359 (consolidating appeals with writs); *see also, e.g.*, Cal. R. Ct. 8.147 (governing the "[r]ecord in multiple or later appeals in the same case"). And even if petitioner were to notice a protective appeal that turns out to be premature, the Rules of Court also provide for appellate jurisdiction. *See, e.g.*, Cal. R. Ct. 8.104(e); *see also, e.g.*, *Hollister Convalescent Hosp.*, 15 Cal. 3d at 669 (describing the "general and well-established rule that a notice of appeal which specifies a nonappealable order but is timely with respect to an existing appealable order or judgment will be construed to apply to the latter judgment or order").

It is only in the situation where the class and individual claims are dismissed on dates separated by a significant period of time – the situation that petitioner agrees is proper under *Daar* – that multiple appeals are most likely to ensue. But petitioner does not object to that.

Preclusion of trial court jurisdiction over prejudgment motion practice. Petitioner next asserts that the class action one-final-judgment rule somehow prevents a trial court from considering a motion for reconsideration. Petitioner ignores, however, that the procedural rules of the California courts apply the same way under both petitioner's and the established views of the *Daar* rule, and do not have the effect that he claims.

The Rules of Court establish the time to file a notice of appeal when a timely motion for reconsideration is pending, *see* Cal. Code Civ. P. § 1008; Cal. R. Ct. 8.108(e) (extending time to appeal where motion for reconsideration pending, to up to 180 days after entry of the order for which

reconsideration is sought), as well as when other prejudgment motions (such as motions for new trial, to vacate judgment, or for judgment notwithstanding the verdict) are pending. *See* Cal. R. Ct. 8.108(a)-(c).[6] Nothing about the class action one-final-judgment rule changes the application of these Rules of Court, or the fact that the trial court retains jurisdiction to adjudicate the individual claims, and thus petitioner's assertion that the established *Daar* rule would preclude the trial court from reconsidering its earlier rulings, or somehow creates uncertainty or delay, is without merit.

It is true that the Rules of Court do not protect a plaintiff who fails to file a protective notice of appeal by the jurisdictional date when his motion for reconsideration is still pending, let alone one who simply misses the deadline altogether. *Hollister Convalescent Hosp.*, 15 Cal. 3d at 667, 670 ("we have steadfastly adhered to the fundamental precept that the timing filing of an appropriate notice of appeal or its legal equivalent is an absolute prerequisite to the exercise of appellate jurisdiction") (on motion for new trial); *Annette F. v. Sharon S.*, 130 Cal. App. 4th 1448, 1454-8 (2005) (on motion for reconsideration); *Laraway v. Pasadena Unified School Dist.*, 98 Cal. App. 4th 579, 583 (2002) (on failure to file timely a notice of appeal). But the potential appellant's responsibility to file a protective notice of appeal to preserve appellate review does not depend

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[6] This case illustrates that point. Petitioner filed a motion for reconsideration of the order dismissing his class claims, thereby extending the time he had to file a notice of appeal as to that order to, at most, 180 days after entry of that order (although an earlier date may have applied). *See* Cal. R. Ct. 108(e). Petitioner's motion was denied a full month before the maximum 180-day period elapsed, yet he did not file a timely notice of appeal.

upon whether the appealable order is accompanied by other, nonappealable orders.

Improper burden placed on representative and class litigation. Petitioner next claims that the class action one-final-judgment rule unfairly burdens class litigation by requiring that an appeal be taken from the appealable order dismissing the class claims. Petitioner finds that burden in the chance that the plaintiff may file more than one notice of appeal, and that the plaintiff is required to seek review of an appealable order within the time permitted by the Rules of Court, or lose the opportunity for appellate review. But again, petitioner does not explain how that burden is different under his conception of the *Daar* rule than when class and individual claims are dismissed at the same time, or why a bright-line rule places a heavier burden on class litigation than his far more subjective proposal.

Petitioner also claims that this burden exists "in no other setting" and that "grant of an identical [sic] demurrer in a non-class action case would not [have the same result]." Opening Br. at 22. Yet that is exactly what happens in multi-party cases. This Court has held that an appeal as to one party is proper in a multi-party action where "a judgment is entered which leaves no issue to be determined as to [the] party," even if other parties' claims survive, because "it better serves the interests of justice to afford prompt appellate review to a party whose rights or liabilities have been definitively adjudicated than to require him to await the final outcome of trial proceedings which are of no further concern to him." *Justus v. Atchison*, 19 Cal. 3d 564, 568 (1977), *disapproved of on other grounds in Ochoa v. Superior Court*, 39 Cal. 3d 159, 171 (1985).

This multi-party one-final-judgment rule has been consistently applied in California,[7] and it also places the "burden" on parties as to whom all claims have been adjudicated to seek timely review of those claims or forever lose the opportunity. The class action one-final-judgment rule is no different; it treats the class representative and the potential class(es), for finality purposes, as if they are separate "parties" in a multi-party case. Thus, rather than "burdening" class action litigation by "prevent[ing] ... appellate review," Opening Br. at 22, the class action one-final-judgment rule does exactly what petitioner claims he wants: it provides "effective appellate review of dismissal of class claims." *Id.* That petitioner failed timely to seek that review does not change the burden or the effectiveness of the rule.

Subversion of legislative and judicial intent. Petitioner's last objection is that the consistent application of the class action one-final-

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[7] *See, e.g., Connolly v. County of Orange*, 1 Cal. 4th 1105, 1112 (1992) (appellate jurisdiction was proper where "the two judgments that were rendered disposed of all of the issues between the parties") (citing *Justus*, 19 Cal. 3d at 568); *Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 436-37 (2003) (despite "all claims [not] hav[ing] been finally adjudicated as to all parties," the judgment was appealable because it was "final at least with respect to plaintiff's claims against [two] defendants"); *Oakland Raiders v. National Football League*, 93 Cal. App. 4th 572, 577-78 (2001) (same); *Panico v. Truck Ins. Exchange*, 90 Cal. App. 4th 1294, 1300-01 (2001) (the combined notice of appeal was timely as to the corporation's claims, but untimely as to the individual shareholders' claims because there was a separate, earlier dismissal and judgment that "disposed of all causes of action in which the [individual shareholders] were plaintiffs"); *Black v. Department of Mental Health*, 83 Cal. App. 4th 739, 744 n.3 (2000) (appeal was proper where the trial court sustained one defendant's demurrer without leave to amend and sustained the other defendant's demurrer with leave to amend); *Millsap v. Federal Express Corp.*, 227 Cal. App. 3d 425, 429-30 (1991) (failure to appeal from order or judgment in favor of one defendant rendered appeal untimely when notice of appeal was filed after subsequent judgment in favor of a second defendant).

judgment rule is contrary to precedent as well as to legislative and judicial intent. He asserts that legislative intent is "subverted" whenever an appellant is permitted to take an appeal from anything other than a final judgment, unless the Legislature has permitted it by statute. Opening Br. at 24.

Petitioner is wrong for several reasons. First, he can only reconcile his position with the holding of *Daar* by misstating its holding and that of *Vasquez*. In doing so, petitioner ignores more than forty years of precedent. *See supra* section I.C. Second, the Legislature has had more than forty years since *Daar* to express any different "intent" by codifying the rule proposed by petitioner, and it has not done so. Moreover, a well-established procedural framework has developed, through the California Rules of Court, to support the class action one-final-judgment rule. *See* Cal. R. Ct. 8.104. Thus, the forty years of consistent judicial application of the class action one-final-judgment rule, and the development of procedural rules to support it, demonstrate that the *Daar* rule as applied to petitioner embodies, not subverts, legislative and judicial intent.[8]

CONCLUSION

The rule of *Daar* has served the legal community well for more than four decades and should not be abandoned in favor of the amorphous

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[8] At the end of his brief, petitioner also argues that the unpublished Court of Appeal ruling would have a wide-ranging effect on a broad range of civil actions that are not class actions. Opening Br. at 25-27. But the rule of *Daar* was developed for class action litigation, and the application of the rule is appropriately limited to that context. The appealability of orders in other actions seeking interlocutory relief is covered adequately in existing statutes and rules, including Code of Civil Procedure section 904.1(a).

"divergence" test proposed by petitioner. For the foregoing reasons, the Court should affirm the Court of Appeal's decision.

Dated: June 18, 2010

Respectfully submitted,

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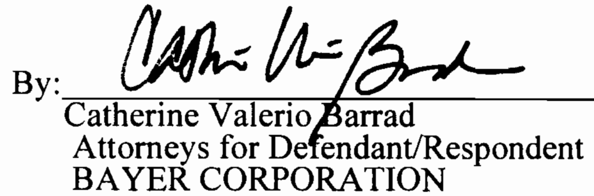
By: 

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.520(c)(1))

The text of this brief consists of 10,128 words as counted by the Microsoft Word 2007 word-processing program used to generate this brief.

Dated: June 18, 2010

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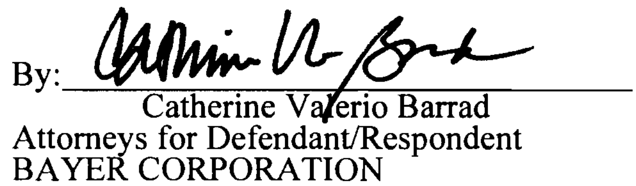
By: 
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STATE OF CALIFORNIA)) SS COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is SIDLEY AUSTIN LLP, 555 West Fifth Street, Suite 4000, Los Angeles, California 90013-1010.

On **June 18, 2010**, I served the foregoing document described as **Respondent's Brief on the Merits** on all interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

I served the foregoing document by U.S. Mail, as follows: I placed true copies of the document in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at SIDLEY AUSTIN LLP, Los Angeles, California. I am readily familiar with SIDLEY AUSTIN LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

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

Executed on **June 18, 2010**, at Los Angeles, California.

Annette Vanderby

In re Coordinated Proceeding Special Title (Rule 3.550(b))
In re Baycol Cases I and II
Shaw vs. Bayer Corporation
Appeal No. S178320

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