S226652

IN THE
SUPREME COURT OF
THE STATE OF CALIFORNIA

DISPUTESUITE.COM, LLC
Plaintiff & Respondent,

vs.

SCOREINC.COM, et al.
Defendants & Appellants.

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION TWO, NO. B248694
ON APPEAL FROM ORDER OF LOS ANGELES SUPERIOR COURT
CASE NO. BC489083
HONORABLE JAMES C. CHALFANT, TRIAL JUDGE

REPLY BRIEF ON THE MERITS

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INTRODUCTION

DisputeSuite's brief employs a novel approach to the application of *stare decisis* principles. DisputeSuite apparently believes in a convoluted form of cross-jurisdictional *stare decisis* whereby unpublished federal district court decisions guide this Court's interpretation and formulation of California law. In addition to its reverse-*Erie* approach to the determination of state law, DisputeSuite also asks this Court to accept the Court of Appeal decisions adopting its view, without acknowledging the flaws associated with those decisions. Unlike DisputeSuite's novel approach to such vertical *stare decisis* decision-making, this Court's role at the apex of the California judicial system requires this Court to decide which of the competing lines of authority is correct.

Given DisputeSuite's inability to articulate any cogent grounds for adopting its view, this Court should hold that contractual fee recovery does not require a full and final adjudication of the substantive merits of a lawsuit. Any other holding would necessarily defeat the reciprocity principles governing contractual fee shifting. It would also engender significant confusion in the absence of a bright line rule allowing fee recovery – regardless of the labels attached to each form of dismissal.

Applying these principles here, the trial court's decision should be reversed. Because Score forced DisputeSuite to "go away with its tail between its legs" (*Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, 1456), Score is the "'successful party' by any conventional understanding of that term." (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 572.)

LEGAL DISCUSSION

I. This Appeal Is Governed by De Novo Standard of Review.

DisputeSuite claims that the abuse of discretion governs this appeal. (ABOM 6-7.) This argument is procedurally barred.

Although DisputeSuite sought to impose this standard of review in the Court of Appeal (RB 5-6), the Court of Appeal rejected DisputeSuite's request to alter the appropriate standard of review. Instead, the Court of Appeal applied de novo review in this case. (Typed opn. 5, fn. 1.) DisputeSuite did not bother to challenge the application of this standard in its answer to the petition for review, thus precluding its argument that the abuse of discretion standard governs this case. (See Cal. Rules of Court, rule 8.500(a)(2) ["In the answer, the party may ask the court to address additional issues if it grants review"]; rule 8.516(b)(1) ["The Supreme Court may decide any issues that are raised or fairly included in the petition or answer" unless the Court orders otherwise].)

In any event, DisputeSuite's argument is flawed. Given that the relevant facts are undisputed, "the determination of whether the criteria for an award of attorney fees and costs in this context have been satisfied amounts to statutory construction and a question of law." (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213 [internal citation omitted; addressing fee recovery under the private attorney general doctrine].)

Therefore, DisputeSuite's attempt to impose an artificially higher standard of review is futile.

II. Litigants Are Not Required to Obtain Full Adjudication of the Merits of the Lawsuit In Order To Seek Contractual Fee Recovery.

A. This Court's prior decisions interpreting Civil Code section 1717 support Score's view, not DisputeSuite's view.

DisputeSuite's first substantive argument is based on its quote of a single phrase from this Court's decision in *Hsu v. Abbara* (1995) 9 Cal.4th 863. (ABOM 8.) In that case, this Court stated that "[t]he prevailing party determination is to be made only upon *final resolution* of the contract claims and only by 'a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions.'" (*Hsu,* at p. 876 [internal citation omitted; emphasis added].) DisputeSuite interprets this phrase to bar fee recovery here because DisputeSuite filed another lawsuit against Score in Florida after the trial court dismissed this California lawsuit.

Hsu, however, did not define what constitutes a "final resolution" because, as DisputeSuite acknowledges in its brief, the litigation had completely ended in that case. (ABOM 8.) Cases must be construed based on the facts presented. Because "language contained in a judicial opinion is to be understood in the light of the facts and issue then before the court" (*Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 797), DisputeSuite's argument is invalid. (See *People v. Johnson* (2012) 53 Cal.4th 519, 528 [cases are not authority for propositions not considered].)

Furthermore, this Court did not "use the term 'merits'" in the phrase invoked by DisputeSuite. (*Profit Concepts Management, Inc. v. Griffith* (2008) 162 Cal.App.4th 950, 956 [rejecting the identical interpretation of

Hsu being advanced by DisputeSuite].) In addition, while DisputeSuite has put all of its eggs in this basket – by plucking only one phrase from the entire *Hsu* opinion – DisputeSuite conveniently disregards the remaining part of *Hsu*'s analysis. Reinforcing Score's view, this Court reviewed the legislative amendments to section 1717 in that case and highlighted the fact that "the Legislature deleted the definition of 'prevailing party' as 'the party in whose favor final judgment is rendered.'" (*Hsu,* at p. 873.) Given that the purpose of this amendment was "to abrogate the holding ... that a defendant could not recover attorney fees under section 1717 if the action was dismissed for failure to prosecute" (*ibid.*), adopting DisputeSuite's view would turn the clock back to the pre-1981 era, when this amendment went into effect.

Apparently realizing this flaw in its argument, DisputeSuite contends that it is not "arguing that a final *judgment* is a predicate to a prevailing party determination. But *Hsu* is clear: the prevailing party determination is to be made only upon *final resolution* of the contract claims." (ABOM 15.) This point, however, just begs the question: whether the final resolution of this lawsuit in California triggers fee shifting, as opposed to a final resolution of the entire dispute in both California and Florida. In sum, DisputeSuite's attempt to invoke one single, ambiguous phrase from the entire *Hsu* opinion, by disregarding the rest of that opinion, is flawed.

Moreover, this Court has rejected DisputeSuite's narrow view in defining prevailing parties under section 1717 and other statutes, whether the defendant or the plaintiff is the one seeking fees:

> In *Santisas v. Goodin* (1998) 17 Cal.4th 599 [71 Cal. Rptr. 2d 830, 951 P.2d 399], we held that although a defendant who has received the benefit of a voluntary dismissal of an action against it is not necessarily a prevailing party, it may be under some circumstances. In discussing the meaning of the term "prevailing party" when it is undefined by contract, we stated

> that "a court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, *or otherwise*."

(*Graham, supra,* 34 Cal.4th at pp. 571-572 [internal citation omitted; italics modified].)

Adopting DisputeSuite's view is the antithesis of this pragmatic approach to defining prevailing parties for contractual fee recovery. "If, as is clearly the case, a defendant can be a prevailing or successful party after a plaintiff has voluntarily dismissed the case against it, it is difficult to fathom why a [defendant] cannot be considered a prevailing or successful party when it achieves its litigation objectives" by obtaining an *in*voluntary dismissal. (*Id.* at p. 572 [applying this reasoning to private attorney general fees and deeming plaintiff as the prevailing party when plaintiff "achieves its litigation objectives by means of defendant's 'voluntary' change in conduct in response to the litigation"; brackets added].)

Rejecting a similar argument in evaluating post-settlement cost-shifting, this Court recently held that "[a] determination of whether a complaint was truly meritorious 'would require the court to try the entire case.' We need not place this burden on courts." (*DeSaulles v. Community Hospital of the Monterey Peninsula* (Mar. 10, 2016, S219236) __ Cal.4th__ 2016 Cal. Lexis 1281 at *30 (maj. opn.); internal citation omitted.) The same rationale applies with even greater force to the recovery of attorneys' fees where the amounts at issue are much higher than costs, thus resulting in significant satellite litigation over fee-shifting under DisputeSuite's view.

To summarize, the post-*Hsu* decisions by this Court have repeatedly rejected the mechanical approach advanced by DisputeSuite. There is no reason to adopt a contrary approach for contractual fee-shifting now.

B. Having been rejected by other courts, DisputeSuite's view also defeats the statutory policies behind contractual fee shifting.

The parties dispute whether Score's victory was merely procedural. DisputeSuite, however, fails to refute the fact that Score persuaded the trial court to enforce an express term of the parties' contract and, thereby, won on the merits.

Instead, DisputeSuite insists that, absent an adjudication of the merits of the claims *beyond* the forum selection clause, a party prevailing on a so-called procedural victory cannot recover fees. "But full adjudication on the merits is not necessary to achieving prevailing party status for purposes of a fee award." (*State of California ex rel. Standard Elevator Co., Inc. v. West Bay Builders, Inc.* (2011) 197 Cal.App.4th 963, 980 [rejecting the argument that dismissal based on lack of subject matter jurisdiction bars fee shifting under False Claims Act].) Moreover, given that an "action which is ultimately dismissed by the plaintiff, with or without prejudice, is nevertheless a burden on the target of the litigation and the judicial system" (*Tokerud v. Capitol Bank Sacramento* (1995) 38 Cal.App.4th 775, 779), the same is certainly true in cases of *involuntary* dismissal. DisputeSuite's view is flawed for these additional reasons.

DisputeSuite's view is also utterly inexplicable as a matter of statutory policy. The legislature enacted reciprocal fee shifting to prevent wealthy litigants from causing unjustified costs and disruption to those with limited means by filing unfounded or unsuccessful claims. Awarding attorneys' fees to the prevailing defendant based upon the plaintiff's failure to satisfy a fundamental requirement (proper venue or compliance with a negotiated forum-selection clause) is essential to enforcing the public policy behind section 1717.

This case presents a flagrant violation of those statutory protections. Despite its own assertion that each party is a non-California resident (1 AA 79), DisputeSuite decided to file its lawsuit here by simply making a general allegation that each defendant does business here. (2 AA 521, ¶13 [Carmona's declaration as to non-resident status]; 2 AA 520:20 [same for Pate].) The lawsuit, however, was dead on arrival because "California has no interest in adjudicating the ... claims of nonresidents under sister state laws against non-California defendants. Under these circumstances, even if general jurisdiction be assumed, it would be an abuse of discretion for a trial court to do anything other than dismiss the actions." (*Baltimore Football Club, Inc. v. Superior Court* (1985) 171 Cal.App.3d 352, 364-365.) This inevitable outcome supports the trial court's view that the lawsuit was frivolous (RT E-1212:22-1213-8), particularly given that the trial court invoked *Baltimore Football* in granting Score's motion. (5 AA 1244, last paragraph; 5 AA 1201:26-27.) [1]

Contrary to DisputeSuite's view, what matters for fee purposes is the ultimate result of the litigation, not whether the dismissal of the lawsuit satisfied some arbitrary or amorphous requirement of being "on the merits." Asking whether a judgment is "on the merits" in some abstract sense risks confusion. For example, even a dismissal without prejudice is hardly a toothless sanction; being forced to start the litigation over imposes significant burdens on the plaintiff, and in some cases the obstacles to initiating a new suit may practically eliminate the possibility of re-filing. DisputeSuite's theory, however, would force trial courts to resort to a

[1] While noting that dismissal is appropriate here, the trial court initially stayed the case pending the filing of the lawsuit in Florida in order to maintain the status quo based on the preliminary injunction that had been issued. (5 AA 1244.) The court officially dismissed the case subsequently, at which point the preliminary injunction was vacated. (5 AA 1280 [order dated January 3, 2013 and confirming dismissal as of two weeks earlier].)

crystal ball in a speculative attempt to quantify the possibility of re-filing in each case. While DisputeSuite re-filed its dismissed action in Florida, the adoption of its view would have additional, negative consequences in other cases where re-filing may be impractical.

Finally, because the purpose of section 1717 is to allow reciprocity and to help socio-economically challenged parties from obtaining access to legal representation—rather than to punish the losing party—a resolution of the ultimate merits of the claim is not necessary to accomplish those goals.

III. Alternatively, Assuming That the Party Seeking Fees Is Required to Obtain An Adjudication of the Merits of the Lawsuit, Fee Shifting Is Still Required Here.

To the extent that a merits determination is somehow required, there is good reason to treat the plaintiff's litigation conduct – at least where it is sufficiently serious to require dismissal of the lawsuit – as a failure to satisfy a precondition for initiating and maintaining the lawsuit, given that the plaintiff must file the action in the proper venue.

This case illustrates this point. The trial court found the filing of this lawsuit to be frivolous. (RT E-1212:22-1213-8.) While the trial court refused to award attorneys' fees despite its view as to the frivolity of the lawsuit, DisputeSuite seeks to minimize its misconduct by suggesting that there was never a determination on the merits in this case. Of course, that is not accurate, since the judgment was not premised upon a procedural rule but on an express term of the contract at issue. But even assuming that there is such a requirement, and even assuming that it could be said that this case was dismissed on purely procedural grounds, "proof that a plaintiff's case is frivolous, unreasonable, or groundless is not possible without a judicial determination of the plaintiff's case on the merits." (*Marquart v. Lodge 837, Int'l Ass'n of Machinists & Aerospace Workers* (8th Cir. 1994) 26

F.3d 842, 852 [discussing conflicting cases regarding when this determination can be made and requiring a summary judgment motion to be filed].)

However, unlike the statutes authorizing fee shifting for frivolous conduct which impose a high threshold (as in *Marquart*), section 1717 imposes a much lower standard: one of strict liability. "'I thought it was legal' is no defense" to contractual liability—whether for attorneys' fees or otherwise. (*Commit USA, LLC v. Cisco Systems, Inc.* (2015) 135 S.Ct. 1920, 1930.) Therefore, DisputeSuite's suggestion that fee recovery should be limited to the frivolity standard – a much higher standard – should be rejected. (ABOM 20.)

Seeking to sanitize its improper filing of this lawsuit, DisputeSuite counters that a pre-dismissal, injunctive order issued in this case maintaining the status quo "pending trial" somehow shows that this lawsuit had merit. (ABOM 19; 3 AA 595:11.) However, the trial court's determination, "when asked to issue a preliminary injunction" is "not a final decision on the merits but a determination at a minimum that the questions of law or fact are grave and difficult." (*Graham, supra,* 34 Cal.4th at pp. 575-576 [internal quotation marks and citations omitted].) Therefore, assuming that a merits determination is required for contractual fee shifting, the issuance of the preliminary injunction does not bar Score's fee recovery.[2]

There is another major flaw in DisputeSuite's position. While plaintiffs and defendants are bound by the same definition of "prevailing

[2] Furthermore, DisputeSuite's view that a merits determination is required necessarily defeats its self-serving claim that it qualifies as the prevailing party for obtaining a preliminary injunction, one that merely maintained the status quo. (ABOM 19.) In any event, DisputeSuite's failure to file a fee motion in the trial court precludes this claim here.

party," this does not mean they must achieve prevailing-party status in the exact same way. Contrary to DisputeSuite's arguably egalitarian approach in defining litigation success, plaintiffs and defendants have totally different goals. Plaintiffs seek to win relief through their suit. Plaintiffs usually prevail by a judgment on the merits or a court-ordered consent decree. By contrast, defendants seek to avoid an adverse decision and end the litigation, whether procedurally, substantively or both. (See *R.T. Nielson Co. v. Cook* (Utah 2002) 40 P.3d 1119, 1126 ["if defendant successfully defends and avoids adverse judgment, defendant has prevailed"].) This is true, even if a so-called procedural motion yields dismissal. "The 'merits' of a claim are disposed of when it is refused enforcement." (*Angel v. Bullington* (1947) 330 U.S. 183, 190.) As a defendant, Score's dismissal was a decision on the merits, particularly given that the court enforced the key contractual clause at issue; i.e., the forum selection clause.

The procedural label invoked by DisputeSuite is inaccurate and irrelevant. In the context of a prevailing defendant, it matters not whether judgment is entered because a plaintiff falls short on an element of its substantive claim, lacks standing or capacity to sue, fails to satisfy a statute of limitations, disregards statutory pre-suit requirements, or violates some other required provision. In each of these scenarios, the defendant is the party in whose favor a judgment is rendered because the case has ended in defendant's favor. In sum, it is the fact of judgment—that a party won—that matters, not the basis on which judgment was entered.

Because DisputeSuite's view fails to take these discrepancies into account, its position is flawed.

IV. The Policy and Statutory Arguments Raised by DisputeSuite Are Flawed.

A. DisputeSuite's view proliferates needless litigation.

DisputeSuite claims that unless the parties have engaged in extensive litigation – by obtaining a full and final adjudication of all claims raised in each forum – there should be no fee recovery. This view entails negative practical repercussions.

"All too often attorney fees become the tail that wags the dog in litigation." (*Deane Gardenhome Assn.* v. Dentkas (1993) 13 Cal.App.4th 1394, 1399.) DisputeSuite's position would inevitably exacerbate this problem.

Adoption of DisputeSuite's view would also ratify a "sue first, ask questions later" litigation strategy on the part of the plaintiff. DisputeSuite's sue-first strategy often comes with a further price tag for non-impecunious defendants who decide to defend themselves in court: months, if not years, of litigation over fruitless last-ditch efforts by the plaintiff to forestall defeat. Alternatively, in the case of defendants with modest means (e.g., consumers sued by collection agencies), plaintiffs would be encouraged to file in the wrong venue by gambling on the possibility that defendants would not waste their limited resources on fighting such a non-jurisdictional defect; i.e., improper venue.

DisputeSuite's proposed solution – to have such a consumer find a contingency lawyer to file a brand new lawsuit under the Fair Debt Collection Practices Act ("FDCPA") – merely perpetuates the litigation, wasting limited judicial resources. (ABOM 21.) Moreover, insofar as the gravamen of such actions typically alleges that the defendant's prior litigation activity was tortious, such actions frequently are vulnerable to

anti-SLAPP motions. (See Code Civ. Proc., § 425.16, subds. (e)(1) and (e)(2) [describing activities protected by the anti-SLAPP statute].) Exposure to mandatory anti-SLAPP fees in response to the FDCPA lawsuit against the debt collector could cause the consumer to be burned twice by the legal system: first, by incurring his or her own fees in the underlying case filed in the wrong venue, and then by potentially paying his or her opponent's fees as a result of anti-SLAPP fee-shifting in the subsequent case.

Likewise, a subsequent abuse of process or malicious prosecution lawsuit for filing the contract action in the wrong forum is no remedy due to the anti-SLAPP fee exposure, setting aside the differences between these forms of fee recovery. (Cf. *West Bay Builders, supra,* 197 Cal.App.4th at p. 981 [noting that one may succeed in recovery of statutory fees without being able to recover fees under a malicious prosecution theory].) To summarize, the risks associated with deterring consumers from vindicating their rights – as discussed by DisputeSuite (ABOM 23) – are much worse under DisputeSuite's heads-I-win, tails-you-lose approach to fee recovery.

B. DisputeSuite's technical, statutory arguments are flawed.

Continuing with its relentless efforts to avoid fee liability, DisputeSuite argues that "under Civil Code section 1717 there can only be one prevailing party on a given contract in a given lawsuit." (ABOM 11 [quoting *Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515, 543].) Because DisputeSuite filed two separate lawsuits in two jurisdictions, roughly two thousand miles apart, this is a moot point here. In any event, DisputeSuite's attempt to apply this general principle as an absolute ban is flawed. For example, an installment contract may yield multiple lawsuits, arising out of different breaches over different periods of

time between the same parties. The plaintiff in the first lawsuit may prevail on one ground but, in the next lawsuit over that "given contract," the defendant may prevail based on a different ground. Under DisputeSuite's absolutist view, the defendant in the second lawsuit would be barred from fee recovery, even if the second lawsuit was defeated on the merits.

Quoting the Court of Appeal's decision in this case, DisputeSuite also argues that "there can only be one prevailing party on a contract"; otherwise, "a party could be considered a prevailing party by succeeding on one contract issue or claim while later losing on others. Surely, the Legislature did not intend this result." (ABOM 17.) This argument has been rejected in other contexts. "[P]artial success goes to amount, not entitlement." (1 Pearl, Cal. Attorney Fee Awards (3rd ed. 2010) § 3.13, p. 3-16 [collecting cases].) Because a party's "partial success is a factor considered in determining the *amount* of any fee award" (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 393 [emphasis added]), DisputeSuite's view should be similarly rejected here.

C. The remaining arguments raised by DisputeSuite provide no basis to preclude fee recovery.

Reiterating the Court of Appeal's decision in this case, DisputeSuite also argues that Score's approach to fee recovery "sets the stage for 'piecemeal attorney fee awards for each resolution of a contract clause.'" (ABOM 10.) This scenario, however, would be the exception, not the norm. Even if this were to occur in every single lawsuit (which is highly unlikely), there is certainly no statutory ban under section 1717 against the filing of multiple fee motions, particularly by the same party. In fact, courts in other statutory fee-shifting cases have had no problems entertaining or issuing "piecemeal attorney fee awards." (See, e.g., *Sundance v. Municipal Court*

(1987) 192 Cal.App.3d 268, 271 [rejecting the argument that fee award is "premature" where court's decision "contemplates the possibility of further litigation" and holding that if "there is any further litigation in which the plaintiffs secure additional relief, a second application for attorneys' fees can be considered" under the private attorney general doctrine]; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 1002 ["there is no rule prohibiting a party from bringing a second motion to recover attorney fees incurred since an initial motion was filed"].)

Moreover, when both sides file fee motions, "the party prevailing on the contract shall be the party who recovered a *greater* relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civil Code, § 1717, subd. (b)(1).)

Likewise, attaching the "premature" label does not justify the adoption of DisputeSuite's view. (See *Kroff v. Larson* (1985) 167 Cal.App.3d 857, 861-862 [clients were entitled to recover contractual fees on appeal against their former attorney that had filed a "premature" lawsuit to obtain costs advanced in a contingency case where the merits of the underlying case had not been adjudicated and no settlement had been reached, a pre-condition for the attorney's recoupment of costs].)

Without citing any statistics or other empirical data whatsoever, DisputeSuite also speculates that "the majority of litigation in this state proceeds pursuant to the American Rule" and that "contract litigation itself is but one subset of civil litigation." (ABOM 2.) "Although broad categories of cases, such as routine personal injury actions, still do not involve fee-shifting, most litigation involving important statutory rights does the raise the possibility that fees may be shifted from the losing to the prevailing party." (Pearl, *supra,* § 1.3, p. 1-3.)

Finally, having failed to address, let alone challenge, our first proposed test for fee-shifting (based on the appealability status of the underlying ruling terminating the case), DisputeSuite comes up with its own proposed test. Under its view, as we understand it, there should be a so-called rebuttable presumption that an involuntary dismissal without prejudice triggers fee shifting – "but this presumption can be overcome by demonstrating the continuation of the litigation of the plaintiff's contract in another forum." (ABOM 25.) How convenient! In other words, DisputeSuite is asking this Court to engage in judicial legislation, under the guise of interpreting section 1717, by carving out a special rule that applies only to cases like this one just so that DisputeSuite can escape a contractual fee award here.

To summarize, the arguments raised by DisputeSuite provide no excuse to avoid liability for initiating and maintaining a lawsuit that was involuntarily dismissed by the court on the grounds of a binding contractual forum-selection clause.

CONCLUSION

The court should reject the narrow, mechanical and formulaic interpretation of the contractual fee-shifting statute because DisputeSuite's view defies the reality of who actually prevailed in this lawsuit. Moreover, plaintiffs who know their legal disputes do not belong in any California courtroom should be dissuaded from congesting courthouses in the Golden State with civil cases that must be adjudicated in other states – especially when the capacity to adjudicate the disputes that belong here has been so diminished in recent years. Reversing the decisions of the lower courts in this case will reconcile and advance the aims of section 1717, promote vital public policies in California, and simultaneously discourage meritless litigation here.

Respectfully submitted,

Dated: March 23, 2016

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Dated: March 23, 2016

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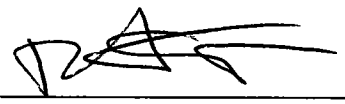
By 
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen. I am not a party to this action; my business address is 555 South Flower Street, 29th Floor, Los Angeles, California 90071.

On **March 23, 2016**, I caused the foregoing document described as **REPLY BRIEF ON THE MERITS** to be served on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

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[X] **(BY OVERNIGHT DELIVERY)** The attached document is being filed and served by delivery to a common carrier promising overnight delivery as shown on the carrier's receipt pursuant to CRC 8.25.

Executed on **March 23, 2016** at Los Angeles, California.

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

Karina Ramirez

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