CASE NO. **S195152**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CONCERNED CITIZENS FOR RESPONSIBLE GOVERNMENT AND WILLIAM DOHERTY
Plaintiffs, Appellants and Cross-Respondents,

vs.

WEST POINT FIRE PROTECTION DISTRICT AND WEST POINT FIRE PROTECTION DISTRICT BOARD OF DIRECTORS,
Defendants, Respondents and Cross-Appellants

REPLY BRIEF IN SUPPORT OF OPENING BRIEF ON THE MERITS

From a Decision of The Court of Appeal,
Third Appellate District (No. C061110)
Reversing a Judgment of the Superior Court of Calaveras County
(No. CV33828)

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I. INTRODUCTION.

Petitioners West Point Fire Protection District and its Board of Directors ("West Point") have raised two issues and ask that the decision of the court of appeal be reversed.

First, an assessment for fire protection for individual properties, such as the one here, may properly be characterized as a "special assessment," rather than a general one. As required by Proposition 218, it directly benefits the properties being assessed. A special benefit must be one that is particular and distinct from its effect on other parcels and one that real property in general and the public at large do not share. (Art. XIII D, § 2, subd. (i), .) (*Silicon Valley Taxpayers Assn. v. Santa Clara Open Space* (2008) 44 Cal.4th 431, 452.) Protecting an owner's real property from burning is a separate and distinct benefit from stopping a fire elsewhere, and from other services that a fire department might also provide, and therefore the assessment here meets the definition of "special assessment" in Proposition 218.

Also, there was nothing improper about the way West Point measured the proportional value of the benefit provided. Proposition 218 requires that what is charged for a special assessment be proportional to the benefit received by the individual properties being assessed. In some circumstances, a reasonable way to measure the benefit received by the individual property may be the cost of providing that benefit. While other methods may also be appropriate in other circumstances, nothing in Proposition 218 dictates that cost of providing the benefit may not be the appropriate measure of the benefit in the right circumstances. Indeed, measurement by cost is the only reasonable method in these circumstances. Nor is there any precedent leading to a different result. The prior opinion,

upon which the court of appeal here incorrectly relied, *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1081, merely said that, under its particular fact pattern, cost was not a proper measure, but also stated that in another situation it might be. This is one of those other situations.

In their Answer Brief on the Merits ("Ans. Br.") William Doherty and Concerned Citizens for Responsible Government ("CCRG"),[1] raise several arguments challenging the foregoing propositions. As detailed below, none of the arguments has merit. The decision of the court of appeal should be reversed.

II. A PROPERLY FRAMED FIRE ASSESSMENT, SUCH AS THE ONE HEAR, CAN QUALIFY AS A SPECIAL ASSESSMENT UNDER PROPOSITION 218.

The Answer Brief in general takes two approaches to the issue of whether fire protection for properties can be deemed a special benefit. First, it argues that fire services per se are a general benefit and may not be deemed a special benefit for assessment purposes. Second, it attacks the specific Engineering Report at issue here (Ex. 4)[2]. Neither approach is availing.

A. Fire Protection for Individual Properties Is a Special Benefit.

CCRG argues that "fire services" are a general government benefit because of wording in Proposition 218 itself. (Ans. Br., p. 8.) It quotes:

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1 William Doherty died during the pendency of this case, and so the Answer Brief is stated to be on behalf of CCRG.

2 As used here and in the Opening Brief on the Merits: trial exhibits ("Ex."); the court of appeal opinion ("Op."); the clerk's transcript ("CT"); and the reporter's transcript ("RT").

"No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, *where the service is available to the public at large in substantially the same manner as it is to property owners.*" (Emphasis added; Cal. Const., art. XIII D, § 6, subd. (b)(5).) In suggesting that the provision dictates that al fire protection services be deemed general benefits, the Answer Brief ignores the concluding phrased emphasized by the italics. That is, not all fire services are general benefits, only those not available to the public at large in the same manner. Fire protection services can be broken down into two categories—those that are available to the general public and those that are available only to property owners. Self evidently, protecting one's property from burning down is not a benefit avialable to non-property owners. Yes there are fire services avialable to the general pubic, but the Engineer's Report segregated them, and the property owners are paying an assessment only for that portion attributed to protecting their properties. When examined carefully then, the specific language of Proposition 218 supports the concept that some fire services can be specifically related to property ownership.

In the same vein, the Answer Brief refers to the legislative history of Proposition 218, as quoted in *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 105. But the cited language was merely the legislative analyst parroting the same language of Proposition 218 quoted above. Certainly fire services can be a general benefit in some circumstances. West Point, and specifically the Engineer's Report, do not quarrel with that notion. But the legislative analyst does not address the situation where a type of fire service specific to real property is broken out from services offered to the

general public. The legislative history is simply of no relevance in this regard.

Although the argument is not fully articulated, at pages 8-10, the Answer Brief points out that fire protection is not an "improvement" to a piece of property; rather it is a service. Then, citing a pre-Proposition 218 case, *Knox v. City of Orland* (1992) 4 Cal.4th 132, it refers to language mentioning assessments for improvements. The implication of the argument seems to be that fire protection cannot be the subject of an assessment because it is for a service, not an improvement. If that is the intent of the argument, it ignores the language of Proposition 218, which includes as the subject of a special assessment a "property related service being provided." (Cal. Const., art XIII D, § 4, subd. (a).)

In making the argument, the Answer Brief notes at pages 8-9, that many parcels may never use the fire service. That misconstrues the nature of the service. It is a protection service. It is available to put out a fire on a specific piece of property if one happens. All properties use the service in that they are protected; the situation where they do not have an actual fire does not mean there is no valuable service offered.

In seeking to distinguish the case of *San Diego v. Holodnak* (1984) 157 Cal.App.3d 759, the Answer Brief (p. 10) focuses on the nearness of fire stations being asserted as the special benefit in that case, and notes that is not what is offered here. Recognizing that pre-Proposition 218 authorities have limited application to post Proposition 218 cases, the Opening Brief on the Merits cited *Holodnak* only for the proposition that it found that "fire stations do specially benefit the properties within their area of service..." (*Id.* at p. 763.) That is, the court of appeal had previously deemed fire protection could be part of a special benefit.

Finally, the Answer Brief makes the point that there is no authority directly on point providing that fire protection for property can be the subject of a special assessment on Proposition 218. True enough, and certainly that is one reason West Point asked this Court to review the issue. The analogous authorities mentioned in the Opening Brief on the Merits were just that, analogies to other types of assessments. West Point submits they support fining fire protection in these circumstances to be a special benefit. But the lack of any precedent precisely on point does not stop one from reaching that conclusion, any more than any contrary precedent other than the opinion below requires a different conclusion.

In summary, under the proper circumstances, fire protection services may be a special benefit to properties. Nothing in the Answer Brief undermines that conclusion.

B. The Engineer's Report Correctly Identifies a Special Benefit.

The Engineer's Report specifically at issue here (Ex. 4) correctly identifies a special benefit. Nothing in the Answer Brief refutes that position.

As the Answer Brief correctly notes (pp. 12-13), the Engineer's Report certainly contains language about having 24 hour fire protection is good for the whole community. But the language in the report hardly constitutes an admission that fire protection for individual properties is a general, not a special, benefit. The Answer Brief is seeking to elevate the style of the descriptive language over the substance of the conclusions of the report. Rather, it is important to look at the parts of the Engineer's Report which specifically address what are special and what are general benefits. (E.g. Ex. 4, pp. 13-23.)

The Answer Brief complains that there is no evidentiary support for the engineer's estimate that 50% of vehicle fire calls could be attributed to specific parcels. In fact, under the circumstances of this case, the complaint is moot. That is because after making that statement, the Engineer's Report carries forward in its equations only the statistic for house fires, and not the statistic for vehicle fires. (Ex. 4, pp. 14-16; see full discussion of the point in the Opening Brief on the Merits, p. 9.) Moreover, after all the calculations were done, the engineer lowered the final number used for calculating the assessment from $159,413 to $146,000, which is more than enough to compensate for any effect that including three vehicle fires in the equation would have had. (Ex. 4, pp. 17; similarly see full discussion of the point in the Opening Brief on the Merits, p. 10.)

Thus whether or not it was proper to conclude that a small number of vehicle fires were associated with specific parcels makes no difference to the outcome of this case. But the discussion does raise an important issue: what may an engineer do with respect making reasonable assumptions based upon expert opinion. The assessment procedure in Proposition 218 calls for an engineer's report as the basis of going forward with an assessment. (Cal. Const., art XIII D, § 4, subd. (b).) That was done and no challenge was made to the qualifications of the engineer. Such a report is necessarily based upon assumptions, analysis of data and reasonable conclusions based upon experience of the engineer. While Proposition 218 imposes the burden on the government agency to show the appropriateness of an assessment, it does not impose an evidentiary standard of proof. Or put another way, if it does require "evidence" as the Answer brief suggests, the requirement of an engineer's report provides that evidence in the form of the expert opinion of the engineer. If the overall report is reasonably

based on statistics and the type of information an engineer of the type would normally consult in reaching an opinion, then, unless challenged or disproven, the opinion should be accepted. There is nothing in the record below evidencing anything wrong with this reasonable assumption of the engineer.

The Answer Brief complains that some parcels in the district were not charged an assessment, even though the fire department might respond to a call. The problem is that such a result is driven by Proposition 218. "No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel." (Cal. Const., art. XIII D, §4, subd. (a).) West Point had to exclude parcels where the charge would be higher than the benefit. The engineer did an historical analysis of fires in the district. (RT 337-340.) The result was a $5000 cutoff—that is, parcels assessed by the county at that amount or less were exempt. What else could West Point do? It must comply with *all sections* of Proposition 218. The Answer Brief would read Proposition 218 in a way that would make it impossible ever to do an assessment in an area with a parcel that had a low value, as it would either have to charge a parcel an assessment that was more than a reasonable value to that parcel, or it would have to do no assessment at all. West Point finds nothing in the legislative history of Proposition 218 to suggest it was meant to stop all assessments, only that it was meant to make assessments and other levies responsive to the voting public. It needs to be read to harmonize all its parts to carry out its purpose. West Point was entitled—actually required—to exempt certain parcels of very low value. Finally, there was no counter evidence at trial to show that the engineer's analysis in this respect was wrong.

III. COSTS WERE A PROPER MEASURE OF PROPORTIONAL BENEFIT.

The other issue on appeal is that, in circumstances as these, the cost of providing a service may be a reasonable measure of the value of the benefit given. West Point found that the cost of delivering fire services to all unimproved parcels was the same, and the cost to all improved parcels were the same. It used that proportional cost to measure the value of the benefit being delivered.

The Answer Brief in part complains that the system is too simplistic. But this is a rural district with a mix of unimproved parcels and basic structures. It is not downtown San Francisco. It is reasonable for the engineer to conclude that the division of response costs should be in two parts. There was no counter evidence below.

Primarily the Answer Brief argues (pp. 19-20) that the engineer should instead have estimated the value of each building in the district. The district was reasonable to conclude that would not have been a good system. The answer Brief suggests if one house is worth $1 million and another worth $10,000, then the value to the first is 100 times the value to the second. That is plainly wrong. First, where do those values come from? For a $146,000 assessment, must West Point hire an appraiser to appraise each house, each year? That notion would be absurd, so presumably the Answer Brief is proposing that West Point rely on the assessed values for tax purposes. But that is undermined by Proposition 218's predecessor, Proposition 13. Under Proposition 13, if a homeowner does not move, then the assessment on the home cannot be increased by more than 2% per year. (Cal. Const., art. 13A, § 2, subd. (b).) Thus, assessed values for tax purposes are required to be disproportionate by

Proposition 13. Proposition 13 may properly be protecting long time homeowners from inflationary taxes, but it renders the tax system unusable for Proposition 218 purposes. An engineer could reasonably conclude that using those numbers would not fulfill the proportionality requirements of Proposition 218. To add to that, neither an appraised value from an appraiser nor a tax assessment value takes into account the contents of a house. If the $10,000 house had a $2 million piece of artwork, then its value could be more than the $1 million house postulated in the Answer Brief.

Much the same can be said about the Answer Brief's attempt to show that different unimproved parcels might have different value depending on the timber or other crops on them. Trying to do an individual valuation of each parcel would be unreasonable, an impossible without full access to each parcel. Measuring the cost of responding to an unimproved parcel fire is a better measure of value of the benefit.

Proposition 218 is hardly a model of clarity when it comes to identifying what a government agency is required to do to make a legitimate levy. That entity has to make some reasonable assumptions. There was nothing unreasonable about determining here that using cost as a measure of value was better than other types, in order to determine proportionality of benefit. There is no contrary authority—only authority that says that in the particular circumstances of that case cost was not the right measure of benefit, but it might be in another. *Town of Tiburon v. Bonander*, *supra*, 180 Cal.App.4th 1057, 1081. This is that other case.

IV. WEST POINT COMPLIED WITH GOVERNMENT CODE SECTION 50078.2.

The Answer Brief (pp. 27-28) argues that West Point did not comply with Government Code section 50078.2. While that was not one of the issues raised by the Petition to this Court, it is apparently asserted as an additional reason to uphold the determination by the court of appeal.

The position is not correct for numerous reasons. West Point did meet the requirements of section 50078.2 in its Resolution 07-06, passed by its Board. The trial court held in West Point's favor in that regard. No statement of decision was requested. As that means all findings of fact are in West Point's favor, there is no basis for CCRG to attack it here. Further, CCRG challenged that resolution in a separate lawsuit and lost and is therefore barred from challenging it again. Even if it could, it missed the statute of limitations.

A. CCRG Failed to Request a Statement of Decision.

The trial court found in favor of West Point on all issues. Because of the failure of CCRG to request a statement of decision, all necessary findings to support the judgment will be implied in West Pont's favor, and the only issue is whether there is substantial evidence to support those implied findings. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.) While those rules vary with respect to Proposition 218 jurisprudence, the issue under section 50078.2 is not subject to those rules.

B. West Pont Passed the Needed Resolution.

Resolution 07-06 (Ex. 14), which was passed after the vote was certified, recites that an assessment balloting procedure or "election" was held; it recites the rate structure; it states that the Assessment passed; and it levies the assessment, that is directs the County to collect the Assessment.

Appellants complain that this formal resolution failed to "determine and/ or levy" the assessment. That is not a fair reading. It directs the County to collect the assessment that the voters passed, which certainly fits that definition. It also appropriately set the rate structure, as the trial court necessarily fund.

Even if Resolution 07-06 had never been passed, West Point would be deemed to have passed the needed resolution for other reasons. Government Code section 50078.2 allows the establishment of schedules by use of either an ordinance or a resolution. (Gov. Code, § 50078.2.) "A resolution is usually a mere declaration with respect to future purpose or proceedings of the board." (*City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565.) At the Board meeting on February 15, 2007, the Board approved the Engineer's Report. (Ex. 3.) The Engineer's Report, Exhibit 4, established uniform schedules and rates based upon the type and use of property and the risk classification of the structures or other improvements on, or use of, the property- as required by Government Code § 50078.2. (Ex. 4, pp. 13-21.) That the rate structure in this small rural district was simple—one rate for improved and one for unimproved—does not detract from the fact it was a rate structure. Under the definition set forth in *City of Sausalito,* approval of the Engineer's Report on February 15, 2007 was a resolution setting forth uniform schedules because such approval was a "declaration with respect to future . . . proceedings of the board," and it was memorialized in the Minutes of this Board meeting. (*City of Sausalito, supra,* 12 Cal.App.3d at p. 565.) At the February meeting, the Board also approved the ballot (Ex.6), and Exhibit 7, which also contain the rate structure.

These are fact issues. (See *City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565.) The trial court's determination to that effect should be honored. The fact CCRG requested no statement of decision reinforces that finding.

C. Res Judicata/Collateral Estoppel Bars CCRG from Challenging Resolution 07-06.

In any event, the above issues relating to a resolution were already decided in another lawsuit. Therefore, the challenge is barred by the doctrine of res judicata/collateral estoppel.

Res judicata bars claims where there has been a final judgment on the merits between the same parties upon the same cause of action. (*Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 974.) This rule applies generally to an action that has been dismissed on demurrer. (*Erganian v. Brightman* (1936) 13 Cal.App.2d 696, 699-700.)

CCRG challenged Resolution 07-06 in the fourth and fifth causes of action of their petition in another lawsuit. (Ex. 23, see ¶ 133 et seq.) West Point demurred (Ex. 24) as did the County, which also was sued (Ex. 25). West Point demurred among other things on the grounds the statute of limitations under the validation statutes had passed. (Ex. 24.) The court expressly sustained the demurrers for that reason. (Ex. 26.) CCRG did not appeal and so there was finality.

Here, the elements of res judicata have been satisfied. There can be no question that the parties in the Petition litigation and this litigation are the same (the plaintiffs being CCRG and Doherty and West Pont being defendant). Similarly, the causes of action were identical in substance. Indeed, all that CCRG did is break up the long fourth cause of action in the Petition into three separate causes of action all challenging the same

Resolution, No. 07-06. Finally, the judgment was final and on the merits. An order was issued on February 22, 2008, and the Notice of Entry of Order was filed on February 27, 2008. (Ex. 26.) In its order, the trial court sustained West Point's demurrer specifically pursuant to the legal principles announced in *Barratt American Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685. This was exactly what West Point argued in its demurrer. By adopting West Point's argument wholesale, the Court agreed that the statute of limitations for challenging the appropriateness of Resolution 07-06 had come and gone. Accordingly, the judgment was on the merits. (*See, Kanarek v. Bugliosi* (1980) 108 Cal.App.3d 327, 334 [stating that whether the sustaining of a general demurrer is on the merits depends upon the facts of the case and the reason for ruling - here the reason for ruling was based on West Point's substantive arguments regarding the limitations period].)

The doctrine of collateral estoppel precludes re-litigation of an issue where the issues are identical to those decided in a prior proceeding, the issues were actually litigated, the issues were necessarily decided in the prior proceeding, the decision in the prior proceeding was final and on the merits, and the same parties were involved in both actions. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Again, with respect to the causes relating to Resolution 07-06, all of these elements are satisfied

D. CCRG Is Barred From Challenging the Resolution by the Statute of Limitations.

Even if the issue had to be considered anew, the trial court was barred from considering issues relating to resolution 07- 06 because CCRG had failed to file an action testing their validity with the 60 day limitations period in Code of Civil Procedure section 860 et seq.

In its First Amended Complaint (CT 152), CCRG made no mention at all of West Point's Resolution No. 07-06. Similarly, none of the *summonses* made any mention of either Resolution. (Exs. 17-20.) In the Second Amended Complaint causes of action three, four and five, the issue with respect to Resolutions were raised for the first time. That was not within 60 days of Resolution 07-06 being passed and so challenge to 07-06 was barred.

Government Code section 50078.17 provides that any challenge to a resolution levying an assessment or modifying or amending an existing resolution must comply with the validation statutes, section 860 of the Code of Civil Procedure et seq.. Under the validation statutes a public agency may seek a judicial determination of the validity of some matter, such as an ordinance, resolution, or other action taken by the agency. If the agency does not seek validation . . . any 'interested person' may file what is sometimes called a reverse validation action to test the validity of the matter." (*Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1027-1028 [internal citation omitted.) "The validation procedure is intended to provide a uniform mechanism for *prompt* resolution of the validity of a public agency's actions." (*Id.*, at p. 1028; emphasis added.) A "validation action is 'in the nature of a proceeding in rem'" and therefore "[t]he form of summons and the manner of service are statutorily prescribed. Jurisdiction of 'all interested persons' is had by publishing a summons for the time provided by Government Code section 6063. The summons must contain particular wording and satisfy other requirements to be valid. (*See, also*, Code Civ. Proc., §§ 860-862.) Jurisdiction is complete only after the date "specified in the summons." (Code Civ. Proc., § 862.)

This action is a "reverse validation" action pursuant to California Code of Civil Procedure section 860 *et seq*. The term "reverse validation action" refers to the fact that this lawsuit is brought by opponents of the assessment rather than the government agency. Thus it was CCRG and Doherty who had to comply with the validation statutes. (*Katz*, *supra*, 144 Cal.App.4th at p. 1028.)

The validation statutes impose a 60 day statute of limitations – that is a 60 day period in which anyone challenging an ordinance subject to those sections must file an action, and then 60 days in which summons must be properly published, and then service returned to the Court. (Code Civ. Proc., §§ 860, 863; *Katz*, *supra*, 144 Cal.App.4th at p. 1028.) Here, CCRG indisputably failed to comply with the 60 day limitations period in which to challenge Resolution No. 07-06. Resolution 07-06, challenged by Appellants is dated June 14, 2007. It was not challenged until the Second Amended Complaint, dated July 23, 2008 (CT 1574.) More than 60 days had passed, indeed, more than a year. The CCRG cannot claim lack of discovery of this public record. The Resolution was mentioned by CCRG on October 9, 2007, when it filed a request for a TRO. (Ex. 21, p. PA207.)

V. THE OTHER ARGUMENTS RAISED BY THE ANSWER BRIEF ARE NOT MERITORIOUS.

The Answer Brief is unclear as to the intent of its argument contained at pages 23-25 that it does not like the analysis of the needs of the district for fire protection services. That was answered by the voters who adopted the assessment.[3] West Point does not claim it is exempt fro

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[3] an irony of the Answer Brief's position is that it suggests that West Point

Proposition 218 because it is small, or rural. However, it is not reasonable to adopt a system for West Point that is suitable to a large city; the engineering and methodology must be appropriate to the circumstances.

Nor does West Point argue that Government Code section 50078 provides an exemption to Proposition 218. As a constitutional measure, Proposition 218 would clearly prevail. The Government Code section does, however, contribute to the understanding of what a special benefit is, as set forth in the Opening Brief on the Merits

VI. CONCLUSION.

West Pont's positions on the two issues appealed are meritorious. The public will be well served by a decision clarifying the se important issues for benefit assessments, so that agencies can create them based upon well understood requirements. The separate argument, regarding Government Code section 50078.2 does not provide any reason to uphold the decision of the court of appeal. West Point respectfully requests that his Court reverse the decision f the Court of Appeal.

Dated: January 10, 2012

NOSSAMAN LLP

By: _____

Stephen N. Roberts
Attorneys for Petitioners West Point Fire Protection District and West Point Fire Protection District Board of Directors

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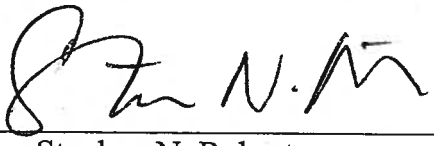
should not do an assessment, but should rather pursue a tax. Yet in these circumstances, an assessment comes closer to the intent of Proposition 218 of making levies more responsive to the voters, because it is voted upon by only those who are to pay the assessment, the property owners. A tax may be voted upon by others, even though paid by only the property owners.

RULE 14(c)(1) CERTIFICATION

As required by Rule 14(c)(1) of the California Rules of Court, I certify that this brief is at 13 point font and contains **4,563** words. In making this certification, I have relied upon the word count function of Microsoft Word, the computer program used to prepare the brief.

January 10, 2012 NOSSAMAN LLP

By: 

Stephen N. Roberts
Attorneys for Defendants, Respondents and Petitioners West Point Fire Protection District and West Point Fire Protection District Board of Directors

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman LLP, 50 California Street, 34th Floor, San Francisco, California 94111.

On **January 10, 2012** I served the foregoing **REPLY BRIEF IN SUPPORT OF OPENING BRIEF ON THE MERITS** on the parties to the within action by placing ( ) the original (x) a true copy thereof, enclosed in a sealed envelope, addressed as shown on the attached service list.

(X) (By U.S. Mail) On the same date, at my place of business, said correspondence was sealed and placed for collection and mailing following the usual business practice of my employer. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and, pursuant to that practice, the correspondence would be deposited with the U.S. Postal Service, with postage thereon fully prepaid,

() (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Francisco, California.

_____ _____

(Dated) Maura Bonal

Calaveras Superior Court Case No. CV 33828

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