Court of Appeal number F067460
Fresno County Superior Court number 09 CEGG 03295 MBS

In the Court of Appeal
State of California
Fifth Appellate District

Joseph C. Hudson, et al.,

***Plaintiffs-Appellant*s,**

***v*.**

County of Fresno,

***Defendant-Appellant*.**

After a Judgment of the Fresno County Superior Court
M. Bruce Smith, Judge Presiding

Application for Leave to File Amicus Curiae Brief;

Amicus Curiae Brief of Consumer Attorneys of California in Support of Plaintiffs

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Application for Leave to File Amicus Curiae Brief

A.

Application

Consumer Attorneys of California requests an order granting leave to file an amicus curiae brief in this matter. The amicus curiae brief is in support of the plaintiffs-appellants, Joseph C. Hudson and Jervon Ireland. The proposed brief is attached to this application.

Counsel is familiar with the briefing filed in this action to date. The concurrently-filed amicus brief addresses fundamental policy issues not otherwise considered or argued by the parties, including application of the law as advocated by the parties to this matter. The attached brief also offers for consideration judicial opinions from Sister States. Amicus believes the brief will assist this Court in its consideration of the issues presented.

CAOC is aware that the time for filing amicus curiae briefs has passed, but requests this Court to grant leave to file this brief. Briefing was completed on September 18, 2014. The Association of Southern California Defense Counsel applied for leave to file a late amicus curiae brief in support of the

defendant-appellant County of Fresno on November 3, 2014. According to its supporting declaration, it was unaware of this appeal until October 14, 2014, and it needed two days to have a vote among its members and until November 3 to prepare and file the brief.

Like ASCDC, Consumer Attorneys of California did not learn about this appeal until after the deadline for filing amicus curiae briefs. CAOC learned about this appeal from respondent Joseph Hudson's counsel on November 7, 2014. The matter immediately was referred to CAOC's Amicus Curiae Committee coordinator, who sent an email to all committee members (of which I am one). It took three days for the committee to vote by email to participate and to find members to volunteer to write a brief. (CAOC's AC Committee does not have retained counsel; it relies upon Committee members to volunteer time to review the numerous requests and to write briefs.) Three days later (November 10), the Committee voted to participate and Steven B. Stevens volunteered to prepare a brief. CAOC received the parties briefs on November 18, 2014.

No party to this action has provided support in any form with regard to the authorship, production or filing of this brief.

B.

Statement of Interest

The Consumer Attorneys of California is a voluntary membership organization representing approximately 6,000 attorneys practicing throughout California. The organization was founded in 1962. Its membership consists primarily of attorneys who represent plaintiffs in personal injury, including medical malpractice, actions. Consumer Attorneys has taken a leading role in advancing and protecting the rights of injured Californians, including those injured through the negligence of health care providers, in both the courts and the Legislature. Mr. Stevens, a co-author of this Amicus Curiae brief, is a certified specialist in appellate advocacy (State Bar of California Board of Legal Specialization) and, and is a member of CAOC's Amicus Curiae Committee.

Consumer Attorneys of California requests an order granting it leave to file an amicus curiae brief in this matter.

Respectfully submitted,

Steven B. Stevens, A Prof. Corp.

_____

Steven B. Stevens
Counsel for Consumer Attorneys of California

I.

Summary of Argument

Defendants and their supporters offer an unusual attack upon closing argument: An appeal to reason—and an appeal to the jury's role in the community and the courts—should be banned. They criticize the scientific basis for these appeals, pointing to articles that question the wisdom of counsel's arguments, yet insist that the arguments be prohibited in any event.

Arguing to a jury that a reasonable person should pick the safest behavior does not implicate a juror's self-interest even if, tangentially, that juror—and everyone else in the community—would be safer. An argument directing the jury's attention to safety as the reasonable standard of conduct is well within the scope of permissible advocacy. The defendant's effort to demonize appeals to reason, and through that, appeals to safety, should be rejected.

II.

Counsel for All Parties Have Wide Latitude To Persuade the Jury to See Evidence and Draw Inferences Favorable to Their Clients

Confronted with a persuasive argument that defeated the defendant's position, the defense now demands that the argument be banned. But banning arguments to a

jury is contrary to California law. To the contrary, counsel have wide latitude to persuade a jury about the righteousness of the parties' positions:

> In conducting closing argument, attorneys for both sides have wide latitude to discuss the case. The right of counsel to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. The adverse party cannot complain if the reasoning be faulty and the deductions illogical, as such matters are ultimately for the consideration of the jury. . . . Counsel may vigorously argue his case and is not limited to "Chesterfieldian politeness." . . . An attorney is permitted to argue all reasonable inferences from the evidence. . .. Only the most persuasive reasons justify handcuffing attorneys in the exercise of their advocacy within the bounds of propriety.

Cassim v. Allstate Ins. Co., 33 Cal.4th 780, 795, 16 Cal.Rptr.3d 374, 383-384 (2004) (citations and internal quotations omitted).

A.

Advocating for the Safest Conduct as Reasonable Care Is Not a "Golden Rule" Argument

The genius of the jury is that it brings together people of diverse backgrounds and experiences and, together, they determine whether a defendant's (or, in many cases, a plaintiff's) conduct was reasonable. This determination has nothing to do with whether the conduct is so egregious that it must be punished; it is merely a determination that the conduct was unreasonable by the standards expected of members of the community and that the defendant should be accountable for the harm it caused.

Over 140 years ago, the United States Supreme Court recognized that the jury is the conscience of the community. Though it did not use that phrase, it adopted the that philosophy that the jury the best position to determine what members of that community should expect from each other. *Railroad Co. v. Stout*, 84 U.S. (17 Wall.) 657, 21 L.Ed. 745 (1873), affirming a judgment finding a railroad negligent in its maintenance of a turntable, which injured a child, reposed its trust in the jury to determine what safety it expects from the companies operating in the community:

> Twelve men of the average of the community, comprising men of education and men of little education,

> men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man, *that they can draw wiser and safer conclusions* from admitted facts thus occurring than can a single judge.

Railroad Co., 84 U.S. (17 Wall.) at 663-664 (emphasis added).

Justice Mosk, in his concurring opinion in *Ballard v. Uribe*, 41 Cal.3d 564, 224 Cal.Rptr. 664 (1986), expressed the same philosophy and did characterize it with the now familiar shorthand, the "conscience of the community":

> A jury has also been frequently described as "the conscience of the community." . . . In addition, courts have long recognized that in our heterogeneous society jurors will inevitably belong to diverse and often

> overlapping groups defined by race, religion, ethnic or national origin, sex, age, education, occupation, economic condition, place of residence, and political affiliation . . .. The very purpose of the right to trial by a jury drawn from a representative cross-section of the community is to achieve an overall impartiality by allowing the interaction of the diverse beliefs and values the jurors bring from their group experiences.

Ballard, 41 Cal.3d at 577, 224 Cal.Rptr. at 672 (J. Mosk, con.) (citations and internal quotations omitted). *See also Kentucky Fried Chicken of California, Inc. v. Superior Court*, 14 Cal.4th 814, 59 Cal.Rptr.2d 756 (1997) (Kennard, J., dissenting in opinion deciding as matter of law that merchant had no duty to customers to refrain from resisting armed robbery; "The values underlying the preference for having juries in negligence cases decide what level of precautions is reasonable under the circumstances in some respects parallel the values underlying the right to a jury trial guaranteed in criminal cases by Sixth Amendment to the United States Constitution. Both sets of values reflect in part a belief that certain decisions are best left to the commonsense judgment of the jury.")

While there are some limits on what counsel can argue, *e.g.* appeals to bigotry or prejudice, *Kolaric v. Kaufman*, 261 Cal.App.2d 20, 67 Cal.Rptr. 729 (1968), or direct appeals to self-interest of jurors as taxpayers, *Du Jardin v. Oxnard*, 38 Cal.App.4th 174, 179, 45 Cal.Rptr.2d 48, 50 (1995) (action against municipality), *it is not improper to advocate safety as the reasonable standard of care to be expected of all people*. The defendants and their counsel decry this argument, drawing a strained analogy between the self-interest of juror-taxpayers (their taxes will go up if they find for a plaintiff) and the indirect beneficial effect of living in a community in which its members are expected to chose safety over risk when their conduct impacts others.

It is undoubtedly true that, if all individuals and companies considered safety first, a community and all of the people living in it (including members of a jury pool) would be safer as well. Juries are supposed to speak for the community when they are asked to decide what behavior is reasonable—that is, what behavior members of the community reasonably should expect from each other. That does not mean that an argument that advocates the safest choice (whatever that might be, and counsel might disagree) is an appeal to self-interest.

B.

There is Nothing Improper, And Certainly Nothing in Violation of the "Golden Rule," To Remind a Jury of its Role in the Tort Justice System

It is not improper argument to the jury to remind it, or even to implore the jury, to live up to the role that the law already acknowledges for its existence. Neither the defendant here nor its supporter, an association of defense attorneys, offer any authority to support the novel notion that an argument that the safest course of conduct is not a reasonable course of conduct.

The Golden Rule prohibition cannot be rationally stretched to include arguments about the unreasonableness of the defendant's choices, even if the implications of that argument are that, with different choices, the entire community will be safer. The Golden Rule argument asks the jurors to place themselves in the position of the plaintiff and ask themselves how much money they would want to go suffer the injuries that she has suffered. The argument is improper because "[h]ow others would feel if placed in the plaintiff's position is irrelevant." *Cassim*, 33 Cal.4th at 797 n.4, 16 Cal.Rptr.3d at 385 n.4. Reminding the jury that it does speak for the community when it determines what is reasonable conduct, or what how an injury should be compensated, does not violate the prohibition of "Golden Rule" arguments.

The present action was, no doubt, difficult for the County to defend. Having undertaken the responsibility to protect the most vulnerable members of the community—children in homes in which they are abused—its decisions to take (or refrain from taking) measures in violation of mandatory duties are difficult to justify. An appeal to the jury to find violations of the defendant's mandatory duties—that is, to find for the plaintiff on liability—is not an appeal to juror self-interest, except in the most attenuated sense that a Child Protective Services agency that conducts itself foremost to protect children will benefit that entire community. The argument does not promise to lower a juror's taxes; it does not threaten to increase municipal services; it does not promise any direct benefit to any particular juror; it certainly does not ask the jurors to put themselves in the shoes of the Hudsons or of the children who were abused.

It is an argument that says, in essence, that when it comes to protecting abused children, or children at risk of being abused, the agency charged with that responsibility must conduct itself accordingly. The argument is an appeal to the jury to be the conscience of the community and articulate, through its verdict, that reasonable conduct—what a reasonable social worker would do if the defendant had not violated its mandatory duties—is that which places primary emphasis on child safety and protection.

The defendant and its counsel may disagree with that argument; they may believe it is unreasonable or unworkable. But that does not make the argument unlawful.

> The right of counsel to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. The adverse party cannot complain if the reasoning be faulty and the deductions illogical, as such matters are ultimately for the consideration of the jury.

People v. Beivelman, 70 Cal.2d 60, 76-77, 73 Cal.Rptr. 521, 530 (1968) (internal quotations and citation omitted); *Grimshaw v. Ford Motor Co.*, 119 Cal.App.3d 757, 798, 174 Cal.Rptr. 348, 375 (1981) (applying *Beivelman* in civil action).

C.

Counter-Argument, Not Prohibition, is the Remedy

For Arguments with Which a Litigant Disagrees

The remedy for an argument with which a litigant disagrees is a logical counter-argument. *People v. Valencia*, 43 Cal.4th 268, 284, 74 Cal.Rptr.3d 605, 625

(2008) ("The prosecutor was entitled to argue his interpretation of the evidence, just as defendant was entitled to argue his interpretation of that same evidence."). To be sure, it may be difficult to argue against safety as the most reasonable conduct to expect from individuals and corporations. The difficulty is the result of the evidence and the law, not of the skill of a plaintiff's counsel. There is no authority that an attorney's oratorical skill or forensic eloquence is grounds for banning his or her argument.

D.

Being Held Accountable is Not Being Punished

Much has been written about the language of responsibility, with the defense taking issue with phrases—taken out of context—such as "hold them accountable" or "tell them" or "send a message." The contention is that using those words should be deemed misconduct as a matter of law and banned because, so the argument goes, they are the words of punitive damages. Like all words, however, it depends on the context.

No doubt there have been cases in which counsel have beseeched a jury to "send a message" to a defendant by imposing substantial punitive damages. Also, there have been some cases in which counsel have used the same phrase to convey a desire for the jury to add improperly a punitive component to compensatory damages.

Defendants often point to *Nishihama v. City and County of San Francisco*, 93 Cal.App.4th 298, 112 Cal.Rptr.2d 861 (2001), as authority that these words standing alone render a closing argument improper. *Nishihama* does not, however, hold that "send a message" is the touchstone of misconduct. The improper conduct in *Nishihama* was *not* that phrase; it was the entire context of the argument, in which the jury was invited to inflate the compensatory damages, in effect injecting a punitive component into the compensatory damages.

In the context of a debate about what is reasonable, in contrast, counsel can justly entreat the jury to choose safety as reasonable care—to "send a message" that the safety is the standard of conduct that members of a community should expect from each other. To a defendant that argues (and perhaps even believes) that lackadaisical conduct is enough, or that half-hearted measures should be sufficient, it may seem that the message of safety is punitive. It is not.

It is the jury, through a verdict finding liability, telling a defendant and all others similarly situated in the community that its acts were unreasonable. One of the "public policies underlying our tort system . . . [is] . . .as a general matter, . . . to maintain or reinforce a reasonable standard of care in community life." *City of Santa Barbara v. Superior Court*, 41 Cal.4th 747, 755, 62 Cal.Rptr.3d 527, 532 (2007). The immediate goal of such a verdict is to hold a defendant responsible for the injuries its unreasonable choices caused. The message of the verdict is to tell the defendant to

change its behavior to correspond with the standard of care in the community. An argument to "tell the defendant" that its conduct was unreasonable does *not* implicate punitive damages; it implicates one of the fundamental public policies of the tort system.

The commonsense judgment of the community holds true for a jury's determination of damages as well. The jury is uniquely qualified to determine which injuries are tolerable or intolerable and, as to the latter, what is fair compensation. It is no "Golden Rule" argument to implore a jury to be the conscience of the community and set a value for a plaintiff's particular injury. *See Mary Beth G. v. City of Chicago*, 723 F.2de 1263, 1276 (7th Cir. 1983) (rejecting appeal asserting excessive damages awarded to women subjected to unlawful strip and body cavity searches, "[t]he jury is the collective conscience of the community, and its assessment of damages must be given particular weight when intangible injuries are involved."); *Leather v. Ten Eyck*, 97 F.Supp.2d 482, 488 (S.D.N.Y. 2000) (jury, as conscience of community, can work to defendant's advantage; reduced compensatory award to plaintiff arrested in violation of Constitution but who was driving under influence; "[t]he jury expresses the conscience of the community, and this Court must refrain from placing unreasonable restrictions on its power to do so, or second guessing its conclusions.").

Defense protests about arguments that a defendant "needs to be accountable" (AOB at 14) are similarly misguided. "Accountable" means "responsible." To argue that a defendant should "account" for its acts is to argue that it needs to make amends for its acts. Webster's New World Collegiate Dictionary (3rd ed. 1998), p. 9. "Accountable" or "account" carries no suggestion of punishment—except, perhaps, to the intransigent defendant who insists that it did nothing unreasonable even after the jury has told it otherwise and, thus, sees any compensation as punishment. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 9 Cal.Rptr.3d 544 (2004) (plaintiff's counsel's argument that overtime compensation laws embody public policy and workers must be paid overtime at premium rates; "counsel simply appealed to the jury to vindicate the public policy underlying the overtime laws by holding [defendant] accountable for the full amount of overtime compensation owing to plaintiffs. We do not view this argument as suggesting that the jury should inflate the damage award or award the equivalent of punitive damages.").

E.

The Reptile as Red Herring

The defendant seeks to ban an argument because it takes issue with consultants and commentators who have studied jury verdicts and the techniques of persuasion. In particular, the defense attacks two authors, David Ball and Don Keenan, who authored a book, Reptile: The 2009 Manual of the Plaintiff's Revolution. The theory

of the "Reptile" is to appeal to an understanding of safety as the reasonable standard of conduct that should be expected of members of the community. As even the theory's defense detractors concede, the authors of the book sought to undo years of defense "Reptile" techniques, which included "leading the public to believe torts undermine the quality and availability of healthcare, threaten the local economy by endangering jobs, make products more expensive, and weaken research and development expenditures." Howard, B, et al., "A Field Guide to Southern California Snakes: Identifying and Catching Plaintiffs' Reptile Theory in the Wild," *Verdict* (Association of Southern California Defense Counsel, vol. 3, 2013), at 11-12 (summarizing Ball and Keenan).

The "Reptile" theory seeks to shift the view of a tort case from one that endangers jobs to one that involves choosing safety as the reasonable course of conduct. The authors do not advocate playing upon a juror's emotions or sympathies. Indeed, Ball and Keenan reject such efforts. "Our method is to get jurors to decide on the entirely logical basis of what is just and safe, not what is emotionally moving. Jurors are always emotionally moved, and we always want jurors to 'feel' strongly that we should win. But the Reptile gets jurors to that point not on the basis of sentiment, but what is safe." Howard, B., "A Field Guide," *supra*, at 11-12 (quoting Ball and Keenan).

Contrary to the defense position, an argument that a reasonable person should choose safety is an argument based on the law and, assuming evidence is introduced at trial, those facts and their inferences. Indeed, *that* is California law: "A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. You [the jury] must decide how a reasonably careful person would have acted in [defendant's] situation." CACI 401.

The "Reptile" argument does nothing more than advocate holding a defendant liable for unreasonable conduct (or, as here, it advocates what other reasonable persons would do if the defendant had not violated a mandatory duty). A defendant is still free to try to persuade a jury, if there is evidence to support the arguments, that greater risk must be accepted and is reasonable, or that there is no safest course, or that safety ought to be balanced against other factors.

The debate about the "Reptile" theory, thus, is itself a distraction. Neither this amicus brief, nor the briefs in this case, are a defense of Keenan and Ball's theories. It is a defense of the right to argue a case to the jury, to exercise that wide latitude to persuade. To make an appeal a test of a jury consultant's opinions is in itself improper and ultimately unproductive, because the issue in a trial court and in an

appellate court is whether an argument conforms to law, *not* whether the source or inspiration for that argument is correct.[1]

The defense bar also has its jury consultants, authors, and organizations who teach defense counsel techniques for trial. The Federation of Defense & Corporate Counsel and the Association of Southern California Defense Counsel are just two examples. They publish articles and, presumably, conduct seminars about closing argument. They too teach defense lawyers how jurors think and how to target those jurors who are susceptible to defense arguments. One defense counsel and author teaches how to identify in voir dire which jurors will be for the defendant and to target arguments at those jurors. Willis, R., "It Ain't Necessarily So: Lessons in Jury Selection," Verdict (Association of Southern California Defense Counsel, vol. 2, 2011) at 20 ("pitch your case to the 'fer ye's' . . . for they are the ones that make the most important argument in the case . . . inside the jury room"), available at www.ascdc.org/PDF/ASCDC%2011-2.pdf, as of Dec. 5, 2014.[2]

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[1]Curiously, the defense bar disputes the psychological and scientific validity of Keenan and Ball's theory yet (presumably, just in case), it seeks to ban all arguments inspired by that theory.

[2]Other defense authors teach moving the focus on the plaintiff's injuries when arguing damages to the jury and, instead, include an argument "that the verdict must be fair to the defendant as well as to the plaintiff." Montgomery, C. B., et al., "Preventing the Runaway Verdict in Catastrophic Injury Cases," FDCC Quarterly (Federation of Defense & Corporate Counsel, Spring 2010), at 248. Even though the law is that the jury must "decide how much money will reasonably compensate [the plaintiff] for the harm," CACI 3901, such an argument injects a subtle (or, depending on tone and context, not-so-subtle) insinuation that the jury should take into account

The defense position in the present appeal is an attack upon the argument because it takes issue with the jury consultant who wrote a book about persuasive techniques. It is no more proper or productive to attack Keenan and Ball than it would be to attack the defense authors who recommend how to distract from a plaintiff's damages or how to hint at a loss of jobs in the event of a plaintiff's verdict. The issue is not the inspiration for the argument; the issue is the propriety of the argument itself considering the evidence and in the context of the entire closing argument.

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the defendant's ability to satisfy a verdict, regardless of the scope of the injury he or she inflicted.

Still other defense authors teach that, when representing a corporation, defense counsel should "emphasize throughout the trial that corporations are comprised of hard-working individuals who may be impacted by the outcome of a trial." Governo, D. M., et al., "Successful Trial Tactics in Toxic Tort Cases," FDCC Quarterly (Federation of Defense & Corporate Counsel, Winter 2010), at 191. This argument suggests that jobs may be lost if the jury's verdict is against the defendant, a consideration that manifestly, is contrary to law. (Such an argument, by the way, validates Keenan and Ball's observation (above, at 16)that the defense has been using the "Reptile" theory to its advantage for years, even if it did not invoke the theory by name.)

III.

Conclusion

"Only the most persuasive reasons justify handcuffing attorneys in the exercise of their advocacy within the bounds of propriety." *Beagle v. Vasold*, 65 Cal.2d 166, 181, 53 Cal.Rptr. 129, 137 (1966).

A closing argument cannot be banned merely because the inspiration for it is unacceptable to the defense bar. Like any other argument, the propriety of an argument turns on whether the words are based upon the evidence and permissible inferences. The defense argument that the "Reptile" theory is wrong, so any argument that it inspires should be banned, is contrary to the settled law of California. As long as it is based on the evidence, an argument that the safest care is reasonable care is permissible. If the defense has a refutation, it too is free to offer it.

The right of a plaintiff's counsel (as that of defense counsel) "to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. . . . [S]uch matters are ultimately for the consideration of the jury." *Grimshaw*, 119 Cal.App.3d at 798, 174 Cal.Rptr. at 375.

Arguing to a jury that a reasonable person should pick the safest behavior does not implicate a juror's self-interest even if everyone in the community would be safer. An argument directing the jury's attention to safety as the reasonable standard of conduct is well within the scope of permissible advocacy. The defendant's effort to demonize appeals to reasonableness, and through that, appeals to safety, should be rejected.

Respectfully submitted,

Steven B. Stevens, A Prof. Corp.

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Certificate of Word Count

This brief (excluding the caption, tables, proof of service and this certificate) contains 4,048 words, as calculated by the WordPerfect 16 word processing program that was used to generate the brief.

_____
Steven B. Stevens,
Counsel for Consumer Attorneys of California

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 18 years old and am not a party to this action. My business address is Steven B. Stevens, A Professional Corporation, 2934½ Beverly Glen Circle, Suite 477, Los Angeles, California 90077. On December 8, 2014, I served the following documents: **Application for Leave to File Amicus Curiae Brief; Amicus Curiae Brief of Consumer Attorneys of California in Support of Plaintiff** on the interested parties or counsel in this action by:

✔ placing [____ the original] [✔ a true copy] enclosed in a sealed envelope addressed as stated on the attached service list, and:

✔ **By Mail** By placing the envelope addressed as above for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings, and other matters for mailing with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

___ **BY EXPRESS SERVICE CARRIER (C.C.P. §§ 1013(c); defendant _____only):** By placing a sealed envelope or package, addressed as above, and depositing it in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized carrier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person(s) on whom it is to be served as stated on the attached airbill.

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___ **BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the offices of the addressee(s).

✔ **BY ELECTRONIC SERVICE:** I provided a PDF version of the Appellant's Opening Brief to the Supreme Court, pursuant to California Rule of Court 8.212(c).

✔ **State:** I declare under penalty of perjury that the foregoing is true and correct.

___ **Federal:** I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this December 8, 2014, in Los Angeles County, California.

_____
Steven B. Stevens

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