**Case No. S235968**

**IN THE SUPREME COURT**

**OF THE STATE OF CALIFORNIA**

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DAWN HASSELL, *et al.*
Plaintiffs and Respondents,

vs.

AVA BIRD,
Defendant,

YELP, INC.,
Appellant.

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After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233
Superior Court of the County of San Francisco
Case No. CGC-13-530525, The Honorable Ernest H. Goldsmith

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# REPLY IN SUPPORT OF PETITION FOR REVIEW

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## I. INTRODUCTION

Before the court of appeal's Opinion, *no* California case had approved an injunction that expressly named a non-party to litigation and affected that non-party's distinct rights without providing notice and an opportunity to be heard. Plaintiffs do not deny this and in every case they cite, the non-party's right to an adversarial hearing—enabling it to defend its rights by opposing the injunction—was protected. Yelp did not receive such a hearing here. The question before this Court is whether California law permits this drastic expansion of what was, before the appellate Opinion, a narrow exception to basic due process rights.

Plaintiffs try to escape the obvious problems created by the appellate Opinion by arguing repeatedly that Yelp has no right to host allegedly defamatory speech on its website. But this circular reasoning demonstrates the fundamental flaw in the court's analysis—Yelp was not a party to the action that found the speech to be defamatory after an uncontested hearing. The lower court gave Yelp no opportunity to litigate the question of whether the speech is defamatory, and thus its resulting decision is not binding on Yelp. *E.g.*, *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825. The defamation holding against Bird cannot serve as the excuse for denying Yelp basic due process rights. And yet, as Plaintiffs' Answer makes clear, that is the fundamental premise of their argument—because the speech was found to be defamatory (at a hearing that Yelp was not

informed about, and in which Yelp could not participate), Yelp purportedly has no right to challenge the infringement of its independent First Amendment rights to publish that speech. This cannot be the law. This Court should make clear that it is not. Section II.A, *infra*.

Plaintiffs' analysis of Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230") is just as flawed. Again, Plaintiffs use the defamation finding from an uncontested hearing—that Yelp was not invited to attend—to support their claim that Yelp has no rights worthy of protection. Answer to Petition for Review ("Answer") 7, 19-20, 22. And they continue to trumpet the court of appeal's conclusion that Section 230 can be evaded by the simple expedient of not directly suing a website provider, inviting the very gamesmanship that they try to dismiss as an unpersuasive "bogeyman." Answer 21-22. As the overwhelming amicus support for this Court's review demonstrates, Yelp is not tilting at windmills. Already, the appellate decision has found its way into threats by plaintiffs across the country (and even outside our borders), who are eager to evade Section 230 and take action directly against website providers like Yelp. *See Amicus* Letter of Google, Inc., dated August 10, 2016, at 3 ("plaintiffs in a pending case in Canada involving Google have cited the decision to try to justify an unprecedented blocking order that would require Google to remove certain search results websites across the entire world"); *Amicus* Letter of Glassdoor, Inc., dated August 15, 2016, at 1

("[s]ince *Hassell* was published, we have begun receiving demand letters citing the opinion as grounds for demanding that Glassdoor remove content and reviews deemed objectionable"). This flouting of a federal statute should not be the norm in California courts, but it will if the appellate Opinion remains good law. Section II.B, *infra*.

Plaintiffs' Answer to the Petition for Review only emphasizes the danger of the appellate Opinion, and the need for this Court's review to "secure uniformity of decision [and] to settle [] important question[s] of law." Cal. R. Ct. 8.500(b)(1). Yelp, therefore, respectfully requests that the Court grant its Petition for Review and, on review, reverse the decisions of the lower courts.

## II. HASSELL'S ANSWER HIGHLIGHTS THE NEED FOR THIS COURT'S REVIEW TO FIX THE PROBLEMS CREATED BY THE COURT OF APPEAL'S DECISION.

### A. Review Is Necessary To Make Clear That Trial Courts May Not Enjoin Non-Parties, Taking Away Their Independent Rights, Without Notice And An Opportunity To Be Heard.

#### 1. Yelp Has A First Amendment Right To Publish Third-Party Speech On Its Website, And A Due Process Right To Challenge Attempts To Infringe That Right.

In their effort to defend the court of appeal's decision, Plaintiffs ignore a core legal principle. Plaintiffs' opposition to this Court's review stands or falls on Plaintiffs' claim that Yelp is bound by the trial court's finding that the speech is defamatory. Answer 1-3, 9-10, 13-17. Shorn of

this key claim, their arguments fall apart. But Yelp is not challenging the ruling *against Bird* that the speech is defamatory, nor must it do so to assert its rights. Yelp is advocating its own First Amendment rights, independent of any judgment entered against Bird in a proceeding to which Yelp was not a party.

Plaintiffs do not discuss the legal requirements for their repeated proclamation that Yelp is bound by the holding against Bird, perhaps because they know that they cannot possibly satisfy those requirements. As this Court explained little more than a year ago, "[i]n accordance with due process, [issue preclusion] can be asserted only against a party to the first lawsuit, or one in privity with a party." *DKN Holdings*, 61 Cal.4th at 824-825 (citation omitted). There, the Court held that defendant, a non-party to a judgment in prior related litigation, could not invoke the judgment to prevent the lawsuit against him under a *claim* preclusion theory. *Id.* at 824-827. However, the non-party could invoke *issue* preclusion *against the party*. *Id.* at 827 (citations omitted). The Court made clear that claim and issue preclusion are available only *against* parties to litigation. *Id.* at 824. Here, because Plaintiffs chose *not* to make Yelp a party to this litigation, they cannot enforce the defamation holding against Yelp. The central theme of their Answer crumbles under this clear law.

Plaintiffs' argument is the essence of bootstrapping and demonstrates the dangers the appellate decision creates. Under their

reasoning, *any* judicial finding that speech is defamatory—even one entered following questionable service (A00026) and an uncontested default hearing (A00211)—would bind third parties, although they had no ability to oppose that finding. Plaintiffs could get uncontested judgments around the country and use them to deny California citizens their own First Amendment rights—all because a court somewhere entered a default judgment finding the speech to be defamatory.[1] This cannot be the law in California, but *it is* under the court of appeal's Opinion.

Unsurprisingly—and contrary to Plaintiffs' claim that the law is well-settled (Answer 9)—in none of Plaintiffs' cases did a court bind a *non-party* not in privity with a party to a holding that speech is defamatory. In *Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, the Court reversed a prior restraint against defendant to the extent it applied to non-parties, explaining that "[t]here is no evidence in the record[ ]to support a finding that anyone other than [defendant] herself defamed plaintiff, or that it is likely that [defendant] will induce others to do so in the future." *Id.* at 1160. The Court reserved the question of "whether the scope of the injunction properly could be broader if people other than [defendant]

[1] Thus, Plaintiffs' argument that Yelp cited no case "confer[ring] a constitutional right to a prior hearing before a distributor can be ordered to comply with an injunction that precludes re-publication of specific third party speech that has already been adjudged to be unprotected and tortious" is beside the point. Answer 14-15, citing Op. 23. Under basic claim and issue preclusion principles, Plaintiffs may not apply to Yelp the defamation finding *against Bird alone*.

purported to act on her behalf." *Id.* at n.11. It held that "following a trial at which it is determined that *the defendant* defamed the plaintiff, the court may issue an injunction prohibiting *the defendant* from repeating the statements determined to be defamatory." *Id.* at 1155-1156 (emphasis added). Plaintiffs ignore this key difference between *Balboa Island* and this case.

Nor do Plaintiffs' other cases help them. Answer 9-10, 14-15. In *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 245-246, the Court addressed restrictions on "virtual child pornography." It stated in passing that freedom of speech does not embrace defamation, although it did not apply that general observation to the different facts of that case. *Id.* In *Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 776, the Court merely recognized the state's interest in preventing false statements of fact, in deciding whether the forum had personal jurisdiction over defendant. And in *Bill Johnson's Rests., Inc. v. N.L.R.B.* (1983) 461 U.S. 731, 743, the Court held that the First Amendment right to petition does not protect sham litigation, "[j]ust as false statements are not immunized by the First Amendment right to freedom of speech." *Id.* at 743 (citation omitted). None of these cases hold—as Plaintiffs insist—that once speech is found to be defamatory in *any* proceeding *anywhere*, that holding is binding on the entire world and everyone loses First Amendment rights related to that

speech.[2] To the contrary, "[t]he Court has never endorsed the categorical rule [Plaintiffs] advance[]: that false statements receive no First Amendment protection." *U.S. v. Alvarez* (2012) 567 U.S. – , 132 S.Ct. 2537, 2545.[3]

Yelp is fully within its rights to point out that the injunction Plaintiffs hope to impose on Yelp was flawed from its inception because it was entered following a default judgment without any evaluation of the individual statements. Pet. 25.[4] *Cf. Freedman v. Maryland* (1965) 380

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[2] It is false on three levels to claim that Hassell "notified Yelp of their intention to seek a removal order against Yelp should Bird refuse to comply." Answer 1. *First*, neither the letter sent to Yelp nor the enclosed Complaint suggested that Plaintiff would seek an injunction *against Yelp*. A000601, A000628. *Second*, Plaintiffs did not wait until Bird "refuse[d] to comply" to seek a prior restraint against Yelp. They asked for Yelp to be enjoined as part of the judgment and injunction against Bird. A00048-00051, A00212-00213. *Third*, Plaintiffs asked for and obtained an *injunction* against Yelp (*id.*), not a "removal order" (a term without legal significance).

[3] The Supreme Court long ago recognized that some false speech must be protected in order to give "the freedoms of expression … the 'breathing space' that they 'need ... to survive'"; thus plaintiffs bear the burden of proving falsity, and public officials and public figures must prove constitutional malice to state a defamation claim. *New York Times v. Sullivan* (1964) 376 U.S. 254, 271-272 (citations omitted); *see Philadelphia Newspapers, Inc. v. Hepps* (1986) 475 U.S. 767, 776.

[4] Plaintiffs accuse Yelp of "fundamental[ly] misrepresent[ing]" the allegedly defamatory nature of Bird's statements (Answer 17 n.4), but cannot deny that the trial court's order following an uncontested hearing did not evaluate the individual statements or any potential defenses to liability. A00211. Plaintiffs also mischaracterize Yelp's Terms of Service, claiming they state that Yelp will remove defamatory content. Answer 3. They do not. A000637. They make clear that Yelp assumes no obligation—and retains sole discretion to decide whether—to remove

U.S. 51, 58 ("because only a judicial determination *in an adversary proceeding* ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint" (citations omitted; emphasis added)). As this Court explained in *Barrett v. Rosenthal* (2006) 40 Cal.4th 33 ("*Barrett*"), "[d]efamation law is complex, requiring consideration of multiple factors." *Id.* at 57 (citations omitted). Despite this Court's admonition that "a court must tread lightly and carefully when issuing an order that prohibits speech" (*Balboa Island*, 40 Cal.4th at 1159 (citation omitted)), the trial court issued, and the appellate court approved, a broad injunction without analyzing the individual statements (A00211).

Plaintiffs also ignore the fundamental point of the many U.S. Supreme Court cases that require a hearing to enjoin speech. Answer 15-16. They focus on the question of whether state officials must provide a hearing *before* enjoining speech. *Id.*; *see also id.* 1-2; Op. 23. But the Supreme Court consistently has required a prompt hearing to adjudicate the claimed rights, even if that hearing does not *precede* the seizure. Pet. 17-18, citing *Marcus v. Search Warrant of Property* (1961) 367 U.S. 717, 731-732; *Heller v. New York* (1973) 413 U.S. 483, 488. Here, the appellate

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content that allegedly violates its terms. Thus, while it is Yelp's general practice to remove content adjudicated defamatory against third parties—assuming any appeals have been exhausted and a plausible showing of defamation has been made (A00734) —this rarely occurs, as users have the ability to remove their own reviews under such circumstances.

court held that Yelp was entitled to no hearing at all to oppose the injunction against it. Op. 21.

Finally, Yelp has never "disclaim[ed]" its First Amendment rights, as Plaintiffs claim. Answer 15; *see also id.* 9, 10. There is nothing inconsistent about Yelp relying on its First Amendment right to *publish* speech created by others, *and* its protection under Section 230 from any court orders that would restrain that right.[5] "The provisions of section 230(c)(1), conferring broad immunity on Internet intermediaries, are themselves a strong demonstration of legislative commitment to the value of maintaining a free market for online expression." *Barrett*, 40 Cal.4th at 56. Plaintiffs' argument—that only those who create speech have a First Amendment right in that speech—is simply wrong. *E.g.*, *Marcus*, 367 U.S. at 731-733; *Heller*, 413 U.S. at 488. The appellate court's rejection of Yelp's due process rights (Op. 22) creates tremendous uncertainty in California law and must be corrected.

### 2. Injunctions Cannot Bind Non-Parties Like Yelp Without Evidence That They Aided And Abetted The Enjoined Party.

Plaintiffs' Answer ignores the fundamental difference between the cases Plaintiffs cite and this case—Yelp was denied the right to challenge the prior restraint the trial court entered against it. In a short paragraph,

[5] Thus, Yelp's arguments are not a "moving target," nor is it "talking out of both sides of its mouth" as Plaintiffs pejoratively claim. Answer 9, 10.

devoid of legal support, Plaintiffs try to explain away this critical point, first arguing that it fails because Yelp purportedly has no First Amendment rights at issue. Answer 13. As demonstrated above, this is wrong. Section 1, *supra*.

Second, Plaintiffs argue that Yelp's argument is irrelevant to the question of whether an injunction can be applied to a non-party. But this is undisguised bootstrapping. Every case the appellate court cited makes clear that an injunction cannot be applied to a non-party unless evidence establishes the non-party aided and abetted the party in evading the injunction, or engaged in similar conduct. Op. 19. Yet, the court expressly disclaimed the need for evidence here (Op. 21), and affirmed the injunction against Yelp without legal authority or analysis to support its vast expansion of this narrow exception to due process rights.

Plaintiffs claim the "deeply-rooted practice" of applying injunctions to non-parties "is not nearly as limited as Yelp suggests," but *ignore the facts and holdings of the cases they cite*. Answer 11. Yelp's Petition focuses on the criteria and standards courts impose to justify extending injunctions to non-parties to the injunction proceedings. Those standards have been twisted here. Pet. 19. Plaintiffs' perfunctory analysis (Answer 12-14)—which does not cite a single case permitting an injunction on facts like these—says nothing about this key point.

Plaintiffs' attempt to distinguish *Regal Knitwear Co. v. N.L.R.B.* (1945) 324 U.S. 9 (Answer 12), also ignores the fact that there, the non-party was not named in the injunction, and the Court held it was entitled to a hearing *to determine if the injunction could be applied to it*. 324 U.S. at 16. The fact that the injunction took effect before the non-party was given a hearing is meaningless because the non-party was not named. Here, in contrast, Yelp is named in the injunction (A00213); it is accused of "flouting" that injunction, simply because it refuses to sacrifice its right to challenge the prior restraint entered against it (Answer 21); and it faces contempt and other sanctions if it refuses to comply with an injunction that ignores Yelp's interests in its own website (Op. 30-31).

Plaintiffs' attempt to distinguish the many California cases rejecting application of an injunction to a non-party (Answer 12-13 (citations omitted)) demonstrates the danger of the rule the appellate court announced. Plaintiffs claim that because Yelp was specifically named in the injunction, it does not have the same right to challenge application of the judgment to it. But that is why Yelp is petitioning this Court for review—because the circular reasoning adopted by the court of appeal extinguishes fundamental rights.[6]

[6] It is no answer that the court of appeal contemplated a second hearing, at which the trial court would decide whether Yelp should be held in contempt. Op. 18. Yelp is faced with an injunction that expressly enjoins it and should not have to decide between complying with an

Finally, Plaintiffs misstate California law in attempting to distinguish *Blockowicz v. Williams* (N.D. Ill. 2009) 675 F.Supp.2d 912, *aff'd* (7th Cir. 2010) 630 F.3d 563. Answer 13-14. Under federal law, "a court may find a nonparty in contempt if that person has 'actual knowledge' of the court order and 'either abets the party named in the order or is legally identified with him.'" *Id.* at 915 (citation omitted). The same standard applies here. *See Berger v. Superior Court* (1917) 175 Cal. 719, 722 (injunction can be applied only to those named in the injunction, their members, and those "acting as an aider and abetter," of the enjoined parties (citations omitted)).

Contrary to Plaintiffs' claim (Answer 13), *Planned Parenthood Golden Gate v. Garibaldi* (2003) 107 Cal.App.4th 345, 353, applied this standard. The court explained that an injunction may apply to non-parties "with or through whom the enjoined party may act" while reiterating this Court's caution in *Berger* that "'a theory of disobedience of the injunction cannot be predicated on the act of a person not in any way included in its

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unconstitutional prior restraint and risking contempt sanctions. The procedure the court of appeal endorses—enter an injunction and ask afterwards if the injunction is proper—is not and cannot be the law in California. *Cf. In re Berry* (1968) 68 Cal.2d 137, 148-149 (person affected by injunction may seek "a judicial declaration as to its jurisdictional validity" or violate the order and risk contempt sanctions). Under the appellate court's rationale, no reason exists to give anyone advance notice that an injunction is being sought against them. Op. 21. The enjoined party could just argue afterwards—in opposing contempt proceedings—that no facts support the injunction. But that is not, and should not be, the law in California.

terms or acting in concert with the enjoined party and in support of his claims.'" *Id.* (citations omitted). Thus, the court refused to enforce an injunction against abortion protestors neither named individually nor as class members. *Id.*; *see also* Pet. 21-22.

Ultimately, Plaintiffs' argument is the reason this Court's review is necessary. The appellate court watered down the strict requirements of these cases by approving the injunction here. Op. 21. If this narrow exception can be applied to Yelp—which is connected to Bird *only* because she is one of millions of people who post on Yelp—it can be applied to any third party. The exception will have swallowed the rule. A newspaper that refuses to remove a published letter to the editor or a quote from a source in an article, a bookstore that continues to sell a book found to be misleading, and a library that provides internet access, all are non-parties "with or through whom [an] enjoined party may act." Answer 14. But none has the type of close relationship with the enjoined party that courts consistently have required to hold them bound by an injunction to which they were not a party. This Court should accept review to ensure that this narrow exception to due process is strictly confined, and does not become a weapon to deprive non-parties of their constitutional rights.

### B. Review Is Necessary To Make Clear That Plaintiffs Cannot Evade Section 230 By Denying Website Publishers Their Due Process Rights.

Plaintiffs' Answer essentially concedes the unprecedented nature of the appellate Opinion, as it fails to cite a single decision permitting an injunction against a website publisher that played no role in creating the content at issue.

Plaintiffs pretend the court of appeal engaged in a straight-forward application of Section 230. But by focusing on the prohibition of liability in Subsection (e)(3) (Answer 3, 17), Plaintiffs read Subsection (c)(1) out of the statute. That Subsection mandates that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). As Plaintiffs' cases explain (Answer 21), "publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content" (*Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1102 (citation omitted))—the very thing Plaintiffs challenge here. In *Barnes*, the Ninth Circuit rejected a negligent undertaking claim based on Yahoo!'s failure to remove "indecent profiles" posted on Yahoo!, explaining that Yahoo!'s conduct was "quintessentially that of a publisher." *Id.* at 1102-1103. *See also Chicago Lawyers' Comm. v. Craigslist, Inc.* (7th Cir. 2008) 519 F.3d 666, 671 (rejecting claim against publisher of website ads under Subsection (c)(1)); *Delfino v. Agilent Tech.,*

*Inc.* (2006) 145 Cal.App.4th 790, 806-807 ("plaintiffs, in alleging that Moore's employer was liable for his cyberthreats, sought to treat [the employer] 'as the publisher or speaker' of those messages" (citing § 230(c)(1)); *Universal Communications Systems, Inc. v. Lycos, Inc.* (1st Cir. 2007) 478 F.3d 413, 422 (rejecting claim against website publisher based on misinformation on website).[7]

The injunction against Yelp is a more direct violation of Subsection (c)(1) than the cases Plaintiffs try to distinguish. Answer 21. Plaintiffs argue that Yelp has no right to defend the speech because it was adjudged to be defamatory *against Bird*. They proclaim that *Yelp* has no First Amendment rights worthy of protection because of the judgment *against Bird*. Answer 19.[8] And they defend the injunction against Yelp by claiming that Bird is acting through it. If this is not treating Yelp as the

[7] Plaintiffs misstate the facts in *Hardin v. PDX, Inc.* (2014) 227 Cal.App.4th 159. Answer 20. The defendant there did not *create* any of the content at issue; it merely modified its software to limit the third-party-created content that would be distributed. 227 Cal.App.4th at 162-163. Thus, *Hardin* is another example of the improper narrowing of Section 230 immunity by California courts.

[8] Plaintiffs misinterpret *Signal Oil & Gas Co. v. Ashland Oil & Refining Co.* (1958) 49 Cal.2d 764, in arguing that Section 230 "is not a ground to attack the judgment as a 'void' judgment." Answer 18 n.5. "'If a court grants relief, which under no circumstances it has any authority to grant, its judgment is *to that extent* void.'" *Id.* at 778 (citation omitted; original emphasis). Here, the judgment is void to the extent it purports to restrict Yelp because Section 230 prohibits treating Yelp as the publisher of Bird's speech.

"speaker or publisher" of Bird's words, Yelp is not sure what possibly could be.[9]

Plaintiffs' argument that Section 230 should be defined by the facts of the case that prompted its enactment (Answer 18-19) is just as flawed. As the court noted in *Chicago Lawyers* in evaluating Section 230, "a law's scope often differs from its genesis. Once the legislative process gets rolling, interest groups seek (and often obtain) other provisions." 519 F.3d at 671; *see also Barrett*, 40 Cal.4th at 44 n.7 (noting that *one* purpose of Section 230 was to overrule the case Plaintiffs cite); *see generally Amicus* Letter of Facebook, Inc., *et al.*, dated August 12, 2016, at 3 (noting Congressional endorsement of decisions interpreting Section 230 as granting immunity). Thus, Section 230 broadly applies to "information" and bars courts from treating website publishers as a "publisher or speaker" of third-party content.

Finally, Plaintiffs' attempt to distinguish other California cases addressing Section 230—by pointing out that they all involve claims "asserted directly against the provider"—again highlights the need for review. Answer 20-21. Plaintiffs should not be able to avoid Section 230

[9] Independently, the injunction, and any contempt sanctions against Yelp that might flow from it, are barred by Subsection (e)(3) because they impose liability on Yelp for its conduct in publishing third-party speech. *Cf. Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 831.

immunity by denying online publishers due process rights.[10] By enjoining Yelp's publication of Plaintiffs' speech, the lower courts treated Yelp as the publisher of that speech. This Court should accept review and ensure that California courts adhere to all of Section 230's requirements, and that Subsection (c)(1) is not abridged in California.

Dated: August 17, 2016

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[10] It is not true that Yelp cites only a blog post to support its position. Answer 21; *see* Pet. 28-31 (citations omitted). But this blog post and the many other publications that have criticized the appellate decision aptly explain the reason this Court's review is so important.

## CERTIFICATE OF WORD COUNT

(Cal. Rules of Court 8.504(d))

The text of this brief consists of 4,197 words as counted by the Microsoft Word word-processing program used to generate this brief, including footnotes but excluding the tables, the cover information required under rule 8.204(b)(10), this certificate, and the signature block.

Dated: August 17, 2016

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## PROOF OF SERVICE

I, Mary Land, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of Davis Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, CA 94111-6533.

I caused to be served a true and correct copy of **REPLY IN SUPPORT OF PETITION FOR REVIEW** on each person on the attached list by the following means:

☒ **On August 18, 2016, I enclosed a true and correct copy of said document in an envelope with postage fully prepaid for deposit in the United States Postal Service.**

I placed such envelope(s) with postage thereon fully prepaid for deposit in the United States Mail in accordance with the office practice of Davis Wright Tremaine LLP, for collecting and processing correspondence for mailing with the United States Postal Service.

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

Executed on August 18, 2016 at San Francisco, California.

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