S S204543

# In the Supreme Court of the State of California

Taylor Patterson,

Plaintiff and Appellant,

v.

Domino's Pizza, LLC; Domino's Pizza Franchising, and Domino's Pizza, Inc.,

Defendants and Respondents.



Court of Appeal, Second Appellate District,
Division Six, Case No. B235099
Ventura County Superior Court
Case No. 56-2009-00347668-CU-OE-SIM
Honorable Barbara Lane

## Petition for Review

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## Table of Contents

## Table of Authorities

**Page**

### Cases

## State Statutes



## Rules



## Other Authorities



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## Petition for Review

Domino's Pizza LLC, Domino's Pizza Franchising and Domino's Pizza, Inc. (collectively, "Domino's"), petition for review of (1) a published decision by the Court of Appeal, Second Appellate District, Division Six reversing a summary judgment in Domino's' favor on vicarious liability grounds and (2) the Court of Appeal's subsequent refusal to dismiss the appeal and vacate the opinion for lack of jurisdiction. A copy of the opinion, published June 27, 2012, and the subsequent ruling declining to dismiss the appeal for untimeliness issued July 30, 2012, are attached as Exhibits "A" and "B," respectively.

## Issues Presented for Review

1. Whether a franchisor can be held vicariously liable for the acts of a franchisee's employee where the franchisor did not exercise control over the day-to-day details concerning the type of conduct giving rise to the plaintiff's claims.

2. Whether a later judgment which makes no substantial or material change to an earlier judgment that ended the litigation between the plaintiff and a set of defendants can revive an otherwise untimely appeal.

3. Whether a Court of Appeal retains the power to dismiss an untimely appeal after an opinion is filed, but before the remittitur issues.

## Why Review Should Be Granted

This case provides the Court with the opportunity to clarify an issue of vicarious liability critical to the burgeoning franchise community in California, and address a jurisdictional issue of importance to the state's appellate courts.

According to the International Franchise Association, as of 2003 there were "1500 franchise companies operating in the United States through more than 320,000 retail units" which accounted for "more than 40% of all retail sales" in this country and employed "more than 8 million people." (Joseph H. King, *Limiting the Vicarious Liability of Franchisors for the Torts of Their Franchisees* (2005) 62 Wash. & Lee L.Rev. 417, 421 (hereafter, "*Limiting Vicarious Liability*"); see also Plaintiff's Request for Publication, p. 2 ["[m]ore and more corporations are doing business in California through franchises, and many of these franchises are restaurants" such as "Denny's, Buffalo Wild Wings, and Famous Dave's"].) A new franchise opens every eight minutes in the United States, and one out of every twelve retail business establishments is a franchised business. (*Limiting Vicarious Liability, supra,* at pp. 417, 421.)

Franchises can take the form of product distribution systems (such as automobile dealerships) or business-format systems (such as fast food restaurants). (*Id.* at p. 422.) Their commonality is that the franchisor has developed some valuable product or service, and the franchisee pays a certain amount for the right to market this product or service under the franchisor's

trademark. (*Id.* at p. 421.) Franchising offers the franchisor an opportunity to expand without the need to raise capital and dealers with "stakes in the business" who can be expected to have "greater motivation and rapport with the local community than [would] managers employed by the franchisor." (*Id.* at p. 423.) Franchisees, in turn, receive the opportunity to own a business with established brand recognition and goodwill.

In California, this much is clear: a franchisor may be held vicariously liable for the acts of a franchisee, and a franchisee's employees, when the actual relationship between the franchisor and franchisee is determined to be one of principal and agent. (See CACI 3705; Directions for Use, CACI 3704.) Unclear, however, is what the governing test and surrounding circumstances must be to give rise to such liability. Traditionally, California courts have looked to indicia of substantial control of the franchisee's business operations generally. (See *Nichols v. Arthur Murray, Inc.* (1967) 248 Cal.App.2d 610, 615-617; *Porter v. Arthur Murray, Inc.* (1967) 249 Cal.App.2d 410, 421.) But the modern trend is to conduct a more focused examination of the indicia of control of day-to-day activities that relate to the type of conduct at issue. (See *Cislaw v. Southland Corporation* (1992) 4 Cal.App.4th 1284, 1293-1296; *Kerl v. Dennis Rasmussen, Inc.* (2004) 273 Wis.2d 106; *Rainey v. Langen* (Maine 2010) 998 A.2d 342.) This modern standard recognizes franchisors' need to closely control and supervise certain local operations to protect their trademarks and brands and assure customers consistent, high quality products and services, and acknowledges that this

type of control can exist without giving rise to agency liability for daily operational activities.

The Court of Appeal's decision flies in the face of this trend. The Court of Appeal found that a triable issue of fact was raised concerning Domino's liability for sexual harassment of a franchise employee by a franchisee's store manager because (1) the franchise agreement provided for a number of franchisee controls unrelated to sexual harassment and (2) according to the franchisee, "there was a lack of local franchisee management independence." (Typed opn., pp. 4-8.) This reasoning reflects a traditional, generalized view of control out of step with the modern trend. It also potentially unnecessarily broadens franchisor liability. A detailed franchise agreement could give rise to liability whenever it demonstrates brand and operational controls – even if it does not purport to control, nor did the franchisor in fact control, the particular type of conduct at issue. This Court should grant review to determine, for the first time, what the vicarious liability of franchisors should be. [1]

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[1] The appellate court's opinion has reverberated throughout the franchise law community. Employment and franchise blogs have reported on the decision, and expressed concern about its impact on franchises in California. See, e.g., Vicarious Liability – Like Pizza– Is a Dish Best Served Cold, available at http://californiaemploymentlaw.foxrothschild.com (visited July 30, 2012); California Franchisor May Be Vicariously Liable for Harassment of a Franchisee's Employee, available at http://www.seyfarth.com/publications/ma070512 (visited August 1, 2012); Franchisor Liability for Sexual Harassment by Franchisee Supervisors, available at http://sandiegoemploymentlaw.blogspot.com (visited August 1,

This case also raises fundamental issues of appellate jurisdiction. The jurisdiction of the Court of Appeal is limited in scope to the notice of appeal and the judgment from which a party appeals. (*Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.) If an appeal is untimely, an appellate court has no jurisdiction to consider it, and "must dismiss [an] untimely appeal of its own motion even if no objection is made." (*Estate of Hanley* (1943) 23 Cal.2d 120, 123; see also Cal. Rules of Court, rule 8.104(b).) Jurisdiction cannot be conferred "by the consent or stipulation of the parties, estoppel, or waiver." (*Estate of Hanley, supra,* 23 Cal.2d at p. 123.) Where, as here, there purport to be two different judgments, the appealability of the first judgment would only transfer to this later judgment and restart the 60-day period to appeal if the later judgment satisfied one of two emerging tests: (1) the second judgment substantially modified the first judgment or (2) the later judgment materially changed the rights of the parties. (See, e.g., *Sanchez v. Strickland* (2011) 200 Cal.App.4th 758, 765; *Dakota Payphone LLC v. Alcarez* (2011) 192 Cal.App.4th 493, 504; *Torres v. City of San Diego* (2007)154 Cal.App.4th 214, 222; *Dickens v. Lee* (1991) 230

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2012); Court of Appeal Imposes Franchisor Liability for Franchisee Harassment Claim, available at http://shawvalenza.blogspot.com (visited August 1, 2012); California Appeals Court holds that Franchisor may be liable for Harassment by Employee of Franchise, available at http://www.lexology.com (visited August 6, 2012). In short, as Plaintiff observed in her request to publish the Court of Appeal's opinion, "[g]iven the explosion of restaurants now allegedly owned and operated by franchisees, the issue is one of continuing public interest." (Request for Publication, p. 2.)

Cal.App.3d 985, 987, fn.1.) The subsequent judgment here did neither. Nonetheless, this case presents the Court with the opportunity to examine the emerging law concerning merged judgments and clarify which test should govern.

Finally, because the appeal in this case, which now undergirds a published opinion, is untimely, the appellate court should have dismissed the appeal and vacated its decision. It declined to do so, however, because it believed it lacked the power to do so once its opinion became final, even though jurisdiction of the case had not yet been returned to the trial court. This Court should, at the very least, grant review and retransfer to the Court of Appeal with directions to determine the issue of the timeliness of the appeal.

## Statement of the Case

### A. The Franchisor Relationship.

Plaintiff, Taylor Patterson ("Plaintiff"), a former employee of Sui Juris LLC ("Suri Juris"), an independent Domino's Pizza franchise, sued Sui Juris, Sui Juris' owner Daniel Poff, and Domino's Pizza corporate entities for sexual harassment she allegedly experienced from a Sui Juris assistant manager.[2] (1 JA 1-18.) Domino's filed a motion for summary judgment urging that Sui Juris was an independent contractor and there was no principal-agency relationship between Sui Juris and Domino's. (Typed opn., p. 2; see also 1 JA 24-32 [demurrer to the complaint

[2] After the action was filed, Sui Juris filed for bankruptcy protection. (1 JA 81-84.)

on the same grounds]; 1 JA 75, 105 [affirmative defenses on the same ground].)

The trial court granted summary judgment in Domino's favor. The trial court observed that, "[l]ike a majority of jurisdictions, California courts look to whether the franchisor exercised control over the day-to-day operations of the franchisee, or controlled through the franchise agreement the instrumentality that caused the harm." (4 JA 831.) The court found that "[t]he Domino's defendants established that, as franchisor (and related entities), they have the right to and do impose controls over their franchisees to avoid inconsistency in operating the Domino's pizza stores and the loss of associated goodwill; however, this control did not include hiring, firing and day-to-day personnel issues." (4 JA 833, citations omitted; see also 1 JA 132-135, 197-205, 232-234; 1 JA 236, 255 [Poff trained Plaintiff and other employees on sexual harassment issues].) The court concluded that evidence presented by the plaintiff did not raise a triable issue of fact because (1) it was undisputed that Poff, as the owner of Sui Juris, was responsible for hiring, firing and training (including sexual harassment training); (2) even where the Domino's area leader Claudia Lee made suggestions about firing or disciplining the assistant manager at issue, the termination was ultimately Poff's decision. (4 JA 834.)[3]

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[3] Poff initially suspended the assistant manager in question pending a sexual harassment investigation; Poff ultimately fired the assistant manager, however, because he did not show up for work. (1 JA 242.)

The appellate court took a different view. The court determined that the language in the franchise agreement itself raised inferences that Sui Juris was not an independent contractor because it reflected that Domino's retained substantial control of its franchisee's local operations – even though none of these provisions related to the type of conduct at issue in the case. (Typed opn., pp. 4-6.) The court further determined that there was other evidence of control based on Poff's testimony that he felt that his franchise would be in jeopardy if he did not follow Domino's guidelines and area leader Lee's "suggestions" concerning termination of the assistant manager in question and that of a previous employee who had delivered non-Domino's food in a Domino's bag. (Typed opn., pp. 7-8.) The appellate court used a slightly different standard than that employed by the trial court: whether the franchisor "assume[d] substantial control over the franchisee's local operation, its management-employee relations or employee discipline." (Typed opn., p. 4.)

### B. The Timeliness of the Appeal.

The trial court granted summary judgment in favor of the Domino's corporate entities because it determined that Domino's was not responsible for the actions of its franchisee, Sui Juris, and the franchisee's store manager. (JA 828-839.) The court entered judgment in favor of Domino's in April 2011. (JA 841-853.) Domino's served notice of entry of that judgment on May 4, 2011. (JA 856-871.) A second judgment was entered on June 20, 2011 which repeated verbatim the disposition in favor of Domino's as a result of the summary judgment ruling, delineated

the amount of costs to be awarded, and referred to the dismissal of claims involving other parties. (JA 880-881; see also JA 884-888 [notice of entry of judgment].) Plaintiff purported to appeal from this later judgment on August 10, 2011. (JA 889-892.)

Shortly before the Court of Appeal's published opinion became final, and within days of newly retained appellate counsel examining the record and discovering the timeliness problem, Domino's moved to dismiss the appeal and vacate the opinion on jurisdictional grounds. On July 30, 2012, the first court day after the opinion had become final, the Court of Appeal denied the motion "by operation of law" because the court's "last day of jurisdiction was 7/27/12."

This petition for review from the June 27, 2012 opinion and July 30, 2012 order followed.

## Legal Discussion

### I

### A FRANCHISOR IS NOT VICARIOUSLY LIABLE FOR THE ACTS OF A FRANCHISEE EMPLOYEE IN AN AREA OVER WHICH THE FRANCHISOR DOES NOT MAINTAIN DAY-TO-DAY CONTROL. HERE, THE FRANCHISEE, NOT DOMINO'S, HAD THE RESPONSIBILITY TO TRAIN AND REPRIMAND EMPLOYEES CONCERNING SEXUAL HARASSMENT.

Although "[f]ranchising is a heavily regulated form of business in California," "there are relatively few decisions on the nature of the relationship between the franchisor and franchisee as it affects third persons." (*Cislaw v. Southland*, *supra*, 4

Cal.App.4th at p. 1295.) Early California case law generally applied a simple agency analysis for determining when a franchisor may be held vicariously liable for the acts of its franchisees: if the franchisor had a right of substantial control over the franchisee, an agency relationship would be found to exist. (See, e.g., *Nichols v. Arthur Murray, Inc., supra,* 248 Cal.App.2d at p. 613; *Kuchta v. Allied Builders Corp.* (1971) 21 Cal.App.3d 541, 547.) Subsequent decisions have lent more nuance to this analysis, and focused on whether a franchisor exercised or had the right to exercise complete or substantial control over the day-to-day operations of the franchisee. (See, e.g., *Cislaw v. Southland Corp.*, supra, 4 Cal.App.4th at p. 1295 [concluding that, as a matter of law, the franchisor did not have the right to completely or substantially control the means and matter of the franchisee's business where the franchisee testified that she had sole control over employment, inventory, marketing decisions, etc.]; *Kaplan v. Coldwell Banker Residential Affiliates, Inc.* (1997) 59 Cal.App.4th 741, 746 [granting summary judgment to franchisor because franchisor did not control or have the right to control the day-to-day operations of the franchisee's office – franchisee hired and fired employees, set office wages and commissions and determined business hours]; *Juarez v. Jani-King, Inc.* (N.D. Cal. Jan. 23, 2012) No. 09-3495, 2012 U.S. Dist. LEXIS 7406, *12-13 [concluding that franchisor did not exercise sufficient control over the franchisee to render the franchisor an employer because, inter alia, franchisee had the discretion to hire, fire and supervise its employees.].)

California courts therefore appear to recognize that "[a] franchisor must be permitted to retain such control as is necessary to protect and maintain its trademark, trade name and goodwill, without the risk of creating an agency relationship with its franchisees." (*Cislaw v. Southland Corp., supra,* 4 Cal.App.4th at p. 1284.) "The franchisor's interest in the reputation of its entire [marketing] system allows it to exercise certain controls over the enterprise without running the risk of transforming its independent contractor franchise into an agent." (*Kaplan v. Coldwell Banker Residential Affiliates, Inc., supra,* 59 Cal.App.4th at p. 745.) However, a review of California case law reveals that there is little uniformity in applying the substantial control standard and in determining the level and range of control that is necessary to protect the franchisor's brand versus that which may render the franchisor vicariously liable for the acts of its franchisee. This inconsistency, and the uncertainty it creates, may have a chilling effect on companies seeking to expand through the franchise system.

Many states have resolved this uncertainty – and the tension between franchisors' need to protect their trademark, trade name and good will and, at the same time, preserve the independent contractor relationship with their franchisees – by applying a more focused agency analysis in the franchisor/franchisee context. (See *Kerl v. Dennis Rasmussen, Inc.* (Wis. 2004) 682 N.W.2d 328, 338 ["the clear trend in the case law in other jurisdictions is that the quality and operational standards and inspection rights contained in a franchise

agreement do not establish a franchisor's control or right of control over the franchisee sufficient to ground a claim for vicarious liability as a general matter or for all purposes."]; *Rainey v. Langen*, supra, 998 A.2d 342; *Pizza K, Inc. v. Santagata* (Ga. Ct. App.4th Div. 2001) 547 S.E.2d 405, 407; *Hong Wu v. Dunkin Donuts, Inc.* (E.D.N.Y. 2000) 105 F.Supp.2d 83, 88; *Schlotzsky's, Inc. v. Hyde* (Ga. Ct. App. 2003) 538 S.E.2d 561, 563; *Hart v. Marriott Intl.* (2003) 304 A.D. 2d 1057, 1058, 758 N.Y.S. 2d 435; *Braucher v. Swagat Group LLC* (C.D. Ill. 2010) 702 F.Supp.2d 1032, 1043-1044.) "These courts have adapted the traditional master/servant 'control or right to control' test to the franchise context by narrowing its focus: the franchisor must control or have the right to control the daily conduct or operation of the particular 'instrumentality' or aspect of the franchisee's business that is alleged to have caused the harm before vicarious liability may be imposed on the franchisor for the franchisee's tortious conduct." (*Kerl, supra*, 682 N.W.2d at p. 340 ["a franchisor may be held vicariously liable for the tortious conduct of its franchisee only if the franchisor has control or a right of control over the daily operation of the specific aspect of the franchisee's business that is alleged to have caused the harm"]; *Viado v. Domino's Pizza, LLC* (Or. Ct. App. 2009) 217 P.3d 199, 207- 212 [affirming summary judgment for franchisor because the franchisee "and not Domino's had the right to control the physical details of the manner of performance of [the franchisee employee's] driving"]; see generally Carol J. Killer and Thomas S. Dickie, *Franchising: Evolution of the Agency Control Dilemma*

*Broad Versus Narrow Approach to Franchisor Liability* (1993) 11 Midwest L. Rev. 30; King, *Limiting Vicarious Liability, supra,* 62 Wash. & Lee L.Rev. at pp. 431-433 & 432, fn. 58 [collecting cases from "a number of courts [that] have required that the control by the franchisor not merely relate to the day-to-day operations, but extend 'over the specific aspects of the franchisee's business operations from which the injury arose'"].)

With the trend in California of more closely scrutinizing the relationship between franchisors and franchisees in the context of vicarious liability, it appears as though California is slowly inching more toward the instrumentality test and away from the traditional agency/substantial control theory. This Court should take the opportunity to address the vicarious liability standard in the franchise context – something it has never done – and adopt the instrumentality approach as the standard for franchisor/franchisee liability in California.

## II

## THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEAL HAD NO JURISDICTION TO HEAR THE UNTIMELY APPEAL IN THIS CASE.

### A. Plaintiff Did Not Appeal From the First Judgment Which Ended the Litigation Between Herself and the Domino's Defendants. Plaintiff's Notice of Appeal From the Later Judgment in this Case Came Too Late.

"'In California, the right to appeal in civil actions is wholly statutory. . . . In order to exercise that right an appellant must have standing to appeal, and must take an appeal from a

statutorily declared appealable judgment or order.' [Citation]." (*Jordan v. Malone* (1992) 5 Cal.App.4th 18, 21; see also *In re Brekke* (1965) 233 Cal.App.2d 196, 199.) Code of Civil Procedure section 904.1 enumerates the orders and judgments from which an appeal will lie. A "judgment" is statutorily defined as the "final determination of the rights of the parties." (Code Civ. Proc. Sect. 577.) Judgments include determinations that finally adjudicate one group of parties' rights. (See *Griset v. Fair Political Practices Comm'n* (2001) 25 Cal.4th 688, 697.) A judgment resolving all issues between any one set of adverse parties therefore is immediately appealable, even if the action remains as to the other parties. (See, e.g., *Justus v. Atchison* (1977) 19 Cal.3d 564, 568 [demurrers sustained on all causes of action of certain plaintiffs]; *Johnson v. Threats* (1980) 140 Cal.App.3d 287, 289 [demurrers sustained on all counts against one defendant]; *Daon Corp. v. Place Homeowners' Ass'n* (1989) 207 Cal.App.3d 1449, 1456 [judgment dismissing cross-complaint is appealable if it finally adjudicates all pending claims as to a particular party].)

Here, the order granting summary judgment in favor of Domino's and against Plaintiff resolved all claims between those parties.[4] The resulting judgment was therefore immediately

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[4] The judgment awarded costs to Domino's in an amount to be determined later. (JA 871.) This outstanding issue did not render the judgment nonappealable; rather, it meant that if Plaintiff wanted to challenge the cost award, she would have to file another notice of appeal from the determination of the amount of those costs. (See, e.g., *Torres, supra,* 154 Cal.App.4th at p. 222.)

appealable. Dominos' counsel served notice of entry of judgment on May 4. A notice of appeal was due 60 days thereafter, on July 5. (Cal. Rules of Court, rule 8.104(a)(2).) Plaintiff filed her notice of appeal on August 10 – more than 90 days after notice of entry of judgment was served.[5] The notice of appeal was therefore untimely. As a result, the Court of Appeal never obtained jurisdiction to decide this appeal.

### B. The Earlier Appealable Judgment Cannot be Saved by Merging it into the Subsequent Judgment.

Plaintiff purported to appeal from a second, June 2011 judgment. (JA 890.) The appealability of the first judgment would only transfer to this later judgment and restart the 60-day period to appeal if, under two emerging lines of cases, the later judgment (1) substantially modified the first judgment or (2) materially changed the rights of the parties. (See, e.g., *Sanchez v. Strickland* (2011) 200 Cal.App.4th 758, 765; *Dakota Payphone LLC, supra,* 192 Cal.App.4th at p. 504; *Torres, supra,* 154 Cal.App.4th at p. 222; *Dickens, supra,* 230 Cal.App.3d at p. 987, fn.1.) It did neither.

The original judgment entered judgment in favor of the Dominos' defendants based on the summary judgment ruling, and awarded costs in an amount to be determined later. (JA 871.) The later judgment repeated this same ruling and quantified the

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[5] Plaintiff did not appeal from the earlier judgment; she appealed from a subsequent judgment. As we explain, she also appealed from the wrong judgment.

amount of costs to be awarded. (JA 880-881.) As noted previously, this may have given rise to a separate appeal from the cost award, but it was not a substantial or material change that would restart the clock on appealing the underlying judgment.

The subsequent judgment also recited the voluntary dismissal of a cross-complaint by Domino's against a codefendant Sui Juris. (JA 881.) This does not substantially modify or materially change the judgment between Domino's and plaintiff either. (Compare *Angell v. Superior Court (Verdugo Trustee Service Corp.)* (1999) 73 Cal.App.4th 691, 698 ["when a judgment resolves a complaint, but does not dispose of a cross-complaint pending *between the same parties*, the judgment is not final and thus not appealable," emphasis added].) It adds no further ground for appeal, either, since a voluntary dismissal is not appealable. (See *Cook v. Stewart McKee & Co.* (1945) 68 Cal.App.2d 758, 761.) The judgment also contained a provision stating that plaintiff had agreed to dismiss with prejudice, in exchange for an award of costs, the plaintiff's claims against Sui Juris and Renee Miranda. (JA 880-881.) This additional provision concerning a settlement between these other parties does not substantially change or materially affect the rights of the Dominos' entities and the plaintiff under the earlier judgment either.[6]

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[6] There are no other grounds to save this appeal. Appellate courts have sometimes saved premature appeals from nonappealable orders by construing such appeals as having been taken from a subsequent judgment. (See Eisenberg, et al., Civil Appeals and Writs, Sect. 2:262-2:263 (Rutter

## III

## THE COURT OF APPEAL RETAINED THE POWER TO DISMISS THE APPEAL AND VACATE THE OPINION AFTER THE OPINION WAS PUBLISHED, BUT BEFORE THE REMITTITUR ISSUED.

The law is clear that a timely notice of appeal is a jurisdictional prerequisite, such that if the appeal is untimely, the "court has no jurisdiction to consider it, and it must be dismissed." (*Dakota Payphone LLC, supra,* 192 Cal. App. 4th at p. 443.) Even if the jurisdictional argument is not raised by the parties, the court, on its own motion, must dismiss if the notice is untimely. (*Nu-Way Assoc. Inc. v. Keefe* (1971) 15 Cal. App. 3d 926, 928-29.) "Jurisdiction to entertain . . . a late appeal cannot be conferred 'by the consent or stipulation of the parties, estoppel, or waiver." (*Id.* at p. 928.)

Pursuant to Cal. Rules of Court, Rule 8.264, a decision of the Court of Appeal becomes a final order thirty days after filing.

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Guide, 2011).) But the issue here is not that the appeal was premature; it was tardy. Nor is this appeal a candidate for treatment as a writ petition. This remedy, too, should be reserved for nonappealable interim orders, rather than untimely appeals. (See *Mauro B. v. Superior Court* (1991) 230 Cal.App.3d 949, 952-953.) Nor are the circumstances here comparable to those where improper appeals have been deemed to be writs. (Compare *In re Albert B* (1989) 215 Cal.App.3d 361, 373 [right to appeal retroactively taken away by legislature and parties had already fully briefed the issues]; *In re Marriage of Vryonis* (1988) 202 Cal.App.3d 712, 714, fn.1 [time to appeal final judgment had not yet expired and writ review would resolve the entire litigation].)

While it is true that, once a decision is final, the Court has no power to review or modify it (see *In re Marriage of Balcof* (2006) 141 Cal. App. 4th 1509, 1518), the Court of Appeal does not lose jurisdiction over the matter until the remittitur issues (see *Bellows v. Aliquot Assoc., Inc.* (1994) 25 Cal. App. 4th 426, 433 [concluding that the jurisdiction of the appellate court terminates when the remittitur issues].)

Even after the remittitur, courts have concluded that appellate courts retain jurisdiction to recall cases back from the trial courts. (See, e.g., *In re Martin* (1962) 58 Cal.2d 133 [providing that "the District Court of Appeal does retain some vestige of jurisdiction, even after the remittitur has gone down" because of its ability to recall]; Cal. Rules of Court, Rule 8.272 [providing "[o]n a party's or its own motion or on stipulation, and for good cause, the court may stay a remittitur's issuance for a reasonable period or order its recall."].

"Ordinarily, when a court has jurisdiction to render a judgment which is not the result of fraud, imposition or prejudicial mistakes of facts, a remittitur which has been duly issued thereon may not be recalled or quashed to correct mere errors of law or procedure." (*People v. Stone* (1949) 93 Cal.App.2d 858, 861.) Nonetheless, "in a proper case, where the court lacked jurisdiction to pronounce judgment because a pending motion for new trial had not been disposed of, or for other adequate reasons such as fraud or imposition on the court, the extraordinary remedy of recall of remittitur may be granted." (*Id.*) This is

similar to the rule in the trial court that "when a judgment is "void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant" the court has "inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored." (*Rochin v. Pat Johnson Manu. Co.* (1998) 67 Cal. App. 4th 1228, 1239; see also *Andrisani v. Saugus Colony Ltd.* (1992) 8 Cal. App. 4th 517, 523 ["A court may set aside a void order at any time"]; *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 862 ["appellants are seeking relief from a void [default] judgment, which the court has authority to set aside at any time"]; *Fireman's Fund Ins. Co. v. Worker's Compensation Appeals Bd.* (2010) 181 Cal.App.4th 752, 766 ["a judgment is void if the court rendering it lacked subject matter jurisdiction or jurisdiction over the parties. . . . The granting of relief, which a court under no circumstances has any authority to grant, has been considered an aspect of fundamental jurisdiction for the purposes of declaring a judgment or order void."].)

This Court should grant review and retransfer to the Court of Appeal to determine the timeliness of the notice of appeal in this case. The remittitur has not yet been issued and therefore the Court of Appeal retains jurisdiction over this matter and should be required to fulfill its obligation to ensure its jurisdictional power to hear this appeal.

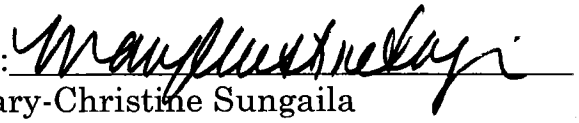
## Conclusion

For the foregoing reasons, this Court should grant review on all three issues or, at the very least, grant review and retransfer to the Court of Appeal to decide the jurisdictional issues.

Dated: August 6, 2012

Respectfully submitted,

SNELL & WILMER L.L.P.

By: 

Mary-Christine Sungaila
Attorneys for Petitioners, Domino's Pizza, LLC, Domino's Pizza Franchising and Domino's Pizza, Inc.

## Certification of Word Count

The undersigned certify that according to the word count feature of the word processing program used to prepare this petition for review, it consists of 4803 words, exclusive of the matters that may be omitted under rule 8.504(d)(1).

Dated: August 6, 2012

SNELL & WILMER L.L.P.

By: _____
Mary-Christine Sungaila
Attorneys for Petitioners, Domino's Pizza, LLC, Domino's Pizza Franchising and Domino's Pizza, Inc.

Filed 6/27/12 Opinion following rehearing

**CERTIFIED FOR PUBLICATON**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

TAYLOR PATTERSON,

Plaintiff and Appellant,

v.

DOMINO'S PIZZA, LLC et al.,

Defendants and Respondents.

2d Civil No. B235099
(Super. Ct. No. 56-2009-00347668-CU-OE-SIM)
(Ventura County)

OPINION FOLLOWING REHEARING

Here, for purposes of a summary judgment motion, a franchisor's actions speak louder than words in the franchise agreement.

Plaintiff Taylor Patterson was an employee of defendant Sui Juris, LLC, dba Domino's Pizza (Sui Juris). Patterson alleges she was sexually harassed and assaulted at her job. She filed an action pursuant to Government Code section 12940 (FEHA [Fair Employment and Housing Act]) against Sui Juris and Domino's Pizza, LLC, Domino's Pizza, Inc., and Domino's Pizza Franchising, LLC (collectively Domino's).

Patterson appeals the summary judgment granted in favor of Domino's. We reverse.

FACTS

Patterson was a teenage employee of Sui Juris, a Domino's pizza franchisee. Renee Miranda was the assistant manager of that restaurant. Patterson claimed Miranda sexually harassed and assaulted her at work.

Patterson filed an action against Miranda, Sui Juris, and the franchisor Domino's, alleging causes of action for sexual harassment in violation of FEHA, failure to

prevent discrimination, retaliation for exercise of rights, infliction of emotional distress, assault, battery and constructive wrongful termination. She claimed Sui Juris and Domino's were Miranda's employers and were vicariously liable for his actions under the doctrine of respondeat superior.

Domino's answered the complaint and filed a cross-complaint against Miranda seeking "indemnity" and "apportionment of fault." Sui Juris filed for bankruptcy relief.

Daniel Poff, the Sui Juris owner, testified at his deposition that Claudia Lee, a Domino's "area leader," told him to fire Miranda. He said he had to comply with the instructions of the Domino's area leaders because "[i]f you didn't, you were out of business very quickly." He said Lee also told him to fire another employee because of his performance in handling bags. Poff had no choice; he had to follow Lee's instructions and fire that employee. His operation was monitored by the Domino's inspectors, and their decisions determined whether he could maintain his franchise.

Domino's filed a motion for summary judgment claiming that: 1) Sui Juris was an independent contractor pursuant to the terms of a written franchise agreement, and 2) there was no principal-agency relationship between Sui Juris and Domino's. The notice of motion indicated that summary judgment on all causes of action was based on the ground that "DOMINO'S was not PATTERSON'S employer and was not involved in the training, supervision or hiring of any employees of Defendant SUI JURIS."

Patterson opposed the motion and attached, among other things, Poff's deposition. She claimed Domino's exercised substantial control over Sui Juris, and consequently there are triable issues of fact relating to Domino's liability.

The trial court granted summary judgment. It noted that the franchise agreement between Domino's and Sui Juris provides that Sui Juris is responsible for "supervising and paying the persons who work in the Store." It ruled there is no triable issue of fact because Domino's has no role in Sui Juris's employment decisions. The court also found that even if Domino's is considered to be the employer, Patterson could not

prevail on the remaining issues. It entered summary judgment in favor of Domino's on all causes of action.

## DISCUSSION

### *Domino's Control over Sui Juris*

"'We review a summary judgment motion de novo to determine whether there is a triable issue as to any material fact . . . .'" (*Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, 436.) "'We are not bound by the trial court's stated reasons or rationales.'" (*Ibid.*) ""'In practical effect, we assume the role of a trial court . . . .'"" (*Ibid.*) "'Summary judgment is a drastic remedy to be used sparingly, and any doubts about the propriety of summary judgment must be resolved in favor of the opposing party.'" (*Ibid.*)

The trial court found that Sui Juris was an independent contractor and that Miranda was "not an employee or agent of . . . Domino's . . . for purposes of imposing vicarious liability."

Whether a franchisor is vicariously liable for injuries to a franchisee's employee depends on the nature of the franchise relationship. "[A] franchisee may be deemed to be the agent of the franchisor." (*Kuchta v. Allied Builders Corp.* (1971) 21 Cal.App.3d 541, 547.) "The general rule is where a franchise agreement gives the franchisor the right to complete or substantial control over the franchisee, an agency relationship exists." (*Cislaw v. Southland Corp.* (1992) 4 Cal.App.4th 1284, 1288.) "'[I]t is the right to control the *means and manner* in which the result is achieved that is significant in determining whether a principal-agency relationship exists.'" (*Ibid.*) Consequently, a franchisee may be found to be an agent of the franchisor even where the franchise agreement states it is an independent contractor. (*Kuchta,* at p. 548.) If the franchisor has substantial control over the local operations of the franchisee, it may potentially face liability for the actions of the franchisee's employees. (*Nichols v. Arthur Murray, Inc.* (1967) 248 Cal.App.2d 610.)

"[T]he franchisor's interest in the reputation of its entire system allows it to exercise certain controls over the enterprise without running the risk of transforming its

independent contractor franchisee into an agent." (*Cislaw v. Southland Corp.*, *supra*, 4 Cal.App.4th at p. 1292.) Consequently, it may control its trademarks, products and the quality of its services. But the franchisor may be subject to vicarious liability where it assumes substantial control over the franchisee's local operation, its management-employee relations or employee discipline. (*Id.* at p. 1296; *Kuchta v. Allied Builders Corp.*, *supra*, 21 Cal.App.3d at p. 547; *Nichols v. Arthur Murray, Inc.*, *supra*, 248 Cal.App.2d at p. 615.)

*The Franchise Agreement*

The franchise agreement provides, in relevant part, that Sui Juris "shall be solely responsible for recruiting, hiring, training, scheduling for work, supervising and paying the persons who work in the Store and those persons shall be your employees, and not [Domino's] agents or employees." Domino's claims this provision, as a matter of law, removes its control over franchisee-employee matters.

Patterson contends the language relied on by Domino's is limited or qualified by other provisions of the agreement that vest substantial control in Domino's. The agreement provides that Domino's sets both the "qualifications" for the franchisee's employees and the standards for their "demeanor." Franchisee employees may not operate a store without first disclosing their identities to Domino's. A violation of this provision may result in termination of the franchise. The franchisee is required to install a "PULSE," or another computer system designated by Domino's, for training employees. The type of training is determined by Domino's.

Domino's Manager's Reference Guide (MRG) describes the specific employment hiring requirements for all "personnel involved in product delivery," and it describes the documents that must be included in their personnel files. It requires all employees to submit "[t]ime cards and daily time reports." It specifies standards for employee hair, facial hair, "[d]yed hair," jewelry, tattoos, fingernails, nail polish, shoes, socks, jackets, belts, gloves, watches, hats, skirts, visors, body piercings, earrings, necklaces, wedding rings, "[t]ongue rings," "clear tongue" retainers, and undershirts.

Domino's claims the franchise agreement grants Sui Juris the freedom to conduct its own independent business. But provisions of the agreement substantially limit franchisee independence in areas that go beyond food preparation standards. The franchisee's computer system is not within its exclusive control. Domino's has "independent access" to its data. Domino's has the right to audit the franchisee's tax returns and financial statements. (*Kuchta v. Allied Builders Corp.*, *supra*, 21 Cal.App.3d at p. 547 [franchisor's right to audit franchisee's books is a factor supporting a finding of agency].) Domino's also determines the franchisee's store hours, its advertising, the handling of customer complaints, signage, the e-mail capabilities, the equipment, the furniture, the fixtures, the décor, and the "method and manner of payment" by customers. Domino's regulates the pricing of items at the counter and home delivery, and it sets the standards for liability insurance. A franchisee's liability insurance policies must name Domino's as "additional insureds."

Domino's also decides the franchisee's book and record keeping methods. It may determine the franchisee's location and right to re-locate and may send inspectors to monitor its operations. (*Kuchta v. Allied Builders Corp.*, *supra*, 21 Cal.App.3d at p. 547 [franchisor's "right to control the location of the franchisee's place of business" and the right to send inspectors are factors supporting a finding that the franchisee is an agent].) It also controls whether the franchisee may "engage, or own any interest, in any other business activity" or "be employed by any other business." Domino's requires franchisees to report "weekly" on sales, and to provide it with their state and local business tax returns "for any period" and "such other information as [Domino's] may reasonably require . . . ."

Domino's MRG specifies the standards a franchisee is expected to maintain as "minimum guidelines for the operation of all Domino's Pizza stores . . . ." These include a variety of requirements in a variety of areas, which include: bank deposits, safes, "front till" cash limits, type of credit cards that must be accepted, mobile phone use, store closing procedures, store records, refuse removal, radar detectors, phone caller identification requirements, security, delivery staffing, holiday closings, stereos, tape decks, wall displays, franchisee web sites, "in-store conversations," and literature that is

"allowed in a store." (*Miller v. McDonald's Corp.* (Or.Ct.App. 1997) 945 P.2d 1107, 1111 [manual describing how "the franchisee was to carry out its responsibilities in considerable detail" supported claim of agency]; see also *Parker v. Domino's Pizza Inc,* (Fla.Ct.App. 1993) 629 So.2d 1026, 1029 ["manual which Domino's provides to its franchisees is a veritable bible for overseeing a Domino's operation"].)

These requirements raise reasonable inferences supporting Patterson's claim that Sui Juris is not an independent contractor. (*Kuchta v. Allied Builders Corp.*, *supra*, 21 Cal.App.3d at p. 547; see also *Parker v. Domino's Pizza, Inc.*, *supra*, 629 So.2d at p. 1029 [triable issue of fact whether Domino's franchisee was an independent contractor as stated in the franchise agreement because other provisions in the agreement gave Domino's control over "every conceivable facet of the business"]; see also *Font v. Stanley Steemer International, Inc.* (Fla.Ct.App. 2003) 849 So.2d 1214, 1219 [Domino's and other franchisors use franchise agreements with provisions stating franchisees are independent contractors, but "other contractual provisions" may "reflect otherwise"].)

*Other Evidence of Control*

Domino's relies on foreign state decisions that suggest the language of the franchise agreement is dispositive on control. But California courts have concluded that the provisions of the agreement are relevant, but not the exclusive evidence of the relationship. (*Postal Instant Press, Inc. v. Sealy* (1996) 43 Cal.App.4th 1704, 1716 [some franchise agreements have unenforceable "one-sided" provisions purporting to place "all the obligations on the franchisee"].) Consequently, "the provisions of franchise agreements are not necessarily controlling." (*Wickham v. Southland Corp.* (1985) 168 Cal.App.3d 49, 59.) Instead, we look to the totality of the circumstances to determine who actually exercises the ultimate control. (*Kuchta v. Allied Builders Corp.*, *supra*, 21 Cal.App.3d at p. 547 ["the question of whether the franchisee is an independent contractor or an agent is ordinarily one of fact"].)

Domino's suggests that the evidence shows: 1) Sui Juris made all the decisions regarding the employees of that franchise; 2) Domino's assumed no role and

exercised no actual control over employee discipline; and 3) Poff, the owner of Sui Juris, made his own voluntary decision to terminate Miranda.

Patterson responds that she presented evidence supporting reasonable inferences that, apart from the provisions of the franchise agreement: 1) Domino's exercised extensive local management control over Sui Juris, 2) it had control over employee conduct and discipline, 3) a Domino's area leader was deciding which Sui Juris employees should be fired, 4) Domino's ordered Poff to terminate Miranda, and 5) Poff complied as he had no choice given the extensive control Domino's exercised over his franchise. Patterson claims there are triable issues of fact about the extent of Domino's control.

At his deposition, Poff said when he "signed with Domino's, . . . [he] was told, in no uncertain terms, that if [he] did not play ball the way they wanted [him] to play ball, that [his franchise] would be in jeopardy." Poff said he had no control about the food supplies he could purchase for his store, because Domino's made those determinations, with an exception for Coca-Cola products.

Poff said Domino's provided guidelines about the employees he could hire. They had to "look and act a certain way," and he implemented those policies when he hired applicants. Domino's guidelines also included policies on employee "attendance" and sexual harassment. Poff's testimony suggests that Domino's oversight of his franchise was extensive. Domino's sent inspectors to verify compliance, "called the store on the sly," and used "mystery shoppers" to determine whether Sui Juris was following its procedures. Poff said, "I was getting ticky-tacked to death by inspectors. . . . [T]he way they changed the operating agreement made it easier for them to put you out of business by how they could write you up and how they graded their inspections."

Poff said he was also under the direction of Domino's area leader Claudia Lee. He indicated that Lee told him which of his employees should be terminated, and he had no choice but to comply. He said Lee told him to fire one Sui Juris employee who was not following procedures relating to the use of bags. He said, "I had to pull the trigger on the termination, [and] it was very strongly hinted that there would be problems if I did not

do so. [Domino's] area leaders would pull you into your office . . . and tell you what they wanted. If they did not get what they wanted, they would say you would be in trouble. . . . I never said 'no' intentionally to an area leader."

Lee told Poff to terminate Miranda. She said, "'You've got to get rid of this guy.'" She instructed him to "re-train" his employees. Poff said he had to follow directions of the Domino's area leaders. He said, "If you didn't, you were out of business very quickly."

Domino's points to contrary evidence. But in reviewing a summary judgment, we do not resolve factual disputes. We must "'view the evidence in the light most favorable to the opposing party [i.e., the plaintiff] and accept all inferences reasonably drawn therefrom.'" (*Suarez v. Pacific Northstar Mechanical, Inc.*, *supra*, 180 Cal.App.4th at p. 436.) Poff's testimony, if believed by a trier of fact, supports reasonable inferences that there was a lack of local franchisee management independence. Patterson met her burden to show triable issues of fact involving the extent of Domino's control over Sui Juris.

*Other Issues*

The trial court found that even if Domino's is considered the employer, there are no triable issues of fact showing it had notice of, ratified, or condoned Miranda's conduct. It ruled that there are no facts showing prior incidents of sexual harassment at the restaurant. It concluded Patterson could not prevail. These issues are relevant where an employee claims harassment by another employee.

But a different standard applies where the harasser is the employee's supervisor. (*Dee v. Vintage Petroleum, Inc.* (2003) 106 Cal.App.4th 30, 36.) The trial court found that Miranda was the restaurant "manager." Consequently, Miranda was not merely another coworker. Patterson was a 16-year-old employee, a minor, subject to his control and supervision on the job.

The trial court erred by applying a negligence standard. It did not consider the issue of the employer's strict liability for a supervisor's sexual harassment of a child employee. (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026,

1042.) As stated by our Supreme Court, "[U]nder the FEHA, an employer is strictly liable for *all* acts of sexual harassment by a supervisor." (*Ibid.*) Domino's did not present sufficient facts in its motion to show its entitlement to summary judgment based on a claim involving a supervisor's sexual harassment of an employee. (See *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1421 [discussing the strong evidentiary burden the employer must meet to obtain summary judgment on this issue].)

A single sexually offensive act by one employee against another usually is not sufficient to establish employer liability. (*Dee v. Vintage Petroleum, Inc.*, *supra*, 106 Cal.App.4th at p. 36.) But "where the act is committed by a supervisor, the result may be different." (*Ibid.*) "'Because the employer cloaks the supervisor with authority, we ordinarily attribute the supervisor's conduct directly to the employer.'" (*Ibid.*) "'Thus, *a sexual assault by a supervisor, even on a single occasion*, may well be sufficiently severe so as to alter the conditions of employment and give rise to a hostile work environment claim.'" (*Ibid.*, italics added.)

The trial court's finding that Domino's made a sufficient evidentiary showing to support its motion is not supported by the record. We have reviewed Domino's remaining contentions and conclude they will not change the result we have reached.

The judgment is reversed. Costs on appeal are awarded to Patterson.

CERTIFIED FOR PUBLICATION.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Barbara A. Lane, Judge

Superior Court County of Ventura

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Winer & McKenna, LLP, Alexis S. McKenna, Kelli D. Burritt, Kent F. Lowry, Jr. for Plaintiff and Appellant.

Kolar & Associates, Elizabeth L. Kolar for Defendants and Respondents.

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

2nd Appellate District

Change court

*Court data last updated: 08/06/2012 10:05 AM*

**Docket (Register of Actions)**

**Patterson v. Dominos Pizza LLC et al.**
**Division 6**
**Case Number B235099**

| Date | Description | Notes |
|---|---|---|
| 08/11/2011 | Notice of appeal lodged/received. | dated 8-10-11; from final judgment (6-21-11) |
| 08/11/2011 | Notice per rule 8.124 - with reporter's transcript. | dated 8-10-11 (included in Notice of Appeal) |
| 08/11/2011 | Letter to counsel - 10 days to file case information statement. | |
| 08/16/2011 | Civil case information statement filed. | |
| 08/18/2011 | Filing fee. | received from VCSC; R296040 |
| 08/30/2011 | Notice to reporter to prepare transcript. | R.T. due 12/27/11 |
| 10/21/2011 | Record on appeal filed. | R-1 (11) |
| 11/08/2011 | Stipulation of extension of time filed to: | Appellant's opening brief. Due on 01/30/2012 By 61 Day(s) |
| 01/30/2012 | Appellant's opening brief. | Plaintiff and Appellant: Patterson, Taylor<br>Attorney: Kent Frampton Lowry 8.25 (b)(3) - mailed 1/27/12 |
| 01/30/2012 | Joint appendix filed. | 4 vols. |
| 02/03/2012 | Certificate of interested entities or persons filed by: | Aplnt |
| 02/16/2012 | Received: | original signature page for stipulation designating contents of joint appendix (copy of stipulation in volume 1 of joint appendix) |

| | | |
|---|---|---|
| 02/27/2012 | Respondent's brief. | Defendant and Respondent: Dominos Pizza LLC<br>Attorney: Elizabeth Louise Kolar<br>Attorney: Jeanne Lee Tollison<br><br>Defendant and Respondent: Dominos Pizza Franchising LLC<br>Attorney: Elizabeth Louise Kolar<br>Attorney: Jeanne Lee Tollison<br><br>Defendant and Respondent: Dominos Pizza, Inc.<br>Attorney: Elizabeth Louise Kolar<br>Attorney: Jeanne Lee Tollison |
| 02/28/2012 | Filing fee. | Responsive Filing Fee. Receipt #R298377. |
| 03/02/2012 | Received: | Amended P.O.S. of RB (showing service of brief on CA Supreme Court & trial court) |
| 03/19/2012 | Appellant's reply brief. | Plaintiff and Appellant: Patterson, Taylor<br>Attorney: Kent Frampton Lowry 8.25 (b)(3) - mailed 3/16/12 |
| 03/20/2012 | Case fully briefed. | |
| 04/10/2012 | Calendar notice sent. Calendar date: | 5-9-12 @ 1:30 PM |
| 05/09/2012 | Cause argued and submitted. | 1:30 PM |
| 06/04/2012 | Opinion filed. | (Signed Unpublished) REV/NFP/ 11P / G-Y-P |
| 06/08/2012 | Filed request to publish opinion. | Aplnt Taylor Patterson |
| 06/19/2012 | Opposition filed. | Domino's Pizza, LLC's opposition to request for publication of opinion. |
| 06/27/2012 | Order granting rehearing petition filed. | On the Court's own motion, rehearing in the above-entitled matter is GRANTED. |
| 06/27/2012 | Opinion filed. | (Signed Published) REV/CFP / 10P / G-Y-P *Costs on appeal are awarded to Patterson |
| 07/26/2012 | Association of attorneys filed for: | Mary-Christine Sungaila of Snell & Wilmer L.L.P. associated in by Kolar & Associates on behalf of Respondents Domino's Pizza, LLC; Domino's Pizza Franchising and Domino's Pizza, Inc. |
| 07/26/2012 | Motion filed. | "Motion to Dismiss Appeal and Vacate June 27, 2012 Appellate Opinion for Lack of Jurisdiction" by Respondents |
| 07/27/2012 | Filed letter from: | Kent F. Lowry (Winer & McKenna, LLP), counsel for appellant, dtd 7/27/12 asking this court to let the |

| | | |
|---|---|---|
| | | motion to dismiss appeal fail by operation of law or, if the court should be inclined to consider the motion on the merits, take whatever steps are necessary to preserve jurisdiction and establish a briefing schedule. |
| 07/30/2012 | Note: | Motion to Dismiss Appeal and Vacate 6/27/12 Appellate Opinion for Lack of Jurisdiction DENIED BY OPERATION OF LAW (This court's last day of jurisdiction was 7/27/12). |

**Click here** to request automatic e-mail notifications about this case.

## Proof of Service

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On August 6, 2012, I served, in the manner indicated below, the foregoing document described as **Petition for Review** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

*Please see attached Service List*

☒ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)), as indicated on the service list.

☐ BY ELECTRONIC SERVICE: C.R.C., rule 8.212(c)(2)(A)) as indicated on the service list.

☐ BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered by courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)), as indicated on the service list.

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

Executed on August 6, 2012, at Costa Mesa, California.

## Service List

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