Supreme Court Case No. **S180890**

Supreme Court of California

LES JANKEY

Plaintiff-Petitioner

v.

SONG KOO LEE

Defendant-Respondent

Petition after a Decision by the Court of Appeal,
First Appellate District, Division Four

Ruvolo, P. J., Sepulveda and Rivera, JJ

Case No. A123006

PETITIONER'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

Petitioner Les Jankey ("petitioner" or "Jankey") and respondent Song Koo Lee ("respondent" or "Lee") have characterized and enumerated differently the issues raised in this case. *Compare* POB at 1 *with* RAB at 7 & n.4.[1] Boiled to their essence, however, these issues present the Court with a single question of first impression: *Should the California state courts split with the California federal courts and mandate the award of attorney's fees to defendants – under a state law the United States Court of Appeals for the Ninth Circuit has held to be preempted – in cases advancing non-frivolous but unsuccessful claims under the Americans with Disabilities Act ("ADA")*? This question is extraordinarily important; indeed, it has troubled the federal and state courts in California for so long that it has now resulted in two separate and mutually incompatible lines of interpretation, one applied in the federal courts, the other applied in the lower state courts. It is for this reason that petitioner respectfully asks this Court to resolve this question by overturning the Court of Appeal's decision and providing the courts of this State with an authoritative and definitive interpretation that will bring the fee-shifting provision of Section 55 of the California Civil Code into line with other fee-

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[1] "POB" and "RAB" refer to Petitioner's Opening Brief and Respondent's Answering Brief, respectively.

shifting statutory standards, the intent of the California legislature, and the objectives and purposes of Congress in enacting the ADA.

DISCUSSION

I. Respondent's argument concerning the mandatory award of attorney's fees in favor of prevailing defendants and against disabled plaintiffs who file non-frivolous (yet unsuccessful) ADA claims is inconsistent with the objectives and purposes of Congress.

Respondent devotes considerable space in his brief to advance his argument that mandatory fee awards to prevailing defendants under state law for non-frivolous ADA claims are consistent with the intent of Congress concerning the purposes and objectives of the ADA. *See, e.g.,* RAB at 36 ("the Court of Appeal correctly analyzed the ADA as a whole to [sic] before concluding that Section 55 does *not* stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress") (italics in original). Conspicuously absent, however, is evidence supporting this argument (*i.e.*, what Congress actually intended with respect to fee awards when it enacted the ADA). This omission is troubling, to say the least, for the Congressional Record is peppered with numerous examples of Congress stating that the objective and purpose of the ADA were to incorporate the Supreme Court's standard in *Christianburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), allowing for fee awards to prevailing ADA defendants *if and only if the disabled plaintiff's lawsuit was frivolous*:

> It is intended that the term "prevailing party" be interpreted consistently with other civil rights laws. *Plaintiffs should not be assessed opponents' attorneys' fees unless a court finds the plaintiff's claim is "frivolous, unreasonable, or groundless."* ... The provision specifically includes "litigation expenses" under the rubric of attorneys' fees [] so that the expenses of experts, paralegal, etc. are governed by the *Christianburg* [] standard regarding the assessment of such expenses against a plaintiff.

Committee Reports, 101 H. Rpt. 485, Part 2 (May 15, 1990), p. 117, reprinted 1990 U.S.C.C.A.N. 303, 423 (citing same) (italics added).

> Section 505 provides that courts [] may award attorney's fees including litigation expenses, and costs to a prevailing party for actions brought under the ADA. The Committee intends that the attorney's fee provision be interpreted in a manner consistent with the Civil Rights Attorney's Fees Act, [] including that statute's definition of prevailing party, as construed by the Supreme Court [*viz.*, *Christianburg Garment*].

Committee Reports, 101 H. Rpt. 485, Part 3 (May 15, 1990), at p. 73, n. 77, reprinted 1990 U.S.C.C.A.N. 445, 496 (citing same) (footnotes omitted).

> [L]itigation expenses are included within the rubric of attorney's fees. As such, *those expenses are to be assessed against a plaintiff only under the narrow standard set forth in Christianburg Garment.* Particularly because of the current unavailability of damages for private plaintiffs under the ADA, it is to be hoped that courts will liberally apply the attorney's fee provision of the act.

136 Cong Rec E 1913, 1921 (June 13, 1990) (Hoyner, Rep.) (italics added).

> In the case of the prevailing defendant, the rule is, as I understand it, in the case where all [] allegations were found to be specious and frivolous, *the court still has to find that they were brought in bad faith before the [defendant] can get attorney's fees.* So the standard is quite different for the two. And the [defendant] is put at a very distinct disadvantage on attorney's fees in those cases.

135 Cong Rec S 10734, 10763 (Sept. 7, 1989) (Bumpers, Sen.) (italics added). This legislative history is *devastating* for respondent, as it directly contradicts his representations that the mandatory award of fees and costs to prevailing defendants under state law for non-frivolous ADA claims (1) is *not* an obstacle to the accomplishment and execution of the full purposes and objectives of Congress (RAB at 36, italics in original); (2) provides disabled plaintiffs with *greater* protections than those offered under the ADA (RAB at 38); and (3) does not abrogate the scope of rights available under the ADA *in any fashion* (RAB at 39). As illustrated by the passages above, this simply is not true.

Further undercutting respondent's claim that the mandatory award of fees and costs to prevailing defendants under state law – *more than $122,000.00 in this single case alone* – for non-frivolous ADA claims provides *greater* protection to the disabled, and is *consistent* with the purpose and objectives of the federal act, is the Congressional finding that the disabled are historically poorer and more economically disadvantaged than their able-bodied counter-parts:

> [B]y almost any definition, Americans with disabilities are uniquely underprivileged and disadvantaged. They are much poorer, much less well educated and have much less social life, have fewer amenities and have a lower level of self-satisfaction than other Americans ... [They] experience staggering levels of unemployment and poverty. According to a recent Louis Harris poll "not working" is perhaps the truest definition of what it means to be disabled in America.

1990 U.S.C.C.A.N. at 313, 314. Accord, 135 Cong Rec S 4984, 4985 (May 9, 1989) (Harkin, Sen.) (same).

> [] Americans with disabilities are notably underprivileged and disadvantaged. Compared with persons without disabilities, persons with disabilities are much poorer, have far less education, have less social and community life, participate much less often in social activities that other Americans regularly enjoy, and express less satisfaction with life. Historically, the inferior economic and social status of disabled people has been viewed as an inevitable consequence of the physical and mental limitations imposed by disability.

1990 U.S.C.C.A.N. at 447-448.

> The Congress finds that ... census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

42 U.S.C. § 12101(6). Accord, 136 Cong Rec S 9684, 9693 (July 13, 1990) (Reigle, Sen.) ("Currently, the disabled are more likely to be poor and unemployed than the nondisabled"); 135 Cong Rec E 1575, 1575 (May 9, 1989) (Coelho, Rep.) ("Colossal unemployment and poverty among the disabled often goes unchallenged because the public has the general impression that these are the inevitable results of disabling conditions"); 135 Cong Rec H 1690, 1690 (May 9, 1989) (Coelho, Rep.) ("Most people do not regard disabled persons as ... an economically disadvantaged group. But these stereotypes – like most stereotypes – are untrue").

Imposing the burden of paying a six-figure attorney fee and cost award – for no other reason than that the plaintiff filed, but ultimately lost, a *non-frivolous* claim for discrimination – on a member of a poverty-stricken, economically-underprivileged group of disabled Americans, cannot be squared with Congress' clearly stated objective and purpose of bringing that group into the economic mainstream of American society. Respondent's hypothesis that Section 55 escapes conflict preemption therefore fails as a matter of law since (1) the awarding of *mandatory* fees and costs to prevailing defendants for non-frivolous ADA claims is in direct conflict with the stated intent, purposes and objectives of Congress; and (2) it is impossible to justify requiring disabled plaintiffs (*e.g.*, Jankey) to pay attorney fees and costs to a prevailing defendant for a *non-frivolous* ADA claim under Section 55 while simultaneously *not* having to pay those *same* fees and costs to that *same* defendant for the *same* non-frivolous ADA claim. Without that underlying support, respondent's argument is simply crushed under the weight of United States Supreme Court authority (*e.g.*, *Hines v. Davidovitz,* 312 U.S. 52 (1941), *Geier v. American Honda Motor Co.,* 529 U.S. 8961 (2000), and *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000)), and Congressional records that it conveniently ignores.

II. Because petitioner received nothing under Section 55 that he would not have received under the ADA (except, of course, the burden of paying respondent's $122,002.54 attorney fee bill), the CDPA's mandatory fee shifting provision falls under the category of lesser state laws expressly preempted by the federal act.

Respondent attempts to salvage its mandatory fee and cost award under Section 55 by claiming that such awards to prevailing defendants (for non-frivolous ADA claims) are not expressly preempted by the ADA, 42 U.S.C. § 12201, because (1) Congress did not intend to preempt *all* state laws that provide *less* protection than the ADA; and (2) the California Disabled Persons Act ("CDPA") offers *greater* protections than the federal act it incorporates. *Compare, generally,* 42 U.S.C. §§ 12101 *et seq.* (ADA) *with* Calif. Civil Code §§ 54 *et seq.* (CDPA); Calif. Civil Code § 54.1(d) (CDPA incorporates ADA *in toto*). In support of this argument, respondent cites to Congress' expressed intent *not* to preempt state laws that confer fewer substantive rights if the protections and remedies available under that alternative state law are greater. RAB at 40-43, quoting, *inter alia*, 28 C.F.R. Part 36, App. B at 672 (2004 ed.), and 1990 U.S.C.C.A.N. 445, 493.[2] Superficially appealing as this sounds, respondent

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[2] "For example, assume that a person with a physical disability seeks damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but does not allow them on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws." RAB at 43, n.22 (quoting same)

ignores the fact that the protections and remedies petitioner received under Section 55 were neither equal to, nor greater than, those afforded by the ADA:

		Section 55[3]	ADA[4]
1.	Petitioner has standing to sue as a disabled individual?	Yes	Yes
2.	Respondent is liable for discriminatory acts?	Yes	Yes
3.	The store is a type of covered facility?	Yes	Yes
4.	Petitioner is limited to injunctive relief?	Yes	Yes
5.	ADA violations establish liability?	Yes	Yes
6.	The store is required to remove architectural barriers?	Yes	Yes
7.	Petitioner must pay respondent's attorney fees for non-frivolous claim?	Yes	No

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3 *See* Calif. Civil Code § 54(b), incorporating Calif. Gov. Code § 12926(k) (disability defined); Calif. Civil Code § 55 (injunctive relief and mandatory fee awards); Calif. Civil Code §§ 54(a), 54.1(a) (places open to the public covered and liable); Calif. Civil Code § 54.1(d) (ADA incorporated).

4 *See* 42 U.S.C. § 12102 (disability defined); 42 U.S.C. § 12181(7) (places open to public covered); 42 U.S.C. §§ 12182(b)(2)(A)(iv), 12183(a) (liability); 42 U.S.C. § 12188(a)(2) (injunctive relief); *Hubbard v. Sobreck, LLC*, 554 F.3d 742 (9th Cir. 2009), citing 42 U.S.C. § 12205 (discretionary fee awards).

As evinced by this side-by-side comparison between the two acts, *petitioner received nothing under Section 55 that he would not have received under the ADA – except, of course, the burden of paying Lee's $122,002.54 attorney fee bill.*

Neither did California law offer petitioner a greater level of protection than he would have received under the ADA, despite respondent's suggestions to the contrary. *See* RAB at 48 ("whereas an ADA plaintiff may obtain an injunction only for conduct that violates the ADA, a Section 55 plaintiff may obtain an injunction not only for conduct that violates the ADA but also for conduct that violates provisions of the CDPA, but *not* the ADA") (italics in original), citing *Molski v. Arciero Wine Group*, 164 Cal.App.4th 786, 792 (2008). Rather, a review of the record shows that the only architectural barrier at issue in respondent's store – *viz.*, the five-inch step adjacent to the entrance door – violated *identical* state and federal requirements.[5] *See, e.g.*, CT 278-309. Accord, 28 C.F.R. Part 36, App. A, § 4.5.2 ("Changes in level greater than 1/2 inches [] shall be accomplished by means of a ramp"); Calif. Code Regs., Tit. 24, § 1133B.2.4 ("Change in level greater than 1/2 inch[es] [] shall be accomplished by means of a ramp."). In other words, *there*

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[5] It is worth noting that the trial judge improperly restricted the scope of injunctive relief available to petitioner to barriers actually encountered, which is also in direct conflict with the Ninth Circuit's published opinion. *Compare*, CT 614 at n.1, *with Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1041-47 (9th Cir. 2008).

was no "greater protection" to petitioner under Section 55, and respondent's suggestion to the contrary could be construed as a clever act of sleight-of-hand.

This same sleight-of-hand tactic appears in respondent's argument about damages available under the CDPA. Respondent contends that Section 55 offers greater protections and remedies than the ADA because the CDPA provides for the possibility of a damage award. *See* RAB at 44. But this argument blatantly ignores the fact that such damage awards originate from Section 54.3(a) of the California Civil Code – *not* from Section 55 – and *that* section expressly limits fee awards to prevailing *plaintiffs*. *See* Calif. Civil Code § 54.3(a) ("Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities ... is liable for ... damages ... [and] attorney's fees as may be determined by the court ... [.]"). Simply because Section 54.3(a) offers greater protections and remedies for the disabled (*e.g.*, damage awards and plaintiff-only fee awards) does *not* mean that Section 55 can somehow piggy-back onto those protections and remedies in order to escape preemption. In fact, if respondent's interpretation is taken to its logical conclusion (or, more accurately, to a *reductio ad absurdum*), then the CDPA can *never* be preempted because it permits damage awards based on ADA violations, whereas the federal act does not.

Simply put in its starkest terms, while the CDPA does offer greater protection than the ADA in *some* areas (*e.g.*, housing discrimination claims and statutory minimum damages, Calif. Civil Code §§ 54.1(b) and 54.3(a), respectively), mandatory fee awards against disabled plaintiffs – for no other reason than that they filed a non-frivolous ADA claim and sought a state law remedy consistent with that federal act – is not one of them. Section 55, thus, clearly falls under the category of "lesser state laws" expressly preempted by the ADA.

III. Contrary to respondent's assertions, Section 55 is at least latently ambiguous and must not be read as mandating a non-discretionary fee award in favor of all defendants, regardless of whether *vel non* a plaintiff's otherwise unsuccessful claim was frivolous.

Respondent attacks the remaining portions of Petitioner's Opening Brief with the same argument, albeit in two different forms: *(1) The plain language of Section 55 does not allow for an examination of the legislative history because its wording is unambiguous; in the alternative, (2) the legislative history of Section 55 shows an intent on the part of the California Legislature to require a mandatory fee award to the defense.* RAB at 8-32. Neither of these positions stands up to close scrutiny.

Respondent first claims that the plain language of Section 55 – *i.e.*, "the prevailing party in the action shall be entitled to recover reasonable attorney's fees" – could not be any clearer, chastises petitioner for failing to explain how it is not

clear, and deems any suggestion to the contrary to be unreasonable as a matter of law. *See, e.g.,* RAB at 10-19. In making this argument, however, respondent again ignores contrary authority in the form of both published and unpublished opinions that have consistently (1) recognized the latent ambiguity of the term "prevailing party" and (2) openly questioned the scope of Section 55. *See, e.g., Edwards v. Princess Cruise Lines, Ltd.*, 471 F. Supp. 2d 1032, 1033-34 (N.D. Cal. 2007); *see also Wilson v. Norbreck LLC*, 2007 WL 1063050 (E.D. Cal. Apr. 9, 2007), quoting *Gunther v. Lin*, 144 Cal.App.4th 223, 243, n.18 (2006), rev'd on other grounds by *Munson v. Del Taco, Inc.*, 46 Cal.4th 661 (2009) ("We leave for another day the issue of how section 55 interacts with section 54.3 and specifically whether a section 54.3 plaintiff is vulnerable as the non-prevailing party under section 55"). Accord, *SoBreck, LLC*, 554 F.3d at 746 (citing same). Considering that the Ninth Circuit cited to these same cases in *Sobreck*, respondent's decision to ignore this directly contrary case law is curious, to say the least.[6]

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[6] In fairness to respondent, he does not *completely* ignore the *Wilson* decision; rather, he avoids addressing its uncomfortable (for respondent) holding with a dismissive "it is an unpublished federal district court decision and should be given little, if any, weight." RAB at 29. He is similarly – and cavalierly – dismissive of *Munson*, studiously ignoring it right up to the end of his brief, where he cites to it only in his Conclusion and then for a completely unrelated point. RAB at 51.

Perhaps recognizing that his "plain as the nose on your face" argument might prove no more successful with the Supreme Court of California than it was with the Ninth Circuit, respondent asserts in the alternative that the legislative history of Section 55 shows that the California Legislature *expressly* intended (when enacting AB 2471) to allow prevailing *defendants* to receive a mandatory award of attorney fees from one of the most financially disadvantaged groups in the State.[7] RAB at 20-25. Except for a few general statements that reprint the statute (*e*.g., "prevailing party shall be entitled to reasonable attorney's fees"), respondent fails to cite to a *single* instance that suggests – much less "clearly shows" – that the California Legislature intended for *defendants* to receive a mandatory award of fees under Section 55. *Compare ibid.*, *with* Jan Raymond's reprint of the legislative history of AB 2471. Considering its importance to his arguments, one must assume that respondent would have prominently displayed *any* record expressly stating such a clear intent by the California legislature on the very first page of his brief *if that expression of intent did, in fact, exist.* He did not. Instead, respondent introduced a legislative history that shows *only* that disabled

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[7] "[A]ttorneys and courts cost money and according to Federal and State statistics, *the disabled are among the most financially disadvantaged.* For this reason, AB2471 is needed to allow the disabled to bring action against those builders in violation of the law *without the prohibitive burden of attorney's fees and court costs.*" *Letter to Assemblyman Charles Warren from Saralea Altman, Legislative Chairwoman, California Coordinating Council*, dated May 30, 1973 (emphasis added).

plaintiffs would qualify as prevailing plaintiffs and could seek fees – the word "prevailing defendant" does not appear once.

The weakness of respondent's assumptions regarding the plain language of the statute and the intent of the California Legislature is further exposed by its claim that the ADA and Unruh Act do not sit *in pari materia* with the CDPA in general or with Section 55 in particular – *even though all three acts incorporate the exact same protections, standards, and definitions of discrimination. See, e.g.,* RAB at 25-32. Specifically, respondent asserts that, even though the ADA's standards are incorporated into both the CDPA and the Unruh Act *in toto*, the California Legislature never intended to extend those federal standards into the liability provisions of those state law acts. *Ibid.* But, once again, respondent fails to acknowledge that this Court has already *rejected* the same argument in *Munson v. Del Taco,* when petitioner Del Taco argued that disabled plaintiffs were required to prove that a defendant intentionally discriminated against them because the Unruh Act incorporated the ADA's protections but not its standards for liability. *See* 46 Cal.4th at 670-72, citing, *inter alia*, Calif. Civil Code §§ 51(f) and 52(a). In rejecting that line of argument, this Court held that because the Unruh Act adopted the full expanse of the ADA, it necessarily follows that the same standards for liability apply under both acts. *Ibid.* In other words, a defendant liable under the ADA must also be liable under the Unruh Act, *regardless of the standards that*

applied to Unruh claims before that adoption occurred; and simply because the California Legislature did not explicitly alter the liability sections for the CDPA and Unruh Act, (*e.g.,* Calif. Civil Code §§ 52, 54.3, 55), does not mean that those sections were not altered. *Munson,* 46 Cal.4th at 666-76. If the respondent's construction of the Unruh Act, CDPA and ADA were correct, this Court never would have rejected Del Taco's interpretation of the same.

Finally, respondent devotes considerable space distinguishing between cases awarding *discretionary* attorney fees under a private attorney general statute (*i.e.*, Section 1021.5 of the California Code of Civil Procedure) and *mandatory* fees under Section 55, castigating petitioner for citing the former in an attempt to construe the latter. *See* RAB at 11-14. As with his previous arguments, however, the flaws in respondent's analysis become readily apparent when one examines the *published* authority omitted from his brief. This contrary authority shows – as much as it pains the respondent to admit – that California courts have historically looked to Section 1021.5 when deciding whether to award fees under Section 55. *See, e.g., Mundy v. Neal*, 186 Cal.App.4th 256, 259-260 (2010), citing *Graham v. DaimlerChrysler Corp.,* 34 Cal.4th 553, 577 (2004) (court refuses to award mandatory fee awards under Section 55 but, instead, applies discretionary standard from Section 1021.5); *see also Donald v. Cafe Royale, Inc.*, 218 Cal.App.3d 168, 185 (1990) (citation omitted) (court refuses to award mandatory fees under Section

55 based on standards established by Section 1021.5). Accord, *Heather Farms Homeowners Assn. v. Robinson*, 21 Cal.App.4th 1568, 1573 (1994), citing, *inter alia*, Calif. Civil Code § 55 and Calif. Code of Civil Pro. § 1021.5 ("Faced with this lack of authority, we examine how the courts have dealt with similar statutes [when determining who is the prevailing party]"). There is no reason for respondent to have "missed" this published authority yet, once again, he has inexplicably (but studiously) ignored the existence of published authority that does not support his position.

In light of this dearth of direct and unequivocal support, respondent's claims that the California Legislature expressly intended to *burden* disabled plaintiffs with the prevailing defendant's fee awards in all circumstances (RAB at 23-25) and as a matter of sound public policy (RAB at 26, 28, 31) appear to be little more than attorney rhetoric and should be disregarded as such.

CONCLUSION

This case presents what might – indeed, can only fairly – be characterized as a serious and substantial federalism problem, *viz.*, two lines of authority in two different courts governing a single question of how a state statute is to be interpreted in line with a federal statute. What is at least as disconcerting as the problem of "You get one result if you're in federal court in California, and a different result if you're in state court in California" is the dismissive way this problem is treated in the Respondent's Answering Brief. Simply put, the arguments advanced by respondent only *appear* to be supported by the authorities cited in his answering brief; what is troubling is not so much what *is* argued as what is *not* argued, *i.e.*, the cases that are *not* cited and the authorities that are *not* discussed speak volumes. Petitioner has no desire to personalize this case by drawing attention to the way respondent has characterized petitioner and his counsel throughout these proceedings. Nevertheless, petitioner is troubled by the fact that respondent's lengthy (*i.e.*, 52-page, nearly 13,000-word) brief fails to cite to or discuss, at more than one point, critical published case law and other authorities that are squarely on-point for resolution of the issue(s) presented by this appeal. Instead, the answering brief concentrates on a series of narrowly detailed legal distinctions. While freely conceding that respondent's arguments are interesting and even superficially attractive, petitioner asks this court to step back

from the detail and wrestle with the authorities provided by petitioner in order to provide the courts of this State with an interpretation of Section 55 that will comport fully with the clearly expressed intent of both Congress and the California legislature where the rights of disabled citizens are concerned.

Respectfully submitted this twelfth day of November 2010.

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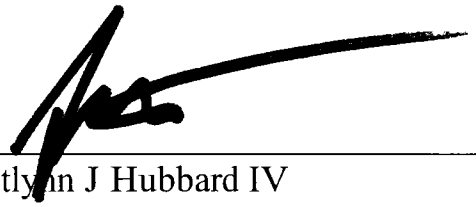
By: /s/  /
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CERTIFICATE OF WORD COUNT

This Petition contains 4,173 words from the cover page to signature block below.

Respectfully submitted this twelfth day of November 2010.

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Attorney for Petitioner

By: /s/ _____/

Scottlynn J Hubbard IV
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, certify that I am a citizen of the United States and a resident of Butte County, California. I am over the age of eighteen years and not a party to the within action; I am employed in the office of a member of the bar of this court at whose direction service was made; my business address is 12 Williamsburg Lane, Chico, California, 95926. The document identified below and this affidavit has been printed on recycled paper meeting EPA guidelines. On the date this affidavit is signed below, a true copy of the PETITIONER'S REPLY BRIEF ON THE MERITS, was placed by me in an envelope addressed to the person(s) at the address(es) set forth below, then sealed and, following ordinary business practices, placed for delivery with the Federal Express Service in Chico, California.

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I declare under penalty of perjury that the foregoing is true and correct. Executed in Chico, California on November 13, 2010.

By: _____