IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Case No. S242799

JULIA C. MEZA,

Plaintiff -Petitioner,

v.

PORTFOLIO RECOVERY ASSOCIATES, LLC, HUNT & HENRIQUES, MICHAEL SCOTT HUNT, JANALIE ANN HENRIQUES, and ANTHONY J. DIPIERO,

Defendants-Respondents.

RESPONDENTS' ANSWER BRIEF ON THE MERITS

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Respondent Portfolio Recovery Associates, LLC is a Delaware limited liability company and is a wholly-owned subsidiary of PRA Group, Inc., a publicly-traded Delaware corporation. PRA Group, Inc. is listed on the NASDAQ stock exchange under the symbol PRAA. Respondent Hunt & Henriques is a law firm. The remaining Respondents, Michael Scott Hunt, Janalie Ann Henriques, and Anthony DiPiero, are individual persons.

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I. INTRODUCTION

Petitioner Julia C. Meza ("Meza") – through her counsel – appears to have lost track of the narrow legal issue to be addressed here. She devotes much of her opening brief to launching a full-scale attack on the accounts receivable industry, accusing it of "prey[ing] on a vulnerable Court system in the same way it preys on vulnerable consumers . . . by exploiting a perceived loophole in California Code of Civil Procedure § 98."[1] Meza also takes aim at the entire California court system – which she refers to as "part of the collection arm of the debt buying industry"[2] – implying that it is financially dependent on the industry and thus complicit in the industry's supposed abuses. She questions whether "the court system should contort its rules to satisfy the business model of the debt buying industry."

Meza faults debt buyers for filing a lot of lawsuits.[3] Litigation, however, is the last option available when other efforts to help consumers address their unpaid financial obligations fail. Meza suggests that the First Amendment does not "guarantee a right to use the courts for collection of defaulted consumer debt,"[4]

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[1] Petitioner's Opening Brief ("POB"), at 10-11.

[2] POB at 10.

[3] Meza's generalized attack on debt buyers is devoid of any evidence supporting her various assertions.

[4] POB at 35.

but she is wrong. It does.

Debt buyers–like all litigants–have an absolute right to petition the government for redress by filing lawsuits. When defendants do not respond to those suits, debt buyers–like all litigants–have an absolute right to seek a default judgment. And when consumers respond and "exercise their right to demand that debt buyers provide proof of the validity and amount of the debt, and litigate cases to trial,"[5] debt buyers–like all litigants–have an absolute right to utilize the procedures enacted by the Legislature – including section 98 – to prosecute or defend lawsuits. Section 98 is available to all litigants, whether they are a party to a single lawsuit or multiple lawsuits. Respondents Portfolio Recovery Associates, LLC ("PRA"), Hunt & Henriques, Michael Scott Hunt, Janalie Ann Henriques and Anthony DiPiero (collectively, "Respondents") properly invoked and complied with the requirements of section 98 in the suit against Meza, and even if they had *improperly* invoked it, litigation activity cannot constitute a statutory tort.

This Court must ascertain the plain meaning of section 98 of the California Code of Civil Procedure. This is a procedural device designed to reduce the costs associated with litigating small stakes cases. It was enacted to give all litigants in limited jurisdiction cases the option to present trial testimony by way of affidavit,

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[5] POB at 10.

thereby avoiding the cost of sending a live witness to trial. To preserve the right of cross-examination, however, the section 98 declaration must specify an address within 150 miles of the courthouse where the declarant is "available for service of process" for a reasonable period of time during the twenty days prior to trial.

Colby Eyre, PRA's declarant here, **was** available for service of process as required by the statute. Meza admittedly made no attempt to serve process on him. Had she done so, it is undisputed that the attorneys at Hunt & Henriques would have accepted service for him, thereby preserving her right to cross-examine him. Meza, however, had no interest in examining Mr. Eyre. Her interest was in seizing on Respondents' alleged failure to comply with section 98 in the hopes of filing a Fair Debt Collection Practices Act ("FDCPA")[6] class action claim.

Meza's argument is built on a series of assumptions, all of which the Court must accept in order for her to succeed. If any one of her assumptions fails, her entire argument collapses.

First, this Court has to accept her theory that section 98 "must contemplate" that the declarant be available to be served personally with a *subpoena*. Doing so, however, would require this Court to read into the statute words that are not there, and to re-insert language that the California Legislature rejected. This would

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[6] 15 U.S.C. §§ 1692, *et seq.*

ignore the Court's clear and oft-repeated instructions concerning statutory interpretation.[7] As first introduced, section 98 would have required the declarant to be available for service of a subpoena. Before it was enacted, however, the Legislature removed the word "subpoena." Meza wants this Court put back into the statute words the Legislature expressly rejected. This would defy the Legislature's unmistakable intent and violate this Court's prior holdings.

Next, the Court would need to agree with Meza that a section 98 declarant must work or reside within 150 miles of the courthouse where trial will be held. Section 98 says no such thing. Words such as "work," "office," "reside," "live," "residence," "home," or the like appear nowhere in the statute. There is nothing suggesting that the Legislature wanted to impose such a strict limits on the work or residence addresses of witnesses who might submit declarations.

Meza misinterprets the Legislative history and purpose of section 98. The statute was meant to reduce delay and costs in litigating small-stakes matters. Her interpretation would force parties to bear the expense of locating their witnesses within 150 miles of the courthouse during the twenty-day period before trial. This

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[7] The Appellate Divisions of two Superior Courts wrongly embraced this argument. *See Target National Bank v. Rocha*, 216 Cal. App. 4th Supp. 1 (Santa Clara County Sup. Ct. App. Div. 2013); *CACH LLC v. Rodgers*, 229 Cal. App. 4th Supp. 1 (Ventura County Sup. Ct. App. Div. 2014).

would cost significantly more than sending a witness to court on the day of trial. This makes no sense and cannot have been what the Legislature intended. Meza's tortured interpretation of section 98 is contrary to the plain language of the statute and its purpose.

For these reasons, Meza's interpretation of section 98 must be rejected. Under section 98(a) of the California Code of Civil Procedure, the affiant need not be physically located and personally available for service of a subpoena at the address provided in the declaration that is within 150 miles of the place of trial. Thus, the Court should answer in the negative the question certified to it by the Ninth Circuit Court of Appeals.

II. FACTS AND PROCEDURAL HISTORY

A. Meza Defaults On Her Credit Card And Is Sued In State Court

Meza opened a credit card account with non-party Wells Fargo Bank, N.A., incurred charges on the account, and ultimately defaulted. *See* ER 38 at ¶¶ 13-14. The account was then "sold, assigned or otherwise transferred" to respondent PRA," which placed it for collection with respondent Hunt & Henriques, a law firm. That firm filed a lawsuit on behalf of PRA against Meza to collect the unpaid balance in San Mateo County Superior Court (the "state court action"). *See id.* 38 at ¶¶ 14-16.

B. Respondents Serve Meza With A Section 98 Declaration Inviting Her To Request The Declarant's Presence At Trial

On April 11, 2014, Hunt & Henriques served Meza with a "Declaration of Plaintiff in Lieu of Personal Testimony at Trial (CCP § 98)" ("the section 98 declaration"). *See id.* at ¶ 17, ER 47-50. The section 98 declaration included testimony relating to Meza's unpaid account, and was signed by PRA employee Colby Eyre. *See id.* 47-50. After the last paragraph, the section 98 declaration advised: "Pursuant to CCP § 98 this affiant is available for service of process: c/o Hunt & Henriques, 151 Bernal Road, Suite 8, San Jose, CA 95119 for a reasonable period of time, during the twenty days immediately prior to trial." *Id.* 49.

It is undisputed that Hunt & Henriques had a policy of accepting service of process for any section 98 declarant, regardless of how the process was delivered to the firm, including by personal service, mail, overnight courier, fax, or even email. *See id.* 193 at ¶ 6; *see also* Order Certifying Question to The California Supreme Court, at 5 (9th Cir. June 22, 2017) ("it is clear that H&H was authorized to accept service of process on Eyre's behalf") (hereafter, "Order Certifying Question"). Neither Meza nor anyone working on her behalf attempted to effect service of process on Mr. Eyre. *See id.* 154-56.[8]

C. Meza Files A Putative Class Action Lawsuit Against Respondents Asserting That They Failed To Comply With Section 98 And Thereby Violated The Fair Debt Collection Practices Act

On August 27, 2014, Meza commenced a putative class action in the United States District Court for the Northern District of California, claiming that the section 98 declaration was "invalid" under California law and thus violated the FDCPA, 15 U.S.C. §§ 1692, *et seq.* *Id.* 14-32 (Original Class Action Complaint); *see also id.* 33-51 (First Amended Class Action Complaint). On September 19, 2014, Respondent filed their Answer to Meza's First Amended Complaint. *Id.* 52-64.

Respondents moved for summary judgment on April 27, 2015. *Id.* 65-485.

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[8] The state court action was ultimately dismissed prior to trial.

Meza opposed this motion on May 26, 2015. *Id.* 486-534. Respondents filed their reply on June 5, 2015. *Id.* 535-54. On August 24, 2015, Respondents submitted supplemental authority in support of their motion. *Id.* 555-69. On September 1, 2015, the District Court granted Respondents' motion for summary judgment. *Id.* 570-86; *see Meza v. Portfolio Recovery Assocs., LLC*, 125 F. Supp. 3d 994 (N.D. Cal. 2015). Judgment was entered the same day. ER 587. Meza filed her notice of appeal on September 23, 2015. *Id.* 588-89. After entertaining oral argument, the United States Court of Appeals for the Ninth Circuit certified to this Court the following question:

> Under § 98(a) of the California Code of Civil Procedure, must the affiant[9] be physically located and personally available for service of process at the address provided in the declaration that is within 150 miles of the place of trial?

Order Certifying Question at 4.

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[9] "'Affiant' and 'declarant' are used interchangeably throughout the certification order."

III. ARGUMENT

A. This Court Examines The Language Of Section 98 To Determine The Legislature's Intent And Effectuate The Statute's Purpose

"In construing a statute," this Court's "task is to determine the Legislature's intent and purpose for the enactment." *People v. Yartz*, 37 Cal. 4th 529, 537 (2005); *accord MacIsaac v. Waste Mgmt. Collection and Recycling, Inc.*, 134 Cal. App. 4th 1076, 1082, 1084 (2005) (court's "'primary task is to determine the lawmakers' intent,'" in order "'to *effectuate the purpose* of the law'" (emphasis in original). The Court must only construe, and cannot amend, the statute. *See City of Long Beach v. Workers' Compensation Appeals Bd.*, 126 Cal. App. 4th 298, 312 (2005).[10]

To determine the legislature's intent, the Court first examines the statute's plain language. *See Los Angeles County Metro. Trans. Auth'y v. Alameda Produce Market, LLC*, 52 Cal. 4th 1100, 1106-07 (2011). As this Court has emphasized, the language of the statute itself is much more indicative of the Legislature's intent than other sources, because the statute's words receive much

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[10] This admonition has been codified: "In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Cal. Code Civ. P. § 1858.

more scrutiny than the legislative history. *See Wasatch Prop. Mgmt. v. Degrate*, 35 Cal. 4th 1111, 1118 (2005) ("We examine the language first, as it the language of the statute itself that has 'successfully braved the legislative gauntlet.'" (citation omitted)). "'It is that [statutory] language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, afer perhaps more lobbying, debate and analysis, finally signed 'into law' by the Governor.'" *Id.* (internal quotation marks and citation omitted).

Accordingly, before considering other sources, the Court must first examine "the words of the statute themselves," as they are "the most reliable indicator of [the Legislature's] intent." *MacIsaac*, 134 Cal. App. 4th at 1082. The words of the statute must be given a "'plain and commonsense meaning,'" absent any specially-ascribed meaning in the statute itself. *Id.* at 1083.

If the language "is clear and unambiguous, [the court's] task is at an end, for there is no need for judicial construction. . . . In such a case, there is nothing for the court to interpret or construe." *Id.*; *see also Yartz*, 37 Cal. 4th at 538 ("If there is no ambiguity in the statutory language, its plain meaning controls; we presume the Legislature meant what it said."). The Court must also construe "the language

of a specific section . . . in the context of the larger statutory scheme of which it is a part." *Olmstead v. Arthur J. Gallagher & Co.*, 32 Cal. 4th 804, 811 (2004).

B. Section 98 Is Clear And Unambiguous; It Does Not Require Service Of A Subpoena

Here, the Court need not consider the legislative history, because the statute is unambiguous. A statute is ambiguous if it can be construed in two ways, both of which are reasonable. *See Snukal v. Flightways Mfg., Inc.*, 23 Cal. 4th 754, 778 (2000). Section 98 has only one reasonable interpretation.

Meza contends that the use of declarations "where the declarant is located more than 150 miles from the place of trial" violates section 98 of the California Code of the Civil Procedure and thus violates the FDCPA. *See* ER 45 at ¶ 55. She urges the Court to follow the rulings in *Target National Bank v. Rocha*, 216 Cal. App. 4th Supp. 1 (Santa Clara County Sup. Ct. App. Div. 2013) ("*Rocha*"), and *CACH LLC v. Rodgers*, 229 Cal. App. 4th Supp. 1 (Ventura County Sup. Ct. App. Div. 2014) ("*Rodgers*"). POB at 21. *Rocha* and *Rodgers* were wrongly decided,[11] however, and are distinguishable (as discussed in section III.E, below), and ignore

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[11] The District Court predicted this Court would not agree with the *Rocha* and *Rodgers* courts. *Meza*, 125 F. Supp. 3d at 1005 ("this Court finds that the California Supreme Court would not follow the holdings of *Rodgers* and *Rocha* requiring declarants to be physically located at the provided address in order to comply with Section 98").

the plain and unambiguous language of section 98(a), which requires the proponent of the declaration to establish that:

> A copy has been served on the party against whom it is offered at least 30 days prior to the trial, together with a current address of the affiant that is within 150 miles of the place of trial, and the affiant is available for service of process at that place for a reasonable period of time, during the 20 days immediately prior to trial.

Cal. Code Civ. P. § 98(a).

Meza points out that section 98 is "a statutory exception to the general rule of Cal. Evidence Code § 1200, which provides that declarations are inadmissible at trial," and that "[u]nless subject to a statutory exception," the section 98 declaration at issue here "is pure hearsay and would have been inadmissible at a trial over Meza's objection." POB at 20-21; *see id.* at 29-30 ("The Court's analysis should begin with the threshold proposition that live testimony of witnesses in the courtroom at trial is the preferred method of receiving evidence. [citations omitted]"). The Legislature effectively abrogated section 1200 by enacting the exception set forth in section 98 for cases where the stakes are low (as explained further below).

Section 98 is susceptible of but one construction. It requires the proponent of the written declaration to identify "a current address . . . within 150 miles of the place of trial" where the declarant "is available for service of process" for a

reasonable period during the twenty days prior to trial. Nothing in the plain language of section 98 requires the affiant to be "physically located" at the designated address, as Meza suggests. *See* POB at 22.

Nor does the statute say the declarant must "reside[]," "maintain[] an office," or "work[]" within 150 miles of the court, or use any other similar term or phrase. *See* POB at 23. Had the Legislature wanted to impose such a requirement, it could have easily mandated that the proponent of the declaration provide "a current *residential or work* address of the affiant that is within 150 miles of the place of trial," and state that "the affiant is available for service of process at that *residential or work address* for a reasonable period of time, during the 20 days immediately prior to trial." Of course, the Legislature did not do so. It would be improper for the Court to implicitly add such terms to the statute.

Meza's argument hinges on her theory "that Section 98 must contemplate service of a trial subpoena, which could *only* be personally served on [the declarant.]" POB at 24 (italics in original); *see id.* at 25 (arguing "personal service" of a subpoena "is required"). The plain language of section 98, however, makes no reference to a "subpoena" or to "personal service." of anything.

Instead, the Legislature directed the proponent of the declaration to identify "a current address . . . within 150 miles of the place of trial" where the declarant

"is available for service of process" before trial. In other words, the declarant need only provide an address – any current address – where the declarant can be served with *process*. Section 98 does not specify or limit the type of address that must be provided. A declarant can have multiple addresses but need only provide one at which the declarant "may be served with process and is within 150 miles of the place of trial."

Nor does the statute say anything about having the affiant physically present at a single address within 150 miles of the courthouse during the twenty days before trial to allow the other party to personally serve a subpoena.[12] Because section 98 is clear and unambiguous, its plain language controls. The Court need not further interpret or construe the provision.

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[12] Even if a subpoena were required, nothing in California law indicates that a subpoena can be served only at a person's residence or work address, as Meza suggests. Rather, personal service is valid at any time or any place. *See* Cal. Code Civ. P. § 1989 (California resident may be served anywhere in state); *Lucas v. Superior Court*, 203 Cal. App. 3d 733, 737 (1988) ("a party may compel attendance of witnesses subpoenaed anywhere within this state"). Mr. Eyre is a California resident. *See* ER 552 at ¶ 3. Meza also complains that "[w]ithout the 150 mile requirement of Section 98, defendants in California courts would be unable to *compel* distant and out-of-state declarants to attend trial . . . ." POB at 32. She ignores the fact that a litigant can compel an out of state declarant to attend trial, by serving process consistent with the statute's requirements. If the witness does not attend trial, the evidence that the opposing party sought to introduce through the affidavit will be excluded.

C. The History And Purpose Of Section 98 Reveals The Legislature Did Not Intend To Require Declarants To Be Located Within 150 Miles Of The Courthouse For Twenty Days Before Trial

Even if the Court concludes section 98 is ambiguous, the history and purpose of the statute reinforces Respondents' interpretation.

With ambiguous provisions, the Court may consider "extrinsic sources, including the ostensible objects to be achieved and the legislative history." *California Highway Patrol v. Superior Court*, 135 Cal. App. 4th 488, 496 (2006). The goal is to effectuate the Legislature's "apparent intent," and promote the statute's general purpose, avoiding an interpretation that would cause absurd results. *Id.* at 496-97. If the Legislature's intent is not clear, the Court may then consider "'the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.'" *People v. Cornett*, 53 Cal. 4th 1261, 1265 (2012) (internal quotation marks and citations omitted); *see Hale v. Southern Cal. IPA Med. Grp., Inc.*, 86 Cal. App. 4th 919, 924 (2001) (court may consider legislative history if legislative intent not clear from statute's language).

Prior versions of a bill are a cognizable form of legislative history that indicate the Legislature's intent. *See Kaufman & Broad Cmtys., Inc. v.*

Performance Plastering, Inc., 133 Cal. App. 4th 26, 32 (2005).[13] Significantly, when the Legislature rejects language in an earlier version of a statute, using different language in a later version, the court may not give credence to the rejected language. This Court has repeatedly recognized that the Legislature's rejection "of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision." *People v. Soto*, 51 Cal. 4th 229, 245 (2011) (internal quotation marks omitted; quoting *Rich v. State Board of Optometry*, 235 Cal. App. 2d 591, 607 (1965)); *Madrid v. Justice Court of Dinuba Judicial Dist.*, 52 Cal. App. 3d 819, 825 (1975) (same); *see Gikas v. Zolin*, 6 Cal. 4th 841, 861 (1993) (Mosk, J., dissenting) ("We cannot interpret section 13353.2 to reinsert what the Legislature has deleted," citing *Rich*, 235 Cal. App. 2d at 607).[14]

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[13] In *Kaufman*, the court set forth a thorough list of items that do and do not constitute cognizable legislative history. *See id.* at 31-39. Effectively, the Court is limited to considering only that which "'shed[s] light on the collegial view of the Legislature *as a whole*.'" *Id.* at 30 (quoted citation omitted; italics in original).

[14] *See also* Cal. Code Civ. P. § 1858 (when construing statute, court shall not insert what has been omitted); *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1107 (2007) (amending bill to delete penalty provisions is evidence that Senate intended to exclude provisions); *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 194-95 (2005) (deletion of conditional stay provision in anti-SLAPP statutes supports interpretation of statute to mandate automatic stay on appeal); *In re Mehdizadeh*, 105 Cal. App. 4th 995, 1004 n. 23 (2003) ("'[t]he rejection of a specific provision contained in an act as originally introduced is "most persuasive"