

Case No. S241324

IN THE SUPREME COURT OF CALIFORNIA

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**WESTLAKE HEALTH CARE CENTER,**  
Defendant-Petitioner and Appellant,

SUPREME COURT  
**FILED**

v.

JUL 17 2017

**DR. LEEVIL, LLC,**  
Plaintiff-Respondent.

Jorge Navarrete Clerk

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Deputy

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After a Decision of the Court of Appeal  
Second Appellate District, Division Six  
Court of Appeal No. B266931  
Superior Court, County of Ventura Case No.: 56-2015-00465793-CU-UD-  
VTA  
The Honorable Vincent J. O'Neill, Jr.

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**PETITIONER'S OPENING BRIEF**

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Westlake Health Care Center

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**I.**

**ISSUES ON WHICH APPEAL HAS BEEN GRANTED**

Pursuant to the California Supreme Court's June 14, 2017 Order, the issue to be briefed and argued is: "Does Code of Civil Procedure section 1161a require a purchaser of real property at a foreclosure sale to perfect title before serving a three-day notice to quit on the occupant of the property?"

**II.**

**INTRODUCTION AND STATEMENT OF THE CASE**

This appeal arises from a Judgment entered in an unlawful detainer action concerning a 99-bed skilled nursing facility located in Thousand Oaks, California (the "Premises"). Defendant-Petitioner and Appellant Westlake Health Care Center ("Petitioner") is the former tenant and former licensed operator of that facility.

In early 2015, Respondent Dr. Leevil, LLC ("Respondent"), the holder of a loan secured by the Premises, foreclosed on the Premises and subsequently purchased the Premises at a non-judicial foreclosure sale on February 19, 2015. The next day, on February 20, 2015, before the trustee's deed upon sale was even recorded, Respondent purported to serve a three-day notice to quit on Petitioner, as well as, on "ALL OTHER OCCUPANTS" (the "Notice to Quit"). Respondent thereafter filed the underlying unlawful detainer action alleging that it was entitled to possession of the Premises based on that Notice to Quit.

Only one issue from that unlawful detainer action is at issue in this appeal: "Does Code of Civil Procedure section 1161a require a purchaser of real property at a foreclosure sale to perfect title before serving a three-day notice to quit on the occupant of the property?"

Code of Procedure section 1161a states in pertinent part:

(b) In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobilehome, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:

[...]

(3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, ***and the title under the sale has been duly perfected.***” (Emphasis added).

Petitioner argued below that the Complaint for unlawful detainer was fatally defective as title had not been “duly perfected” as required by Code of Civil Procedure<sup>1</sup> section 1161a at the time the Notice to Quit was allegedly served. The Notice to Quit was therefore premature and invalid. Because California law requires strict compliance with the statutory requirements for an unlawful detainer action, Respondent’s failure to perfect title before service of the Notice to Quit unlawful detainer action rendered the complaint for unlawful detainer improper.

The trial court rejected Petitioner’s argument and determined that pursuant to Code of Civil Procedure 2924h, which governs procedures at foreclosure sales, title was perfected as of the date of the foreclosure sale on February 19, 2017. After stipulation by the parties on several remaining issues, Judgment was entered on July 22, 2015.

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<sup>1</sup> Unless otherwise stated, all statutory references herein will refer to the California statutes.

Petitioner appealed the trial court's decision, citing, among other issues, that the Notice to Quit was premature and invalid. After oral argument and while the matter was under submission in the Court of Appeal, this Court ordered publication of the matter entitled *U.S. Financial, L.P. v. McLitus*, 6 Cal. App. 5th Supp. 1 (Cal. App. Dep't Super. Ct. 2016), *as amended* (Dec. 2, 2016) ("*McLitus*"). *McLitus*, which was factually similar to the case at hand, held that duly perfected title under Code of Procedure 1161a is a prerequisite to service of the three day notice to quit in an unlawful detainer action.

Despite requesting supplemental briefing by the parties regarding the issue in light of the *McLitus* decision, the Appellate Court ultimately disagreed with the *McLitus* decision, holding that Code of Civil Procedure section 1161a does not require that title be recorded before a notice to quit is served, but rather "Because title was perfected before the complaint was filed, the unlawful detainer proceedings were valid. To conclude otherwise, we would have to rewrite section 1161a, subdivision (b)(3) to add the requirement that title be perfected before the notice to quit is served." *Dr. Leevil, LLC v. Westlake Health Care Center*, 9 Cal. App. 5th 450, 457 (2017) ("*Dr. Leevil*").

This Court thereafter granted review. As discussed below, a plain reading of Code of Civil Procedure section 1161a and application of California's policy of strict compliance in order to obtain the benefits of the summary unlawful detainer remedy requires title be perfected before the service of a three-day notice to quit. Petitioner therefore respectfully requests that this Court reverse the lower courts' rulings on this issue and direct the trial court to enter Judgment in favor of Petitioner.



**III.**  
**SUMMARY OF FACTS**

Prior to entry of Judgment in this action, Petitioner was the licensed operator and tenant of a 99-bed residential care facility located on the Premises. (2AA at T49 402 ¶2.<sup>2</sup>) Petitioner operated the facility under a licensed granted by the State of California. (2AA at T49 402 ¶2.)

Until February 2015, the Premises was owned by nonparty Westlake Village Property L.P. (“Westlake L.P.”). On March 12, 2002, Petitioner entered into a written Lease with Westlake L.P. pursuant to which Petitioner leased the Premises from Westlake L.P. for a term of 20 years. (2AA at T37 301-307.)

In 2008, the property owner, Westlake L.P., obtained a loan from TomatoBank, N.A. (the “Bank”) to refinance the property. (1AA at T23 135-37.) The loan thereafter matured and Westlake L.P. defaulted.

In 2014, the Bank sold the loan to Respondent Dr. Leevil, LLC. (1AA at T23 149-52.) Respondent subsequently foreclosed on the loan via the power of sale contained in the Deed of Trust. (1AA at T2 11-12.) On February 19, 2015, Respondent proceeded with a non-judicial foreclosure sale and purchased the Premises via a trustee’s deed upon sale. (1AA at T2 11-12.) The trustee’s deed upon sale was not recorded until 6 days later on February 25, 2015. (1AA at T2 11.)

On February 20, 2015, the day after the foreclosure sale but before the trustee’s deed was officially recorded, Respondent purported to serve a three-

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<sup>2</sup> Citations to Appellant’s Appendix shall be in the following format: ([Volume]AA at T[tab number] [page number].)

day notice to quit on Petitioner (“Notice to Quit”). (1AA at T23 154-57.) The Notice to Quit was signed by “Ronald Richards, Esq.” without any identification of Respondent whatsoever or any indication of in what capacity Mr. Richards was acting. (*Id.*)

Respondent thereafter commenced the underlying unlawful detainer action on April 1, 2015. (1AA at T2 9.)

#### IV. PROCEDURAL HISTORY

On April 1, 2015, Respondent filed a Complaint for Unlawful Detainer after Completion of Power of Sale from a Foreclosure by a Trustee’s Deed (“Complaint”). (1AA at T2 9.) On the caption page of the Complaint, Respondent cites “CCP §§ 1161/1161a(b)(3)” and states that it is an “Action Based on Code of Civil Procedure Section 1161a.” (1AA at T2 11.)

The Complaint alleged that Respondent “acquired title on February 19, 2015 via a trustee's deed upon sale recorded on February 25, 2015. The trustee's deed upon sale granted, plaintiff a 100% ownership interest. Title has been duly perfected.” (1AA at T2 11.)

After a demurrer, Petitioner filed its Answer on April 30, 2015. (1AA at T17 99.) The case was ultimately set for trial on July 15, 2015. (2AA at T36 289.) Pursuant to the trial court’s order, on July 1, 2015 and July 2, 2015, Petitioner timely filed five motions *in limine*, including a Motion in Limine No. 1 for Judgment on the Pleadings.<sup>3</sup> (1AA at T23 119; 1AA at T24 163;

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<sup>3</sup> “A motion for judgment on the pleadings may be made at any time either prior to the trial or at the trial itself.” *Stoops v. Abbasi*, 100 Cal. App. 4th 644, 650 (2002) (citing *Ion Equip. Corp. v. Nelson*, 110 Cal. App. 3d 868, 877 (1980)); see also *Smify v. Citibank (South Dakota) N.A.*, 11 Cal. 4th 138, 145

1AA at T25 168; 1AA at T26 207; 1AA at T29 222.) The Motion for Judgment on the Pleadings argued that, among other issues, Respondent did not properly serve its Notice to Quit under California Code of Civil Procedure section 1161a(b)(3), as it had not perfected title at the time it served the Notice to Quit. (1AA at T29 222-23.) Respondent opposed the Motion for Judgment on the Pleadings arguing that title was deemed perfected as of the date of the sale under section 2924h(3) because the trustees' deed upon sale was recorded within 15 days of the sale. (1AA at T32 235-36.)

On July 20, 2015, the trial court heard the Motion for Judgment on the Pleadings. The trial court ruled that the deed was "deemed recorded as a matter of law." (RT 59:7-17.)

The trial court immediately thereafter held a bench trial and summarily adjudicated the matter in favor of the Respondent. The remaining issues after the bench trial were resolved pursuant to stipulation, and Judgment was entered by the trial court in favor of Respondent.<sup>4</sup> (RT 155:8-156:26.)

The Notice of Entry of Judgment was filed on July 21, 2015, and was entered onto the docket on July 22, 2015. (1AA at T1 1; 2AA at T45 354.) On September 16, 2015, Petitioner filed its notice of appeal to the Court of Appeal, Second Appellate District ("Appellate Court"). (2AA at T46 358.) Petitioner filed its opening brief with the Appellate Court on April 12, 2016 and Respondent filed its brief on July 14, 2016. Oral argument before the Appellate

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(1995). As such, it is established that a motion for judgment on the pleadings ("MJOP") can also be made in limine. *Lucas v. County of Los Angeles*, 47 Cal. App. 4th 277, 284- 285 (1996). This is due to the fact that courts have inherent power to control litigation and conserve judicial resources through whatever procedural vehicle reaches that result. *Id.*

<sup>4</sup> By stipulation of the parties, enforcement of the Judgment was stayed until September 14, 2015. (*Id.*)

Court was heard on November 9, 2016, and the matter was taken under submission.

On December 5, 2016, after Oral Argument, the Appellate Court ordered that the submission be vacated for further briefing. Specifically, the Court of Appeal requested “letter briefs on *U.S. Financial, L.P. etc., v. McLitus*, San Diego County Superior Court, Appeal Division (Case No. 37-2016-00201 1 16-CL-UD-CTL), ordered published by the California Supreme Court on December 2, 2016 (S237852).” (See Order Vacating Submission and Order For Supplemental Letter Briefs, dated December 5, 2016.) The parties subsequently submitted the requested letter briefs regarding *McLitus*. There was no further oral argument on the *McLitus* issue.

The Appellate Court issued its Order on March 7, 2017, affirming the judgment in favor of Respondents. *Dr. Leevil* at 457. On the issue of the validity of the Notice to Quit, the Appellate Court departed from the reasoning of the trial court, but nonetheless rejected the arguments raised by Petitioners on appeal and the decision by the *McLitus* court. The Appellate Court held that while perfected title is required prior to service of the complaint, perfected title is not required prior to service of a three-day notice to quit. *Dr. Leevil* at 456-57.

This Court granted Petitioner’s Petition for Review on June 14, 2017, solely as to the issue of whether Code of Civil Procedure section 1161a requires a purchaser of real property at a foreclosure sale to perfect title before serving a three-day notice to quit on the occupant of the property.

## V.

### LEGAL ARGUMENT

#### A. The Summary Remedy Provided by the Unlawful Detainer Statutes Requires Strict Compliance

As a preliminary matter, it is well-established under California law that in order to take advantage of the summary remedy of unlawful detainer, a “landlord must demonstrate strict compliance with the statutory notice requirements contained in section 1161 et seq.” *Culver Ctr. Partners E. No. 1, L.P. v. Baja Fresh Westlake Vill., Inc.*, 185 Cal. App. 4th 744, 749 (2010) (“*Culver Ctr. Partners*”) (denying unlawful detainer remedy where service of notice to quit was not proper even though defendant had actual notice); accord *Borsuk v. Appellate Division of the Superior Court*, 242 Cal. App. 4th 607, 609–10 fn. 1 (2015). “The remedy of unlawful detainer is a summary proceeding to determine the right to possession of real property. Since it is purely statutory in nature, it is essential that a party seeking the remedy bring himself clearly within the statute.” *Baugh v. Consumers Associates, Limited*, 241 Cal.App.2d 672, 674–75 (1966) citing *Rankin v. Superior Court*, 157 Cal. 189, 106 P. 718 (1910). Indeed, California law has long held that “forfeitures are not favored by the courts; every intendment and presumption is against the person seeking to enforce the forfeiture; statutes creating forfeitures must be strictly construed; and one who seeks the summary remedy of unlawful detainer allowed by the statute must bring himself clearly within its terms.” *Horton-Howard v. Payton*, 44 Cal.App. 108, 112 (1919) citing *Savings & L. Soc. v. McKoon*, 120 Cal. 179 (1898); *Opera House Ass'n v. Bert*, 52 Cal. 471 (1877); *Lacrabere v. West*, 141 Cal. 554 (1904). Without adherence to the strict requirements of the unlawful detainer statutes, including Code of Civil Procedure section 1161a, a landlord’s remedy is simply an ordinary suit for breach of contract, with all the according delays. *Culver Ctr. Partners* at 750.

Taking into account the requirement for strict compliance with the unlawful detainer statutes and strict construction of such statutes, as discussed below, Respondent's failure to record its trustee's deed upon sale prior to service of the Notice to Quit rendered the Notice to Quit invalid and the unlawful detainer complaint defective as a matter of law. The lower courts therefore erred in finding in favor of the Respondent on this issue, and the Judgment should be reversed.

**B. Code of Civil Procedure Section 1161a Requires That Title Be Duly Perfected at the Time the Notice to Quit Is Served**

Code of Civil Procedure section 1161a, the governing statute upon which Respondent based its unlawful detainer action and under which it served the Notice to Quit, provides in pertinent part:

(b) In any of the following cases, a person who holds over and continues in possession of a manufactured home, mobilehome, floating home, or real property after a three-day written notice to quit the property has been served upon the person, or if there is a subtenant in actual occupation of the premises, also upon such subtenant, as prescribed in Section 1162, may be removed therefrom as prescribed in this chapter:

...

(3) Where the property has been sold in accordance with Section 2924 of the Civil Code, under a power of sale contained in a deed of trust executed by such person, or a person under whom such person claims, *and the title under the sale has been duly perfected.*

Code of Civ. Proc. §1161a(b)(3) (emphasis added). Contrary to the ruling of the Appellate Court, requiring good record title prior to the service of the notice to quit is not "rewriting" section 1161a.

The statute is clear in the series of required events. First, the circumstances described in subsection 1161a(b)(3) must take place, i.e. the property must be sold pursuant to Section 2924h *and* title under the sale must

be duly perfected title. Second, the three day notice to quit must be validly served. Then, and only then, the new owner of the property may avail themselves of the unlawful detainer statutes in order to evict the holdover occupant. Indeed, the statute is clear that eviction may only occur *where* there has been a sale pursuant to section 2924h *and* title under the sale has been duly perfected. The sale and duly perfected title are required conditions before a holdover tenant can be evicted and notice to quit may be given.

Duly perfected title includes, but is not limited to, good record title. “[T]itle is duly perfected when all steps have been taken to make it perfect, i.e., to convey to the purchaser that which he has purchased, valid and good beyond all reasonable doubt, *which includes good record title*, but is not limited to good record title, as between the parties to the transaction. The term ‘duly’ implies that all of those elements necessary to a valid sale exist, else there would not be a sale at all.” *Bank of New York Mellon v. Preciado*, 224 Cal. App. 4th Supp. 1, 9-10 (2013) (emphasis added) (citing *Kessler v. Bridge*, 161 Cal. App. 2d Supp. 837, 841 (1958)); accord *Stephens, Partain & Cunningham v. Hollis*, 196 Cal. App. 3d 948, 952–53 (1987).

The facts here are not disputed, and are a matter of judicial admission by Respondent. Respondent alleged in its Complaint that it purchased the property at the foreclosure sale on February 19, 2015, and that it served its Notice to Quit on February 20, 2015. (1AA at T2 12.) However, Respondent admitted in that same Complaint that title was not recorded until February 25, 2015. (1AA at T2 11.) Therefore, at the time Respondent purported to give its Notice to Quit, title had not been perfected, as it had not yet been recorded. The Notice to Quit was therefore defective and premature, and the unlawful detainer action was improper.

For these reasons, the Appellate Court's determination that 1161a only requires perfect title prior to filing of the complaint is incorrect. As the *McLitus* court explained, the strict requirement that title must be recorded prior to serving the Notice to Quit makes sense, as without good record title, a tenant would have no way of verifying who is the owner of record:

A defective notice cannot support an unlawful detainer judgment for possession. Respondent's interpretation, on the other hand, would suggest that a post-foreclosure plaintiff could routinely prematurely issue a three-day notice that includes legal and factual misstatements (e.g., that the purchaser has already duly perfected title when it had not yet done so). And as argued by Appellant, such a practice would practically prevent a defendant from effectively verifying the identity of the alleged purchaser of a property as a search of recorded documents would prove futile.

Absent a sale in accordance with Section 2924 of the Civil Code *and* a duly perfected title prior to the issuance of the notice, a post-foreclosure purchaser cannot avail itself of a summary unlawful detainer eviction proceeding. Respondent's prematurely issued notice was fatally defective, and the unlawful detainer judgment must be reversed.

*McLitus*, 211 Cal. Rptr. 3d at 151-52.

Indeed, under the Appellate Court's interpretation, a Notice to Quit could arguably be served even prior to the foreclosure sale itself, so long as it is prior to the service of the unlawful detainer complaint. Such a construction certainly cannot be what was intended by the legislature and violates the paramount principles under California law that unlawful detainer statutes are to be strictly complied with and strictly construed.

Without perfected title, the tenant cannot know whether or not the notice to quit is from the correct owner of the property, or to whom it should validly surrender possession or pay. This is particularly true here, as the Notice to Quit did not even identify the purported new owner of record.



Moreover, the notice period set forth in Respondent's Notice to Quit expired before Respondent's title had even been perfected. Petitioner therefore could not even verify the correct owner of the property in the county records in the time given.

As acknowledged by the Appellate Court, "[s]ervice of the notice to quit is an element of the [unlawful detainer] action that must be alleged in the complaint and proven at trial." *Dr. Leevil* at (citing *Borsuk v. Appellate Division of the Superior Court*, 242 Cal. App. 4th 607, 612-13 (2015)). Construing the statutes to require perfected title prior to service of a notice to quit would therefore be in accordance with the requirements that unlawful detainer statutes be strictly construed to avoid forfeiture. The *McLitus* decision should be affirmed and the Judgment in the underlying action should accordingly be reversed.

### **C. Section 2924h(c) Does Not Excuse Compliance With Section 1161a**

Although the Appellate Court below did not base its decision on Section 2924h(c), it is worth noting that Section 2924h(c) also does not support Respondent's arguments. As discussed above, Respondent argued in its opposition to the motion for judgment on the pleadings that "Pursuant to *Civil Code*, section 2924h(c), for title obtained by trustee sale under a power of sale in a deed of trust, title is perfected as of the date of the trustee sale so long as the trustee's deed upon sale is recorded within 15 days of the sale, which it was here." (1AA at T32 234.) This argument was expressly rejected by the *McLitus* court, and the Appellate Court apparently was not swayed by the argument either.

Indeed, section 2924h(c) is clear that it applies only for purposes of that particular subdivision: "*For the purposes of this subdivision*, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall

be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale . . .” Moreover, by its very terms the statute applies to the *sale* and not *title* to the property.

As the *McLitus* court aptly explained:

In this case, the sale was perfected at the time the three-day notice was served, but not the title. Thus, the plaintiff could not provide defendant with a valid three-day notice. The court below mixed the issues of sale and title, but perfecting title is not interchangeable with perfection of the sale under this statutory scheme.

*McLitus*, 211 Cal. Rptr. 3d at 151. In fact, contrary to Respondent’s arguments below, a review of the full text of subdivision (c) confirms that the provision applies only to the foreclosure *sale* and not the *title* to the property:

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee's deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale, or the next business day following the 15th day if the county recorder in which the property is located is closed on the 15th day. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not “available for withdrawal” as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

Code of Civ. Proc. 2924h(c).

Thus, subdivision (c) makes clear that the purpose of the statute is to make conclusive the date of the foreclosure sale even if the funds are not immediately available so long as recording occurs within 15 days. The statute is limited to that provision and has no bearing on any other provision in the Code, and certainly not on the provisions of Section 1161a.<sup>5</sup>

As Respondent failed to duly perfect *title* prior to service of the Notice to Quit, its Complaint was fatally flawed. The trial court accordingly erred in awarding Judgment in favor of Respondent, and the Judgment should be reversed.

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<sup>5</sup> It is also worth noting that perfected title is required under all five scenarios under section 1161a(b) and not just upon a foreclosure sale under Section 2924(c).

**VI.**  
**CONCLUSION**

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court reverse the trial court's July 20, 2015 ruling and resulting Judgment thereon, and direct that Judgment be entered in favor of Petitioner, and/or remand the matter for further consideration.

Dated: July 14, 2017

Respectfully submitted,

ENENSTEIN RIBABKOFF LAVINA  
& PHAM



By: \_\_\_\_\_

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Attorneys for Petitioner

**CERTIFICATE OF WORD COUNT**

Cal. Rule of Court 8.520

Pursuant to California Rule of Court 8.520, I certify that the foregoing Petition for Review was produced on a computer and, according to the word count of the computer program used to prepare the brief, contains 4,639 words.

Dated: July 14, 2017



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Teri T. Pham

PROOF OF SERVICE

STATE OF CALIFORNIA,  
LOS ANGELES COUNTY

I reside in Los Angeles County in the State of California. I am over the age of 18. I am not a party to this action. My business address is 12121 Wilshire Boulevard, Suite 600, Los Angeles, California 90025. On July 14, 2017, I served the foregoing document described as: **PETITIONER'S OPENING BRIEF** on the interested parties in this action addressed below:

Geoffrey S. Long, Esq. L/O of Geoffrey Long APC 1601 N. Sepulveda Blvd., No. 729 Manhattan Beach, CA 90266 Attorneys for Respondent/Plaintiff Dr. Leevil, LLC	Office of the Clerk Ventura County Superior Court Hall of Justice 800 S. Victoria Avenue Ventura, California 93009 Attn: The Honorable Vincent J. O'Neill, Jr.
Ronald N. Richards, Esq. L/O Ronald Richards & Assoc., APC P.O. Box 11480 Beverly Hills, California 90213 Attorneys for Respondent/Plaintiff Dr. Leevil, LLC	Office of the Clerk 2 <sup>nd</sup> District Court of Appeal Division 6, Court Place 200 East Santa Clara Street Ventura, California 93001

**BY UNITED STATES MAIL:** I placed a true copy of the document in separate, sealed envelopes addressed to the parties named above, with prepaid postage, in the U.S. mail in Los Angeles, California. 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 on that same day in the ordinary course of business.

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

Executed this 14<sup>th</sup> day of July, 2017 at Los Angeles, California.

  
NANCY TORRECILLAS