Case No. S241471

IN THE SUPREME COURT OF CALIFORNIA

Michael McClain, Avi Feigenblatt
and Gregory Fisher,

Plaintiffs, Appellants and Petitioners,

vs.

Sav-On Drugs, et al.,

Defendants and Respondents.

REPLY TO ANSWERS TO PETITION FOR REVIEW

After a Decision of the Court of Appeal
Second Appellate District, Division 2
Case Nos. B265011 and B265029
Affirming a Judgment Of Dismissal Following
An Order Sustaining Demurrer Without Leave to Amend
Los Angeles County Superior Court, Case Nos. BC325272 and BC327216
Honorable John Shepard Wiley

Service on the Attorney General and the Los Angeles District Attorney
Required by Bus. & Prof. Code § 17209 and
Cal. Rules of Court, Rule 8.29(a), (b), and (c)(1)

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I. NOWHERE IN THEIR ANSWERS TO THE PETITION FOR REVIEW DO RESPONDENTS DENY THAT THE PREREQUISTES TO A *JAVOR* REMEDY CREATED BY THE *McCLAIN* OPINION WOULD PRECLUDE LITERALLY EVERY SINGLE SUCH CASE, THEREBY RENDERING THE *JAVOR* REMEDY A NULLITY DESPITE THIS COURT'S ENDORSEMENT OF IT IN *LOEFFLER.*

On page 8 of its Answer, the Board of Equalization correctly sets forth the three prerequisites the *McClain* opinion has now created for a consumer ever to be able to use the *Javor* remedy. The SBE writes that the *McClain* opinion now requires:

> 1) The customers must have no available statutory tax refund remedy;
>
> 2) The judicially-crafted remedies sought by the plaintiffs are "consonant" with the statutory tax refund procedures provided by the Legislature; and
>
> 3) There had been a prior determination by the Board or a court that a tax refund was due and owing, such that the refusal to create the remedy will unjustly enrich either the retailer or the state.

But the SBE then does not deny that, ***by definition***, prerequisites 1 and 2 above will be impossible to fulfill in every case, and that they were not fulfilled in *Javor* itself. In other words, if conditions 1 and 2 were to exist as prerequisites as the *McClain* Court holds, then the *Javor* opinion itself would not exist. And with regard to prerequisite 3, the Respondents concede exactly what Petitioner is saying: without a *Javor* remedy it is by definition impossible for a consumer, the real-party-in-interest, to ever

compel the Board to make a determination on whether a sales tax is owing. Rather, the real-party-in-interest would need to rely on the whim of the agency which has its money to decide to initiate and make a determination that the money was wrongfully taken.

The Respondents' Answers serve to underscore the urgency and importance of this Court granting review. They do not deny that numbers 1 and 2 of the above three *McClain* prerequisites were not satisfied in *Javor* itself, and they do not deny that there is literally no possible way under the *McClain* opinion to compel the Board to ever make a determination so as to satisfy condition 3.

If left uncorrected, *McClain* really will have made a nullity of this Court's *Javor* remedy.

II. RESPONDENTS FAIL TO EXPLAIN HOW THE *MCCLAIN* COURT HAS NOT REWRITTEN THE REBUTTABLE PRESUMPTION IN CIVIL CODE 1656.1 INTO ITS OPPOSITE, AN IRREBUTTABLE PRESUMPTION, UNDOING WHAT THE LEGISLATURE DID IN 1978 IN RESPONSE TO THE UNITED STATES SUPREME COURT'S DECISION IN *DIAMOND*.

Respondents also completely fail to explain why the *McClain* opinion does not, as Petitioner says, *de facto* rewrite the rebuttable presumption in Civil Code section 1656.1 into its opposite, an irrebuttable one. Rather, the SBE instead argues at page 13 of its Answer, "the presumption was never at issue in this case." On the contrary, Petitioners

First Cause of Action for breach of the contract required by Civil Code §1656.1 is predicated upon Petitioners rebutting the presumption that they agreed to "reimburse" the retailers for sales taxes that were never owed. By holding that such a claim is barred, the Court's holding has now changed the rebuttable presumption into an irrebuttable presumption, thereby destroying the consensual basis for the constitutionality of sales tax reimbursement that this Court first suggested in *National Ice & Cold Storage v. Pacific Fruit Express* (1938) 11 Cal.2d 283), and also reversing the steps that California took in 1978 in response the United States Supreme Court decision in *Diamond National v. State Equalization Bd.* (1976) 425 U.S. 268, which held that a retailer's mandatory collection of sales tax from the purchaser renders the purchaser the de facto taxpayer. As a result, California in 1978 repealed the sections of the California Revenue and Taxation Code which were deemed to create the problem and replaced them with Civil Code §1656.1.

The reason that nowhere in their Answers do the Petitioners explain how *McClain* would not now turn the rebuttable presumption of §1656.1 into an irrebuttable one is because they have no answer to this question. Simply, *McClain* literally does rewrite the rebuttable presumption into an irrebuttable one.

III. THIS COURT MUST GRANT REVIEW TO PREVENT CALIFORNIA'S "SALES TAX REIMBURSEMENT" SYSTEM FROM BEING HELD UNCONSTITUTIONAL.

Petitioners' constitutional arguments are based upon an irrefutable fact: Tax Code § 6901.5 is an escheat statute designed to "ensure[] that retailers do not wrongfully retain excess sales tax reimbursement paid by customers," not a taxation statute designed to raise tax revenue. The SBE's Answer to Petition for Review admits that fact.[1]

Retailers must file returns and pay sales tax quarterly on their gross sales for the preceding quarter (Tax Code §§ 6451–6459) regardless of whether they were reimbursed by customers for the tax liability at the point of sale. Civil Code §1656.1, by contrast, provides that sales tax *reimbursement* is a private contractual payment that "depends solely upon the terms of the agreement of sale." Sales tax reimbursement is typically collected by the retailer from the customer in advance at the point of sale, but that is not legally required, and the retailer may absorb the tax instead. (*Loeffler* at 1117 ["In their place, the Legislature added Civil Code section 1656.1, described above, permitting but not requiring the addition of reimbursement charges, designating the charges as a matter for a contractual agreement between seller and buyer, and permitting the retailer

[1] APR of SBE at 14 ("section 6901.5 is a tax statute that ensures that retailers do not wrongfully retain excess sales tax reimbursement paid by customers.")

to absorb the tax."]), The amount of sales tax reimbursement collected by the retailer from the customer therefore has no necessary relationship to the amount of sales tax owed by the retailer.

The fact that Tax Code §6901.5 is not a statute designed to raise tax revenue is also proven by the underscored language of the statute itself :

> When an amount represented by a person to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer . . . [or] shall be remitted by that person to this state. . . . those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction . . . and the balance, if any, shall constitute an obligation due from the person to this state.

(Emphasis added.)

The excess sales tax reimbursement funds governed by §6901.5 are, by definition, not owed as taxes because they are "computed upon an amount that is not taxable or is in excess of the taxable amount." (Emphasis added.)

Additionally, under §6901.5 the excess sales tax reimbursement must be either "returned by the person [i.e. the retailer] to the customer" or "remitted by that person to this state." If Tax Code §6901.5 were a taxation statute designed to raise tax revenue, there would be no reason to give the retailer the option of returning the excess sales tax reimbursement to the customer, since that would defeat any goal of raising tax revenue.

Moreover, the retailer's option of returning excess sales tax reimbursement to the customer is a statutory recognition that the customer is the rightful owner of excess sales tax reimbursement.

The distinction between an escheat statute and a taxation statute is important because the strictures of Article XIII §32 of California's Constitution only applies to the "collection of any tax," not to the State's escheat of funds.[2] There is a long history of courts holding state escheats of money to be unconstitutional deprivations of property without due process of law and/or unconstitutional takings of private property for public use without just compensation. *See, e.g., State v. Savings Union Bank & Trust Co.* (1921) 186 Cal. 294, 300; *Webb's Fabulous Pharmacies v. Beckwith* (1980) 449 U.S. 155 ; *Koontz v. St. Johns River Water Management District* (2013) 570 U.S. ___, 133 S. Ct. 2586, 186 L. Ed. 2d 697 (2013); *Cerajeski v. Zoeller*, (2013) 735 F.3d 577 (7th Cir., Posner J.).

Because of the constitutional restrictions on escheat, most modern escheat statutes only provide for provisional, nonpermanent escheats which are "subject to the right of claimants to appear and claim the escheated property." (Code Civ. Proc. 1300, subd. (c); *Morris v. Chiang* (2008) 163

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[2] Moreover, even if Article XIII §32 did apply to the escheat of funds, that would not matter, because the Due Process and Takings Clauses of the U.S. Constitution apply to attempts by states to escheat money, and those federal constitutional provisions trump any provisions of the California Constitution.

Cal. App. 4th 753, 756.) There are generally no constitutional concerns with nonpermanent escheats. *See Harris v. Westly* (2004) 116 Cal. App. 4th 214 ("This case, however, does not involve permanent escheat to the state . . . Indeed, the statute is explicit in its provision to the contrary...We perceive no constitutional dimension to that deprivation under the circumstances.")

Here, the *Javor*-type remedy provided such a "right of claimants [i.e. customers] to appear and claim the escheated property [i.e. excess sales tax reimbursement]." *See Javor v. State Board of Equalization* (1974) 12 Cal.3d 790, 802 ("a customer, who has erroneously paid an excessive sales tax reimbursement to his retailer who has in turn paid this money to the Board, may join the Board as a party to his suit for recovery against the retailer in order to require the Board in response to the refund application from the retailers to pay the refund owed the retailers into court.") Tax Code §6901.5 was therefore a "nonpermanent escheat" prior to the Court of Appeal's opinion. But that opinion effectively abolishes the *Javor*-type remedy by imposing supposed "prerequisites" that no case, not even *Javor* itself, could possibly satisfy. (*See* Petition for Review, Section I at 17-20.)

Besides effectively abolishing the *Javor-type* remedy, the Court of Appeal's opinion also extends *Loeffler's* "safe harbor" from the UCL and CLRA causes of action involved in *Loeffler* to also cover Petitioners' First Cause of Action for breach of the contract specified in Civil Code §1656.1.

(Op. 22. ["In *Loeffler*, our Supreme Court read this section as providing a "safe harbor" or "safe haven" for any retailer/taxpayer "vis-à-vis the consumer" if the retailer/taxpayer "remits reimbursement charges [it collects] to the Board."]) Thus, under the Court of Appeal's extension of the "safe harbor," the retailer cannot be liable for breach of the agreement under which customer consent to paying sales tax reimbursement was given, no matter what agreement was reached between the customer and the retailer, whether express or implied. The ruling therefore turns the "rebuttable" presumption in Civil Code §1656.1 "that the parties agreed to the addition of sales tax reimbursement" instead into the opposite of what the statute says, into an "irrebuttable presumption."

The Court of Appeal's having eliminated all "right of claimants to appear and claim the escheated property," Tax Code §6901.5 is transformed into a "permanent escheat" See Civ. Proc. §1300, subd. (d) ("'Permanent escheat means the absolute vesting in the state of title to property....") A permanent escheat "generally requires a judicial proceeding ...." to cut off the ownership rights of claimants to the property (*Morris v. Chiang, supra* at 756), but there are no such judicial proceedings with respect to excess sales tax reimbursement. Thus, because the Court of Appeal's opinion effectively abolished both the *Javor*-type remedy and the ability of customers to sue retailers for breach of the contract required by Civil Code

§1656.1, the Court of Appeal's opinion has rendered Tax Code §6901.5 unconstitutional.

With customers having no power to *dispute* a sales tax charge, there is also no basis for presuming that the customers *agree* with the charge, thereby destroying the consensual basis for the constitutionality of sales tax reimbursement that this Court first suggested in *National Ice & Cold Storage v. Pacific Fruit Express* (1938) 11 Cal.2d 283). And, as this court held in *National Ice*, there is no other constitutional basis for customers being obligated to reimburse retailers for a tax obligation that is statutorily imposed exclusively upon retailers.

The result of the Court of Appeal's opinion, therefore, could be that retailer collection *of all* sales tax reimbursement from customers (not just *excess* sales tax reimbursement) is rendered unconstitutional as a deprivation of property without due process of law.

IV. THE ANSWER OF DEFENDANT RETAILERS MISREPRESENTS THAT ESCHEAT WAS FIRST RAISED IN THE PETITION FOR REHEARING. THE COURT OF APPEAL MADE A SIMILAR MISTAKE AND REFUSED TO CONSIDER PETITIONERS' ESCHEAT ARGUMENT, THEREBY DENYING PETITIONERS A FAIR HEARING.

The Retailer Defendants' Answer to Petition for Review makes the following statement:

> This issue of escheat, however, was not properly presented below. "As a policy matter," this court "normally will not

> consider an issue that the petitioner failed to timely raise in the Court of Appeal." (Cal. Rules of Court 8.500(c)(1); *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 481.) As the Court of Appeal's Opinion notes, Plaintiffs' escheat argument, among others, was not raised until the Petition for Rehearing was filed. (Slip Op. at 28, n.9.) Thus, review should be denied on this basis alone.

(APR of Retailers at 10-11.)

We thought this issue had been laid to rest by our Petition for Review at pp. 16-17, where we supplied the jump cites to the page ranges in each of our prior briefs discussing our constitutional theories based upon escheat. But now the Retailers' Answer to Petition for Review repeats to this Court exactly the same incorrect allegation as was contained in the Court of Appeal's April 10, 2017 Order Modifying Opinion and Denying Rehearing, namely that Petitioners first raised their escheat argument in their Petition for Rehearing. This is absolutely not true.

Petitioners have made the escheat argument at every stage of the demurrer and appellate proceedings. Petitioners' initial Plaintiffs' Opposition to Retailer Defendants' Demurrer to the Fourth Amended Complaint included a heading captioned "Denying Consumers A Remedy In This Case Would Render The Entire Sales Tax Reimbursement Scheme Unconstitutional." The text of the section focused on escheat, making many of the same arguments and citing many of the same cases Petitioners are relying upon today:

The fact that California had the taxing power (but did not use it) to make all sales of glucose test strips and lancets taxable does not save it from **committing an unconstitutional escheat.** (*Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 133 S. Ct. 2586, 2600-2601 ["we have repeatedly found takings where the government, by confiscating financial obligations, achieved a result that could have been obtained by imposing a tax"].) **Even without escheating the funds**, California committed a Taking, under Defendants' and the SBE's view of current law, by authorizing retailers to collect sales tax reimbursement from consumers without furnishing any procedural right for consumers to contest their presumed "agreement." (*See, e.g., Unity Real Estate v. Hudson* (W.D. Pa. 1005) 889 F.Supp. 818 ["takings occur even when the government does not formally acquire property for its own use, but for the use of third parties"]; *Hodel v. Irving* (1987) 481 U.S. 704 [**escheat of fractional Indian land allotments to tribe**].) Indeed, under their view of current law, **the escheat requirement of §6901.5** operates as a "physical taking" by the State rather than a "regulatory taking," causing §6901.5 to work a per se taking for which consumers are entitled to just compensation without "complex factual assessments of the purposes and economic effects of government actions." (*Brown v. Legal Foundation* (2003) 538 U.S. 216, 233-234.) Moreover, by making consumers' consent irrelevant and depriving consumers of a right to enforce their contract, Defendants' and the SBE's view of current law constitutes an unconstitutional deprivation of property without due process of law under Nat'l Ice:

> [T]o baldly legislate that without, and in the absence of either due or any process of law, a legal debt that is owed by one person must be paid by another, is quite at variance with ordinary notions of that which may be termed the administration of justice. It therefore may be deemed concluded, that ... any ... provision of the statute ... which purports ... to authorize the retailer ... to collect from ... the purchaser ... the tax imposed upon its retailer `for the privilege of selling' such property, is unconstitutional and consequently invalid.

(*National Ice & Cold Storage v. Pacific Fruit Express* (1938) 11 Cal.2d 283.)

Plaintiffs' Opposition to Retailer Defendants' Demurrer to the Fourth Amended Complaint, 12/1/2014, AA 517-518.

Petitioners have reiterated the same escheat argument at every opportunity since the initial brief was filed on December 1, 2014. Petitioners' did so (1) in their oral argument to the trial court (RT 633:6-10); (2) in their Appellants' Opening Brief (AOB 73-76), (3) in their Appellants' Reply Brief (ARB 35-39), (4) in their Petition for Rehearing (RP 20-21; 24; 26-36; and 40-43), (6) in their Petition for Review (PR 1, 8, 10-11, 13-14, 16-17, 28-33), and (7) now in this brief.

As is apparent from the briefing in this Court, Petitioners' constitutional arguments predicated on Tax Code §6901.5 being an escheat statute rather than a taxation statute are among the most important arguments in this case, and are most certainly material to the controversy. The Court of Appeal rejected Petitioners constitutional arguments for a number of reasons. However, all of those reasons disappear once it is recognized that Tax Code §6901.5 is an escheat statute rather than a taxation statute.

For example, one reason given by the Court of Appeal for rejecting Petitioners' Takings Clause claim is that "it is well settled that "'[t]axes and user fees . . . are not "takings." (Op. 25.) Once it is recognized that excess sales tax reimbursement is not "taxes and user fees" but rather private property escheated by the State, this reason disappears.

The Court of Appeal states that the due process "guarantee applies to the payment of taxes . . . but authorizes a state to relegate taxpayers to a 'postpayment refund action' as long as they are afforded 'meaningful backward-looking relief to rectify any unconstitutional deprivation.'" (Op. 25-26.) These comments are inapplicable to sales tax reimbursement once it is recognized as being the subject of escheat rather than taxation

The Court of Appeal states that "it is not precisely clear how due process applies . . . The payment of sales tax alleged in the operative complaint entails two sequential transactions: Consumers pay sales tax reimbursement to retailers, and retailers pay sales tax to the state. The first transaction is ostensibly outside the reach of due process because it reflects a contractual arrangement between two private parties . . . and the consumers are not parties to the second transaction." (Op. 26.) But such two-step transactions are quite common in the escheat cases, especially those involving unclaimed property. *See State v. Savings Union Bank, supra* at 6 and *Cerajeski v. Zoeller, supra* at 6.

Thus, since Petitioners' escheat argument eliminates all of the Court of Appeal's reasons for rejecting Petitioners' constitutional arguments, it is clear that Petitioners' escheat argument is material to the controversy. Yet the Court of Appeal refused to consider escheat as a basis for Petitioners' constitutional arguments, stating "because the initial round of briefing on appeal is not a dry run for a whole new round of post-opinion briefing on

rehearing, we respectively decline to consider these arguments for the first time on rehearing." (4/10/2017 Slip Op. at 28, n.9.) How the Court of Appeal mistakenly thought Petitioners had not raised the escheat argument in prior briefs is unclear, since our Petition for Rehearing included the following paragraph:

> Thus, Tax Code §6901.5 is not a taxation statute; it is an escheat statute. Appellants made that point in their Opening Brief, Reply Brief, and in their Opposition to the Retailers Joint Demurrer in the court below. Yet the word "escheat" does not appear anywhere in this court's opinion.

(RP at 29, emphasis added.)

But regardless of how the mistake was made, the fact is that the Court of Appeal expressly refused to consider evidence and argument material to the controversy. Petitioners were thereby denied a fair hearing. That alone is sufficient reason for this Court to accept review.

V. RESPONDENTS HAVE NO ANSWER TO PETITIONERS' CONSTITUTIONAL ARGUMENTS.

If this Court needs verification that Petitioners' constitutional arguments are correct, it need look no further than Respondents' own briefs. Notwithstanding that Petitioners discussed the escheat basis for their unconstitutionality arguments at every stage of their briefing, the SBE never mentioned the word "escheat" in any of the briefs that it filed in the courts below: not in the trial court and not in the Court of Appeal. Petitioners submit that the reason the SBE never discussed Petitioners'

escheat argument in the courts below is that the SBE had no answer to it. That fact is confirmed by the SBE's Answer to Petition for Review, which finally does make a feeble attempt to respond:

> In any case, Plaintiffs' argument is without merit. Plaintiffs do not provide any authority for the proposition that section 6901.5 is an escheat statute. Escheat means "the vesting in the state of title to property the whereabouts of whose owner is unknown or whose owner is unknown or which a known owner has refused to accept." (Code Civ. Proc., § 1300, subd. (c).) As explained by this Court, section 6901.5 is a tax statute that ensures that retailers do not wrongfully retain excess sales tax reimbursement paid by customers. (*Loeffler, supra*, 58 Cal.4th at pp. 1111-1113.)

(APR of SBE at 14-15.)

It is not surprising that the definition of "escheat" in Code Civ. Proc., § 1300 uses the phrase "the whereabouts of whose owner is unknown or whose owner is unknown or which a known owner has refused to accept." CCP §1300 is, after all, the first section of Title 10 of the CCP on the subject of "Unclaimed Property." However, the SBE's argument is nonsensical. Under the SBE's argument, the State would have a due process obligation to provide a mechanism by which owners who were unknown or who cannot be located could claim their property, but no such due process obligation would arise as to known owners, such as Petitioners, who requested return of their money in State custody. That obviously cannot be the law. Indeed, the escheat cases involving unclaimed property

only arise because the rightful owner has surfaced and made a claim for its funds in state custody.

The retailer defendants mention the word escheat only once in the courts below, in a brief footnote to their Respondents' Brief:

> Fn 9 To substantiate the supposed threat of a due process violation, Plaintiffs cite *State v. Savings Union Bank & Trust Co.* (1921) 186 Cal. 294 ("Savings Union Bank & Trust") and *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980) 449 U.S. 155 ("Webb's Fabulous Pharmacies"). In Savings Union Bank & Trust Co., a dispute over a depositor's estate, the State asserted that certain monies were automatically escheated to the State after twenty years pursuant and a dispute arose with the depositor's estate. (*Savings Union Bank & Trust, supra*, 186 Cal. at pp. 295-296.) In Webb's Fabulous Pharmacies, parties deposited money into the court for an interpleader. (*Webb's Fabulous Pharmacies, supra*, 459 U.S. at pp. 162-164.) The Supreme Court found that interest on the interpleaded funds did not belong to the court. (Ibid.) Here, in contrast, Plaintiffs paid sales tax reimbursements to a private party based on a private contract. There is no analogy to escheat or interpleader.

As discussed at pp.13-13, *supra,* with respect to the Court of Appeal's repetition of that argument, it is foreclosed by federal and state cases involving the escheat of unclaimed property. The privity structure between three parties is identical in the unclaimed property context as under Tax Code §6901.5., yet those cases have never held that the due process clause does not apply merely because the chain of custody of the property includes a stakeholder [the bank] in between the rightful owner [its customer] and the state. Rather, for at least 95 years California law has

been to the contrary. (*State v. Savings Union Bank, supra.* 186 Cal.294 at 300.)

In their Answer to Petition for Review at p.11, the retailer defendants argue that "plaintiffs efforts to transform private contracts into state action is unsupported and unsupportable." But the mere fact that the State has escheated the funds and is unjustly enriched thereby is sufficient state action, as shown by all of the escheat cases cited herein.

For the foregoing reasons, the Petition for Review should be granted.

DATED: May 25, 2017

Respectfully submitted,

McKool Smith Hennigan, P.C.
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By: /s/Bruce R. MacLeod

Attorneys for Plaintiffs and Appellants

CERTIFICATE OF WORD COUNT

The undersigned certifies, pursuant to California Rules of Court, Rule 14(c)(1), that this brief contains 4,122 words, including footnotes, as counted by Microsoft Word 2010, the word processing program used to prepare the brief.

PROOF OF SERVICE

I declare as follows:

I am a citizen of the United States and employed in San Mateo County, California. I am over the age of eighteen years and not a party to the within action. My business address is 255 Shoreline Drive, Suite 510 Redwood Shores, CA 94065. On **May 25, 2017**, I served the foregoing document(s) described as **Reply To Answers To Petition for Review** on the interested parties in this action follows:

☐ by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☒ by transmitting via e-mail or other electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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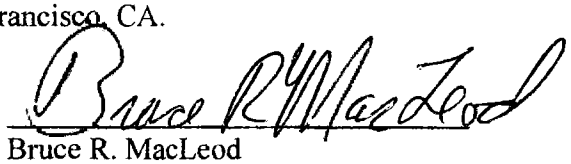
I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **May 25, 2017**, at San Francisco, CA.



Bruce R. MacLeod

PROOF OF SERVICE

I declare as follows:

I am a citizen of the United States and employed in San Mateo County, California. I am over the age of eighteen years and not a party to the within action. My business address is 255 Shoreline Drive, Suite 510 Redwood Shores, CA 94065. On **May 25, 2017**, I served the foregoing document(s) described as **Reply to Answers to Petition for Review** on the interested parties in this action follows:

☒by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Redwood Shores, California addressed as set forth below.

☐by transmitting via e-mail or other electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Court of Appeals, 2nd District Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013 Tel: (213) 830-7000	Office of the Attorney General Appellate Coordinator Consumer Law Section 300 South Spring Street Nmth Tower, 5th Floor Los Angeles, CA 900 13
Office of the District Attorney Consumer Law Section Appellate Division 320 W. Temple St., #540 Los Angeles, CA 90012	Clerk, Honorable John Shepard Wiley Los Angeles County Superior Court CCW- Dept. 311 600 S. Commonwealth A venue Los Angeles, CA 90005

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

Executed on **May 25, 2017**, at Redwood Shores, CA.

Adrian Corona