

S214058

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PATRICIA J. BARRY

*Plaintiff and Appellant,*

v.

THE STATE BAR OF CALIFORNIA,

*Defendant and Respondent.*

SUPREME COURT  
FILED

OCT 29 2014

Frank A. McGuire Clerk  
Deputy

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After a Published Decision by the Court of Appeal Second Appellate District, Division Two Case No. B242054, Reversing a Judgment Entered by the Superior Court for the County of Los Angeles, Case No. BC452239, The Honorable Deirdre Hill presiding

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**REPLY BRIEF OF DEFENDANT AND RESPONDENT**  
**(The Petitioner in this Court)**

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The legal arguments in Ms. Barry's untimely Answering Brief are, as she directly states, merely a repetition of the opening brief she filed in the court of appeal. She asserts that where the trial court lacks subject matter jurisdiction it cannot reach "the merits" of an anti-SLAPP motion or award attorneys' fees. The State Bar of California has already explained why Ms. Barry is wrong on both of those issues in its Opening Brief in this Court. Ms. Barry's "Answering" Brief does not respond to any of the State Bar's arguments in its Opening Brief. Given Ms. Barry's failure to respond at all to the Opening Brief, the State Bar will not burden the Court with a "reply" that restates the arguments it has already made. For the reasons set forth in the Opening Brief, the State Bar respectfully requests this Court to hold that the mandatory fee and cost award under Code of Civil Procedure section 425.16, subdivision (c) remains available even where the reason why a plaintiff was unable to establish that "there is a probability that the plaintiff will prevail on the claim" is that the superior court lacks subject matter jurisdiction over the action, and to affirm the order of the trial court awarding fees and costs to the State Bar.

DATED: October 29, 2014

Respectfully submitted,

**KERR & WAGSTAFFE LLP**

By 

Michael von Loewenfeldt

*Attorneys for Defendant and Respondent*  
*THE STATE BAR OF CALIFORNIA*

**CERTIFICATION OF COMPLIANCE WITH WORD LIMIT**

Pursuant to Rules of Court, rules 8.204(c)(1) and 8.520(c)(1), I certify that this Brief is proportionately spaced, has a typeface of 13-point, proportionally-spaced font, and contains 219 words excluding signatures, as counted by the computer program used to generate this brief.

DATED: October 29, 2014

**KERR & WAGSTAFFE LLP**

By



MICHAEL VON LOEWENFELDT  
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THE STATE BAR OF  
CALIFORNIA

## PROOF OF SERVICE

I, Ginie Phan, declare that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 101 Mission Street, 18th Floor, San Francisco, California 94105.

On October 29, 2014, I served the following document(s):

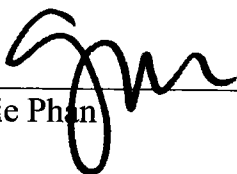
### REPLY BRIEF OF DEFENDANT AND RESPONDENT (THE PETITIONER IN THIS COURT)

on the parties listed below as follows:

Patricia J. Barry 634 Spring Street, #823 Los Angeles, CA 90014	Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill St. Los Angeles, CA 90012
California Court of Appeal 2nd Appellate District, Division 2 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013 <i>Via Electronic Submission to California Court of Appeal</i>	

By first class mail by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the firm's daily mail processing center for mailing in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 29, 2014 at San Francisco, California.

  
\_\_\_\_\_  
Ginie Phan