

SUPREME COURT COPY

Supreme Court No. S240918

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

**Rana Samara,
Plaintiff and Appellant,**

v.

**Haitham Matar D.D.S.
Petitioner, Respondent and Defendant.**

**SUPREME COURT
FILED**

FEB 27 2018

Jorge Navarrete Clerk

Deputy

After a Decision Certified for Publication by the Court of Appeal
Second Appellate District, Division Seven, Case No. B265752
LOS ANGELES SUPERIOR COURT – NORTH CENTRAL
Case No. EC056720
The Honorable William D. Stewart, Judge

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF KENNETH
BARTON'S *AMICUS CURIAE* BRIEF AND APPENDIX OF
EXHIBITS FILED IN SUPPORT OF PETITIONER, RESPONDENT
AND DEFENDANT HAITHAM MATAR D.D.S.**

Patrick C. McGarrigle, Esq. (SBN 149008)

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MCGARRIGLE, KENNEY & ZAMPIELLO, APC

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FEB 13 2018

CLERK SUPREME COURT

Pursuant to Evidence Code §§452(d) and 459, and California Rules of Court, rule 8.520(g), Kenneth Barton (“**Barton**”) respectfully requests that this Court take judicial notice of the following documents which are referenced within and in support of his *amicus curiae* brief (and copies of which are attached to his Appendix of Exhibits in support thereof), filed in connection with and in support of the Petition of Petitioner, Respondent and Defendant Haitham Matar D.D.S. Barton’s documents – listed below and lodged concurrently herewith - are relevant to this Court’s consideration of the issues of claim preclusion and the finality of judgments as discussed in *People v. Skidmore* (1861) 17 Cal. 261, and *DiRuzza v. County of Tehama* (2003) 323 F.3d 1147, et al. (but challenged by *Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76), as they demonstrate the critical need for this Court to affirm the principles of claim preclusion and finality of judgments stated within *Skidmore* and avoid the endless relitigation of decided causes of action and the extraordinary burden on the courts and litigants:

Exhibit #	Title
1	Third Amended Complaint in Los Angeles Superior Court in <i>Kenneth Barton v. RPost International Limited, et. al.</i> , Case No. YC061581.
2	Statement of Decision entered August 3, 2012 Los Angeles Superior Court in <i>Kenneth Barton v. RPost International Limited, et. al.</i> , Case No. YC061581.
3	Judgment after Court Trial entered August 30, 2013 Los Angeles Superior Court in <i>Kenneth Barton v. RPost International Limited, et. al.</i> , Case No. YC061581.
4	Court of Appeal Opinion entered December 9, 2014 in California Court of Appeal, Second District, Case No. B251722.
5	Amended Judgment After Court Trial And Appeal entered July 21, 2015 in <i>Kenneth Barton v. RPost International Limited, et. al.</i> , Case No. YC061581.

6	Plaintiff Kenneth Barton's ("Plaintiff") Notice of Motion and Motion for Summary Judgment/Partial Summary Adjudication ("MSJ") on Plaintiff's Adversary Complaint and Causes of Action for Non-Dischargeability against Defendant Zafar Khan ("Defendant") in the United States Bankruptcy Court, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
7	Defendant Zafar Khan's Opposition To MSJ in the United States Bankruptcy Court, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
8	Plaintiff Kenneth Barton's Reply in support of MSJ in the United States Bankruptcy Court, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
9	Order granting Plaintiff's MSJ in the United States Bankruptcy Court, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
10	Amended Judgment in Favor of Plaintiff following MSJ in the United States Bankruptcy Court, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
11	Defendant Zafar Khan's Notice Of Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
12	Plaintiff Kenneth Barton's Opposition to Defendant Zafar Khan's Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
13	Defendant Zafar Khan's Reply In Support of Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

14	Order Denying Defendant Zafar Khan's Notice Of Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, <i>In re: Zafar Khan; Kenneth Barton v. Zafar Khan</i> , BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
15	Appellant Zafar Khan's ("Appellant") Opening Brief re: Non Dischargeability Appeal, U.S. Bankruptcy Appellate Panel of the Ninth Circuit, <i>In re: Zafar Khan; Zafar Khan v. Kenneth Barton</i> , BAP No.: CC-16-1076; BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
16	Appellee Kenneth Barton's ("Appellee") Responding Brief re: Non Dischargeability Appeal, U.S. Bankruptcy Appellate Panel of the Ninth Circuit, <i>In re: Zafar Khan; Zafar Khan v. Kenneth Barton</i> , BAP No.: CC-16-1076; BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
17	Appellant's Reply Brief re: Non Dischargeability Appeal, U.S. Bankruptcy Appellate Panel of the Ninth Circuit, <i>In re: Zafar Khan; Zafar Khan v. Kenneth Barton</i> , BAP No.: CC-16-1076; BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.
18	United States Bankruptcy Appellate Panel Of The Ninth Circuit's Decision/Judgment in <i>In re: Zafar Khan; Zafar Khan v. Kenneth Barton</i> , BAP No.: CC-16-1076.
19	Opinion of the United States Court of Appeals for the Ninth Circuit, <i>In re: Zafar Khan; Zafar Khan v. Kenneth Barton, et al.</i> , 9 th Circuit Case No.: 15-60002; BAP Case No.: 14-1021.
20	Stipulation Re Stay Of Appellate Proceedings And Modification Of Briefing Schedule in the United States Court of Appeals for the Ninth Circuit, <i>In re: Zafar Khan; Zafar Khan v. Kenneth Barton, et al.</i> , 9 th Circuit Case No.: 17-60010; BAP Case No.: 16-1075.

Judicial notice is the appropriate procedure for bringing these records before this court pursuant to Evidence Code sections 452(d) as they are records of the courts of the state of California and of the United States. Based on the foregoing legal authority, and for the foregoing reasons, Barton respectfully requests this Court grant his Motion for Judicial Notice.

Dated: February 5, 2018

McGARRIGLE, KENNEY &
ZAMPIELLO, APC

By: 

Patrick C. McGarrigle, Esq.

Michael J. Kenney, Esq.

Attorneys for Kenneth Barton

DECLARATION OF MICHAEL J. KENNEY

I, Michael J. Kenney, declare:

1. I am an attorney, duly licensed to practice before this Court, and a principal of McGarrigle, Kenney & Zampiello, APC, counsel for Kenneth Barton (“**Barton**”). The following is based upon my personal knowledge and, if called upon, I could and would competently testify to the truth thereof.

2. Attached to the concurrently filed Appendix of Exhibits as Exhibit 1 is a true and correct copy of the Third Amended Complaint in Los Angeles Superior Court in *Kenneth Barton v. RPost International Limited, et. al.*, Case No. YC061581.

3. Attached to the concurrently filed Appendix of Exhibits as Exhibit 2 is a true and correct copy of the Statement of Decision entered August 3, 2012 Los Angeles Superior Court in *Kenneth Barton v. RPost International Limited, et. al.*, Case No. YC061581.

4. Attached to the concurrently filed Appendix of Exhibits as Exhibit 3 is a true and correct copy of the Judgment after Court Trial entered August 30, 2013 Los Angeles Superior Court in *Kenneth Barton v. RPost International Limited, et. al.*, Case No. YC061581.

5. Attached to the concurrently filed Appendix of Exhibits as Exhibit 4 is a true and correct copy of the Court of Appeal’s Opinion entered December 9, 2014 in California Court of Appeal, Second District, Case No. B251722.

6. Attached to the concurrently filed Appendix of Exhibits as Exhibit 5 is a true and correct copy of the Amended Judgment After Court Trial And Appeal entered July 21, 2015 in *Kenneth Barton v. RPost International Limited, et. al.*, Case No. YC061581.

7. Attached to the concurrently filed Appendix of Exhibits as Exhibit 6 is a true and correct copy of Plaintiff Kenneth Barton's ("Plaintiff") Notice of Motion and Motion for Summary Judgment/Partial Summary Adjudication ("MSJ") on Plaintiff's Adversary Complaint and Causes of Action for Non-Dischargeability against Defendant Zafar Khan ("Defendant") in the United States Bankruptcy Court, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

8. Attached to the concurrently filed Appendix of Exhibits as Exhibit 7 is a true and correct copy of Defendant Zafar Khan's Opposition To MSJ in the United States Bankruptcy Court, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

9. Attached to the concurrently filed Appendix of Exhibits as Exhibit 8 is a true and correct copy of Plaintiff Kenneth Barton's Reply in support of MSJ in the United States Bankruptcy Court, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

10. Attached to the concurrently filed Appendix of Exhibits as Exhibit 9 is a true and correct copy of the Order granting Plaintiff's MSJ in the United States Bankruptcy Court, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

11. Attached to the concurrently filed Appendix of Exhibits as Exhibit 10 is a true and correct copy of the Amended Judgment in Favor of Plaintiff following MSJ in the United States Bankruptcy Court, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

12. Attached to the concurrently filed Appendix of Exhibits as Exhibit 11 is a true and correct copy of Defendant Zafar Khan's Notice Of Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

13. Attached to the concurrently filed Appendix of Exhibits as Exhibit 12 is a true and correct copy of Plaintiff Kenneth Barton's Opposition to Defendant Zafar Khan's Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

14. Attached to the concurrently filed Appendix of Exhibits as Exhibit 13 is a true and correct copy of Defendant Zafar Khan's Reply In Support of Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

15. Attached to the concurrently filed Appendix of Exhibits as Exhibit 14 is a true and correct copy of the Order Denying Defendant Zafar Khan's Notice Of Motion For Certification Of Appeal For Direct Review In Court Of Appeals, Central District, *In re: Zafar Khan; Kenneth Barton v. Zafar Khan*, BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

16. Attached to the concurrently filed Appendix of Exhibits as Exhibit 15 is a true and correct copy of Appellant Zafar Khan's ("Appellant") Opening Brief re: Non Dischargeability Appeal, U.S. Bankruptcy Appellate Panel of the Ninth Circuit, *In re: Zafar Khan; Zafar*

Khan v. Kenneth Barton, BAP No.: CC-16-1076; BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

17. Attached to the concurrently filed Appendix of Exhibits as Exhibit 16 is a true and correct copy of Appellee Kenneth Barton's ("Appellee") Responding Brief re: Non Dischargeability Appeal, U.S. Bankruptcy Appellate Panel of the Ninth Circuit, In re: Zafar Khan; Zafar Khan v. Kenneth Barton, BAP No.: CC-16-1076; BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

18. Attached to the concurrently filed Appendix of Exhibits as Exhibit 17 is a true and correct copy of Appellant's Reply Brief re: Non Dischargeability Appeal, U.S. Bankruptcy Appellate Panel of the Ninth Circuit, In re: Zafar Khan; Zafar Khan v. Kenneth Barton, BAP No.: CC-16-1076; BK Case No.: 2:13-bk-19713-WB, Adversary Case No. 2:13-AP-01752-WB.

19. Attached to the concurrently filed Appendix of Exhibits as Exhibit 18 is a true and correct copy of the United States Bankruptcy Appellate Panel Of The Ninth Circuit's Decision/Judgment in In re: Zafar Khan; Zafar Khan v. Kenneth Barton, BAP No.: CC-16-1076.

20. Attached to the concurrently filed Appendix of Exhibits as Exhibit 19 is a true and correct copy of the Opinion of the United States Court of Appeals for the Ninth Circuit, In re: Zafar Khan; Zafar Khan v. Kenneth Barton, et al., 9th Circuit Case No.: 15-60002; BAP Case No.: 14-1021.

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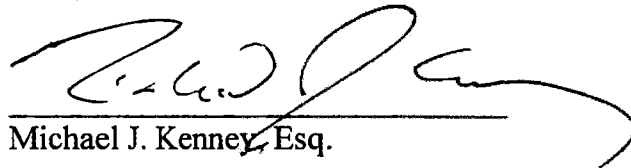
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21. Attached to the concurrently filed Appendix of Exhibits as Exhibit 20 is a true and correct copy of the Stipulation Re Stay Of Appellate Proceedings And Modification Of Briefing Schedule in the United States Court of Appeals for the Ninth Circuit, In re: Zafar Khan; Zafar Khan v. Kenneth Barton, et al., 9th Circuit Case No.: 17-60010; BAP Case No.: 16-1075.

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

Executed this 5th day of February, 2018, at Chatsworth, California.


Michael J. Kenney, Esq.

SUMMONS ON THIRD AMENDED COMPLAINT
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

RPOST INTERNATIONAL LIMITED; RPOST, INC., aka AVION
MICROSERVICES, INC.; SYMANTEC CORPORATION; ZAFAR KAHN;
TERRANCE TOMKOW; HENRI ISENBERG; CAROLE KRECHMAN;
JAMES WATLINGTON; CHARLES BREED; ELLSWORTH ROSTON;
and DOES 1 through 50, inclusive

CONFORMED COPY

OF ORIGINAL FILED
Los Angeles Superior Court

FEB 16 2011

John A. Clarke, Executive Officer/Clerk

by A. Allen, Deputy

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

KENNETH BARTON

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Los Angeles Superior Court
825 Maple Avenue
825 Maple Avenue
Torrance, California 90503

CASE NUMBER:
(Número del Caso):

YC 061581

FILE BY FAX

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Patrick C. McGarrigle, Esq., SBN 149008 (818) 998-3300 (818) 998-3344
McGarrigle, Kenney & Zampiatello, APC
9600 Topanga Canyon Boulevard, Suite 200
Chatsworth, California 91311

DATE: 2/16/11
(Fecha)

JOHN A. CLARKE

Clerk, by *A. Allen*
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

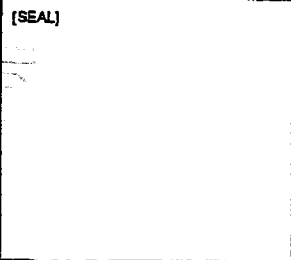
NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):



1 PATRICK C. McGARRIGLE, ESQ., SBN 149008
2 MICHAEL J. KENNEY, ESQ., SBN 192775
3 **McGARRIGLE, KENNEY & ZAMPIELLO APC**
4 9600 Topanga Canyon Boulevard, Suite 200
5 Chatsworth, California 91311
6 PH: (818) 998-3300 FAX: (818) 998-3344

7 Attorneys for Plaintiff
8 Kenneth Barton

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 16 2011
John A. Clarke, Executive Officer/Clerk
By A. Allen, Deputy

9 SUPERIOR COURT OF STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES - SOUTHWEST DISTRICT

11 KENNETH BARTON,
12 Plaintiff,

13 v.

14 RPOST INTERNATIONAL
15 LIMITED; RPOST, INC., aka AVION
16 MICROSERVICES, INC.;
17 SYMANTEC CORPORATION;
18 ZAFAR KHAN; TERRANCE
19 TOMKOW; HENRI ISENBERG;
20 CAROLE KRECHMAN; JAMES
21 WATLINGTON; CHARLES BREED;
22 ELLSWORTH ROSTON; and DOES
23 1 through 50, inclusive,

24 Defendants.

) CASE NO.: YC061581

) [Assigned to Hon. Andrew Kauffman,
Department "B"]

) **THIRD AMENDED COMPLAINT FOR:**

-) (1) **CONVERSION;**
) (2) **BREACH OF FIDUCIARY DUTY**
) (3) **DERIVATIVE ACTION (BREACH**
) **OF FIDUCIARY DUTY);**
) (4) **[OMITTED]**
) (5) **DECLARATORY RELIEF;**
) (6) **[OMITTED]**
) (7) **FRAUD; AND**
) (8) **VIOLATION OF BUSINESS**
) **PROFESSIONS CODE §17200**

) **[FILED PURSUANT TO FEBRUARY 9,**
) **2011 ORDER RE: LEAVE TO AMEND]**

25
26 Plaintiff Kenneth Barton alleges as follows:

27 1. Plaintiff Kenneth Barton ("Barton") is, and at all times relevant herein
28 was, an individual over the age of eighteen and is a resident of Los Angeles County,

COPY

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1 California.

2 2. Plaintiff is informed and believes, and on that basis alleges, that Defendant
3 RPost International Limited (“**RPost, Ltd.**”) is, and at all times relevant herein was, a
4 Bermuda Corporation conducting business and has its principal place of business in the
5 County of Los Angeles, State of California.

6 3. Plaintiff is informed and believes and on that basis alleges that at all times
7 relevant herein Defendant RPost, Inc., currently also known as Avion Microservices, Inc.
8 (“**RPost, Inc.**”), is and was a Nevada Corporation conducting business and has its
9 principal place of business in the County of Los Angeles, State of California.

10 4. Defendants RPost, Ltd. and RPost, Inc. are hereinafter collectively referred
11 to as “**RPost**” or the “*Company*.”

12 5. Plaintiff is informed and believes and on that basis alleges that Defendant
13 Symantec Corporation (“**Symantec**”) is a corporation organized and existing under the
14 laws of the State of Delaware, with its principal place of business located in Mountain
15 View, California. Symantec has, since at least May 2004 and continuing to the present,
16 held a position as a *de facto* director of RPost, Ltd., appointing (by virtue of its status as
17 a Series D Shareholder of RPost, Ltd. and pursuant to the 2004 amended Bye-Laws) its
18 own employee(s) as a director on RPost, Ltd.’s Board of Directors, participated in
19 RPost’s Board of Directors meetings through its employees appointed thereto and was
20 and is aware of (and/or with the exercise of the required diligence, should have been
21 aware of and/or is deemed aware of based on agency-principal and *respondeat superior*
22 principles) and/or participated in the wrongful acts and omissions referenced
23 hereinbelow and ratified same. At all times on and after May 2004 and continuing to the
24 present, Symantec’s responsibility and liability for the acts and/or omissions alleged
25 hereinbelow also derive from Symantec’s appointment of its own employees to RPost,
26 Ltd.’s Board of Directors, which appointments were made by Symantec in furtherance of
27 its own interests as a Series D Shareholder and with said Symantec employees acting at
28 all times within the course and scope of their employment with Symantec.

1 6. Defendant Zafar Khan (“**Khan**”) is an individual over the age of eighteen,
2 a resident (Plaintiff is informed and believes) of the County of Los Angeles, State of
3 California and is, and at all times relevant herein was, an officer and director of RPost
4 and participated in and/or ratified the wrongful acts alleged hereinbelow.

5 7. Defendant Terrence Tomkow (“**Tomkow**”) is an individual over the age of
6 eighteen, a resident (Plaintiff is informed and believes) of the County of Los Angeles,
7 State of California and is, and at all times relevant herein was, an officer and director of
8 RPost and participated in and/or ratified the wrongful acts alleged hereinbelow. Plaintiff
9 is informed and believes and on that basis allege that, at all times relevant hereto,
10 Defendants Kahn and Tomkow collectively hold and/or control the majority of RPost,
11 Ltd.’s shares.

12 8. Defendant Henri Isenberg (“**Isenberg**”) is an individual over the age of
13 eighteen, a resident (Plaintiff is informed and believes) of the County of Los Angeles,
14 State of California and is, and/or was at all times relevant herein, a director of RPost,
15 Ltd., an employee of Symantec (appointed by Symantec to serve on RPost, Ltd.’s Board
16 of Directors in furtherance of Symantec’s interests) and participated in and/or ratified the
17 wrongful acts alleged hereinbelow.

18 9. Defendant Charles Breed (“**Breed**”) is an individual over the age of
19 eighteen, a resident (Plaintiff is informed and believes) of the State of California and is,
20 and/or was at all times relevant herein, a director of RPost, Ltd., an employee of
21 Symantec (appointed by Symantec to serve on RPost, Ltd.’s Board of Directors in
22 furtherance of Symantec’s interests) and participated in and/or ratified the wrongful acts
23 alleged hereinbelow.

24 10. Defendant Carole Krechman (“**Krechman**”) is an individual over the age
25 of eighteen, a resident (Plaintiff is informed and believes) of the County of Los Angeles,
26 State of California, and is and/or was at all times relevant herein, an officer and/or
27 director of RPost, participated in and/or ratified the wrongful acts alleged hereinbelow,
28 and was (in her name or through a holding company or trust owned and/or controlled by

1 her) an owner of shares in RPost Ltd.

2 11. Defendant Ellsworth Roston (“**Roston**”) is an individual over the age
3 of eighteen, a resident (Plaintiff is informed and believes) of the County of Los Angeles,
4 State of California, and is and/or was at all times relevant herein, an officer and/or
5 director of RPost, participated in and/or ratified the wrongful acts alleged hereinbelow,
6 and was (in his name or through a holding company or trust owned and/or controlled by
7 him) an owner of shares in RPost Ltd.

8 12. Defendant James Watlington (“**Watlington**”) is an individual over the age
9 of eighteen, a resident (Plaintiff is informed and believes) of Bermuda, and is and/or was
10 at all times relevant herein, an officer and/or director of RPost and participated in and/or
11 ratified the wrongful acts alleged hereinbelow.

12 13. Defendants Symantec, Kahn, Tomkow, Isenberg, Breed, Krechman,
13 Roston and Watlington are hereinafter collectively referred to as the “**Officer/Director**
14 **Defendants.**”

15 14. Plaintiff is ignorant of the true names and capacities of Defendants sued
16 hereunder as Does 1 through 50, inclusive (the “**Doe Defendants**”), and, therefore,
17 Plaintiff hereby names each of them by said fictitious names. Plaintiff will seek leave to
18 amend this complaint to allege the Doe Defendants' true names and capacities when they
19 are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
20 Doe Defendant is responsible in some manner for the acts and/or omissions alleged
21 herein and that the damages sustained by Plaintiff were and continue to be the direct,
22 proximate and foreseeable result of the acts and/or omissions of the Doe Defendants, and
23 each of them.

24 15. In 1999, Barton and Defendant Tomkow and another individual, Harry
25 Keller, founded the RPost concept and business form, RPost, Inc. By late 1999, Barton
26 and Tomkow were joined by Kahn as the founders of RPost, Inc. (founder and owner,
27 Harry Keller, was subsequently bought out).

28 16. In late 2000, Barton, Tomkow and Kahn (collectively referred to herein as

1 the “**Founders**”) formed RPost, Ltd., and transferred their stock in RPost, Inc. into the
2 RPost, Ltd. in exchange for common shares in RPost, Ltd.

3 17. During 2000 and 2001, RPost, Ltd. issued common stock in RPost, Ltd. to
4 the Founders in three concurrent tranches. Barton was issued three million six hundred
5 sixteen thousand five hundred (3,616,500) shares of RPost, Ltd. Common Stock in 2000
6 (reflected in the Company’s records vis-a-vis Share Certificate No. 9), five hundred
7 thousand (500,000) shares of RPost, Ltd. Common Stock through an 83b election to
8 exercise options paid at \$.01 per share. (reflected in the Company’s records vis-a-vis
9 Share Certificate no. 21) and one million nine hundred thousand (1,900,000) shares of
10 RPost Common Stock was identified on the Company Records as certificate number 25.
11 Barton’s 6,016,500 RPost, Ltd. Common Shares are hereinafter referred to as “**Barton’s**
12 **Shares.**” At the same time that RPost, Ltd. Common Stock was issued to Barton, by
13 agreement of the Founders, RPost, Ltd. issued Common Stock to Khan and Tomkow,
14 with the Founders’ designated Share Certificate numbers being consecutive in each of
15 the three tranches.

16 18. RPost, Ltd.’s 2004 Common Share Capitalization table affirmed and
17 confirmed the above-referenced share transactions and the issuance of Barton’s Shares
18 by RPost, Ltd. for Barton’s benefit. Moreover, in May 2004, at Rpost, Ltd.’s request,
19 Watlington affirmed and represented in writing as part of the Series E Agreement that all
20 of the common shares of RPost, Ltd. (which necessarily included Barton’s Shares) were
21 fully paid for. Thereafter, in July 2005, RPost, Ltd. and RPost, Inc. filed an action in the
22 Los Angeles Superior Court, Case No. YC053346, wherein RPost affirmatively
23 represented to Barton and to the Court that Barton had acquired Barton’s Shares through
24 a series of transactions¹. Similarly, from at least 2003 through mid-2005, in multiple
25

26 ¹In its Complaint in Case No. YC051416 (the “**Complaint**”), RPost affirmed and
27 represented that, “As of July 24, 2000 Barton held 3,325,800 shares in RPost, Inc.”
28 (Complaint, p. 4:15-16) Further, that “The Founders exchanged their shares in RPost, Inc.
for shares in RPost International Limited, and Barton received some 3,616,500 shares of
RPost International Limited’s Common Stock.” (Complaint, p. 4:23-25) RPost also

1 filings with the United States Securities and Exchange Commission (the "S.E.C."),
2 RPost, Ltd. (acting and communicating through Khan under the penalty of perjury)
3 repeatedly represented and affirmed to the SEC that Barton owned at least 10% of the
4 outstanding stock of RPost, Ltd.

5 19. At all relevant times herein, RPost, Ltd. and the Officer/Director
6 Defendants owed Plaintiff, as a shareholder of RPost, Ltd., a fiduciary duty including,
7 without limitation, a duty to fully, completely and fairly disclose all facts which could or
8 would materially affect Plaintiff's rights and interests in, for example, Barton's Shares.
9 Notwithstanding the fiduciary obligations that the RPost, Ltd. and the Officer/Director
10 Defendants, and each of them, owed to Barton at all relevant times, at no time, prior to
11 Khan's admission in July 2009 and, later, only upon Khan's trial testimony in April
12 2010, did RPost, Ltd. and/or any of the Officer/Director Defendants notify and disclose
13 to Barton (but, in fact and rather, fraudulently concealed from him) that RPost, Ltd.
14 and/or the Officer/Director Defendants:

15 (1) contended that Barton allegedly had not paid for the Barton Shares and/or that
16 Barton acquired his initial shares in exchange for his purported promise to serve as
17 RPost, Ltd.'s legal counsel, that Barton allegedly did not serve as legal counsel and,
18 therefore, RPost, Ltd. could cancel his shares and unwind his share acquisition
19 transactions without notice and legal process;

20 (2) prepared falsified RPost, Ltd. Board of Directors resolutions purporting to
21 "correct" (so as to suit said defendants fraudulent scheme, as alleged herein below) the
22 original resolutions (which original resolutions affirmed Barton's acquisition of and
23 payment for Barton's Shares);

24 (3) prepared and circulated falsified financial statements of RPost, Ltd. to attempt

25 _____
26 affirmed and represented that in May, 2001 Barton was issued an additional 500,000
27 shares of common stock, and received an additional 1,900,000 shares of RPost
28 International Limited common stock in August 2001, "...for a total of 6,016,500 shares.
Today that represents 19% of the total number of issued and outstanding shares of RPost
International Limited's Common Stock as converted." (Complaint, p. 5:12-16).

1 to "substantiate" the deceitful and secret assertion that Barton had not paid for his
2 Shares;

3 (4) prepared and circulated false financial statements and information to RPost,
4 Ltd.'s purported "auditors" to attempt to "substantiate" the deceitful and secret assertion
5 that Barton had not paid for his Shares;

6 (5) submitted false "facts" and documents to Bermuda counsel, as part of RPost,
7 Ltd.'s and its Officers/Director Defendants' scheme to secretly cancel Barton's Shares
8 (and unwind the transactions whereby Barton acquired same) and return Barton's Shares
9 to RPost, Ltd.'s treasury, so as to induce said counsel to offer a fraudulently premised
10 "legal opinion" for use by RPost, Ltd. and the Officer/Director Defendants to justify
11 their fraudulent scheme;

12 (6) refused to produce (despite Barton's requests and without a court order) the
13 purported "legal opinion" letter and refused to provide testimony regarding same;

14 (7) notwithstanding a court order and representations by RPost, Ltd.'s counsel on
15 the record (that all Rpost, Ltd. Corporate minutes had been produced), RPost, Ltd.
16 withheld from production a full and complete copy of the original RPost, Ltd. Director
17 Resolutions and delayed the production of certain corporate minutes (purporting to
18 memorialize a directors meeting authorizing "corrections" to Directors Resolutions from
19 5 years earlier) until February 2010; and, among other things,

20 (8) concealed from Barton that RPost, Ltd., acting by and through the
21 Officer/Director Defendants, had secretly in 2007 (or thereafter) canceled Barton's
22 Shares (and unwound the transactions whereby Barton acquired same) and returned them
23 to RPost, Ltd.'s treasury and continued to fail to produce, despite Court order, RPost,
24 Ltd.'s documents regarding Barton's Shares (in particular, any business records
25 evidencing the actual, purported cancellation of Barton's Shares (and unwinding of the
26 transactions whereby Barton acquired same) and the return thereof to RPost, Ltd.'s
27 treasury).

28 20. The actual taking and conversion of Barton's Shares and said acts having