Supreme Court Case No.: S152360

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ALEXANDRA VAN HORN, *Plaintiff and Respondent,* v. ANTHONY GLEN WATSON, *Defendant and Appellant* LISA TORTI, *Defendant and Respondent.*	CASE NO. B188076 (Lead) (Los Angeles County Superior Court Case No. PC 034945)
ALEXANDRA VAN HORN, *Plaintiff and Appellant.* v. ANTHONY GLEN WATSON, et al., *Defendants and Respondents.*	CASE NO. B189254

ANSWER BRIEF TO THE AMICUS CURIAE BRIEF OF THE BOY SCOUTS OF AMERICA

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ANSWER BRIEF TO THE AMICUS CURIAE BRIEF OF THE BOY SCOUTS OF AMERICA

INTRODUCTION

The Amicus Curiae Brief of the Boy Scouts of America ("the BSA") adds nothing new to the arguments raised by Appellant Lisa Torti. The BSA

states that its members "seek to help other people at all times." [1] It adds that boy scouts do not want to be subject to liability if they are helpful to others.[2]

Boy Scouts have nothing to worry about under the existing law and the Court of Appeal's decision if they *are* helpful to others. The good Samaritan law as stated by this Court in *Williams v. State of California*.[3] shields a Boy Scout from liability. *Williams*, quoting from Rest. 2d Torts, §§ 314 and 323, states:

> [T]he volunteer who, having no initial duty to do so, undertakes to come to the aid of another - the "good Samaritan." He is under a duty to exercise due care in performance and is liable if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.[4]

This Court upheld the common law good Samaritan law as "settled law" as recently as 1998 in *Artiglio v. Corning*, wherein the Court emphasized the long-standing history of the common law good Samaritan laws:[5]

> Over 30 years ago, we described this negligent undertaking theory of liability - sometimes referred to as the "Good Samaritan" rule - as "[f]irmly rooted in the common law [of negligence]" (citation) and cited [Rest. 2d. Torts] section 324A as one of the authorities establishing its controlling principles (citations). Indeed, "[i]t is ancient learning that one who assumes to act, even though gratuitously, may thereby become

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[1] Amicus Brief ("AB"), p. 4.

[2] Scout Oath; AB, p. 4.

[3] (1983) 34 Cal. 3d. 18.

[4] *Williams* at 23.

[5] (1998) 18 Cal. 4th 604.

subject to a duty of acting carefully, if he acts at all." [6]

* * *

> Thus, it is settled law that one "who, having no initial duty to do so, undertakes to come to the aid of another - the 'good Samaritan' " - has "a duty to exercise due care in performance and is liable if (a) his failure to exercise care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." (*Williams v. State of California* (1983) 34 Cal. 3d 23.[7]

This Court's reference to the good Samaritan law in *Williams* and *Artiglio* is applied through CACI Jury Instruction No's. 450 and 452. Pursuant to these instructions, a Boy Scout will not be found negligent if "there was a sudden and unexpected emergency situation in which someone was in actual or apparent danger of immediate injury", the Boy Scout "did not cause the emergency" and the Boy Scout "acted as a reasonably careful person would have acted under similar circumstances, even if it appears later that a different course of action would have been safer." [8]

The BSA is under the mistaken belief that the Court of Appeal held there is no protection under the law for a good Samaritan (or a good Scout) unless there is a medical emergency. But, the Court of Appeal stated: "We do not hold that the act of moving a person is *never* the rendition of emergency medical care, only that it was not in this case." [9]

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[6] *Artiglio* at 613.

[7] *Ibid.*

[8] CACI No. 450.

[9] Slip Opinion, p. 12, fn. 8.

In *every one* of the examples given on page 5 of the Amicus Brief where a Boy Scout helped another, he would *not* be subjected to liability under the Court of Appeal's decision. For example, the Scout trying to save the swimmer in deep water would not be found liable under the Court of Appeal's decision, even if he failed to rescue the swimmer.

All that the Court of Appeal's decision stated was that Section 1799.102 immunity "has application only to the rendering of care at the scene of a *medical* emergency.[10] The Court of Appeal's decision did not take away any immunity already afforded a Boy Scout by the good Samaritan law expressed in CACI No's. 450 and 452.

The BSA notes that Boy Scouts strive to be prepared. Being *prepared* means you know what to do with an accident victim - something Ms. Torti apparently did not learn. Being prepared means not using marijuana and alcohol, as Ms. Torti did, *then* trying to help an accident victim. Being prepared means not panicking and becoming hysterical, as did Ms. Torti. Being prepared means having your wits about you, something everyone at the accident scene said Ms. Torti did not have.

If Ms. Torti had been thinking as a good Scout, she would not have moved Plaintiff once she *knew* there was no smoke coming from the Watson car - just air bag dust. If Ms. Torti had been prepared like a Boy Scout, she also would not have recklessly yanked Plaintiff from Mr. Watson's car. She would not have lain Plaintiff just a foot away from the allegedly soon-to-explode car.

The BSA can take comfort that *prepared* Boy Scouts have nothing to worry about from the Court of Appeal's decision. The unique facts presented

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[10] *Ibid.*, p. 12.

to the Court of Appeal are very different from the scenarios described on page 5 of the Amicus Brief.

The BSA says the Court of Appeal "ignores the full context of '*the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act*.' " That is not true. The Court of Appeal noted that the Act uses the words *emergency medical* twice in the title of the Act alone. It refers to *medical care personnel* and *medical services*.

The Court of Appeal also noted that the Legislature declared that the purpose of the Act in Section 1797.5 is to provide *emergency medical services* to the people of California:

> It is the intent of the Legislature to promote the development, accessibility, and provision of emergency **medical** services to the people of the State of California. ¶ Further, it is the policy of the State of California that people shall be encouraged and **trained to assist others** at the scene of a **medical emergency**. Local governments, agencies, and other organizations shall be encouraged to offer training in **cardiopulmonary resuscitation and lifesaving first aid techniques** so that people may be adequately trained, prepared, and encouraged to assist others immediately. (Emphasis added.)

Ms. Torti did not fulfill *any* of the purposes of the Act. She did not provide emergency medical services. She was not trained to assist others at the scene of a medical emergency. She did not offer cardiopulmonary resuscitation or lifesaving first aid techniques.

Boy Scouts do deserve the State's gratitude and encouragement. The Court of Appeal's decision does not take any of that away. The Court should affirm the Court of Appeal's decision.

I. THE LEGISLATURE INTENDED TO ENCOURAGE ACTION BY *PREPARED* RESCUERS, SOMETHING BOY SCOUTS ARE AND MS. TORTI WAS NOT

The first sentence of the BSA's brief states that the BSA's mission is to prepare young people to make ethical and moral choices over their lifetimes. Boy Scouts are prepared because they are trained.

The "mission" of the Legislature in enacting the Emergency Medical Services System and Prehospital Emergency Medical Care Personnel Act ("the Emergency Medical Services Act") of which Section 1799.102 was in part was also to encourage California citizens to prepare themselves by learning cardiopulmonary resuscitation (CPR) and lifesaving procedures *then* attempting to rescue others. The Legislature stated this purpose in Health & Safety Code section 1797.5:

> [I]t is the policy of the State of California that people should be encouraged and **trained** to assist others at the scene of a **medical** emergency. Local governments, agencies and other organizations shall be encouraged to offer training in **cardiopulmonary resuscitation and lifesaving first aid techniques** so that people may be adequately **trained, prepared** and encouraged to assist others immediately. (Emphasis added.)

In his September 10, 1980, letter encouraging the governor to sign the Emergency Medical Services Act, the bill's author, Senator John Garamendi, said the important purpose of the act was to save lives by establishing a comprehensive statewide *medical services program* to train citizens and professionals in life saving medical services. Senator Garamendi stated:

> Projections from national studies estimate that 20% of those dying from accidental deaths and 10% of those dying from heart attacks could be saved if known **emergency medical and rescue techniques** were applied in an efficient emergency

> medical service system. . . . A substantial number of lives can be saved if the State has an appropriately organized EMS (emergency medical services) system.[11]

Senator Garamendi made it clear to the governor that he intended his bill to induce *qualified, trained* people to assist accident victims who may have suffered back injuries, *not untrained* people like Respondent Torti. The Senator stated:

> For example, studies from the California Regional Spinal Injury Project have demonstrated that prompt and **appropriate treatment** in the acute and early stages of spinal cord injury results in a cost saving of $11,000/paraplegic and $15,000/quadraplegic. If the 5,000 para - and quadraplegics were assured such care, we could save about $32,000,000 annually for such care." [12]

Thus, the Legislature intended to encourage people to become "trained and prepared" to provide "CPR and lifesaving first aid". The BSA's brief notes that "the Boy Scouts of America is committed to encouraging boys to help others at all times, especially in emergencies. The familiar Boy Scout Motto is '**Be Prepared**.' which means that 'when someone has an accident, you are **prepared** because of your **first aid instruction**.' " [13] The BSA adds: "thousands of Boy Scouts have earned merit badges for **Emergency Preparedness and Lifesaving**." [14]

Prepared Boy Scouts are the very people the Legislature intended to encourage and immunize by Section 1799.102. They have been taught

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[11] Garamendi Letter, p. 1, emphasis added [AA 0026–AA 0028].

[12] *Ibid*, emphasis added.

[13] AB, p. 4,- emphasis added.

[14] *Ibid.*, emphasis added.

essential first aid and lifesaving techniques as contemplated by Section 1797.5. They are prepared to rescue others in emergencies. Ms. Torti was not.

Thus, the BSA is wrong when it states that the Court of Appeal decision undermines the public policy of the Act. To the contrary, the decision upholds the purpose of the act: to encourage trained and prepared people to attempt rescues. Unlike Boy Scouts, Ms. Torti is not a person the Legislature intended to immunize. She moved an accident victim in a careless and thoughtless manner.

First, Ms. Torti was not mentally prepared to rescue anyone. As the Court of Appeal stated: "during the evening of October 31, 2004, plaintiff, Torti and Jonelle Freed were relaxing at Torti's home where some marijuana was apparently shared and smoked by both plaintiff and Torti. After Watson and Ofoegbu arrived, they all went to a bar at about 10:00 p.m., where they consumed several drinks." [15]

The BSA would have to agree that smoking marijuana and consuming alcohol does not "prepare" one to rescue another. The Scout Oath among other things states that a scout will keep himself "physically strong, mentally awake, and morally straight." [16] There is a triable issue of fact as to whether Ms. Torti's impaired mental state caused her to *think* there was a danger of explosion or fire when there was none.

Secondly, the Court of Appeal noted: "the cause of action against Torti alleged that . . . plaintiff was not in need of assistance from Torti." [17] There was no "rescue" needed here. Plaintiff needed only to sit quietly until

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[15] Slip Opinion, p. 4.

[16] Boy Scout Oath (www.scouting.org).

[17] Slip Opinion, p. 5.

paramedics arrived. The Court of Appeal stated: "The record demonstrates the absence of a medical emergency." [18]

That is not hindsight. No one at the scene of this accident except Ms. Torti ever thought there was even a remote possibility that the vehicle would catch fire. There was no flame or smoke near the car or any leaking gasoline.[19]

Even Ms. Torti admitted that *before* she touched Ms. Van Horn, she knew the smoke she *thought* she had seen was merely air bag dust.[20] In short, Torti saw nothing that should have compelled her or anyone to move Ms. Van Horn from the vehicle.

Ms. Torti also could not have had a good faith belief the Watson vehicle was going to explode because she made no effort to move Plaintiff out of harm's way. She dropped Plaintiff right next to the vehicle and right on top of the fallen light pole.[21] If she had really thought the car was going to catch fire or explode she would have moved Plaintiff far away from the vehicle.

Therefore there is a question of fact as to whether Ms. Torti really had a good faith belief the car was going to explode. As the Court of Appeal noted, "there are conflicting recollections about the critical events that followed the accident." [22] Summary judgment is not appropriate where triable issues of fact exist.

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[18] *Ibid.*, p. 4.

[19] AA 423 and 430.

[20] AA 239-240; 311; 415 and 451.

[21] AA 246; 419-420; 423; 443-444; and 451.

[22] Slip Opinion, p. 5.

II. THE GOOD SAMARITAN LAW PROTECTS BOY SCOUTS FOR ALL OF THE RESCUE ATTEMPTS DESCRIBED IN THE AMICUS BRIEF

The BSA states that "because of lifesaving practice [a boy scout] might be able to save a non-swimmer who has fallen into deep water." [23] First, as noted above, the Legislature intended Section 1799.102 to immunize *trained* and *prepared* rescuers. Secondly, because of the good Samaritan law, articulated in *Williams v. State of California,*[24] *every one* of the Boy Scout rescuers described on page 5 of the Amicus Brief would *not* be subjected to liability under the Court of Appeal's decision.

The two Scouts described in the Amicus Brief who respectively kept the girl and boy from falling would not be held liable under *Williams*, even if they ultimately lost their grip and the children fell. The Scout described in the brief that searching for the two women stranded in the Pacific Ocean also would not be found negligent even if he never found the women.

Williams also exonerates the Scout who jumped into the pool to save his younger brother even if he ultimately was unable to save his brother. The Scouts who saved the father trapped under the broken mast, the cousin from the Huntington Beach surf and the little girl from the river current would also escape liability under the common law good Samaritan law.

The BSA is therefore wrong that these Scouts are left unprotected by the Court of Appeal's decision merely because the rescues did not involve medical care. Each used care, helped the victim and did not make the situation worse. The *Williams* case, Rest. 2d of Torts and CACI No's. 450

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[23] AB, p. 4.

[24] (1983) 34 Cal. 3d. 18.

and 452 protect every one of these Scouts from liability.

III. THE LEGISLATURE INTENDED THE WORD "MEDICAL" TO BE READ INTO SECTION 1799.102

The BSA alleges that the Court of Appeal gratuitously read the word "medical" into Section 1799.012. But *the Legislature* intended the word to be inserted into the section.

The Court of Appeal correctly noted this Court's statement that the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.[25] This Court has declared the familiar rules of statutory construction:

> Our fundamental task in interpreting a statute is to ascertain the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine the language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. [26]

This Court also recently stated in *Troppman v. Valverde*:[27]

> The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the subject matter must be harmonized to the extent possible.[28]

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[25] *Lundgren v. Deukmejian* (1988) 45 Cal. 3d 727, 735.

[26] *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal. 4th 733, 737.

[27] (2007) 40 Cal. 4th 1121, 1135

[28] *Troppman* at p. 1135.

Here, the Legislature itself labeled the entire Act "The Emergency **Medical Services** System and Prehospital Emergency **Medical Care Personnel** Act." (Emphasis added.) The Legislature also disclosed the "spirit" of the Emergency Medical Services Act in Section 1797.5:

> It is the intent of the Legislature to promote the development, accessibility, and provision of emergency **medical** services to the people of the State of California. ¶ Further, it is the policy of the State of California that people shall be encouraged and **trained to assist others** at the scene of a **medical emergency**. Local governments, agencies, and other organizations shall be encouraged to offer training in **cardiopulmonary resuscitation and lifesaving first aid techniques** so that people may be adequately trained, prepared, and encouraged to assist others immediately. (Emphasis added.)

The Legislature therefore declared its intent to train and encourage people, both professionals and laypersons, to provide life-preserving emergency medical care. If the Legislature had not wanted the entire Act to apply to medical care, it would not have used the word "medical" repeatedly in the title nor declared the intent of the Act to: "provide the state with a statewide system for emergency medical services."

Therefore, although Section 1799.102 does not contain the word "medical" in the text, the entire Act was intended to immunize the rendering of medical care. The Court of Appeal correctly cited *Giles v. Horn,*[29] that "legislative purpose will not be sacrificed to a literal construction of any part of the statute." [30]

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[29] 100 Cal. App. 4th 118, 220.

[30] Slip Opinion, p. 8.

Second, Section 1799.102 is derived from former Health & Safety Code section 1767, which provided in pertinent part:

> **In order to encourage local agencies and other organizations to train people in emergency medical service programs and to render emergency medical services to others,** no person who in good faith renders emergency medical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. . . . The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. [31]

Third, the Legislature removed immunity for "moving" an accident victim in its June 10, 1977, amendment to Assembly Bill 1301:

> [N]o person who in good faith and not for compensation renders emergency care at the scene of an emergency ~~or who transports an injured person for emergency medical treatment~~ shall be liable for any civil damages resulting from any act or omission.[32]

Fourth, Section 1799.102 applies to emergency care given at the scene of an emergency. Section 1799.102 does not define what it means to render "emergency care." However, Section 1799.70 of the Act defines "scene of an emergency" to include a situation where there is an *immediate* need for medical attention (such as CPR or lifesaving first aid).

Here, there was no "emergency" need for Ms. Torti to do anything with Plaintiff, including move her from the car, before paramedics arrived. Under

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[31] As noted by the Court of Appeal (Slip Opinion, p. 10, emphasis added).

[32] June 10, 1977 Amendment to AB 1301 (Ms. Torti's Request for Judicial Notice, Exh. A).

the definition provided by the Legislature, Ms. Torti did not provide any "care at the scene of an emergency." She simply moved the Plaintiff.

Section 1799.102 cannot be twisted and bent to fit the facts of this case where Ms. Torti's alcohol consumption and hysteria caused her to conclude there was an immediate emergency when in fact there was none. If Section 1799.102's good faith provision applies to Ms. Torti, how clouded or impaired can the rescuer be under Section 1799.102 and still merit immunity? How unnecessary, harmful or outrageous can the conduct of the actor be and still be immune from liability?

At some point we have to say that immunity cannot cover every person whose irrational, alcohol-fueled and objectively unsupportable belief causes her to believe someone needs rescuing when they do not and whose conduct further injures the accident victim.

IV. IF SECTION 1799.102 IS INTERPRETED AS THE BSA SUGGESTS, IT WOULD VITIATE THE COMMON LAW GOOD SAMARITAN LAW AND OTHER CALIFORNIA STATUTES

If Section 1799.102 is read to provide immunity to *anyone* performing *any* act for an accident victim, we do not need any other immunity statutes. For example, if the Legislature agreed with the BSA's interpretation of Section 1799.102, why in 1987 did it enact Harbors & Navigation Code section 656? That section provides immunity to boat owners who render assistance to those involved in boating accidents, so long as their assistance is reasonable.

Ms. Torti's interpretation of Section 1799.102 would seem to apply to boating accidents. Yet, Section 656's "reasonable standard" is inconsistent with Section 1799.102's "good faith" standard. A more consistent

interpretation of Section 1799.102 is that it provides immunity where medical care is rendered.

If the Legislature agreed with the BSA's interpretation of Section 1799.102, why did it enact Civil Code section 1714.2 which immunizes CPR (a medical service) by good Samaritans:

> In order to encourage citizens to participate in emergency medical services training programs and to render emergency medical services to fellow citizens, no person who has completed a basic cardiopulmonary resuscitation course which complies with the standards adopted by the American Heart Association or the American Red Cross for cardiopulmonary resuscitation and emergency cardiac care, and who, in good faith, renders emergency cardiopulmonary resuscitation at the scene of an emergency shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care. (b) This section shall not be construed to grant immunity from civil damages to any person whose conduct in rendering such emergency care constitutes gross negligence.

If the Legislature agreed with the BSA's interpretation of Section 1799.102, why did it enact Civil Code section 1714.21 which also immunizes use of a defibrillator (a medical service) by good Samaritans:

> Any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency is not liable for any civil damages resulting from any acts or omissions in rendering the emergency care . . . A person or entity that acquires an AED for emergency use pursuant to this section is not liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care by use of an AED, if that person or entity has complied with subdivision (b) of Section 1797.196 of the Health and Safety Code.

If the Legislature had intended by Section 1799.102 to abrogate the long-standing common law good Samaritan law, as the BSA urges, it would have expressly done so. In the recent case *Brodie v. Workers Appeals Bd.*,[33] this Court stated:

> [W]e do not presume the Legislature intends, when it enacts a statute to overthrow long-established principles of law unless such intention is clearly expressed or necessarily implied. [34]

The Court of Appeal correctly found that the Legislature's *only* intent by passing the Act was to ensure the proper emergency *medical* care of the state's citizens. Any other interpretation of Section 1799.102 by the Court of Appeal would have been inconsistent with Civil Code sections 1714.2 and 1714.21, CACI Jury Instructions No's. 450 and 452 and *Williams v. State of California, supra.*

V. CONCLUSION

The good Samaritan law as stated by this Court in *Williams v. State of California*, Rest.2d Torts, §§ 314 and 323 and CACI No's. 450 and 452 shield a Boy Scout from liability. In each example given on page 5 of the Amicus Brief, where a Boy Scout helped another, the Boy Scout would *not* be subjected to liability under the Court of Appeal's decision.

The Court of Appeal followed the familiar rules of statutory construction to ascertain the Legislature's intent so as to effectuate the law's purpose. The Court did not examine Section 1799.102's language in isolation,

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[33] (2007) 40 Cal. 4th 1313.

[34] *Brodie* at 1324.

but in the context of the entire Act to determine its scope and purpose and to harmonize it with the rest of the Act.

The Court of Appeal noted that the Legislature declared that the purpose of the Act in Section 1797.5 is to provide emergency *medical* services to the people of the State. The Court of Appeal's decision does not jeopardize Boy Scouts who try to rescue others. The Court should affirm the Court of Appeal's decision.

DATED: January 30, 2008

CRANDALL, WADE & LOWE
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By: 

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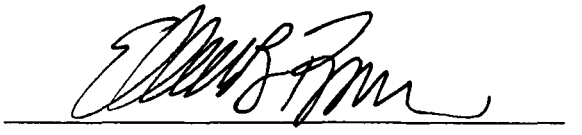
GLEN WATSON

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 14(c)(1))

The Text of this brief consists of 4,294 words as counted by the Corel WordPerfect, Version 8, word processing program used to generate this brief.

DATED: January 30, 2008



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PROOF OF SERVICE - 1031a(3) C.C.P.

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 7700 Irvine Center Drive, Suite 700, Irvine, CA 92618-2929.

On **January 30, 2008,** I served the foregoing document described as **ANSWER BRIEF TO THE AMICUS CURIAE BRIEF OF THE BOY SCOUTS OF AMERICA** on the interested parties in this action as set forth on the attached service list in the following manner:

(X) **BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service on the same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a. I am aware that on a motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

( ) **BY FACSIMILE.** In addition to service by mail as set forth above, a copy of said document(s) was also delivered by facsimile transmission to the addressee(s) pursuant to Code of Civil Procedure §1013(e).

( ) **BY PERSONAL SERVICE.** I caused a true copy of said document(s) to be hand-delivered to the addressee(s) via a California registered process server pursuant to Code of Civil Procedure §1011.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **January 30, 2008,** at Irvine, California.

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