Case No. S247677

IN THE
SUPREME COURT OF CALIFORNIA

LUIS GONZALEZ,
Plaintiff and Appellant,

v.

JOHN R. MATHIS AND JOHN R. MATHIS AS TRUSTEE OF THE JOHN R. MATHIS TRUST
Defendants and Respondents.

After a Published Decision by the Court of Appeal,
Second Appellate District, Division Seven, Case No. B272344

Superior Court for the County of Los Angeles,
Case No. BC542498, Honorable Gerald Rosenberg, Judge

ANSWER TO *AMICUS CURIAE* BRIEF OF THE CONSUMER ATTORNEYS OF CALIFORNIA

*Michael E. Bern (*pro hac vice*)
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
michael.bern@lw.com

Marvin S. Putnam (SBN 212839)
Robert J. Ellison (SBN 274374)
LATHAM & WATKINS LLP
10250 Constellation Boulevard
Suite 1100
Los Angeles, CA 90067
Telephone: (424) 653-5500
Facsimile: (424) 653-5501
marvin.putnam@lw.com
robert.ellison@lw.com

Attorneys for Defendants and Respondents John R. Mathis and John R. Mathis as Trustee of the John R. Mathis Trust

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

INTRODUCTION

Pursuant to California Rule of Court 8.520(f)(7), Defendant Johnny Mathis files this answer to the *amicus curiae* brief of Consumer Attorneys of California (CAOC) in support of Plaintiff Luis Gonzalez. Like Gonzalez, CAOC offers almost no defense of the Court of Appeal's actual reasoning in this case. And although claiming to address *Privette v. Superior Court* (1993) 5 Cal.4th 689 and its progeny, CAOC makes no serious effort to actually reconcile the decision below with the salient facts or holdings of those cases. Instead, CAOC's brief is a misguided plea for "this Court to revisit its previous decisions and adjust its direction." (CAOC Br. 20.) As that underscores, the Court of Appeal's decision represents a stark departure from *Privette*'s framework that would undermine this Court's longstanding precedents and the important policies underlying them.

Rather than address the arguments presented in Mathis's Opening Brief (OBM) and Reply Brief (RBM), or wrestle with the merits of the Court of Appeal's analysis, CAOC principally argues that this case turns on a fact not even discussed in the Court of Appeal's decision—that Gonzalez is not licensed or trained to repair roofs. As this Court's cases make clear, however, that consideration has nothing to do with whether *Privette*'s framework applies to this case. Nor does it diminish that it was Gonzalez's responsibility to ensure his and his employees' safety in this case.

Mathis takes this opportunity to make three overarching points in response to CAOC's brief:

First, the fact that Gonzalez was not a licensed roofer is immaterial to the question of whether *Privette* and its progeny preclude Mathis's liability. CAOC's fixation on this red herring reflects a fundamental misunderstanding of the duty that was delegated to Gonzalez by virtue of his position as an independent contractor. By hiring Gonzalez to wash his skylight, Mathis delegated to Gonzalez responsibility for the safety of himself and his employees at the worksite. Fulfilling that duty did not require Gonzalez—a self-professed expert in safely cleaning hard-to-reach skylights—to repair Mathis's roof or to hold a license of any kind. And CAOC's claim that this case turns on whether Gonzalez was licensed or trained to repair roofs is impossible to reconcile with this Court's precedents.

Second, CAOC's arguments are inconsistent with *Privette* and its progeny. In particular, CAOC fails to grasp the true import of *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, *Tverberg v. Fillner Construction, Inc.* (2010) 49 Cal.4th 518, and *SeaBright Ins. Co. v. U.S. Airways, Inc.* (2011) 52 Cal.4th 590—none of which CAOC can plausibly reconcile with the conclusion that Mathis should be liable here. Perhaps for that reason, CAOC ultimately argues that Gonzalez is not an independent contractor, such that *Privette*'s framework would not apply at all. But Gonzalez's status as an independent contractor and *Privette*'s application to this case are undisputed. See Opinion of the Court of Appeal (Op.) at p. 14 ["Gonzalez does not dispute Mathis hired him as an independent contractor, and that his claims are therefore subject to *Privette* and its progeny."].)

Third, and finally, CAOC is wrong to suggest that public policy and safety concerns support holding Mathis liable. In truth, the Court of Appeal's decision undermines safety by discouraging homeowners and other hirers from engaging expert contractors for potentially dangerous tasks. CAOC is wrong, moreover, that *Privette*'s application in this case would discourage the elimination of known hazards. To the contrary, delegating responsibility for safety to expert independent contractors makes it *more* likely that safety hazards will be identified and addressed.[1]

ARGUMENT

A. The Fact That Gonzalez Was Not A Licensed Roofer Is Irrelevant

Like Gonzalez's Answering Brief (ABM), CAOC's brief makes essentially no effort to defend the actual reasoning of the Court of Appeal's decision: namely, that dicta in *Kinsman* signals the existence of a broad third exception to the *Privette* doctrine. (See OBM 31–50 [addressing the Court of Appeal's reasoning].) Instead, the centerpiece of CAOC's argument is the notion that Mathis could not have delegated his tort duties to Gonzalez because Gonzalez was merely an "unlicensed house cleaner-window washer," not a licensed roofer. (CAOC Br. 26; see also,

---

[1] CAOC's brief also cursorily argues that the "retained control" exception to the *Privette* doctrine should apply here. (CAOC Br. 33–34, 58; see generally *Hooker v. Dept. of Transportation* (2002) 27 Cal.4th 198.) Both lower courts rejected that argument, and Mathis has already explained why they were right to do so. (OBM 59–61; RBM 34–37.) CAOC does not engage with Mathis's arguments or persuasively rebut the Court of Appeal's analysis on this issue.

e.g., *id.* at 15, 29, 31, 33, 38, 40–44.) There is a reason the Court of Appeal did not adopt this argument: It is meritless. Whether Gonzalez had a license to perform roofing work is totally irrelevant to the issues in this case.

1. CAOC fundamentally misunderstands the relevant duty that Mathis delegated to Gonzalez's company when he hired it to clean his skylights. Over and over, CAOC contends that because Gonzalez was not a roofer, Mathis could not have delegated "responsibility for repairing [Mathis's] roof" to Gonzalez. (CAOC Br. 20; see also, e.g., *id.* at 26 ["[A]ny duty to repair or remediate Defendant's dilapidated roof could not have been delegated to Plaintiff."]; *id.* at 29 [asserting that "delegation of a duty to Plaintiff to correct or repair the roof" was "forbidden by law"]; *id.* at 57 ["Defendant does not explain why a landowner-hirer's duty to adequately maintain his roof would be assumed by a housecleaner."].) But Mathis has never claimed that he delegated to Gonzalez a duty *to repair his roof.* Instead, by hiring Gonzalez's company to clean his skylight, Mathis delegated to it any "tort law duty *to provide a safe workplace*" for its workers. (*SeaBright, supra,* 52 Cal.4th at p. 600, italics added.)[2]

---

[2] CAOC's apparent suggestion that Mathis was obligated to "expressly" delegate responsibility for safety to Gonzalez is off base. (See CAOC Br. 28, 41.) This Court has made clear that a delegation of the duty to ensure workplace safety "is *implied* as an incident of an independent contractor's hiring." (*SeaBright, supra,* 52 Cal.4th at p. 601, italics added.) Accordingly, Mathis delegated responsibility for safety at the worksite simply by hiring Gonzalez to clean his skylight.

That duty to ensure workplace safety did not require Gonzalez to fix Mathis's roof. Gonzalez failed to rebut the fact that there were a host of safety precautions that Gonzalez could have taken in light of the alleged hazard caused by the presence of purportedly slippery loose pebbles or sand on Mathis's roof. (See OBM 16–17, 57–58.) Those precautions did not require roofing repair know-how; many were as straightforward as holding onto the parapet wall or sweeping away any loose pebbles or sand. As *amicus curiae* Associated General Contractors of California (AGC) explains, moreover, window- and skylight-washers are *always* supposed to use safety equipment when working at heights, regardless of the condition of the roof or structure involved. (See AGC Br. 3–7.) But Gonzalez failed to take any of these steps, thereby exposing himself—and worse, his employees—to needless risk, including risk that would have existed even if Mathis's roof were brand new.

Even if one assumes, against all logic and evidence, that there were no reasonable safety precautions that Gonzalez himself could have implemented absent repairs to the roof, Gonzalez's personal competence to make those repairs would still be irrelevant. Rather, his task, as the party delegated responsibility for safety at the worksite, would have been to identify the hazard and inform Mathis that he could not clean the skylight safely until repairs were complete. As *amici curiae* American Property Casualty Insurance Association and Chamber of Commerce (APCIA) note, a "contractor may always condition commencement of the work on the hirer's remedying of dangerous conditions that

cannot be addressed through reasonable precautions by the contractor and the contractor's employees." (APCIA Br. 10; see also *id.* at 41.) Even assuming no reasonable precautions were available other than repairing the roof, it was Gonzalez's failure to insist on such repairs prior to cleaning the skylight—rather than his personal ability to repair a roof—that exposed both him and his employees to any resulting danger.

CAOC's erroneous focus on whether Gonzalez could have *fixed* Mathis's roof leads it to misapply one of the key principles underlying *Privette*: the costs of safety precautions and workers compensation insurance should already be factored into the price of the contracted work. (See *Privette*, *supra*, 5 Cal.4th at pp. 693, 699, 701.) An independent contractor tasked with cleaning a rooftop skylight will thus factor in the costs associated with any safety precautions or risks of that work in the contract price. CAOC attacks a strawman when it proclaims it "highly doubtful that the costs associated with the risks of roof repair or remediation[] were included in the contract price" here. (CAOC Br. 29.) That is unsurprising—Gonzalez did not fix Mathis's roof, did not offer to do so, and did not tell Mathis that the roof had to be repaired before the skylight could be cleaned.

2. In addition to stressing that Gonzalez was not a roofer, CAOC mentions again and again that he was an "unlicensed" cleaner. (See, e.g., CAOC Br. 15, 19, 26, 29, 31, 33, 38, 40–44.) Neither Gonzalez himself nor the Court of Appeal ever suggested that his lack of an occupational license is relevant. And for good reason, as it plainly is not.

CAOC never claims that Gonzalez needed a license to engage in window- and skylight-washing. It claims only that a license is required for roofing work. (CAOC Br. 26.) But Gonzalez was not hired to (and did not) fix Mathis's roof. And as explained above, Gonzalez's inability (either practical or legal) to fix the roof is totally irrelevant to the *Privette* doctrine. CAOC's reliance on *Mendoza v. Brodeur* (2006) 142 Cal.App.4th 72 to suggest that Gonalez's lack of an occupational license made him Mathis's employee as a matter of law (rather than an independent contractor) is therefore totally baseless.[3] (See CAOC Br. 42–44.) In *Mendoza*, the unlicensed plaintiff was hired *as a roofer*. (142 Cal.App.4th at p. 75 ["[T]he parties agree that defendant hired plaintiff to replace the roof on his house."] [Fn. omitted].) Gonzalez was not.

CAOC's repeated use of the terms "unlicensed" and "unqualified" appears designed to suggest that Gonzalez was a menial laborer who could not be expected to be responsible for ensuring workplace safety. That suggestion is specious (and condescending to boot). As did Gonzalez in his Answering Brief, CAOC ignores the undisputed fact that Gonzalez expressly held himself out as a "special[ist] in hard to reach windows and skylights" whose employees "take extra care . . . with their own

---

[3] CAOC also ignores that the parties, trial court, and Court of Appeal all agreed that Gonzalez was not an employee. (See 4-AA-871 [trial court holding that "Plaintiff does not dispute his status" as an independent contractor]; Op. at p. 14 ["Gonzalez does not dispute Mathis hired him as an independent contractor, and that his claims are therefore subject to *Privette* and its progeny."].) Gonzalez has never claimed otherwise.

safety when cleaning windows." (3-AA-669.) It makes perfect sense for the duty of ensuring workplace safety—the *actual* duty at issue here—to have been implicitly delegated from Mathis, an ordinary homeowner, to Gonzalez, a self-professed expert in safely cleaning skylights.

B. CAOC Ignores The Teachings Of This Court's On-Point Decisions

A significant portion of CAOC's brief is devoted to recounting this Court's decisions in the *Privette* line and attempting to show that they are consistent with holding Mathis liable. (See CAOC Br. 24–26, 30–40.) That effort is doomed, for the reasons Mathis already explained in his merits briefs. (See OBM 33–38 [explaining why the decision below is irreconcilable with this Court's precedents]; RBM 11–15 [same].) Remarkably, CAOC makes no effort to address, let alone refute Mathis's analysis of this Court's precedents. CAOC's own analysis of those cases, by contrast, is incompatible with this Court's decisions and underscores how little support can be found in this Court's caselaw for Gonzalez's position.

Start with *Kinsman*. CAOC says that *Kinsman*'s holding was "that a landowner may be liable to [a] contractor's employee for a concealed hazardous condition on the property." (CAOC Br. 37.) True, but it is undisputed that the slippery conditions on Mathis's roof were *not* concealed.[4] (See Op. at p. 7 [noting

---

[4] For the same reason, CAOC's reliance on *Markley v. Beagle* (1967) 66 Cal.2d 951 is misplaced. (See CAOC Br. 50.) *Markley*

concession that "plaintiff was aware of the dangerous conditions on the roof"].)

CAOC nonetheless suggests that *Kinsman*'s holding implies that the "the condition of the roof was a hazardous condition and was Defendant's responsibility to make safe" (CAOC Br. 37), even though Gonzalez knew about the purported hazard. But *Kinsman* expressly holds to the contrary, explaining that if "the contractors knew or should have known about the airborne asbestos hazard, *[it] would have meant a verdict in Unocal's [the hirer's] favor.*" (*Kinsman, supra,* 37 Cal.4th at p. 683.)[5] That was so even though the plaintiff in *Kinsman* was just a carpenter hired to install scaffolding—neither an expert in asbestos remediation, nor licensed for such work, nor hired for the purpose of remediating that hazard. (*Id.* at pp. 664–665.) *Kinsman* thus directly debunks CAOC's theory that *Privette* would apply here only if Gonzalez had been a roofer or licensed. (See RBM 20–21.)

CAOC's reading of *Tverberg* is equally meritless. In an attempt to suggest that the result in that case should not dictate the result here, he suggests that the critical fact on which this Court's decision turned in *Tverberg* was that the plaintiff independent contractor "held a valid license." (CAOC Br. 37–38; see also *id.* at 51.) That reading of *Tverberg* is nothing short of

---

was a case about a *hidden* hazard. (See *Kinsman, supra,* 37 Cal.4th at p. 675 [discussing *Markley*].)

[5] It was only because the evidence was capable of inferences in either side's favor as to whether the hazard was known or concealed that this Court sent the case back for a new trial on that question. (*Kinsman, supra,* 37 Cal.4th at p. 683.)

preposterous. This Court mentioned that Tverberg was a licensed contractor only once, in passing (49 Cal.4th at p. 522), and that fact played no role whatsoever in the Court's analysis.

Likewise unpersuasive is CAOC's assertion that *Tverberg* shows that "the skill, trade or license at issue is highly relevant in the determination of whether the *Privette* rule should apply." (CAOC Br. 51.) Although Tverberg was hired only to build a metal canopy, he was injured by falling into a bollard hole—a hazard that was neither part of his trade, nor something he was hired to remediate, nor anything he had skill in dealing with. To the contrary, "[t]he bollards had no connection to the building of the metal canopy, and Tverberg had never before seen bollard holes at a canopy installation." (*Tverberg, supra*, 49 Cal.4th at p. 523.) Yet this Court found that Tverberg could not recover from the hirer absent a showing that *Hooker*'s retained control exception applied. The same result follows here.

CAOC tries to distinguish *SeaBright*, in turn, on the grounds that in this case (1) "there does not appear to have been a written contract" and (2) Gonzalez "lacked the skill and required license" to repair Mathis's roof. (CAOC Br. 40.) But *SeaBright* itself leaves little doubt that both considerations were irrelevant to this Court's analysis. As to the first point, *SeaBright* teaches that "[b]y hiring an independent contractor, the hirer implicitly delegates to the contractor any tort law duty it owes to the contractor's employees to ensure the safety of the specific workplace that is the subject of the contract." (52 Cal.4th at p. 594, italics omitted.) Because the delegation is implicit upon the hiring of the contractor, the

existence or absence of a written contract delegating that duty does not matter. And COAC points to no reason why it should.

As to CAOC's second point, *SeaBright* teaches that the duty delegated to an independent contractor is the "duty to provide a safe workplace" (52 Cal.4th at p. 600; see also *id.* at pp. 594, 597)—something that need not entail the elimination of the condition creating a hazard.[6] As Mathis has explained, and CAOC ignores, Gonzalez's lack of roofing expertise did not prevent him from taking any one of a number of safety precautions that did not requiring eliminating the loose pebbles. (See *supra* at p. 8; see also OBM 16.)

In addition to trying unsuccessfully to distinguish this case from the specific decisions just discussed, CAOC also attempts to distinguish this case from the entire *Privette* line on the theory that Gonzalez seeks to hold Mathis *directly* liable, not *vicariously* liable. (See CAOC Br. 8, 18, 38, 50–51.) That fundamentally misunderstands both this Court's caselaw and ignores Gonzalez's negligence. To begin with, this Court has rejected the claim that *Privette* does not apply to claims sounding in "direct" rather than "vicarious" liability. Thus, in *Camargo v. Tjaarda Dairy* (2001) 25 Cal.4th 1235, this Court made clear that "*Privette* extends to cases where the hirer is *directly* negligent in the sense of having failed to take precautions against the peculiar risks involved in the work entrusted to the contractor." (*Id.* at p. 1243, italics in

---

[6] To take an obvious example, an independent contractor faced with a rainy day is not responsible for halting the rain at the worksite, but simply for taking reasonable steps to keep its employees safe notwithstanding the hazard.

original.) CAOC's argument here is incompatible with that conclusion.

In any event, CAOC ignores that liability here would, in reality, be a species of vicarious liability premised on Gonzalez's own negligence. As this Court's decisions teach, any duty that Mathis conceivably owed to Gonzalez and his employees "arose out of the contract" between the parties and was therefore delegated to Gonzalez's company as an incident of hiring it. (See *SeaBright*, *supra*, 52 Cal.4th at p. 603.) Having "delegate[d] the responsibility of employee safety to the contractor," Mathis "*ha*[*d*] *no duty to act to protect the employee*." (*Kinsman*, *supra*, 37 Cal.4th at p. 674, italics added.) Given that delegation, holding Mathis liable for *Gonzalez's* failure to take reasonable safety precautions would be to impose "essentially . . . derivative and vicarious" liability. (*Ibid.*; see also *Tverberg*, *supra*, 49 Cal.4th at p. 522 ["Having assumed responsibility for workplace safety, an independent contractor may not hold a hiring party *vicariously* liable for injuries resulting from the contractor's own failure to effectively guard against risks inherent in the contracted work."] [italics in original].)

CAOC is incorrect, therefore, to suggest that Gonzalez's injuries stemmed from the hirer's negligence rather than the independent contractor's. If Gonzalez or his company directed his employees to work on Mathis's roof without precautions despite believing it to be dangerous, that was negligent. (See, e.g., *Rasmus v. Southern Pacific Co.* (1956) 144 Cal.App.2d 264, 268 ["[I]f the employer knows . . . that the third party's premises are dangerous,

the employer may be liable for the employee's injuries there. [Citation.]"].)

At the end of the day, it is difficult to read CAOC's brief as seriously contending that this Court's existing precedents justify holding Mathis liable. In reality, CAOC leaves little doubt that its real goal is to encourage this Court "to revisit its previous decisions and adjust its direction." (CAOC Br. 20.) Even Gonzalez has not advocated such a radical approach, and rightly not. There is no plausible justification for overruling this Court's *Privette* precedents. The principle of *stare decisis* would weigh firmly against such a course even if the particular result in this case were questionable as a matter of public policy. But as explained in the next section, both the *Privette* doctrine and the resulting conclusion that Mathis cannot be held liable in this case are correct as a matter of policy as well.

C. Public Policy Firmly Supports Applying *Privette* Here

CAOC argues that public policy supports a rule of decision that would make Mathis liable for Gonzalez's injury here. In particular, CAOC asserts that holding Mathis responsible will promote public safety because it will "encourage[] landowner-hirers to address known dangerous conditions on their property." (CAOC Br. 8; see also, e.g., *id.* at 51 ["Public safety will not be served by a draconian rule that provides landowner-hirers with immunity for their direct negligence."].) But as Mathis has already explained, the rule for which CAOC advocates would not promote the goal of preventing accidents but frustrate it. (See OBM 38–41;

RBM 15–16 & n.1.) And it would seriously undermine the many other important policy considerations underlying *Privette*'s framework.

To start, CAOC ignores that making hirers susceptible to liability in these circumstances will discourage the hiring of expert contractors—to the detriment of workplace safety. In order to avoid liability under the Court of Appeal's rule, a hirer would have to "look over the expert's shoulder to ensure the contractor is taking all necessary safety precautions." (APCIA Br. 47; see also *id.* at 51.) Hirers could even feel compelled "to take safety measure[s] into their own hands and speculate as to what precautions might be necessary for the specialty work involved." (AGC Br. 13.) But many hirers, including ordinary homeowners, lack the expertise to competently make such safety assessments, and their amateur efforts "to take safety into their own hands" would lead to *more* accidents, not less.

In addition, the Court of Appeal's rule would incentivize would-be hirers to assign tasks to their own non-expert employees—who are entitled only to workers' compensation—as opposed to outside experts, who could sue for substantial tort damages. Here, for instance, under the rule that Gonzalez and CAOC endorse, Mathis exposed himself to substantial tort liability by hiring an expert contractor who had safely cleaned Mathis's skylight for decades, "special[ized] in hard to reach windows and skylights," and represented that his employees "take extra care . . . with their own safety when cleaning windows." (3-AA-669.) By contrast, Mathis could have immunized himself from

liability by instead ordering his 70-year-old housekeeper to do the same job, despite the far greater likelihood that that choice would have resulted in injury.[7] Businesses similarly would be incentivized to use their own employees to address various complex maintenance, cleaning, and construction tasks that should really be handled by outside experts. That is *bad* for workplace safety, and is exactly what *Privette* and its progeny rightly seek to discourage. (See *Privette*, *supra*, 5 Cal.4th at p. 700 [noting importance of not "penaliz[ing] those individuals who hire experts to perform dangerous work rather than assigning such activity to their own inexperienced employees"].)

CAOC is also wrong that the faithful application of *Privette*'s framework to this case would discourage landowners from addressing dangerous conditions on their property. As *Privette* teaches, "the cost of safety precautions" is generally reflected in the contract price. (5 Cal.4th at p. 693.) As a result, exposing a contractor to dangerous conditions imposes added cost on the hirer—who must indirectly pay for the cost of the added precautions a contractor must undertake or the pricier insurance the contractor must obtain. To avoid such costs, the hirer is

---

[7] This hypothetical illustrates why letting Gonzalez sue in tort here is indeed an "unwarranted windfall." (Contra CAOC Br. 30.) Allowing an independent contractor's employee (or the contractor himself) to sue in tort where an identically situated employee of the hirer could not is *exactly* what *Privette* characterized as affording certain individuals an unwarranted windfall based on the happenstance of whether they were employees of the hirer or a contractor. (See *Privette*, *supra*, 5 Cal.4th at pp. 699–700.)

incentivized to address safety risks of which he is aware when those risks can most efficiently be addressed by him or her.

Privette's framework promotes that result. By placing responsibility for safety in the hands of expert independent contractors rather than homeowners or other hirers, *Privette*'s framework increases the likelihood that safety hazards will be identified and addressed. And if a contractor encounters a risk that he cannot reasonably take precautions against on his own—a risk that requires further action from the hirer or a different type of outside expert—the contractor is well situated to inform the hirer and decline to undertake the work until the problem is addressed. (See APCIA Br. 41 ["If [remedial] measures are required, it is incumbent on the contractor either to undertake [them] or to condition commencement of the contract work on the homeowner's retention of another competent contractor to perform the work."].) That approach will encourage hirers to *eliminate* dangerous conditions, not to leave them intact, as CAOC wrongly fears.[8] By contrast, CAOC's preferred rule will disincentivize hirers from utilizing independent contractors at all, which will decrease the likelihood that hazards are even *identified*, let alone addressed.

---

[8] In any event, CAOC's singular focus on incentivizing hirers to "remove or eliminate dangerous conditions" (CAOC Br. 51), is misplaced. Oftentimes it will be far more efficient for a contractor to adopt a safety precaution than to remove or eliminate a hazard at the worksite. That is exactly the sort of decision better placed in the hands of an expert independent contractor rather than the non-expert hirer.

The lineup of *amici* who have weighed in on this case further confirms that public policy militates in favor of reversing the Court of Appeal. Insurers, realtors, contractors, and the Chamber of Commerce all urge this Court to overturn the decision below because it will hurt homeowners, businesses, and the building trades, while doing nothing to improve workplace safety. Notably absent on Gonzalez's side are any of the entities one would expect to speak up if workplace safety were threatened. No labor organizations, employee advocacy groups, or public interest watchdogs. Instead, the only *amicus* supporting Gonzalez is CAOC, an association of plaintiffs' attorneys. That is fitting, for the sole beneficiary of the decision below are the lawyers who would spend countless hours taking advantage of the broad and ambiguous scope of the Court of Appeal's ill-defined and counterproductive new exemption from the *Privette* doctrine.

CONCLUSION

For the foregoing reasons, and those explained in Mathis's merits briefs, the judgment of the Court of Appeal should be reversed.

Dated: March 1, 2019

Respectfully submitted,

LATHAM & WATKINS LLP

BY: /S/ MICHAEL E. BERN
Michael E. Bern (*pro hac vice*)
Marvin S. Putnam
Robert J. Ellison

Attorneys for Defendants and Respondents John R. Mathis and John R. Mathis as Trustee of the John R. Mathis Trust

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.520(c)(1))

The text of this brief consists of 4,396 words as counted by the Microsoft Office Word 2016 word-processing program used to generate the brief.

Dated: March 1, 2019

Respectfully submitted,

LATHAM & WATKINS LLP

BY: /S/ MICHAEL E. BERN
Michael E. Bern (*pro hac vice*)

Attorney for Defendants and Respondents John R. Mathis and John R. Mathis as Trustee of the John R. Mathis Trust

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California, I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 505 Montgomery Street, Suite 2000, San Francisco, CA 94111.

On March 1, 2019, I served the following document:

ANSWER TO *AMICUS CURIAE* BRIEF OF THE CONSUMER ATTORNEYS OF CALIFORNIA

BY ELECTRONIC MAIL

The above-described document was transmitted via electronic email on March 1, 2019:

Wayne McClean
Law Offices of Wayne McClean
21650 Oxnard Street,
Suite 1620
Woodland Hills, CA 91367
(818) 225-7007
law@mcclean-law.com
Counsel for Luis Alberto Gonzalez

Brian J. Panish
Spencer R. Lucas
Thomas A. Schultz
PANISH SHEA & BOYLE LLP
11111 Santa Monica
Boulevard, Suite 700
Los Angeles, CA 90025
(310) 477-1700
panish@psblaw.com
lucas@psblaw.com
schultz@psblaw.com
Counsel for Luis Alberto Gonzalez

Evan D. Marshall
11400 West Olympic
Boulevard, Suite 1150
Los Angeles, CA 90064
(310) 458-6660
em@avlaw.info
Counsel for Luis Alberto Gonzalez

Frederic T. Tanner
Nelson & Griffin LLP
555 South Flower Street, Suite 4200
Los Angeles, CA 90017
(213) 833-0155
ftanner@nelsongriffin.com
Trial Co-Counsel for John R. Mathis and the John R. Mathis Trust

All parties on whom this electronic mail has been served have agreed in writing to such form of service pursuant to agreement.

On March 1, 2019, I also served the above-described document:

BY U.S. MAIL DELIVERY

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins LLP' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service:

David M. Arbogast (167571)
ARBOGAST LAW
933 Woodland Avenue
San Carlos, CA 94070
(650) 587-3006
david@arbogastlaw.com
Counsel for Amicus Curiae, Consumer Attorneys of California

Steven M. Bronson (246751)
THE BRONSON FIRM APC
600 W. Broadway, Suite 930
San Diego, CA 92101-3352
(619) 374-4130
sbronson@thebronsonfirm.com
Counsel for Amicus Curiae, Consumer Attorneys of California

William A. Bogdan
LeClairRyan
44 Montgomery, Suite 3100
San Francisco, CA 94104
(415) 391-7111
Counsel for Amicus Curiae and Pub/Depublication Requestor, Associated General Contractors of California

Edward L. Xanders
Eleanor S. Ruth
Greines Martin Stein & Richland LLP
5900 Wilshire Blvd., 12th Floor
Los Angeles, CA 90036
(310) 859-7811
Counsel for Amicus Curiae, Association of Southern California Defense Counsel

Alan H. Packer
Jack R. Rubin
Newmeyer and Dillion LLP
1333 North California Blvd, Suite 600
Walnut Creek, CA 94596
(925) 988-3200
Counsel for Amicus Curiae, California Building Industry Association

June Babiracki Barlow
Neil Kalin
California Association of Realtors
525 South Virgil Avenue
Los Angeles, CA 90020
(213) 739-8200
Counsel for Amicus Curiae, California Association of Realtors

Fred J. Hiestand
General Counsel
3418 Third Avenue, Suite 1
Sacramento, CA 95817
(916) 448-5100
Counsel for Amicus Curiae, The Civil Justice Association of California

Stephen E. Norris
Joshua C. McDaniel
Horvitz & Levy LLP
3601 West Olive Ave., 8th Floor
Burbank, CA 91505-4681
(818) 905-0800
Counsel for Amicus Curiae, American Property Casualty Insurance Association and Chamber of Commerce of the United States of America

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2019, at San Francisco, California.

Andrea L. Setterholm
andrea.setterholm@lw.com