California Supreme Court Case Number S225090

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ROBERT BARAL,

Plaintiff and Respondent,

vs.

DAVID SCHNITT,

Defendant and Petitioner.

SUPREME COURT
FILED

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Deputy

After a Published Decision of the Court of Appeal
Second Appellate District, Division One (Case No. B253620)
Appeal from the Los Angeles Superior Court
Honorable Maureen Duffy-Lewis (Case No. BC475350)

ANSWER TO PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to the California Rules of Court, Rule 8.208, Plaintiff and Respondent Robert Baral, to the best of his knowledge, is unaware of any entities or persons who have a financial or other interest in the outcome of this proceeding that would be relevant to the question of disqualification under Canon 3E of the Code of Judicial Ethics.

DATED: April 3, 2015

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TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Plaintiff and Respondent Robert Baral ("Baral") respectfully answers the Petition filed by Defendant and Petitioner David Schnitt ("Schnitt") for Review of the Opinion by the Second District Court of Appeal, Division One. The Opinion was correctly decided by the Court of Appeal below, and no proper grounds exist for review. As will be demonstrated below, the Court should deny the Petition for Review.

I. INTRODUCTION

Schnitt's Petition for Review ("Petition") should be denied for the following reasons:

- This case is not ripe for review by this Court because the trial court has not yet determined if Schnitt has standing to invoke the litigation privilege and thereby trigger the procedural safeguards of the anti-SLAPP statute.
- The Petition blatantly mischaracterizes the record in asserting that the purported mixed causes of action in the Second Amended Complaint ("SAC") are the result of artful pleading – the rebranding of protected claims in the same cause of action containing unprotected claims. In fact, as noted by the Court of Appeal in its Opinion, the allegations in the SAC, targeted by Schnitt's anti-SLAPP motion, involve distinct claims that were not previously alleged in any prior version of the operative complaint. Put simply, this case is not the poster child for the artful pleading malady advocated by Schnitt.
- The appellate courts are not divided on the precise procedural issue presented by this case concerning whether a party can

utilize an anti-SLAPP motion to parse allegations from mixed causes of actions in the operative pleading. The purported split in authority pertains, at best, to the ability of the courts, ***not the parties***, to parse allegations from mixed causes of action in adjudicating anti-SLAPP motions. In short, this case is not a "good vehicle" to resolve any outstanding conflicts of authority.

In light of the foregoing issues, and as further explained below, the Petition should be denied.

With regard to the issue of ripeness, the Petition fails to mention that the Court of Appeal acknowledged that Schnitt's standing to invoke the litigation privilege was an "open question" and that it declined to "decide the merits of the litigation privilege ***as applied to the second amended complaint***". (*Baral v. Schnitt* (2015) 233 Cal.App.4th 1423, 1437 [183 Cal.Rptr.3d 615, 625], emphasis added [hereafter *Baral*].) The Court of Appeal further acknowledged that the trial court could consider the litigation privilege issue upon remand. (*Ibid.*) In light of this open question, it would be premature for this Court to accept review of this case because the SAC may not contain any allegations that touch upon protected activity (*i.e.*, petition and free speech rights) in the event that the trial court determines that Schnitt does not have standing to invoke the litigation privilege. This ground alone justifies denial of the Petition.

With regard to Schnitt's assertion that Baral has engaged in "artful pleading" to circumvent the intent of the anti-SLAPP statute, the Court of Appeal found this allegation to be completely untrue. In its Opinion, the Court of Appeal examined the claims alleged by Baral in the SAC and recognized that "[t]his is not a case in which the plaintiff merely rebranded a prior defamation claim and thereby implicated concerns about artful pleading." (*Baral, supra*, 233 Cal.App.4th at 1442.) In short, this case

does ***not*** justify the granting of review by this Court because it does not involve an example of the use of artful pleading to evade the purpose of the anti-SLAPP statute.

With regard to a purported split in authority, Schnitt has identified two published decisions, *City of Colton* (2012) 206 Cal.App.4th 751 [142 Cal.Rptr.3d 74] [hereafter *City of Colton*], and *Cho v. Chang* (2013) 219 Cal.App.4th 521 [161 Cal.Rptr.3d 846] [hereafter *Cho*], that have affirmed the ability of the courts, not the parties, to parse allegations from mixed causes of action in the operative pleading. In both *City of Colton* and *Cho*, the parties pursuing anti-SLAPP motions utilized them in a manner consistent with the anti-SLAPP statute as a result of seeking to strike the entire operative pleading or separate causes of action. In this case, Schnitt adopted the novel approach of drafting an anti-SLAPP motion that only sought to parse allegations concerning alleged protected activity from purported mixed causes of action in the SAC. In light of Schnitt's procedural shenanigans, the Court of Appeal criticized the conclusions reached in both *City of Colton* and *Cho* in opening the door to "artfulness" on the part of parties filing anti-SLAPP motions to excise allegations and thereby stop discovery, delay proceedings and burden the courts with more motions. (*Baral*, *supra*, 233 Cal.App.4th at 1440-43.) The Court of Appeal's criticism of *City of Colton* and *Cho* in this case is *dicta* because neither of those decisions holds that ***a party*** can utilize an anti-SLAPP motion to parse allegations from a mixed cause of action. In fact, there are no published decisions in California in which a party has utilized an anti-SLAPP motion in the same manner as Schnitt did in this case. Put simply, Schnitt has failed to identify a split in authority that would justify review by this Court.

For the stated reasons above, and as further explained below, Baral respectfully requests that the Petition should be denied.

II. SCHNITT'S PETITION DOES NOT SET FORTH ANY GROUNDS TO JUSTIFY THE GRANTING OF REVIEW BY THIS COURT.

A. This Case Is Not Ripe For Review Because The Trial Court Has Not Ruled On Schnitt's Standing To Invoke The Litigation Privilege.

The issue of Schnitt's standing to exercise the litigation privilege remains unresolved. Assuming, *arguendo*, that the trial court, upon remand, determines that Schnitt does not have standing to assert the litigation privilege, then the anti-SLAPP statute would not be applicable because the allegations in the SAC would not embrace any protected activity. Specifically, if Schnitt cannot invoke the litigation privilege, then the allegations in the SAC involving the Investigative Report issued by Moss Adams LLP ("Moss Adams") do not rise to the level of protected activity and do not fall within the scope of the anti-SLAPP statute.

In order to be "ripe" for review, a controversy must be "definite and concrete . . . as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." (*Pac. Legal Found. v. California Coastal Com.* (1982) 33 Cal.3d 158, 169 [188 Cal.Rptr. 104, 655 P.2d 306].) The facts must have "sufficiently congealed to permit an intelligent and useful decision to be made" before a case can be considered ripe. (*Id.* at 171.) The purpose of this policy is to prevent courts from being drawn into disputes that "depend for their immediacy on speculative future events." (*Id.* at 173.)

In this case, the issue of Schnitt's standing, in his individual capacity, to invoke the litigation privilege was never considered by the trial court and was not the subject of the parties' appellate briefs. During oral argument before the Court of Appeal, the issue of Schnitt's standing was raised for the first time. In order to consider this issue, the Court of Appeal

requested supplemental briefing from the parties concerning, among other things, Schnitt's standing to exercise the litigation privilege. (*Baral, supra*, 233 Cal.App.4th at 1431.) After reviewing the supplemental briefs, the Court of Appeal decided that the standing issue should be determined by the trial court and stated:

> By this observation, we are not ruling that the litigation privilege does not apply to these allegations, ***but only that this is still an open question***. . . . We decline the invitation to decide the merits of the litigation privilege ***as applied to the second amended complaint***. As set forth *post* in part IV, even if, arguendo, Schnitt were correct that the litigation privilege applies to the Moss Adams allegations in the second amended complaint, the anti-SLAPP statute does not authorize excising allegations in mixed causes of action where the plaintiff has demonstrated a prima facie case of prevailing on part of the mixed cause of action. Once again, by so ruling, we express no opinion on what impact, if any, the litigation privilege would have on future pretrial and trial proceedings upon remand. (*Baral, supra*, 233 Cal.App.4th at 1437, emphasis added.)

In order to ensure that the trial court, upon remand, is presented with an immediate opportunity to decide the standing issue, the Court of Appeal vacated the trial court's September 23, 2014 order that denied Schnitt's motion to quash a subpoena requiring the production of documents by Moss Adams. (*Baral, supra*, 233 Cal.App.4th at 1443.) As a result of this

act by the Court of Appeal, the parties will be able to address the issue of Schnitt's standing to invoke the litigation privilege in the context of the trial court's reconsideration of the motion to quash. Assuming, *arguendo*, the trial court rules that Schnitt does not have standing, then the allegations in the SAC pertaining to Moss Adams would not involve any protected activity and would not fall within the scope of the anti-SLAPP statute. Put another way, this case may not involve a mixed cause of action if the trial court determines on the merits that Schnitt lacks standing to invoke the litigation privilege.

At this juncture of the proceedings, it would be premature for the Court to grant review of a case that requires a ruling by the trial court as to whether the allegations in the SAC actually involve a protected activity. The Court of Appeal made it abundantly clear in its Opinion that this issue should be adjudicated by the trial court, and it makes sense for trial court to do so. Therefore, based on the issue of ripeness alone, Schnitt's Petition should denied.

B. This Case Does Not Involve The Use Of Artful Pleading To Evade The Purpose Of The Anti-SLAPP Statute.

In hopes of enticing this Court to grant review, Schnitt creates the false impression that Baral engaged in "artful pleading" to resurrect defamation claims that were previously dismissed by the trial court based on the applicability of the anti-SLAPP statute. Schnitt's characterization of the facts is woefully inaccurate and paints a distorted picture that Baral's defamation claims were stricken from the original complaint, and those same claims were simply rebranded and reincorporated into the SAC. [Petition, at 2-3, 12-13.] Schnitt goes so far as to assert that the SAC was amended to "re-allege *the very same conduct* under a 'new' heading along with *other*, indisputably *un*protected conduct" and that the allegations in the

SAC were "*identical* to what [Baral] had previously pled as 'defamation.'" [Petition, at 3 and 13; emphasis in original.]

Of course, as recognized by the Court of Appeal, Schnitt's characterization of the allegations in the SAC is simply not true. In its Opinion, the Court of Appeal carefully examined the SAC and found:

> There are ***no defamation claims in the second amended complaint***, and Baral is not seeking damages regarding the Moss Adams allegations in that complaint. The Moss Adams allegations in the second amended complaint regard a different wrong – breach of fiduciary duty in being frozen out of the management of IQ. (*Baral, supra*, 23 Cal.App.4th at 1437.)
>
> . . .
>
> ***This is not a case in which the plaintiff merely rebranded a prior defamation claim and thereby implicated concerns about artful pleading***. Instead, the second amended complaint describes several acts of self-dealing and breaches of fiduciary duty aimed at depriving Baral of the financial benefits of his investments of time and labor in IQ, of which the Moss Adams allegations are but a small part. (*Id.* at 1442, emphasis added.)

Schnitt's misrepresentation of the facts is intended to pique this Court's interest in taking steps to curtail the purported use of mixed causes of action to sidestep the intent of the anti-SLAPP statute. However, since this case does not involve the very conduct that Schnitt contends requires review by this Court, Schnitt's Petition should be denied.

C. The Appellate Courts Are Not Divided On Whether Schnitt's Anti-SLAPP Motion Is Procedurally Improper.

1. There Are Only Two Appellate Decisions That Stand For The Proposition That The Court, Not The Moving Party, May Parse The Allegations Of A Complaint Subject To An Anti-SLAPP Motion.

The overarching theme of Schnitt's Petition is that there is a sharp divide in the appellate courts as to whether the anti-SLAPP statute is designed to "strike anything less than what a plaintiff happens to lump together as a 'single' cause of action." [Petition, at 1.] Schnitt contends that this Court's reference to *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90 [15 Cal.Rptr.3d 215] [hereafter *Mann*] [1] in *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 820 [124 Cal.Rptr.3d 256, 250 P.3d 1115] [hereafter *Oasis West*] represents the cause of this split in authority. [Petition, at 1.] As will be demonstrated below, only two cases, *City of Colton* and *Cho*, actually involved the parsing of allegations in a single cause of action ***by the court*** (not the moving party) in ruling on an anti-SLAPP motion, and *Cho* is the only case to explicitly refuse to acknowledge this Court's adoption of the *Mann* rule in *Oasis West*.[2] In

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[1] In *Mann*, the Court of Appeal set forth a new rule of law [hereafter "the *Mann* rule"] regarding the second prong of analysis under the anti-SLAPP statute involving mixed causes of action. The *Mann* rule establishes that "[w]here a cause of action refers to both protected and unprotected activity and a plaintiff can show a probability of prevailing on any part of its claim, the cause of action is not meritless and will not be subject to the anti-SLAPP procedure". (*Mann, supra*, 120 Cal.App.4th at 106.)

[2] It is important to note that since *Mann*'s publication over a decade ago, appellate courts have overwhelmingly recognized its importance and applicability to "mixed" causes of action in conducting an analysis under the anti-SLAPP statute. In fact, appellate courts have repeatedly acknowledged this Court's adoption and affirmance of the *Mann* rule in

taking a closer look at both *City of Colton* and *Cho*, this Court will find that the granting of review of this case is not warranted.

In order to create the illusion of a cataclysmic split at the appellate court level concerning the applicability of the *Mann* rule, Schnitt relies heavily on another decision issued by this Court, *Taus v. Loftus* (2007) 40 Cal.4th 683 [54 Cal.Rptr.3d 775, 151 P.3d 1185] [hereafter *Taus*], that does not involve an analysis of mixed causes of action under the anti-SLAPP statute. In *Taus,* the plaintiff asserted several causes of action relating primarily to an invasion of privacy. The defendants filed an anti-SLAPP motion that the trial court denied with respect to several causes of action while allowing the bulk of plaintiff's claims to go forward. (*Taus, supra,* 40 Cal.4th at 690.) Thereafter, the appellate court determined that most, if not all, of plaintiff's claims should be dismissed. (*Ibid.*) Following the appellate court's decision, only defendants sought review before this Court. (*Ibid.*)

Oasis West. (*See, e.g., Burrill v. Nair* (2013) 217 Cal.App.4th 357, 382 [158 Cal.Rptr.3d 332, 348], expressly acknowledging *Oasis West*'s adoption of the *Mann* rule; *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539 [110 Cal.Rptr.3d 129], expressly affirming the *Mann* rule as applicable to "mixed" causes of action; *Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177 [102 Cal.Rptr.3d 214], holding an anti-SLAPP motion cannot be used to strike specific requests for relief; *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 786 [83 Cal.Rptr.3d 95, 106], holding an anti-SLAPP motion cannot be used to "parse" a cause of action, citing *Mann, supra*, 120 Cal.App.4th at 106; *A.F. Brown Elec. Contractor, Inc. v. Rhino Elec. Supply, Inc.* (2006) 137 Cal.App.4th 1118, 1124-25 [41 Cal.Rptr.3d 1, 5], adopting the *Mann* rule and holding "[t]he anti-SLAPP statute authorizes the court to strike a cause of action, but unlike motions to strike under section 436, it cannot be used to strike particular allegations within a cause of action."; *Marlin v. Aimco Venezi, LLC* (2007) 154 Cal.App.4th 154 [64 Cal.Rptr.3d 488], holding prayer for injunction cannot be stricken pursuant to anti-SLAPP motion.)

In *Taus*, this Court noted that its review was limited "[b]ecause plaintiff did not petition for review or file an answer contesting any issue on which the Court of Appeal ruled against her, we have no occasion to address any such issue here." (*Taus, supra*, 40 Cal.4th at 711.) The significance of this Court's limited review in *Taus* is that it did ***not*** consider any issues dealing with mixed causes of action and the anti-SLAPP statute. In fact, in the Court's Opinion in *Taus*, there is no mention of mixed causes of action, the *Mann* rule or the parsing of allegations from a cause of action that involve protected activity.

Four years after the issuance *Taus*, this Court, once again, in *Oasis West*, cited *Mann* for the proposition that a defendant need only establish the probability of prevailing on any part of its claim in order to overcome an anti-SLAPP motion. (*Oasis West, supra*, 51 Cal.4th at 820.) Needless to say, it is inconceivable that this Court would cite to the *Mann* rule if it had already overturned it in *Taus*.[3]

In keeping with his theme of a lack of uniformity of decision as to the applicability of the *Mann* rule to mixed causes of action, Schnitt also presents a lengthy discussion of *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169 [128 Cal.Rptr.3d 205] [hereafter *Wallace*], a case in which the Court of Appeal carefully analyzed, among other things, the *Mann* rule, *Taus*, and *Oasis West*. However, in *Wallace,* the Court of Appeal ultimately concluded that this Court adopted the *Mann* rule in its holding in *Oasis West,* and therefore to the extent the ruling in *Taus* conflicts with the *Mann* rule, *Oasis West* implicitly overruled *Taus*. (*Wallace, supra*, 196 Cal.App.4th at 1210-12.) In *Wallace,* the Court of Appeal noted that "*Oasis* apparently did not involve a mixed cause of

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3 The appellate courts also continued to follow the *Mann* rule after the issuance of *Taus*. (*See, e.g., Haight Ashbury, supra*, 184 Cal.App.4th at 1554; *Platypus Wear, supra,* 166 Cal.App.4th at 786.)

action," and acknowledged that "we can find no suggestion in *Oasis* that our Supreme Court would not also approve of *Mann* in the context of a mixed cause of action, which is, of course, the very context in which *Mann* was decided." (*Id.* at 1212.)[4]

In *City of Colton*, a 2-1 split decision of the Court of Appeal, the majority's opinion ignores *Oasis West* and relies solely on *Taus* for the proposition that "a portion of a cause of action may be stricken if it falls within anti-SLAPP protections." (*City of Colton, supra*, 206 Cal.App.4th at 774.) The majority in *City of Colton* utilized *Taus* as the basis to enable it (the appellate court) to parse allegations from a cross-complaint that constituted protected activity under the anti-SLAPP statute. In reaching its conclusion, the majority failed to acknowledge this Court's adoption of the *Mann* rule in *Oasis West.* In her dissenting opinion, Justice Richli indicated that she disagreed with the majority's interpretation of *Taus*, and also pointed out that the majority's opinion "conspicuously ignores not only *Oasis*, but also the conclusion in *Wallace* that *Oasis* overruled *Taus*." (*Id.* at 794.) The precedential value of *City of Colton* is questionable because of the majority's failure to consider the impact of *Oasis West* in affirming the *Mann* rule.

The first and only published opinion to explicitly decline to follow *Oasis West*'s adoption of the *Mann* rule is *Cho*. In *Cho*, a sexual harassment dispute, the anti-SLAPP motion targeted a cross-complaint that included claims for defamation and intentional infliction of emotional distress. In its ruling, the trial court decided to strike specific allegations from the cross-complaint that involved protected activity. Thereafter, the party who filed the anti-SLAPP motion appealed due to the failure of the

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[4] Similarly, the majority opinion in *Wallace* acknowledged that "*Taus* did not involve a mixed cause of action." (*Wallace*, 196 Cal.App.4th at 1210.)

trial court to grant the anti-SLAPP motion in full and strike the entire cross-complaint. In a brief opinion, the Court of Appeal concluded that it did not interpret *Oasis West* as adopting the *Mann* rule, and instead opted to affirm the trial court's decision to parse allegations from the cross-complaint because "it renders justice to both sides." (*Cho*, *supra*, 219 Cal.App.4th at 527.) In short, the Court of Appeal determined that the trial court possessed the right to strike allegations from the cross-complaint in the context of an anti-SLAPP motion.

In examining both *City of Colton* and *Cho*, it is important to note that neither decision holds that ***a party*** who files an anti-SLAPP motion has the right to request the parsing of allegations from mixed causes of action in the operative pleading. The common thread in both *City of Colton* and *Cho* is that the courts in those cases made unilateral decisions to parse allegations involving mixed causes of action ***without the parties pursuing the anti-SLAPP motions requesting that they do so***. At best, these two decisions can be reconciled as examples of the exercise of the inherent power of the court to efficiently perform judicial functions. In other words, in both cases, the appellate courts refrained from remanding the matters back to the trial courts to require the party pursuing the anti-SLAPP motion to file another motion, such as a discovery motion or a motion in limine, to eliminate any further consideration of issues that constitute protected activity.

At best, Schnitt has identified two cases, *City of Colton* and *Cho*, in which the courts took matters into their own hands to parse allegations involving protected activity that was brought to the courts' attention in the context of an anti-SLAPP motion. Moreover, only one of those cases, *Cho*, refuses to acknowledge this Court's adoption of the *Mann* rule in *Oasis West*. In short, *City of Colton* and *Cho* have not created a divide in the

"uniformity of authority" that would justify the granting of review of this case by the Court.

2. No Court Has Held That A Moving Party Can Use An Anti-SLAPP Motion To Excise Specific Allegations Involving Protected Activity From A Mixed Cause Of Action.

This case represents the first time that an anti-SLAPP motion was utilized by the moving party to parse allegations from a purported mixed cause of action in the operative complaint.[5] Schnitt's Petition fails to mention that there are no published decisions in California in which the ***moving party*** has used an anti-SLAPP motion in the same manner as Schnitt did in this case. More importantly, the anti-SLAPP statute, California *Code of Civil Procedure* § 425.16, is clear that this type of motion is designed to strike a ***cause of action***, not some of the allegations that comprise that cause of action.[6] Clearly, this case differs significantly

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[5] Schnitt could have filed a garden variety motion to strike, pursuant to California *Code of Civil Procedure* § 436, to parse allegations from the SAC that purportedly constitute protected activity. Schnitt made the tactical decision not to do so in order to stay the action and preclude Baral from engaging in any meaningful discovery. It should be noted that Schnitt filed two earlier anti-SLAPP motions that have stayed the action for a substantial period of time since it was originally filed in 2011.

[6] In his Petition, Schnitt raises an argument for the very first time concerning analyzing the allegations in the SAC under a "primary right" theory. [Petition, at 16-18.] This Court should decline to consider Schnitt's last minute argument because it was never raised before the trial court and the Court of Appeal, and it was never argued and/or briefed in this matter. (*See*, Cal. R. Ct. 8.500(c)(1) ["As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal."]; *see also, Cain v. French* (1914) 25 Cal.App.499, 502 [144 P. 302] ["In the petition for transfer to the supreme court we note that several points are made which were not theretofore raised. These we think are without substantial merit;

from *City of Colton* and *Cho* in that those cases involved anti-SLAPP motions that targeted an entire operative pleading or causes of action. More importantly, neither *City of Colton* nor *Cho* expressly state that the anti-SLAPP statute authorizes parties to file anti-SLAPP motions designed to parse allegations involving protected activity from mixed causes of action.

This particular case is distinguishable from *City of Colton* and *Cho* as a result of Schitt's decision to file an anti-SLAPP motion that attempted to parse allegations from purported mixed causes of action. There is no split in authority in California as to the inability of a moving party to utilize an anti-SLAPP motion in the same manner. More importantly, since the enactment of the anti-SLAPP law back in 1992, there has not been any confusion in the legal community as to the proper way to craft an anti-SLAPP motion. Needless to say, Schnitt's Petition is "much ado about nothing" and does not come close to warranting review by the Court.

III. CONCLUSION

As demonstrated above, review of this case should not be granted for several reasons: First, until the trial court makes a determination as to Schnitt's right to invoke the litigation privilege, it would be premature for this Court to consider any issues concerning the applicability of the anti-SLAPP law to this dispute. Second, this case does not involve an attempt by Baral to engage in "artful pleading" in order to sidestep the impact of the anti-SLAPP statute. Last, there is no split in authority as to the inability of a party to use an anti-SLAPP motion to parse allegations concerning

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but in any event points raised for the first time in a petition for rehearing or for transfer will not be considered."].)

protected activity from a mixed cause of action. Accordingly, Schnitt's Petition should be denied.

DATED: April 3, 2015

SAUER & WAGNER LLP

Gerald L. Sauer
Attorneys for Plaintiff and
Respondent Robert C. Baral

CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 8.504(d)(1), I certify that the attached brief is proportionately spaced, using Times New Roman 13-point type, and contains 4979 words.

DATED: April 3, 2015

SAUER & WAGNER LLP

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PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 1801 Century Park East, Suite 1150, Los Angeles, California 90067.

On April 3, 2015 I served the foregoing document(s) described as: **ANSWER TO PETITION FOR REVIEW** on the interested party(ies) in this action, enclosed in a sealed envelope, addressed as follows:

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San Francisco, CA 94105

California Court of Appeal
Second Appellate District, Division 1
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Hon. Maureen Duffy-Lewis
Dept. 38
111 North Hill Street
Los Angeles, CA 90012

California Supreme Court
350 McCallister Street
San Francisco, CA 94102
http://www.courts.ca.gov
via e-submission

( ) By personal service, I delivered such envelope by hand to the offices of the addressee(s) noted above

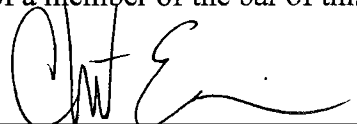
(X) By Norco Overnite, I caused to be delivered such envelope via express mail to the office(s) of the addressee(s) noted above.

( ) By facsimile, I caused the above-referenced document(s) to be transmitted to the party(ies) listed above

Executed this 3rd day of April, 2015 at Los Angeles, California.

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

(X) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Christian Erwin