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Frank A. McGuire Clerk

Deputy

S218176

**IN THE  
SUPREME COURT OF CALIFORNIA**

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FLAVIO RAMOS, et al.,  
*Plaintiffs and Appellants,*

v.

BRENNTAG SPECIALTIES, et al.,  
*Defendants and Respondents.*

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AFTER A DECISION BY THE COURT OF APPEAL,  
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B248038

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**DEFENDANT AND RESPONDENT TST INC'S JOINDER IN THE  
OPENING BRIEF ON THE MERITS OF DEFENDANT AND  
RESPONDENT ALCOA, INC.**

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Defendant and respondent TST, Inc. hereby joins in the Opening Brief on the Merits filed by defendant and respondent Alcoa, Inc. This joinder is filed pursuant to the September 10, 2014 substitution of attorney submitted on behalf of TST, Inc. and California *Rules of Court*, Rule 8.200(a)(5), permitting joinder to avoid duplication and the needless waste of paper, while yet protecting the interests of defendant and respondent TST, Inc.

By this joinder, respondent TST, Inc. hereby joins in and incorporates by reference the entire Opening Brief on the Merits filed by defendant and respondent Alcoa, Inc.

Respondent TST, Inc. is similarly situated to respondent Alcoa, Inc. in that plaintiffs make identical allegations as to each defendant,

alleging these defendants supplied raw materials and/or component parts for a manufacturing process undertaken by plaintiff Flavio Ramos' employer, who exercised total control over the process that allegedly gave rise to the plaintiffs' claimed injuries. [9 AA 2275:1 – 2279:19; 9 AA 2281:4 – 2291:21] The grounds set forth in the Opening Brief on the Merits by Alcoa, Inc. are thus equally available to TST, Inc.

Specifically, the allegations of the operative complaint directed to TST, Inc. and Alcoa, Inc. alleged that these metal defendants manufactured and supplied aluminum ingots to plaintiff's employer which were, then, melted to a molten state and repurposed by plaintiff's employer into products of its own specification, including molds. [Typed opn. 4, 17] Plaintiff Flavio Ramos worked as a mold maker, machine operator, and laborer at employer Supreme Castings from 1972 to 1978 and 1981 to 2009. [9 AA 2280] During his employment, Ramos worked with and around various sand, plaster, and metal products. [9 AA 2280] Plaintiffs failed to identify any defect in TST, Inc.'s products, and there is nothing inherently dangerous about these metal ingots. Equally, plaintiffs did not allege that defendant TST, Inc. – or Alcoa, Inc. – had any influence or control over the innumerable manufacturing processes undertaken by purchasers of their products, including those undertaken by plaintiff Flavio Ramos' employer.

Respondent Alcoa, Inc. has set forth in its Opening Brief on the Merits a challenge to the ruling issued by the Court of Appeal, Second Appellate District, grounded in the rule of law as set forth in *Maxton v. Western States Metals* (2012) 2013 Cal.App.4<sup>th</sup> 81, which held:

“ [i]nappropriate decisions regarding the use of [raw] materials are not attributable to the supplier of the raw materials but rather to the fabricator that puts them to use.” [Maxton (2012 203 Cal. App.4<sup>th</sup> at 90, quoting Rest.3d Tots, Products Liability, Section 5, com. C, page 134.] Alcoa, Inc. – like TST, Inc. – demurred to Plaintiffs’ fourth amended complaint on this same principle and grounds. [10 AA 2521-2563] And, the trial court sustained defendant TST, Inc.’s demurrer on the same basis as defendant Alcoa’s demurrer. [12 AA 2969-2970, Typed opn. 3]

The ruling by Division Four of the Second Appellate District improperly expands the duties of raw material suppliers like Alcoa, Inc. and TST, Inc. Defendant and respondent TST, Inc. accordingly joins in Alcoa, Inc.’s Opening Brief on the Merits in requesting the ruling be reversed.

Dated: October 23, 2014

CALDWELL LAW GROUP



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Susan L. Caldwell  
Attorneys for Defendant and  
Respondent TST, Inc.

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES


At time of service, I was a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 9701 Wilshire Blvd., 10<sup>th</sup> Floor, Beverly Hills, CA 90212.

On October 23, 2014, I served true copies of the following document(s) described as **DEFENDANT AND RESPONDENT TST INC'S JOINDER IN THE OPENING BRIEF ON THE MERITS OF DEFENDANT AND RESPONDENT ALCOA, INC.** on the interest parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

[X] *[MAIL]* by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Beverly Hills, California, addressed to the person at the addresses listed in the Service List and placed the envelope(s) for collection and mailing, following our ordinary business practices. Under this practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the 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 in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 23, 2014 in Beverly Hills, California.

  
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Susan L. Caldwell