Case No.: S219236

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

MAUREEN DESAULLES,

Plaintiff / Appellant,

v.

COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA,

Defendant / Respondent / Petitioner

Court of Appeal of the State of California, Sixth District
Case No. H038184
Superior Court of the State of California, County of Monterey
Case No. M85528

REPLY BRIEF

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I. INTRODUCTION

Code of Civil Procedure Section 1032 ("Section 1032") states plainly that "a defendant in whose favor a dismissal is entered" is a prevailing party entitled to recover costs as a matter of right. (Code Civ. Proc. § 1032(a)(4).) Nothing in this language is vague or unclear. Nothing in this language indicates exceptions or restrictions exist. And, "[n]othing in the wording of the [Section 1032] indicates that a defendant's right to recover costs is limited to certain *types* of dismissals ...." (*Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 738 (emphasis in original.)) Accordingly, courts have made clear time and time again that a defendant in whose favor a dismissal is entered is the prevailing party under Section 1032.

The court in *Chinn* analyzed Section 1032, its language, and its legislative history, and arrived at a conclusion that was consistent with the statute's plain language. The court held that by making a defendant in whose favor a dismissal is entered the prevailing party as a matter of right, the Legislature made clear that settlement proceeds were to be excluded from the definition of "net monetary recovery." (*Chinn v. KMR Property Management* (2008) 166 Cal.App.4th 175, 188.) To rule otherwise, the court concluded, "would lead to an absurd result" because both a settling plaintiff who received settlement proceeds and a settling defendant who obtained a dismissal, would be entitled to an award of costs as a matter of right. (*Chinn, supra,* 166 Cal.App.4th at 189.)

Relying on cases that interpret requests for attorneys' fees, plaintiff Maureen deSaulles ("plaintiff") argues in her Answer Brief that the *Chinn* court's interpretation of Section 1032 is "over-technical." Plaintiff claims that interpreting Section 1032 requires a "pragmatic" approach that eliminates certain types of dismissals from the definition of "dismissal" under Section 1032. Nothing in the law supports such a position. Each of

the cases cited by plaintiff for the position that settlement funds should be considered a net monetary recovery under Section 1032 are analyzed in different contexts and do not apply to the present circumstances. And plaintiff's contention that a "pragmatic" approach is required in interpreting Section 1032 is not only contrary to rules of statutory interpretation, but engrafts amorphous concepts onto a clearly worded statute that was specifically designed to eliminate amorphous concepts.

The *Chinn* court's ruling that the defendant with a dismissal is the prevailing party, and that the settling plaintiff is not, is consistent with statutory language, case law, and legislative intent. For these reasons, and those presented in its Opening Brief and Petition for Review, petitioner Community Hospital of the Monterey Peninsula respectfully requests that the Court uphold the *Chinn* ruling and find that settlement proceeds do not qualify as a net monetary recovery under Section 1032.

II. ARGUMENT

A. A Defendant In Whose Favor a Dismissal Is Entered, Including a Dismissal in Exchange for Settlement, Is the Prevailing Party Under Section 1032.

Plaintiff argues that the *Chinn* decision is wrongly based on an "over-technical reliance on the word 'dismissal' in Section 1032." (Respondent's Answer Brief, p. 17.) Plaintiff contends that courts should instead use a "pragmatic" approach in analyzing the term "dismissal" under Section 1032 and should assume that a "settlement dismissal" is not a "dismissal" for purposes of Section 1032. (Respondent's Answer Brief, p. 27; see also pp. 5, 7, 42.) In making these arguments, plaintiff would have courts place exceptions and restrictions onto statutory language that is clear. Nothing could be more contrary to the rules of statutory interpretation and the legislative goals behind Section 1032. A plain and

commonsense interpretation of the word "dismissal" in Section 1032, without restrictions, is *exactly* what the Legislature, the courts, and public policy call for.

The Court in *Goodman v. Lozano* (2010) 47 Cal.4th 1332 described the rules courts are to follow in interpreting statutes:

> In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. [Citations omitted.] "Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." [Citations omitted.] "If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." [Citations omitted.] In other words, we are not free to "give the words an effect different from the plain and direct import of the terms used." [Citations omitted.] However, "the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.'" To determine the most reasonable interpretation of a statute, we look to its legislative history and background. [Citations omitted.] *Goodman*, 47 Cal.4th at 1332.

Section 1032 states plainly that "a defendant in whose favor a dismissal is entered" is a prevailing party entitled to recover costs as a matter of right. (Code Civ. Proc. § 1032(a)(4) ("Section 1032").) Nothing in this language is vague or unclear. And nothing in this language indicates exceptions or restrictions exist that limit when "a defendant in whose favor a dismissal is entered" is the prevailing party. This is significant. "When the Legislature intends to restrict the recovery of costs or fees[,] it knows how to express such restriction." (*Agnew v. State Bd. of Equalization* (2005) 134 Cal.App.4th 899, 913.)

In line with the clear statutory language of Section 1032 and the rules of statutory interpretation, the Court in *Goodman* warned against

expanding the meaning of Section 1032's unambiguous terms to create "amorphous concepts" contrary to the clear language of that statute. (*Goodman, supra*, 47 Cal.4th at 1334.) Accordingly, and contrary to plaintiff's contention, courts strictly interpret the term "dismissal" as it is used in Section 1032. As one court explained, "[n]othing in the wording of [Section 1032] indicates that a defendant's right to recover costs is limited to certain *types* of dismissals .... Since the Legislature has not distinguished between types of dismissals in the statute, we will not read such a restriction into it." (*Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 738 (emphasis in original.))

Courts therefore find that "a defendant in whose favor a dismissal is entered" is the prevailing party as a matter of right regardless of whether the dismissal is voluntary or involuntary, regardless of whether the dismissal is with or without prejudice, and, regardless of whether the dismissal comes about as part of a settlement. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 606 [defendant entitled to costs under Section 1032 after plaintiff voluntarily dismissed action]; *Great Western Bank v. Converse Consultants, Inc.* (1997) 58 Cal.App.4th 609, 612-614; *Crib Retaining Walls, Inc. v. NBS/Lowry, Inc.* (1996) 47 Cal.App.4th 886, 890; *Cano v. Glover* (2006) 143 Cal.App.4th 326, 331 ["[d]efendant is entitled to costs regardless of whether the dismissal is with or without prejudice"]; *Mon Chong Loong Trading Corp. v. Superior Court* (2013) 218 Cal.App.4th 87, 94 ["[w]hile a lawsuit may be concluded by a voluntary dismissal, the price of such a dismissal is the payment of costs under section 1032"]; 7 Witkin, *Cal. Procedure* (5th Ed., 2014 Supp.), Judgment, § 92, p. 73 ["[t]he price of a voluntary dismissal is the payment of costs under C.C.P. 1032."])

Moreover, and in addition to the rules of statutory construction, the legislative goals of Section 1032 also provide reasons to avoid engrafting exceptions onto the clear language of that statute. The current version of

Section 1032 was sponsored by the California Judges Association and the legislative goal behind the statute was to eliminate confusion and "simplify the present procedure for determining these costs, thereby relieving court congestion and easing judicial workload.'" (*Chinn, supra*, 166 Cal.App.4th 189; *Goodman, supra*, 47 Cal.4th at 1335, 1336.) Clarifying and simplifying procedures for determining costs is important in reducing judicial workloads. Section 1032 applies to all cases and—unlike attorneys' fee claims—cost claims have the potential to arise in *every* case. (See 1 Pearl, *Cal. Attorney Fee Awards* (CEB 2014) § 2.47, p. 2-38.) Thus, providing a specific, clear definition of the term "prevailing party" that streamlines the decision-making process and eliminates disagreements over costs issues, does much to ease judicial workload.

Plaintiff's contentions that Section 1032 requires a "pragmatic determination" and that "settlement dismissals" are to be excluded from the meaning of "dismissal" under Section 1032 injects amorphous concepts into a clearly worded statute specifically designed to eliminate amorphous concepts. The holding in *Chinn* that the defendant with a dismissal is the prevailing party, and that the settling plaintiff is not, is consistent with statutory language, case law, and legislative intent. There is nothing "over-technical" about the *Chinn* court's reliance on the word "dismissal" in Section 1032. A strict interpretation of the statutory language of Section 1032 is what the Legislature, the courts, and public policy call for.

B. There Exists No "Long-Standing Rule" That A Plaintiff Who Accepts A Monetary Settlement In Exchange for A Dismissal Is the Prevailing Party Under Section 1032.

Plaintiff contends that there exists a "long-standing rule" that "a plaintiff who accepts a monetary settlement in exchange for dismissal of his or her lawsuit is the prevailing party, entitled to recovery of costs."

(Respondent's Answer Brief, p. 5.) In fact, *no case* holds that a plaintiff who receives settlement funds in exchange for a dismissal is entitled to costs and the cases cited by plaintiff are distinguishable.

In arguing that a plaintiff in receipt of settlement funds is a prevailing party under Section 1032, plaintiff relies largely on cases that determine the prevailing party *for purposes of attorneys' fees.* (Respondent's Answer Brief, p. 12; see also p. 2.)[1] Plaintiff argues that the "pragmatic determination" of prevailing party status used in some cases to determine the prevailing party for attorneys' fees can be transported into Section 1032 and permits courts to ignore the plain language of Section 1032. (Respondent's Answer Brief, p. 7-8.) The contention that the definition of prevailing party for purposes of attorneys' fees is interchangeable with that of costs has been rejected by numerous courts.

In *Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1142, the court analyzed whether a plaintiff could rely on Section 1032's definition of prevailing party to determine the prevailing party for purposes of awarding attorneys' fees under Code of Civil Procedure section 1717. The court ruled that Section 1032 provides a definition of prevailing party for costs,

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[1] In support of her contention that "[b]y 1986..., the law was well-established that settlement proceeds were to be considered in determining whether costs were to be recovered by a plaintiff...," (Respondent's Answer Brief, p. 13), plaintiff cites *Rapp v. Spring Valley Gold Co.* (1888) 74 Cal. 532, 533 and *Lanyi v. Goldblum* (1986) 177 Cal.App.3d 181, 187, which both only concern requests for attorneys' fees. Plaintiff also cites *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 570, for the contention that the Supreme Court "has allowed costs ... to a settling plaintiff as the prevailing party...." (Respondent's Answer Brief, p. 2.) *Graham* concerns a request for attorneys' fees, rather than costs, and the section of *Santisas* cited by plaintiff concerns only an attorneys' fees award. (*Santisas, supra,* 17 Cal.4th at 621; *Graham, supra,* 34 Cal.4th at 570.) In fact, the Court in *Santisas* made clear in another section of its ruling that a defendant in whose favor a dismissal is entered—even a voluntary dismissal—is the prevailing party under Section 1032 and entitled to its costs. The Court explained, "[p]laintiffs have not called to our attention, nor are we aware of, any statute that would preclude a costs award to the seller defendants in this action." (*Santisas, supra*, 17 Cal.4th at 606.)

but not necessarily for other statutes:

> While it is true *Code of Civil Procedure section 1033.5* allows fees to be considered as costs in contract cases under *section 1032*, it does not follow that *section 1032* is the exclusive statute governing recovery of fees in contract actions. By its own terms, *section 1032* defines prevailing party only for "costs" under that section and does not purport to define it for other statutes. [Citations omitted.] Courts have consistently held the prevailing party for the award of costs under *section 1032* is not necessarily the prevailing party for the award of attorney's fees in contract actions under *section 1717*. [Citations omitted.] *Sears v. Baccaglio, supra,* 60 Cal.App.4th at 1142.

Other appellate courts, as well as the Supreme Court, have ruled similarly. *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3d 1450, 1456 ["We emphatically reject the contention that the prevailing party for the award of costs under *section 1032* is necessarily the prevailing party for the award of attorneys' fees"]; *Zintel Holdings, LLC v. LILO McLean* (2012) 209 Cal.App.4th 431, 438 ["Courts have consistently held the prevailing party for the award of costs under [*Code of Civil Procedure*] *section 1032* is not necessarily the prevailing party for the award of attorney's fees in contract actions under [*Civil Code*] *section 1717*"]; *PNEC Corp. v. Meyer* (2010) 190 Cal.App.4th 66, 70, fn. 2 ["prevailing party" inquiries under section 1032 and section 1717 "are distinct"]; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606 ("recoverable litigation costs do include attorney fees, but only when the party entitled to costs *has a legal basis, independent of the costs statutes* and grounded in an agreement, statute, or other law, upon which to claim recovery of attorney fees") (emphasis added); *Goodman, supra,* 47 Cal.4th 1327, 1335, fn. 3 ["we reject [the]...contention that we must construe section 1032(a)(4) in light of *Civil Code section 1717.*"]

Plaintiff also cites *Slater v. Superior Court* (1941) 45 Cal.App.2d

757, *Purdy v. Johnson* (1929) 100 Cal.App. 416, *Rapp v. Spring Valley Gold Co.* (1888) 74 Cal. 532, 533 and *Lanyi v. Goldblum* (1986) 177 Cal.App.3d 181, 187, to support her contention that a settling plaintiff, rather than a defendant in whose favor a dismissal is entered, is the prevailing party for purposes of costs. But in those cases the plaintiff obtained a *judgment* and in none of those cases did the defendant obtain a dismissal. (*Slater, supra,* 45 Cal.App.2d 758-759; *Purdy, supra,* 100 Cal.App. at 418; *Rapp, supra,* 74 Cal. at 533; *Lanyi, supra,* 177 Cal.App.3d at 183 (analyzing only attorneys' fee award.))[2] This distinction is significant because both before and after the enactment of the current version of Section 1032, the law has always been clear that a defendant with a dismissal is the prevailing party.[3]

Finally, plaintiff cites two more recent decisions, *On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079 and *Wohlgemuth v. Caterpillar, Inc.* (2012) 207 Cal.App.4th 1252, as support for her contentions. Neither case offers much in the way of authority or analysis on the matters at issue in this case. In *On-Line Power* and *Wohlgemuth*, the courts indicated *in dicta* that cases in which the parties settle may present a "situation other

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[2] Plaintiff also cites to *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668 as support for her contention. But, as explained in the Hospital's Opening Brief, the plaintiffs in that case never obtained a *monetary* recovery and no dismissal was filed at the time costs were awarded. (*Folsom, supra,* 32 Cal.3d at 674-675.)

[3] As indicated in *Chinn*, prior to the enactment of the current version of Section 1032, courts held that a defendant in whose favor a dismissal was entered was the prevailing party regardless of whether the dismissal was voluntary, or with or without prejudice. (*Chinn, supra,* 166 Cal.Ap.4th at 190 citing *City of Industry v. Gordon* (1972) 29 Cal.App.3d 90, 93 ("'Costs' are allowed as a matter of course to a defendant as to whom an action is dismissed ... [citations omitted]"), *Fisher v. Eckert* (1950) 94 Cal.App.2d 890, 894 (defendant entitled to costs when it obtains a voluntary dismissal with prejudice), and *International Industries, Inc. v. Olen* (1978) 21 Cal.3d 218, 221 (defendant entitled to costs when it obtains a voluntary dismissal without prejudice.))

than as specified" in subsection (a)(4) of Section 1032 and that therefore such cases may call for the exercise of the trial court's discretion to determine who the prevailing party is. (*On-Line Power, supra,* 149 Cal.App.4th at 1087; *Wohlgemuth, supra*, 207 Cal.App.4th at 1264.) Neither court analyzed the statutory language of Section 1032, or the legislative history, or the legislative intent behind the statute, and the court in *On-Line Power* (which the court in *Wohlgemuth* relied on[4]) made clear that it was *not* ruling on the issue. The court remanded the matter back to the trial court and expressly stated that the prevailing party issue was "an issue that the trial court should address in the first instance." (*On-Line Power, supra,* 149 Cal.App.4th at 1087.)[5] Furthermore, it is important to note that both cases confirm that even in the settlement context, a defendant in whose favor a dismissal was entered is a prevailing party as a matter of right; thus, neither case supports plaintiff's contention that a dismissal obtained through settlement falls outside the definition of "dismissal" under Section 1032. (*On-Line Power, supra,* 149 Cal.App.4th at 1087; *Wohlgemuth, supra*, 207 Cal.App.4th at 1263-1264.)

Plaintiff's contention that there exists a "long-standing rule" that makes a settling plaintiff who voluntarily dismisses his or her case a prevailing party is not supported in the case law. Instead, as explained above, the case law is uniform that a defendant in whose favor a dismissal is entered is a prevailing party as a matter of right.

C. *Chinn* Is Consistent With the Court's Ruling in *Goodman*.

After having argued in her appellate briefs that the *Goodman*

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[4] *Wohlgemuth, supra*, 207 Cal.App.4th at 1264.

[5] The court in *Wohlgemuth*, it should be noted, was not even faced with a request for costs under Section 1032; instead, the plaintiff in that case only requested fees and costs under the Song-Beverly Consumer Warranty Act (Civ. Code § 1790 et seq.) (*Wohlgemuth, supra,* 207 Cal.App. 4th at 1256.)

decision supports her claims, [6] plaintiff now argues that case is distinguishable. (Respondent's Answer Brief, p. 32-33.) In fact, as explained in the Hospital's Opening Brief, the holding in *Goodman* is consistent with *Chinn* because the Supreme Court in that case made clear that courts are to look to the final judgment, rather than prior settlements, to determine whether the plaintiff obtained a net monetary recovery. (*Goodman, supra*, 47 Cal.4th at 1333-1338.)

Plaintiff claims that *Goodman* limits that definition of "net monetary recovery" to cases concerning Code of Civil Procedure Section 877 and that the decision is inapplicable to cases that involve a single plaintiff and a single defendant. (Respondent's Answer Brief, p. 33.) Plaintiff is wrong. The Court in *Goodman* made clear that it was defining that term specifically for purposes of Section 1032. (*Goodman, supra*, 47 Cal.4th at 1331, 1333-1335.) And, in analyzing the term "net monetary recovery," there exists no distinction between cases involving one plaintiff and one defendant and those involving multiple defendants. (*Wakefield v. Bohlin* (2006) 145 Cal.App.4th 963, 992-993 (dis. Opn. of Mihara, J.) ["The intent to distinguish between direct [offsets] [those offsets involving one plaintiff and one defendant] and indirect offsets [those offsets involving multiple defendants] is nowhere expressed in section 1032, and it defies the common meaning of the plain language that the Legislature actually chose to use in the statute."])

In short, the decision in *Goodman* is based firmly on the language of Section 1032 and on the Court's conclusion that that language requires courts to look only at the final judgment to determine whether the plaintiff obtained a net monetary recovery. (*Goodman, supra*, 47 Cal.4th at 1333-1338.) And this supports the conclusion that settlement sums do not equate

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[6] See e.g. Appellant's Reply Brief, pp. 4-6.

to a net monetary recovery under Section 1032.[7]

III. CONCLUSION

Section 1032 was enacted in 1986 "'to simplify the ... procedure for determining ... costs, thereby relieving court congestion and easing judicial workload.'" (*Chinn, supra,* 166 Cal.App.4th at 189.) By ruling that settlement proceeds do not qualify as a net monetary recovery, the *Chinn* ruling ensured that a procedural framework for determining costs awards was in place that was consistent with the statutory language and the legislative goal of simplifying costs procedures. Plaintiff's contention that a "pragmatic" approach that eliminates some types of dismissals from the definition of dismissal under Section 1032 is required in analyzing the language of Section 1032 is contrary to principles of statutory interpretation and the Supreme Court's admonishment that that in analyzing the terms of Section 1032, courts must strictly adhere to the common meaning of those terms. (*Goodman, supra,* 47 Cal.4th at 1334.)

For these reasons, and for the reasons presented in the appellate briefs, the Petition for Review, and the Opening Brief, the Hospital

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[7] Plaintiff states several times in her brief that "[a] settling defendant can easily put a cost or fee waiver" into a settlement agreement. (Respondent's Answer Brief, p. 21.) While this is true, it is also important to note that there are situations in which a cost waiver is neither practicable nor desirable as part of a settlement. For example, in this case, circumstances militated against a cost waiver. The settlement in this case only involved two of plaintiff's seven causes of action and, as part of the settlement, plaintiff retained the right to appeal the dismissal of her other five causes of action and, if she prevailed, to go on to trial with respect to those claims. (Joint Appendix, 98.) A costs waiver in such circumstances would have required a piecemeal resolution of the costs issue that took into account the settlement of only two of plaintiff's seven claims as well as the possibility of plaintiff continuing on to trial and prevailing. Furthermore, such a piecemeal resolution of the costs issue was not desirable from the Hospital's perspective since, at the time of the settlement, the law made clear that the Hospital was the prevailing party as a matter of right and that plaintiff could not use the receipt of settlement proceeds to claim prevailing party status. (*Chinn, supra,* 166 Cal.App.4th at 188.)

respectfully requests the Court uphold the *Chinn* ruling and find that settlement proceeds do not qualify as a net monetary recovery under Section 1032.

Dated: October 15, 2014

FENTON & KELLER

By: _____

Christopher E. Panetta, Esq.
Attorneys for Defendant / Respondent / Petitioner COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA

CERTIFICATION RE WORD COUNT

I, Christopher E. Panetta, hereby certify pursuant to Rule of Court 8.504(d)(1) that the number of words contained in this Petition for Review is 4,494 words.

Dated: October 15, 2014

FENTON & KELLER

By: _____

Christopher E. Panetta, Esq.
Attorneys for Defendant / Respondent / Petitioner COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA

PROOF OF SERVICE

I, Tanya Sampaolo, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 2801 Monterey-Salinas Highway, Post Office Box 791, Monterey, CA 93942-0791. On October 15, 2014, I served the within document(s):

REPLY BRIEF

☒ placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Monterey, California addressed as set forth below.

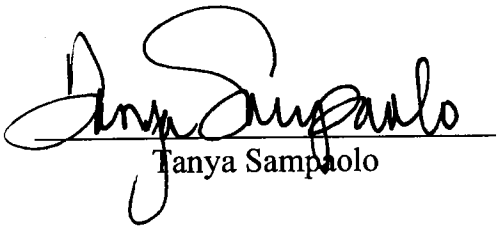
Henry J. Josefsberg, Esq.
110 West Ocean Boulevard, Suite #611
Long Beach, CA 90802

Clerk of the Court
Monterey County Superior Court
1200 Aguajito Road
Monterey, CA 93940

California Court of Appeal
SIXTH APPELLATE DISTRICT
333 West Santa Clara St., Suite #1060
San Jose, CA 95113

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

Executed on October 15, 2014 at Monterey, California.



Tanya Sampaolo