IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

vs.

MIGUEL ANGEL JIMENEZ,

Defendant and Respondent.

COURT NO. S249397

Court of Appeal
No. B283858

Ventura County
Superior Court
No. 2016041618

REPLY BRIEF ON THE MERITS

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TO CHIEF JUSTICE TANI CANTIL-SAKAUYE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant, the People of the State of California, by and through Gregory D. Totten, District Attorney of the County of Ventura, respectfully submits this reply brief on the merits.

ARGUMENT

I.

THE CONDUCT NECESSARY TO PROVE MISUSE OF IDENTITY IN VIOLATION OF SECTION 530.5(A) DOES NOT CONSTITUTE SHOPLIFTING

Respondent writes that his conduct consisted of twice entering Loans Plus,[1] each time cashing a check from OuterWall Inc. (OuterWall). (ABM: 6.) This narrative however leaves out the critical fact that respondent's conduct included the acquisition and retention of OuterWall's personal identifying information, and that his unlawful use of that personal identifying information was without OuterWall's consent. The omission is significant because these are the acts necessary to prove misuse of identity in violation of Penal Code[2] section 530.5, subdivision (a) (530.5(a)), and none of them constitute an act of shoplifting.

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[1] The business name appears in the record as both "Loan Plus" and "Loans Plus." It appears "Loans Plus" is the correct designation.

[2] Further statutory references are to this code unless otherwise designated.

Section 459.5 defines shoplifting only as the entry into a commercial establishment, open for business, with the intent to commit larceny. (§ 459.5, subd. (a); *People v. Gonzales* (2017) 2 Cal.5th 858, 871[*Gonzales I*].) As this court has emphasized, the definition is a "term of art, which must be understood as it is defined...." (*Ibid.*) The definition does not include conduct that might occur before entry and does not require a completed act of larceny. (See *Ibid.* Accord *People v. Lopez* (2018) 26 Cal.App.5th 382 [defendant who enters commercial establishment without intent to commit larceny may be prosecuted for theft committed once inside].) For this reason, shoplifting does not, as respondent asserts, deal with theft from a commercial establishment (ABM: 17), but only with entry into the establishment with intent to commit larceny. (See, *Gonzales I, supra,* 2 Cal.5th at p. 871; *People v. Lopez, supra,* 26 Cal.App.5th at p. 391.)

Section 530.5(a) is unconcerned with entry, with commercial establishments, with business hours, or with the amount of loss involved in the crime. (See *People v. Hagedorn* (2005) 127 Cal.App.4th 734, 744 [§ 530.5(a) does not require proof of intent to defraud].) "[T]he purpose of section 530.5, subdivision (a) is to criminalize the willful use of another's personal identifying information, regardless of whether the user intends to defraud and regardless of whether any actual harm or loss is caused." (*People v. Johnson* (2012) 209 Cal.App.4th 800, 816-818 [violation of section 530.5(a) does not require proof of harm to victim].) Because any unlawful use will satisfy the second element of section 530.5(a) moreover, respondent's entry into Loans Plus was merely incidental to his crime. That fleeting act was but one of

several acts committed by respondent in the course of violating section 530.5(a). Yet in respondent's narrative, the moment he passed through the threshold of Loans Plus all his other criminal conduct was absolved and OuterWall's victimization was erased.

Respondent invokes the *Williamson* rule to argue he cannot be prosecuted for a violation of section 530.5(a). (ABM: 17-18.) The *Williamson* rule was "designed to ascertain and carry out legislative intent." (*People v. Jenkins* (1980) 28 Cal.3d 494, 505; *In re Williamson* (1954) 43 Cal.2d 651, 654.) It provides "if a general statute includes the same conduct as a special statute, the court infers that the Legislature intended that conduct to be prosecuted exclusively under the special statute." (*People v. Murphy* (2011) 52 Cal.4th 81, 86.) The *Williamson* rule does not apply merely because two crimes might be committed together, instead it "applies when (1) 'each element of the general statute corresponds to an element on the face of the special statute' or (2) when 'it appears from the statutory context that a violation of the special statute will necessarily or commonly result in a violation of the general statute.'" (*Ibid.*)

Neither prong of the *Williamson* rule applies to the charges presented for this court's consideration. As to the first, the two crimes share no common elements. As to the second, respondent has argued that shoplifting is the special statute, precluding prosecution under section 530.5(a), and, as this case demonstrates, defendants who commit shoplifting will sometimes do so in the course of committing misuse of identity. (ABM: 17.) But the second prong of the *Williamson* rule is not satisfied when there might be instances where both crimes are committed together, or when

violations of the general statute might sometimes include violations of the special statute. The test is whether violation of the special statute – section 459.5 – will always or commonly violate the general statute – section 530.5(a). The answer here is "no." Because entry into a commercial establishment with intent to commit larceny is neither necessary nor sufficient to prove misuse of identity, no act of shoplifting will ever violate section 530.5(a).

Application of the *Williamson* rule therefore demonstrates that the voters did not intend the misuse of identity at issue here to be prosecuted exclusively as shoplifting. "[B]ecause the general statute contemplates more culpable conduct, it is reasonable to infer that the Legislature intended to punish such conduct more severely." (*People v. Murphy*, *supra*, 52 Cal.4th at p. 87.)

Respondent has argued that his crime should be reduced to shoplifting because the ultimate intent and objective of his criminal activity was to unlawfully obtain money from Loans Plus. (ABM: 12.) The argument is not persuasive. " 'A person who commits separate, factually distinct, crimes, even with only one ultimate intent and objective is more culpable than the person who commits only one crime in pursuit of the same intent and objective.' [Citation.]" (*People v. Correa* (2012) 54 Cal.4th 331, 341 [multiple punishment permitted under § 654 for multiple violations of the same statute].) As respondent concedes, his mere possession of OuterWall's checks, with the intent to cash them, was by itself a violation of section 530.5, subdivision (c)(1). (ABM: 21.) This means he committed at least three distinct crimes and

victimized two distinct entities. As a result, respondent is more culpable than a defendant who commits only an act of shoplifting.

Respondent's assertion that cases other than those currently on review have "prohibited the charging of felony identity theft" (ABM: 18) is a mischaracterization of those cases. Respondent represents that the defendant in *People v. Garrett* pled guilty to forgery (ARB 18), but Garrett was not charged with forgery or with a violation of section 530.5(a).[3] (*People v. Garrett* (2016) 248 Cal.App.4th 82, 85-86.) He "pleaded no contest to Count one, which charged him with unlawfully entering the Quik Stop 'with the intent to commit larceny and any felony' under *Penal Code section 459*." (*Id.*, at p. 87 [emphasis original].) The single act for which Garrett was serving a sentence was his entry into the Quick Stop with intent to commit larceny. He was not serving a sentence for the acquisition and unlawful use of another's personal identifying information. Importantly, the conviction at issue, a violation of section 459, is one of two crimes subject to the preclusive effect of section 459.5, subdivision (b). The Court of Appeal therefore held that even if he had intended to commit identity theft Garrett "could not have been charged with *burglary*." (*Id.*, at p.

[3] Garrett was charged with: "count one–commercial burglary (Pen. Code, § 459); count two–receiving stolen property (Pen. Code, § 496, subd. (a)); count three–possession of heroin (Health & Saf. Code, § 11350, subd. (a)); count four–misdemeanor identity theft (Pen. Code, § 530.5, subd. (c)(1)); count five–possession of burglary tools (Pen. Code, § 466); and count six–possession of tear gas by a felon (Pen.Code, § 22810, subd. (a)). Count one alleged defendant had entered the Quik Stop 'with the intent to commit larceny and any felony.'" (*People v. Garrett*, *supra*, 248 Cal.App.4th at pp. 85–86 [italics removed].)

88 [emphasis added].) The Court of Appeal in *Garrett* was not asked to decide, and therefore did not determine whether a felony charge of misuse of identity in violation of section 530.5(a) would be subject to reduction or reclassification under Proposition 47. (See *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176 [case can provide no authority for a proposition not considered by the court].)

In *Gonzalez I*, the defendant was charged with second degree burglary and forgery. (*Gonzales I, supra*, 2 Cal.5th at p. 862.) Gonzales was not, however, convicted of forgery as respondent asserts (ABM: 14), because he pled guilty only to burglary. (*Ibid.*) For this reason, Gonzales, like Garrett, was charged with a crime that penalized the act of entering a commercial establishment with intent to commit larceny. This court considered arguments from the Attorney General that Gonzales's conduct was not shoplifting because the burglary conviction could have been based on his intent to commit an offense other than larceny. (*Id.* at p. 876; see § 490a.) The Attorney General's argument failed, not because misuse of identity was shoplifting, but because the defendant's *entry* with the intent to cash the stolen checks, the only act supporting his conviction, was shoplifting. (*Id.*, at p. 862.) This conclusion was based on "the history of the burglary and theft statutes and their settled judicial construction." (*Id.*, at p. 869.) That settled construction established that a defendant's entry with the intent to commit theft by false pretenses was sufficient to support a burglary charge. (*Id.*, at pp. 868.)

Whether or not a charged violation of section 530.5(a) would be subject to reclassification as shoplifting was neither argued nor considered. Instead, this court

agreed with the defendant that even if he had committed identity theft, he could not be charged with *burglary*, the only charge under consideration. Because his *entry* with intent to cash the forged checks had already been deemed an act of shoplifting, section 459.5, subdivision (b) precluded additional *burglary* charges based upon the same entry or upon theft of the same property. (*Gonzales I, supra*, 2 Cal.5th at pp. 876-877.) Nothing in this court's jurisprudence supports the conclusion, reached by the Court of Appeal and advocated by respondent, that misuse of identity in violation of section 530.5(a) *is* shoplifting.

II.

MISUSE OF IDENTITY IS NOT SUBJECT TO THE PRECLUSIVE EFFECT OF A CHARGE OF SHOPLIFTING

"In California, all criminal prosecutions are conducted in the name of the People of the State of California and by their authority." (*People v. Eubanks* (1996) 14 Cal.4th 580, 588-589; Gov.Code, § 100, subd. (b).) The prosecutor has the sole discretion to determine whom to charge and what charges to bring. (*Ibid.* See also *People v. Birks* (1998) 4 Cal.4th 108, 134.) The prosecutor has this discretion even though its exercise frequently controls the type of penalty a defendant may receive upon conviction. (See *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 82.) This court has upheld the prosecutor's discretion to choose between "identical criminal statutes prescribing different levels of punishments." (*People v. Wilkinson* (2004) 33 Cal.4th 821, 838.)

The choice of criminal statute necessarily impacts the process of review. In *Gonzales I*, for example, this court did not determine what impact, if any, Proposition 47 would have on a freestanding charge of misuse of identity, because that was not the criminal statute presented for its review. In *People v. Martinez* (2018) 4 Cal.5th 647, the court found that the defendant's *conviction* "would not have been affected even if Proposition 47 had been in effect at the time of his offense," even though the same *conduct* would be a misdemeanor under the provisions of Proposition 47. (*Id.*, at pp. 654-655.) Focussing on the conviction is appropriate because section 1170.18, specifically authorizes resentencing for persons serving or having completed a "sentence for a *conviction* ... of a felony or felonies who would have been guilty of a misdemeanor" under Proposition 47. (See 1170.18, subds. (a), (f) [emphasis added].)

Respondent has observed he was convicted of misuse of identity in violation of section 530.5(a) only because the People chose to charge him that way. (ABM: 20) He is correct. He is not correct, however, when he argues that section 459.5, subdivision (b) curtails this discretion. (See ABM: 21.)

A prosecutor's constitutional charging discretion is basic to the framework of the California criminal justice system. (See *People v. Valli* (2010) 187 Cal.App.4th 786, 801.) Limitations to the prosecutor's traditional discretion must therefore be found only when the intent to do so is clearly expressed. (See *In re Eddie M.* (2003) 31 Cal.4th 480, 499-500.) "[I]t should not be presumed that the legislative body intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication." (*People*

v. Davenport (1985) 41 Cal.3d 247, 266.) No express or clear intent to limit the traditional prosecutor's discretion to charge violations of section 530.5(a) appears in Proposition 47.

When an act of shoplifting is charged, the voters limited prosecutors' discretion only regarding additional charges of "burglary or theft of the same property." (§ 459.5, subd. (b).) Had the intent of the initiative been to limit a prosecutor's discretion with regard to non-theft offenses its drafters " 'would have expressed this intent more clearly in the statute itself.' " (*In re Eddie M.*, *supra*, 31 Cal.4th at pp. 499-500.) Instead, violations of section 530.5(a) are neither expressly prohibited nor precluded by necessary implication. Application of the principle *expressio unius est exclusio alterius*, provides additional support for the conclusion that by creating an express but limited exception to a prosecutor's charging discretion, the voters intended no other exceptions. (See *People v. Buycks* (2018) 5 Cal.5th 857, 887-888 [single exception to collateral effect of resentencing suggests sentencing reduction otherwise fully extends to enhancements].)

Respondent argues that because his criminal scheme was aimed at acquiring money, it should be considered "theft." But, " '[a] person who commits separate, factually distinct, crimes, even with only one ultimate intent and objective is more culpable than the person who commits only one crime in pursuit of the same intent and objective.' [Citation.]" (*People v. Correa*, *supra*, 54 Cal.4th at p. 341.) Moreover, this court has rejected similar arguments which, like respondent's, would

have required expanding the definition of "theft" to include "the unlawful acquisition of property." (*People v. Allen* (1999) 21 Cal.4th 846, 862-863.)

In *People v. Allen* this court considered whether a defendant could be convicted both of burglary and of receiving property stolen during the burglary. (21 Cal.4th at p. 862.) Section 496 criminalized receiving stolen property, but at the time of Allen's conviction precluded conviction for both receiving stolen property and "*theft* of the same property." (*Ibid.* [emphasis original].) The defendant in *Allen* argued that because he was charged with burglary "with the intent to commit theft," his burglary convictions should be treated like theft convictions. (*Ibid.*) Like respondent, Allen argued for an expansive reading of "theft." This court disagreed. Relying on the legislative history which appeared to have rejected the phrase "the unlawful acquisition of the property" this court refused to expand the definition of "theft." "We have no reason to believe, therefore, that when the Legislature used the term 'theft' ... it intended any meaning broader than the meaning the term has in the general theft statute. (*People v. Allen, supra*, 21 Cal.App.4th at p. 863.)

Here the voters also used the word "theft" and not the more expansive phrase, "unlawful acquisition of property." (§ 459.5, subd. (b).) This court has already determined that in so doing, the voters were aware of the statutory definition of theft and the "judicial construction thereof." (*Gonzales I, supra,* 2 Cal.5th at p. 269.) Thus the voters were aware that by precluding additional "theft" charges, they did not also preclude all other charges that might include an unlawful acquisition of property.

III.

SECTION 530.5(A) DEFINES A PUBLIC OFFENSE WHICH IS NOT THEFT

Respondent argues that section 530.5(a) is theft when it "is for the purpose of stealing money." (ABM 22.) He argues that this court's decisions in *People v. Romanowski* (2017) 2 Cal.5th 903 [*Romanowski*], and *People v. Page* (2017) 3 Cal.5th 1175 [*Page*], compel this result. (ABM: 22, 23.) But respondent misconstrues this court's holdings as an "expansive interpretation of section 490.2" (ABM: 23), rather than as a straight forward reading of the statutes and legislative history.

In *Romanowski*, this court analyzed whether theft of access cards in violation of section 484e was subject to reduction pursuant to section 490.2." (*Romanowski, supra*, 2 Cal.5th at p. 908.) The answer in *Romanowski* was straightforward: section 484e, subdivision (d) is expressly defined as "grand theft," and thus explicitly is subject to section 490.2. Likewise, this court's decision in *Page* in no way required an "expansive interpretation" of section 490.2. Instead, this court relied on its own established precedent defining the unlawful taking of a vehicle with the intent to permanently deprive the owner of possession as theft. (*Page, supra,* 3 Cal.5th at p. 1183, citing *People v. Garza* (2005) 35 Cal.4th 866, 871; Veh. Code, § 10851.) Because the offense was defined as theft prior to the enactment of Proposition 47, it was expressly included in the value limitations of section 490.2. *People v. Warmington* (2017) 16 Cal.App.5th 333, 335-336, offers no support for respondent's

position. There the Court of Appeal considered whether a conviction for embezzlement, in violation of section 503 was subject to resentencing. Much like this court did in *Gonzales I*, the Court of Appeal in *Warmington* looked to section 490a which expressly includes embezzlement as a type of theft offense. (*Ibid.*) Because embezzlement was thus clearly defined as a theft offense, it was subject to the value limitation in section 490.2. (*Id.*, at pp. 337-338.)

With no authority, respondent asserts that misuse of identity in violation of section 530.5(a) "is considered a nonlarcenous theft." (ABM: 15, n. 6.) His claim is incorrect. Theft, larceny, embezzlement, and stealing are "the three ways in which property can be unlawfully stolen." (*Gonzales I, supra*, 2 Cal.5th at p. 865.) The crimes considered in *Romanowski*, *Page*, and *Warmington*, were each defined, by statute or precedent, as theft. But misuse of identity has not previously been defined as theft, and its statutory language makes no reference to theft or the consolidated theft offenses: larceny, embezzlement, or stealing. (See § 490a.) Moreover section 530.5(a) contains no requirement "central to the crime of theft–that the information be stolen at all" (*People v. Thuy Le Truong* (2017) 10 Cal.App.5th 551, 561-562), or that the victim's information be taken with "the intent to permanently deprive the owner of its possession." (See, *Page*, *supra*, 3 Cal.5th at p. 1182.)

For these reasons, the Court of Appeal in *People v. Sanders* correctly concluded: "Identity theft is not actually a theft offense." (*People v. Sanders* (2018) 22 Cal.App.5th 397, 405, review granted July 25, 2018, S248775, held behind this case.) *Sanders* rejected the argument, similar to respondent's in this case, that when a

victim's identity is used to obtain property, the violation of section 530.5(a) becomes a theft offense. (*Id.*, at p. 403.) Said the court: "The basic problem is appellant's acts of stealing from merchants do not amount to a theft from the cardholder. The cardholder was harmed by the unlawful use of her card and thefts from the merchants do not make the cardholder a victim of those thefts." (*Ibid.*) The Court of Appeal's logic in *Sanders* is sound and this court should affirm the *Sanders* decision.

IV.

THE VOTERS DID NOT INTEND TO LIMIT MISUSE OF IDENTITY CHARGES

Respondent argues that misuse of identity is subject to reclassification as shoplifting because it is the type of offense targeted by Proposition 47. (ABM: 27.) But Proposition 47 did not reduce penalties for every nonviolent felony offense. For example, access card forgery, in violation of section 484f, subdivision (a) is not subject to resentencing under section 1170.18 because it is not one of the forgery offenses reduced by Proposition 47. (*People v. Bloomfield* (2017) 13 Cal.App.5th 647, 652-653, review denied.) The Court of Appeal recognized: "Prescribing a different penalty for forgery than for theft is not inherently absurd because it is the prerogative of the Legislature, or in this case, the voters, to decide degrees of culpability for different crimes." (*Id.*, at p. 656.) In *People v. Gonzales* (2018) 6 Cal.5th 44 (*Gonzales II*) this court agreed that section 473, subdivision (b) "narrows the class of forgeries eligible for misdemeanor treatment to those 'relating to' certain instruments." (*Gonzales II, supra*, at p. 55.) In *Page*, this court recognized the

existing distinction between vehicle theft and post-theft driving, both criminalized in Vehicle Code section 10851, and used it to conclude that a defendant convicted of theft – but not of post-theft driving – was eligible for resentencing under section 1170.18. (*Page*, *supra*, 3 Cal.5th at pp. 1188–1189.)

Respondent's argument that if the Act meant to "exempt" misuse of identity from the shoplifting statute they should have done so expressly (ABM: 28) is not well taken. The express statutory language applies to an entry to commit theft, which, "in all of its permutations," includes only larceny, embezzlement, and stealing. (§ 490a.) The statutory language does not include the non-theft crime of misuse of identity in violation of section 530.5(a). Because the crime was never included, the voters did not need to "exempt" section 530.5(a) from the ameliorative reach of Proposition 47.

Respondent discounts the impact of *People v. Soto* (2018) 23 Cal.App.5th 813, review denied, by noting that the Legislature amended section 368, subdivision (d), to make it a misdemeanor unless the value of the property stolen exceeds $950. (ABM: 21-26.) But it is also true that neither the Legislature nor the voters have imposed similar value limitations on the crime defined in section 530.5(a). Misuse of identity has never been concerned with the value of the property, if any, obtained by the perpetrator. In fact, "no injurious intent or result is required." (*People v. Hagedorn*, *supra*, 127 Cal.App.4th at p. 744.) "[T]he purpose of section 530.5, subdivision (a) is to criminalize the willful use of another's personal identifying information, regardless of whether the user intends to defraud and regardless of whether any actual harm or loss is caused." (*People v. Johnson*, *supra*, 209 Cal.App.4th at pp. 816-818.)

"It is well settled that the Legislature 'is afforded considerable latitude in defining and setting the consequences of criminal offenses.'" (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 887.) When there is a "plausible basis" for the statutory disparity, a court should not "second-guess" the statute's "wisdom, fairness, or logic." (*Id.* at p. 881.) The plausible basis for the statutory disparity here is the important interest in protecting individuals against the invasions into their privacy and finances and the disruptions caused by the misuse of their identities. (See *People v. Barba* (2012) 211 Cal.App.4th 214, 226.)

Respondent dismisses the People's argument about the important function of section 530.5 based on an overly broad interpretation of this court's rational in *Romanowski*. (ABM: 16, 30.) In *Romanowski*, this court "rejected an argument that consumer protection offenses are categorically excluded from misdemeanor reduction under Proposition 47's theft provisions." (*People v. Bloomfield, supra*, 13 Cal.App.5th at pp. 658-659.) But in so doing this court did not categorically reject the argument that consumer protection is a rational basis upon which to base classification of different offenses. Importantly, the crime at issue in *Romanowski*, a violation of section 484e, subdivision (d) was expressly defined as grand theft and thereby specifically included in section 490.2. Here, where misuse of identity is not defined as theft, not listed in section 1170.18, and not mentioned in section 459.5, consideration of the important policy determinations underlying section 530.5(a) is appropriate.

In *Gonzales II*, this court recognized that the use of identity theft to elevate a crime of check forgery demonstrates the voters' perception that the unlawful use of personal identifying information is more serious than the theft offenses reduced to misdemeanors under Proposition 47. (See *Gonzales II*, *supra*, 6 Cal.5th at p. 54.) As Justice Corrigan wrote in concurrence, "[t]he presence of such personal information on the types of instruments listed in section 473, subdivision (b) would seem to confirm that the drafters were concerned with the commission of identity theft related to those instruments and, thus, intended to exclude misdemeanor treatment for forgeries involving identity theft as they related to the those instruments." (*Id.*, at pp. 57-58, conc. opn. of Corrigan, J.)

CONCLUSION

The crime charged against respondent can only be reclassified as shoplifting if the crime itself is "an act of shoplifting," or if the crime is burglary or theft of the same property that would have been at issue in the shoplifting offense. Misuse of identity in violation of section 530.5(a) however, is none of these things. A comprehensive analysis of both the plain language of the statutes at issue, and the extrinsic evidence of the voters' intent, reveals no indication that misuse of identity is, or should be subject to reclassification under Proposition 47.

Respectfully submitted,

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

Dated: November 13, 2018

By: 
MICHELLE F. CONTOIS
Deputy District Attorney

CERTIFICATE OF WORD COUNT

This document was prepared using Microsoft Word. Using the word count tool provided with the software I have determined that the Reply Brief on the Merits contains 4,811 words, excluding the Table of Contents and Table of Authorities.

Dated: November 13, 2018

By: Michelle J. Contois
MICHELLE J. CONTOIS
Deputy District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, Daniel Cruz say that:

I am a citizen of the United State, over the age of 18 years, a resident of the County of Ventura, and am not a party to the above-entitled action; my business address is 800 South Victoria Avenue, Ventura, California; on November 13, 2018, I served the REPLY BRIEF ON THE MERITS on:

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by e-mail.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 13, 2018, at Ventura, California.