S208173

IN THE SUPREME COURT OF CALIFORNIA

BEACON RESIDENTIAL COMMUNITY ASSOCIATION,
Plaintiff and Appellant,

v.

SKIDMORE, OWINGS & MERRILL LLP et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FIVE
CASE NO. A134542

REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE MERITS

INTRODUCTION

This case presents two issues: (1) Whether the Right to Repair Act, Senate Bill No. 800, Civil Code section 895 et seq. (the Act), which establishes construction standards for residential housing, imposes a duty of care on design professionals in every case, regardless of whether they would owe a duty under the balance of common law factors developed by this Court in *Biakanja v. Irving* (1958) 49 Cal.2d 647 (*Biakanja*) and *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370 (*Bily*); and (2) whether, under the *Biakanja/Bily* policy analysis, HKS/SOM, two architectural firms that contracted with the developer of a high-rise apartment building to provide engineering and design services and did not exercise

control over the actual construction, owed a duty of care to the purchasers of the individual residential units.

As we established in our Opening Brief on the Merits (OBOM), the answer to both questions is no. The Answer Brief on the Merits (ABOM) of the Beacon Residential Community Association (the Association) fails to refute the arguments in our opening brief.

Regarding the first issue, the Association has no answer to our showing that the Act conditions a design professional's liability for violation of its construction standards on proof of a "negligent act," and a plaintiff cannot prove a "negligent act" without establishing, as a threshold matter, a duty of care through application of the *Biakanja/Bily* policy factors. Instead, the Association mischaracterizes our argument, accusing us of suggesting a rule that would foreclose any recovery from design professionals. However, its own brief cites several cases where courts found a design professional owed a duty of care after applying the *Biakanja/Bily* common law duty analysis, which refutes the Association's assertion that a homeowner's association could never obtain relief from a design professional if it were required to establish a duty of care under the *Biakanja/Bily* analysis.

The Association's response to the second issue—whether the *Biakanja/Bily* analysis establishes a duty of care under the facts of this case—is similarly misconceived. It relies on a bevy of cases that, based on their own particular facts, found the defendants owed a duty of care to persons to whom they were not in privity.

However, these cases do not support the broad, overarching rule the Association advances. All of the Association's cases are distinguishable because (1) they involved conduct that exposed third parties to the risk of serious injury or death—conduct far more blameworthy than HKS/SOM's alleged conduct, and/or (2) the connection between the defendant's conduct and the plaintiff's harm was significantly closer than it is here, as the defendant in each case either actually performed the defective work or substantially directed and controlled the work. While application of the *Biakanja/Bily* factors supported a duty of care to third parties under the facts of those cases, the opposite is true here, where HKS/SOM merely provided design services to the Beacon's developer and had no control over the actual construction.

LEGAL ARGUMENT

I. THE RIGHT TO REPAIR ACT DOES NOT IMPOSE ON DESIGN PROFESSIONALS A DUTY OF CARE TOWARD THIRD PARTIES THAT WOULD NOT EXIST UNDER THE COMMON LAW.

The Association argues that the Act abrogates the common law *Biakanja/Bily* duty analysis in actions against design professionals. The Association is mistaken. Indeed, its contention that a design professional may be held liable for violations of the Act even where it does not owe a duty of care is startling.

"As a general rule, '[u]nless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules. [Citation.] "A statute will be construed in light of common law decisions, unless its language ' "clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter . . . ." [Citations.]' [Citation.]" ' [Citation.] Accordingly, '[t]here is a presumption that a statute does not, by implication, repeal the common law. [Citation.] Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws.' " (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297.)

The only common law rule that the Act "clearly and unequivocally" abrogates is the economic loss rule delineated in *Aas v. Superior Court* (2000) 24 Cal.4th 627 (*Aas*). (Civ. Code, § 942; *Greystone Homes, Inc. v. Midtech, Inc.* (2008) 168 Cal.App.4th 1194, 1202.) The Act does not abrogate any other common law rules. The Act states that its provisions apply to design professionals only to the extent that they cause "a violation of a particular standard" in the Act "*as a result of a negligent act or omission*" and that "[n]othing in this title modifies the law pertaining to joint and several liability for . . . design professionals that contribute to any specific violation of this title." (Civ. Code, § 936, emphasis added.)

The Association has no answer to the showing in our opening brief that a plaintiff cannot prove a "negligent act" without establishing a legal duty through application of the *Biakanja/Bily*

policy factors. (OBOM 12-13; *Bily, supra*, 3 Cal.4th at p. 397 ["The threshold element of a cause of action for [professional] negligence is the existence of a duty to use due care toward an interest of another that enjoys legal protection against unintentional invasion"]; *Ratcliff Architects v. Vanir Construction Management, Inc.* (2001) 88 Cal.App.4th 595, 604 (*Ratcliff*) [" 'An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff' "].) If the Legislature intended to impose liability upon design professionals for violations of the Act's performance standards regardless of whether they owed a common law duty of care, it easily could have said so, rather than conditioning liability upon proof of a "negligent act or omission . . . ."

The Association claims it is significant that in 2003, the Legislature deleted the last sentence of Civil Code section 936, which had read "However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply" (Stats. 2002, ch. 722, § 3, p. 4249), and replaced it with the following: "However, the negligence standard in this section does not apply to any general contractor, subcontractor, material supplier, individual product manufacturer, or design professional with respect to claims for which strict liability would apply." (Civ. Code, § 936; see ABOM 66-67.) In fact, the amendment confirms that unless a defendant is strictly liable in tort, it can be held liable for a violation of the Act only upon proof of all of the elements of a

common law negligence cause of action, including a duty of care to the plaintiff.

The Association says that HKS/SOM's "position on Civil Code § 936 would negate the right of any homeowners association to obtain relief from any design professional under the SB 800 remedial scheme." (ABOM 63.) That cannot be so. The Association's brief cites several cases where the courts, applying the *Biakanja/Bily* common law duty analysis, found that a design professional owed a duty of care to third persons. (ABOM 28-30, citing *Montijo v. Swift* (1963) 219 Cal.App.2d 351 (*Montijo*), *Mallow v. Tucker, Sadler & Bennett* (1966) 245 Cal.App.2d 700 (*Mallow*), *Cooper v. Jevne* (1976) 56 Cal.App.3d 860 (*Cooper*), *Huang v. Garner* (1984) 157 Cal.App.3d 404 (*Huang*).) As we explain in the following section of this brief, the *results* in those cases are distinguishable and do not support imposition of liability against HKS/SOM because in each the design professional's conduct was far more blameworthy than HKS/SOM's conduct and/or there was a much closer connection between that conduct and the injury to the plaintiff. But the *reasoning* in those cases refutes the Association's assertion that a homeowners association could never obtain relief from a design professional for a violation of the Act if it were required to establish a duty of care under the *Biakanja/Bily* analysis.

These observations also dispose of the Association's related contention that HKS/SOM are advancing the "fallacy" that "existing law" would need to be "abrogated" in order to hold design professionals liable to future homeowners based on negligence. (ABOM 64.) Once again, HKS/SOM acknowledges that design

professionals may be held liable to future homeowners if the *Biakanja/Bily* analysis establishes a duty of care. It is the Association, not HKS/SOM, that argues for an abrogation of the law that existed when the Act was adopted.

The Association also accuses HKS/SOM of claiming that a design professional must be the "sole procuring cause" of a construction defect, whereas Civil Code section 936 imposes liability if its negligence "caused, in whole or in part, a violation of" one of the Act's standards. (ABOM 64.) The Association again misstates HKS/SOM's position. We do not contend that a design professional must be the "sole procuring cause" of a violation in order to be held liable. We simply contend that design professionals cannot be liable for a violation of one of the Act's standards absent proof of a "negligent act," which requires, as a threshold matter, the existence of a duty of care. (*Bily*, *supra*, 3 Cal.4th at p. 397; *Ratcliff*, *supra*, 88 Cal.App.4th at p. 604.)

The Association's assertion that its position is supported by Civil Code section 43.99, enacted as part of the Act, is similarly unavailing. According to the Association, that statute exempts design professionals who perform an "independent quality review" of a project from liability under the Act. The Association asserts that this exemption would be meaningless unless design professionals who actually design a project and actually participate, even as consultants, in the construction phase of the project are liable for violations of the Act's performance standards. (ABOM 66.)

The Association's quotation of section 43.99 is incomplete. A more complete quotation discloses that the exemption applies to

engineers, contractors, and architects who are "under contract with an applicant for a residential building permit to provide independent quality review of the plans and specifications provided with the application in order to determine compliance with all applicable requirements imposed pursuant to the State Housing Law . . . , or any rules or regulations adopted pursuant to that law, or under contract with that applicant to provide independent quality review of the work of improvement to determine compliance with these plans and specifications . . . ." (Civ. Code, § 43.99.)

This means that architects who contract with an applicant for a residential building permit for the limited purpose of providing independent quality review of the plans and specifications can *never* be held liable for damages based on their review of the plans and specifications. It does not logically follow that the architects retained to provide actual design services—rather than quality review of those services—*are always liable* to third parties, regardless of whether they owe those parties a common law duty of care. The Association's strained interpretation cannot be squared with the plain language of the Act limiting the liability of design professionals to *negligent* violations of its standards and stating that nothing in the Act modifies the law pertaining to design professionals' joint and several liability for violation of the Act.

Finally, the Association argues that the provisions of the Act control over "contrary common law principles." (ABOM 68.) The argument is partially correct as to the one instance in which the Act and the common law are inconsistent. As we have shown, the Act abrogates the common law economic loss rule and to that extent

is controlling over the common law. But the Association's argument is incorrect in all other respects because the Act and the common law can be read harmoniously. Nothing in the Act is inconsistent with other common law rules, including the rule limiting a defendant's liability to those to whom it owes a legal duty of care under the *Biakanja/Bily* analysis. Hence there is nothing for the Act to abrogate.

II. THE COURT OF APPEAL'S DECISION SHOULD NOT BE AFFIRMED ON THE ALTERNATIVE GROUND THAT HKS/SOM OWED THE ASSOCIATION A COMMON LAW DUTY OF CARE.

We demonstrated in the opening brief that because there was no contractual privity between HKS/SOM and the Association's members, the determination whether they owed the members a duty of care depends on application of the policy factors delineated by this Court in *Biakanja, supra,* 49 Cal.2d at p. 647 and *Bily, supra,* 3 Cal.4th at p. 370. Applying those factors, the Court of Appeal in *Weseloh Family Ltd. Partnership v. K.L. Wessel Construction Co., Inc.* (2004) 125 Cal.App.4th 152 (*Weseloh*) held that where a design professional's role in a construction project is limited to providing engineering and design services and does not involve control or supervision of the actual construction, the *Biakanja/Bily* analysis militates against the imposition of a duty of care. We therefore explained why the Court should follow that approach here. (OBOM 23-37.)

The Association disagrees. As a threshold matter, it cites a slew of cases from which it attempts to extract a bright-line rule under which design professionals would owe homeowners association members a duty of care in every conceivable instance. (ABOM 19-31.) The attempt fails because the cases rest on their facts and unique circumstances in which a duty was claimed; the cases in this area simply are not conducive to applying a bright-line rule. Although the issue of duty is a legal, not a factual question, the issue cannot be addressed without close consideration of context. This Court has not endorsed the one-size-fits-all approach urged by the Association. (*Biakanja*, *supra*, 49 Cal.2d at p. 650 ["The determination whether in a specific case the defendant will be held liable to a third person not in privity is a matter of policy and involves the balancing of various factors"].)

Turning to the authorities themselves, none supports the imposition of a duty here. Application of the *Biakanja/Bily* policy factors, and, in particular, the moral blame attached to HKS/SOM's conduct and the closeness of the connection between their conduct and the injuries suffered by the Association's members, readily distinguishes those authorities from this case and counsels against imposing a duty of care.

Many of the cases cited by the Association involved conduct that exposed third parties to the risk of serious injury or death—conduct significantly more blameworthy than HKS/SOM's alleged conduct. (See *Aas*, *supra*, 24 Cal.4th at p. 647 ["while some 'moral blame' arguably 'attach[es]' to many deviations from the building codes . . ., the degree of blame would appear to depend upon the

nature of the deviation. Thus, even if significant moral blame inheres in negligent construction *creating a risk of likely structural failure* leading to a notice of abatement [citing *Huang*, *supra*, 157 Cal.App.3d at p. 424 & fn. 13], we may still reasonably assign reduced moral blame to less serious defects not presenting that degree of risk" (emphasis added)].)

For example, *Hale v. Depaoli* (1948) 33 Cal.2d 228, 229 (*Hale*), relied on by the Association, was a suit against a building contractor for serious injuries suffered by the plaintiff, who fell 10 feet when the railing on a porch collapsed due to faulty construction. This Court acknowledged the general rule that a contractor is not liable to third persons for damage caused by negligent work after completion of the building and acceptance by the owner. (*Id.* at p. 230.) However, invoking Justice Cardozo's seminal decision in *MacPherson v. Buick Motor Co.* (1916) 217 N.Y. 382 [111 N.E. 1050], this Court held an exception to the general rule applied " '[i]f the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made.' " (*Hale*, at p. 231, quoting *MacPherson*, at p. 389.)

The cases cited by the Association holding architects liable to persons with whom they were not in privity likewise involved conduct that created a risk of serious injury or death and a consequent high degree of moral blame. (See *Mallow*, *supra*, 245 Cal.App.2d at p. 701 [architect held liable where workman fatally electrocuted while jackhammering footing at the place called for by the architect's plans and broke into an underground high-voltage transmission line that the plans failed to disclose];

Montijo, *supra*, 219 Cal.App.2d at pp. 351-352 [architect whose plans and specifications for stairway were defective held liable for injuries suffered by plaintiff who fell while descending stairway]; *Cooper*, *supra*, 56 Cal.App.3d at pp. 860, 865 [architects who drew plans and specifications for, and supervised construction of condominiums liable to purchasers for repair costs where "the project, as built, was hazardous to personal safety due to the possibility of structural failure of portions of the building and because of inadequate safeguards from fire"]; *Huang*, *supra*, 157 Cal.App.3d at p. 411 [design professionals' plans included insufficient fire retardation walls, insufficient shear walls, and inadequate structure]; *id.* at p. 424 ["there was testimony presented that the defects in the building are dangerous"]; *id.* at 424, fn. 13 [notice of abatement noted that structural members were likely to collapse " 'and therefore injure persons or damage property' "].)

Unlike the defective porch railing in *Hale*, the defective plans in *Mallow*, the defective stairway in *Montijo*, and the structural and fire safety hazards in *Cooper* and *Huang*, the design and construction defects alleged in this case did not " 'place life and limb in peril.' " (*Hale*, *supra*, 33 Cal.2d at p. 231.) As the Association acknowledges, its primary complaint concerns the alleged "solar heat gain" condition in the condominiums, supposedly due to improper design and construction of the window assemblies. (ABOM 25; see 2 JA 280, 292-293.) Although the Association implies in its brief that the individual condominium owners have suffered discomfort, annoyance and unspecified adverse health effects from the solar heat gain condition (ABOM 26 & fn. 6), it does

not go so far as to claim that the condition is life-threatening. (See *Aas*, *supra*, 24 Cal.4th at p. 647.) And, as we explained in the opening brief, any moral blame falls on the developer, who received complaints about the alleged defects from renters, yet later concealed those defects when it sold the units to the Association's members. (OBOM 30-31.)

Second, with the exception of *Huang*, where the design professionals designed a structurally unsafe building, in each case cited by the Association the connection between the defendant's conduct and the harm to the plaintiff was significantly closer than it is here. None of the defendants in those cases acted in only an advisory capacity. Rather, in each case the defendant either actually performed the defective work or exercised substantial direction and control over the work. (*Hale*, *supra*, 33 Cal.2d at p. 229 [defendant a member of partnership that constructed building with defective railing]; *Stewart v. Cox* (1961) 55 Cal.2d 857, 859-860 [defendant concrete subcontractor negligently gunited swimming pool, causing water to escape and damage plaintiffs' house, pool, and yard]; *Sabella v. Wisler* (1963) 59 Cal.2d 21, 23 [contractor liable to homeowners for negligently constructing dwelling on improperly compacted lot]; *Cooper*, *supra*, 56 Cal.App.3d at pp. 867-869 [architects supervised construction of condominiums]; *Montijo*, *supra*, 219 Cal.App.2d at pp. 351-352 [architect supervised construction of defective stairs].)[1]

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[1] *Huber, Hunt & Nichols, Inc. v. Moore* (1977) 67 Cal.App.3d 278, *Krusi v. S.J. Amoroso Construction Co.* (2000) 81 Cal.App.4th 995, and *Standard Fire Ins. Co. v. Spectrum Community Assn.* (2006) (continued...)

The Association also relies on *Connor v. Great Western Sav. & Loan Assn.* (1968) 69 Cal.2d 850, where this Court held a savings and loan that provided financing for construction of tract homes could be liable to the homes' purchasers for construction defects. However, the holding in *Connor* was legislatively overturned one year later. (Civ. Code, § 3434.) Moreover, and in any event, the savings and loan in *Connor*, unlike HKS/SOM, had the right "to exercise extensive control" over the construction, including the power to require the correction of defects by withholding funds until the corrections were made. (*Connor*, at pp. 864-865.)

Here, in sharp contrast to the defendants in the foregoing cases, HKS/SOM's role in the Beacon project was to provide design

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(...continued)
141 Cal.App.4th 1117, also cited by the Association, addressed entirely distinct issues. Those courts simply noted in passing that in appropriate circumstances, application of *Biakanja/Bily* factors *may* impose a duty of care upon architects. The issue in *Huber*, a suit by a project's contractor against the architects, was whether the trial court erred in excluding evidence offered by the contractor. (*Huber*, at p. 294.) Finding no error, the Court of Appeal affirmed a judgment entered upon a jury verdict in favor of the architects. (*Id.* at p. 296.) *Krusi* held that only the owner in possession when construction defects in the property become manifest, not subsequent purchasers, may recover against the project's architect. (*Krusi*, at p. 1005.) In *Standard*, the insurer of a developer sued by a homeowner's association for construction defects refused to defend on the ground the association could not have been damaged during the policy because the association did not then exist. (*Standard*, at pp. 1121-1122.) The Court of Appeal held the insurer had a duty to defend because coverage depended on when the property damage occurred, not when the homeowner's association came into existence. (*Id.* at p. 1136.)

advice to the project's developer. (2 JA 311.) The Association's third amended complaint alleged that HKS/SOM's role in the actual construction of the building was limited to conducting site inspections, attending weekly meetings, and recommending to the developer any revisions to work performed that did not conform to the contract documents. (2 JA 313-314.)

Notably, the Association alleged that HKS/SOM had to obtain approval from the developer before they could communicate with the contractor regarding any nonconforming work. (2 JA 314.) And, during oral argument on HKS/SOM's demurrer, the Association's attorney conceded that they had no control over the "means and methods of construction." (3 RT 112.) Moreover, the Association declined the trial court's invitation to amend its complaint to allege that HKS/SOM "went beyond what architects do, which is recommend changes, and actually controlled whether or not that change was implemented." (3 RT 119.)

In arguing that HKS/SOM had a more expansive role in the project's construction, the Association relies on the allegation in its third amended complaint that they "reviewed and approved the course of action where the specifications for the exterior windows, contrary to the approved Title 24 submittal for the Subject Property were changed to a design that inadequately prevented heat gain, which causes a seriously defective and nonfunctional condition that is also unhealthy." (2 JA 314; see ABOM 50.) However, all that this and similar allegations in the complaint establish is that HKS/SOM provided the developer with professional advice regarding design changes *the developer* decided to implement, not

that the developer needed their approval in order to make the changes. This is the only interpretation that can be reconciled with the Association's concession that HKS/SOM's role did not involve control of construction.

Because HKS/SOM's role was limited to providing professional advice to the Beacon's developer, and they had no control over the "means and methods of construction," this case is far closer to *Weseloh*, where the Court of Appeal held design professionals owed no duty to third parties, than to any of the Association's cases.

In addition to unsuccessfully arguing that HKS/SOM's role extended beyond providing professional advice, the Association spends almost 14 pages of its brief attempting to distinguish this case from *Weseloh*. (ABOM 43-56.) The attempt is unavailing. While the details of the two cases differ, the material facts do not. In *Weseloh*, the design engineers were retained by a subcontractor to design two retaining walls and had no privity of contract with either the project's general contractor or the owner. Their contracts with the subcontractor did not include an intended beneficiary clause identifying the owner as an intended beneficiary. Here, HKS/SOM were retained by the Beacon's developer and had no contractual relationship with the Association's members who purchased the residential units in the Beacon. Their contracts with the developer expressly provided that the ultimate purchasers of the residential units were not intended beneficiaries of their obligations to the developer. (1 JA 47.) Just as the absence of privity barred the claims in *Weseloh*, it likewise bars the Association's claim here.

The Association suggests that *Weseloh* is distinguishable because the Court of Appeal there upheld summary judgment for the design engineers only because the plaintiffs had failed to produce evidence showing how and the extent to which their damages were caused by asserted design defects (ABOM 48) and because the design professionals had simply followed published "standard details" for the design of the retaining walls that subsequently collapsed (ABOM 44-45).

In fact, the holding in *Weseloh* was much broader. The Court of Appeal acknowledged that the plaintiffs had produced evidence that the design professionals' "design was defective in various ways, 'contributing' to the failure of the retaining walls," that they had "failed to take into consideration the on-site soil conditions, improperly deviated from the original design criteria, and 'ultimately under designed the wall, contributing to the wall's failure,' " and that "the failure of the walls occurred 'in large part' due to [the design professionals'] 'participation in the design and repair of the wall.' " (*Weseloh*, *supra*, 125 Cal.App.4th at p. 168.) Nonetheless, the Court of Appeal, applying the *Biakanja/Bily* analysis, held that because they provided only professional design services, they owed no duty of care to persons with whom they had no contractual privity:

> [The design engineers] showed they had no contractual privity with either the Weseloh plaintiffs or Wessel and performed only professional design services for a subcontractor involved in the project. They therefore carried the burden of producing evidence that the

> Weseloh plaintiffs' and Wessel's negligence claims failed because no duty of care existed.

(*Id.* at p. 164.)

Weseloh is on point for an additional reason. The Court of Appeal there found that holding the design engineers liable to the owner and general contractor would not result in greater care in design engineering because they were accountable to the subcontractor if the latter were found liable to the general contractor as a consequence of their defective design work. (*Weseloh, supra,* 125 Cal.App.4th at p. 170.) Likewise, the Association's members can obtain redress from the developer, who is strictly liable in tort, for any damages caused by defective design or construction. (See *Kriegler v. Eichler Homes, Inc.* (1969) 269 Cal.App.2d 224, 227-229.) The developer, in turn, may seek redress from HKS/SOM, with whom it is in contractual privity. Because they would be liable to the developer for any damages caused by negligent design work, HKS/SOM had a clear incentive to exercise the utmost care to ensure the Beacon was properly designed regardless of whether they owed a duty to the Associations' members.

CONCLUSION

For each of the foregoing reasons, and the reasons set forth in the Opening Brief on the Merits, the decision of the Court of Appeal should be reversed.

August 26, 2013

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1).)

The text of this brief consists of 4,518 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: August 26, 2013

Peter Abrahams

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On August 26, 2013, I served true copies of the following document(s) described as **REPLY BRIEF ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on August 26, 2013, at Encino, California.

Victoria Beebe

SERVICE LIST

Beacon Residential v. Skidmore Owings
Court of Appeal Case No. A134542
Supreme Court Case No. S208173

Individual Served	Party Represented
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Individual Served	Party Represented
Hon. Richard A. Kramer San Francisco County Superior Court 400 McAllister Street, Dept. 304 San Francisco, CA 94102	Case No. CGC08478453
Office of the Clerk Court of Appeal First Appellate District Division Five 350 McAllister Street San Francisco, CA 94102	