IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Case No.: S262699

BONNIE DUCKSWORTH et al.,
Plaintiffs and Appellants,

v.

TRI-MODAL DISTRIBUTION
SERVICES, INC. et al.
Defendants and Respondents.

On Review From A Published Opinion of the Court of Appeal of the State of California,
Second Appellate District, Division 8, Case No. B294872,
Affirming Final Judgments On Orders Granting Summary Judgments

The Superior Court of Los Angeles County, Case No. BC676917
The Honorable Lia Martin, Presiding

APPELLANT'S REPLY BRIEF ON THE MERITS

Kevin A. Lipeles [SBN 244275][kevin@kallw.com]
Thomas H. Schelly [SBN 217285][thomas@kallaw.com]
Julian Bellenghi [SBN 129942][julian@kallaw.com]
Lipeles Law Group, APC
880 Apollo Street, Suite 336
El Segundo, CA 90245
(310)322-2211

Attorneys for Appellant
Pamela Pollock

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. CASE LAW

II. STATUTES

III. OTHER AUTHORITIES

I. INTRODUCTION

In his Answer Brief, MIKE KELSO ("KELSO") ignores the principal arguments offered by PAMELA POLLOCK ("POLLOCK") for the proposition that the *Fair Employment & Housing Act's* ("*FEHA*") statute of limitation commenced when the promotion of Leticia Gonzalez to Account Manager took effect on May 1, 2017, not when Gonzalez was offered and accepted the position in March 2017, because that is when the promotion "occurred" as that term is used in *Government Code* §12960(d). Rather, KELSO offers a series of alternative arguments that are unsupported by law and/or factually baseless. The judgment against POLLOCK should be reversed.

KELSO ignores the public policy announced by this Court in *Romano v. Rockwell International, Inc.*, 14 Cal.4th 479 (1996) that *FEHA*'s statute of limitions must be liberally construed to permit the resolution of *FEHA* claims on their merits. There is good reason for KELSO' failure; no such counter argument exists. As set forth in POLLOCK's Opening Brief and below, it is that public policy which compels a finding that the later May1, 2017 date governs.

KELSO likewise ignores the testimony of his own witnesses, Vice President of Operations Timothy Mullaney and Carson Street Terminal Manager John Severs, which establishes that the Gonzalez promotion "occurred" on May 1, 2017. Both testified that Gonzalez' promotion did not "take effect" until May 1, 2017, when TRI-MODAL placed her in the Account Manager position. As set forth in POLLOCK's Opening Brief and below, "occur" as used in *Government Code* §12960(d) and "take effect" are synonymous.

KELSO seeks to avoid *Romano*'s rationale by attempting to distinguish *Romano* from the case at bar. His attempts are baseless. KELSO concedes that in *Romano,* this Court correctly decided that termination occurs when an employee is discharged, not when the employer earlier advises him, because the later date is when the discharge happens and thus "occurs." KELSO reasons that failures to promote are distinct, because they occur and the employees are damaged, when the employer choses the successful candidate, regardless of when the promotion takes effect.

KELSO's attempt to differentiate promotion and discharge is baseless. Like termination, promotion occurs when the open slot is filled, not before. Simply put, the Gonzalez promotion occurred on May 1, 2017, when it took effect. On that date POLLOCK was damaged. KELSO cites a plethora of cases for the proposition that "a discrimination claim based on failure to promote accrues when the employer makes the decision not to promote the plaintiff." None of those cases so holds, and one actually supports POLLOCK's position.

KELSO contends that application of the statute of limitation to the earlier date would not promote premature claims as referenced in *Romano*, because "at that point the promotion is denied." KELSO misses the point. During the sixty day interval between March and May 1, 2017, a variety of events could have occurred rendering POLLACK's *FEHA* claim unnecessary – Gonzalez could have changed her mind and rejected the position, the employer could have done likewise and rescinded the offer, or the Account Manager position might have been abolished due to market conditions. Or, POLLOCK could have sought redress from the employer. Thus, the time for POLLOCK to have

challenged the Gonzalez promotion by a *FEHA* administrative complaint was when these contingencies ceased to exist – that is, when Gonzalez' promotion "took effect" and she began work as an Account Manager on May 1, 2017. Any *FEHA* complaint prior to May 1, 2017 would have been premature.

KELSO argues that if this Court finds that the statute of limitations runs on the later day, it will result in the litigation of stale claims. This Court addressed that concern in *Romano* and rejected it.

KELSO contends that POLLOCK waived her argument that the statute of limitations could not have commenced in March 2017 since there is no evidence POLLOCK was aware of the promotion at that time. KELSO does not challenge the state of the evidence. Rather, KELSO claims that POLLACK was obligated to have raised a "delayed discovery" argument in opposition to his motion for summary judgment and in the Court of Appeal. KELSO is mistaken.

Delayed discovery never has been an issue in this case. The focus of inquiry always has been when the statute of limitations began to run – when Gonzalez was offered and accepted the promotion, or when it took effect. The Court of Appeal held that the earlier date applied, because POLLACK was aware of the promotion in March 2017. But there is no such evidence in the record. This lack of evidentiary support was raised by POLLOCK in her Petition for Review, which this Court granted. Therefore, this issue is properly before this Court.

KELSO's suggestion that POLLACK should have raised the lack of knowledge issue at summary judgment or in the Court of Appeal ignores the state of the record.

KELSO never argued that POLLOCK knew or should have known of the events of March 2017, including in the Court of Appeal. Lack of knowledge did not become an issue until the Court of Appeal erroneously determined that POLLACK was aware of the promotion in March 2017.

KELSO also ignores a reviewing court's role in determining the propriety of summary judgment - *de novo.* This Court considers *all* the evidence, liberally construing that evidence in support of the party opposing summary judgment and resolving doubts concerning that evidence in favor of that party. It is settled that a statute of limitations begins to run when the plaintiff becomes aware of the acts giving rise to her claim. POLLOCK's lack of knowledge of the promotion in March 2017, precludes summary judgment based on that date.

Even if POLLOCK is deemed to have waived the lack of knowledge argument, it is of no consequence. Under this Court's *Romano* analysis, the employee's knowledge is not determinative. In *Romano,* the employee was aware of his pending termination for more than two years. Despite that knowledge, it was his eventual discharge that triggered the statute of limitations.

Lastly, KELSO argues that this Court's rationale in *Williams v. Chino Valley Independent Fire District,* 61 Cal.4th 97 (2015) is inapplicable to an award of costs on appeal because the general cost provisions in *Code of Civil Procedure* §1032(b) specifically defer to other statutes, while the cost provisions is Rule 8.278 of the *California Rules of Court* do not. KELSO's comparison is flawed.

The proper comparison is *Government Code* §12965(b) to Rule 8.278.

Government Code §12965(b) permits trial courts discretion to award costs. Rule 8.278 at subsection (a)(5) does likewise, permitting Courts of Appeal to award or deny costs in "the interest of justice." In light of the chilling effect a cost award would have on a non-prevailing *FEHA* plaintiff, in *Williams* this Court limited trial courts' discretion to lawsuits that are objectively frivolous. Given that public policy, there is no reason this Court should not extend that same restriction to Courts of Appeal.

KELSO suggests that unlike in *Williams,* a *FEHA* appellant's rights would not be chilled, because appellate costs are limited. Appellate costs also can be significant, particularly where an appeal follows a trial on the merits. In the case of a lower level employee like POLLOCK, imposition of even minimal costs can be financially devastating and could lead to bankruptcy.

KELSO argues that restricting appellate costs to frivolous appeals will "incentivize" employees to appeal cases lacking in merit. This argument turns logic on its head. If this Court extends *Williams* to appellate courts, the new rule will benefit employers and employees alike. On the one hand, it will lack the chilling effect of the present rule, because employees will not fear an imposition of costs if they lose on appeal. Employers likewise will be protected because pursuit of a frivolous appeal will expose the offending appellant to costs.

/ / /

/ / /

/ / /

/ / /

II. ARGUMENT

A. KELSO IGNORES THE PUBLIC POLICY ANNOUNCED BY THIS COURT IN *ROMANO* THAT *FEHA*'S STATUTUE OF LIMITATIONS BE INTERPRETED LIBERALLY TO PROMOTE LITIGATION OF POTENTIALLY MERITORIOUS CLAIMS; THAT POLICY MANDATES THAT THE GONZALEZ PROMOTION "OCCURRED" ON MAY 1, 2017.

KELSO ignores the public policy announced by this Court in *Romano* that *FEHA*'s statute of limitions is to be liberally construed to permit the resolution of potentially meritorious *FEHA* claims. Nor does KELSO even remotely suggest that Customer Service Representive POLLOCK's *quid pro quo* sexual harassment claim against Vice President KELSO, a company executive, lacks merit. There is good reason for KELSO's failure to address *Romano's* public policy. No contervailing argument exists.

Romano is absolutely on point. To reiterate, this Court held that the statute of limitations begins to run, not when an employer makes an adverse employment decision, but when the employer implements the resulting adverse employment action, because that is when it "occurs," as that term is used in *Government Code* §12960(d)(now § 12960(e)) . *Romano, supra*, 14 Cal.4th 479, 491. This Court grounded that decision on sound notions of public policy which merit repetition here:

> [B]y the terms of Government Code section 12960 the limitations period applicable to administrative claims begins to run "after" the unlawful employment practice … "occurred." If the administrative complaint must be filed within one year "after" the unlawful practice … occurred, then for the purpose of the complaint, the administrative cause of action must accrue and the statute of limitations must run from the time of **actual termination.** It would not run from earlier date of notification of discharge, because on that date the unlawful practice … has not yet "occurred."
>
> Such an interpretation is consistent with the plain meaning of the statutory language. It is also consistent with the remedial purpose of the FEHA to safeguard the employee's right to seek, obtain and hold employment without experiencing discrimination.
>
> The FEHA itself requires that we interpret its terms liberally in order to accomplish that stated legislative purpose. In order to carry out the purpose of the FEHA to safeguard employee's rights to hold employment without experiencing discrimination, **the limitations period set out in the FEHA should be interpreted so as to promote resolution of potentially meritorious claims on the merits** …

Romano, supra, 14 Cal.4th at 493-95 (emphasis added; citations omitted).

Clearly then, in light of this stated public policy, the statute of limitation began to run, not when the employer decided to promote Gonzalez in March 2017, which was

outside the then one year statute of limitations, but when the promotion took effect on May 1, 2017, which is when it occurred. Accordingly, POLLOCK's claim is not time-barred.

B. KELSO ALSO IGNORES THE TESTIMONY OF HIS OWN WITNESSES, WHICH FURTHER SUPPORTS THE PROPOSITION THAT THE GONZALEZ PROMOTION OCCURRED ON MAY 1, 2017.

KELSO ignores the testimony of his own witnesses, Vice President of Operations Timothy Mullaney and Carson Street Terminal Manager John Severs, which support the proposition that the Gonzalez promotion "occurred" on May 1, 2017. Both testified that Gonzalez' promotion did not "take effect" until the later date, May 1, 2017, when TRI-MODAL actually placed Gonzalez in the position (AA 267:14-16; AA 271:20-21).

This Court consistently has held that "we interpret statutory language according to its usual and ordinary import, keeping in mind the apparent purpose of the statute. *Romano, supra,* 14 Cal.4th at 493 (underline in original) *quoting Dyna-Med, Inc. v. Fair Employment & Housing Commission,* 43 Cal.3d 1379, 1386-87 (1987. As set forth in POLLOCK's Opening Brief, "occur" and "take effect are synonymous (Opening Brief at 18-19). Therefore, the Gonzalez promotion occurred on May 1, 2017.

/ / /

/ / /

/ / /

C. KELSO'S ATTEMPTS TO DISTINGUISH *ROMANO* ARE BASELESS.

1. There Is No Distinction Between Discharge and Failure to Promote And The Authority KELSO Cites is Inapposite.

KELSO concedes that in *Romano*, this Court correctly decided that termination occurs when an employee is discharged, not when the employer earlier advises him, because the later date is when the discharge happens and thus "occurs." KELSO reasons a failure to promote is distinct, because it occurs and the employee is damaged, when the employer choses the successful candidate, regardless of when the promotion takes effect. KELSO's attempt to distinguish promotion and discharge is baseless. KELSO again ignores this Court's *Romano* rationale that *FEHA*'s statute of limitations be interpreted liberally, as well as the clear language of that statute. Simply put, the Gonzalez promotion occurred on May 1, 2017, when it took effect. It is on that date that POLLOCK was damaged.

Not to be denied and citing some six cases, KELSO, states without reservation: "[A] discrimination claim based on failure to promote accrues when the employer makes the decision not to promote the plaintiff." (Answer Brief at 15). The cases KELSO cites in support of that proposition do not so hold. Significantly, with one exception they do not even address the issue before this Court. *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002) and *Lyons v England*, 307 F.3d 1092 (9th Cir. 2002) hold that an employee cannot recover for discreet acts of discrimination occurring outside the statute of limitations under a continuing violation theory. In *Yonemoto v.*

Shinseki, 3 F.Supp.3d 827 (D. Hawaii), the court dismissed the employee's discrimination claim for failure to exhaust the requisite administrative remedy. *Glue-Fold, Inc. v. Slautterback Corporation* , 82 Cal.App.4th 1018 (2000) involves a breach of trademark claim, and *Eng v. County of Los Angeles,* 2006 U.S. Dist. LEXIS 11024 (C.D. Cal. 2006) addresses a claim arising under 42 *U.S.C.* § 1983.

Only *Johnson v. United Continental Holding, Inc,* 2014 U.S. Dist. LEXIS 88225 (N.D. Cal. 2014) addresses the statute of limitations for a discriminatory failure to promote. Ironically, it supports POLLOCK's position. With no analysis, the court held that failure to promote occurs when the position is "*filled*." *Id.* at 20 (emphasis added). Put another way, when the successful candidate occupies the position. This is precisely what POLLOCK has argued here.

2. KELSO's Suggestion That Application of the Statute of Limitations To The Earlier Date Would Not Result in Premature Claims Lacks Merit.

KELSO contends that application of the statute of limitation to the earlier March 2017 date would not promote premature claims as referenced in *Romano*, because "at that point the promotion is denied, the harm has occurred." Further, KELSO suggests, the effective date of a promotion can be subjective and difficult for the aggrieved employee to determine."(Answer Brief at 21). KELSO's argument defies logic. To reiterate, the employer's decision becomes final and the harm "occurs" when the successful candidate occupies the position. That date is neither subjective nor difficult to determine. The testimony of Vice President Mullaney and Terminal Manager Severs

proves that point. Both clearly testified that the Gonzalez promotion "took effect" on May 1, 2017 (AA 267:14-16; AA 271:20-21).

During the sixty day interval between March and May 1, 2017, a variety of events could have occurred which would have rendered POLLACK's potential *FEHA* claim unnecessary – Gonzalez could have changed her mind and rejected the position, the employer could have done likewise and rescinded the offer, or the Account Manager position might have been abolished due to market conditions. Or, POLLOCK could have sought redress from the employer. The time for POLLOCK to challenge the Gonzalez promotion by a *FEHA* administrative complaint was when these potential contingencies ceased to exist – that is, when Gonzalez' promotion "took effect" and she began work as an Account Manager on May 1, 2017. Any *FEHA* complaint prior to May 1, 2017 would have been premature.

3. KELSO's Claim That If This Court Holds That The Statute Of Limitations Begins On The Effective Date Of A Promotion, Employers Will Be Presented With Stale Claims Was Considered And Rejected By This Court in *Romano.*

KELSO contends that "use of the 'effective date' of a promotion could lead to the prosecution of stale claims, thus defeating one of the beneficial purposes of the statute of limitations on FEHA claims" because the effective date of a promotion could be delayed by events outside the employers control. "Labor market conditions and other factors often dictate the interval between when the promotion is announced or offered and its effective date." During that delay, memories can fade and documentary evidence can be

lost. (Answer Brief at 20). This contention was considered and rejected by this Court in *Romano*:

> [S]uch a rule does not impose an undue burden on employers by forcing them to defend stale claims. First, the period between notification and termination usually is short. Second, both dates are within the employer's control, and the employer may secure or retain evidence in case a claim should arise…

Romano, supra, 14 Cal.4th at 493.

In *Romano,* there was a delay of almost two and one-half years between the time plaintiff Romano was advised of discharge and the actual termination - January 1989 to May 31, 1991. *Romano, supra,* 14 Cal.4th at 484-85. Yet this Court found that said delay did not render plaintiff's claim stale. In this case , the sixty days from March 2017 to May 1, 2017, is significantly shorter and as in Romano, of the employer's own making - "in Gonzalez's case, the effective date of her promotion was delayed while her employer found a qualified employee to take her former position." (Answer Brief at 19-20). Given this Court's holding in *Romano,* POLLOCK's claim could not have been rendered stale.

D. POLLOCK HAS NOT WAIVED THE LACK OF KNOWLEDGE ISSUE, BUT EVEN IF SHE HAS, IT IS OF NO CONSEQUENCE.

KELSO contends that POLLOCK waived her argument that the statute of limitations could not have commenced in March 2017 given there is no evidence

POLLOCK was aware of the promotion at that time. KELSO does not challenge the state of the evidence. Rather, KELSO claims that POLLACK was obligated to have raised a "delayed discovery" argument in opposition to his motion for summary judgment and in the Court of Appeal. KELSO is mistaken.

Delayed discovery never has been an issue in this case. The focus of inquiry always has been when the statute of limitations began to run – when Gonzalez was offered the promotion or when it took effect. Whether POLLOCK's lack of knowledge is germane to that determination is properly before this Court, because (1) the Court of Appeal's opinion was based in part on an erroneous determination that POLLOCK was made aware of the promotion in March 2017 even though the record is devoid of any such evidence, and (2) POLLOCK addressed that error in her Petition for Review filed in this Court .

KELSO argues that the lack of knowledge issue is not properly before this Court, by disputing POLLOCK's assertion that the Court of Appeal's opinion was based in part on a determination that POLLOCK was made aware of the promotion in March 2017. KELSO suggests that the Court of Appeal's reference in this regard simply was part of a hypothetical discussion (Answer Brief at 23). This is not true. The Court of Appeal specifically held:

> Kelso is right. The statute of limitations for failure to promote runs from when an employer **tells** employees they have been given **(or denied**) a promotion. **That date is key,** and not the date when the promoted worker starts the new work.

Ducksworth v. Tri-Modal Distribution Services, 47 Cal.App.5th 532, 546 (2020).

The hypothetical was discussed in a subsequent part of the Opinion. *Id.* 47 Cal.App.5th at 547. And even then, the Court of Appeal's analysis is premised on POLLOCK having been made aware of the promotion in March 2017:

> We can doublecheck this analysis with a hypothetical example. Pollack's allegation is Kelso offered the position to Gonzalez instead of Pollock in retribution for Pollock's refusal to submit to Kelso's demand to make their relationship more sexual. For purposes of analysis, suppose Kelso had been candid about the allegedly harassing decision. In this hypothetical, Kelso would tell Pollock, "Today I am giving this promotion to someone else, even though you deserve it, because you rejected my sexual advances." Such a candid admission would describe grossly illegal discrimination that "occurred" in March 2017 when Kelso denied a benefit she deserved because Kelso wanted sex from her and she would not give it. So that date triggered the one-year clock. **That Kelso allegedly was less than candid would not change anything about this analysis.**
>
> *Ibid.* (emphasis added).

POLLACK raised this error in her Petition for Review to this Court, as part of her proposed Issue 1 (Petition for Review at 1, 10). This Court granted POLLACK's Petition and certified Issue 1 for review as phrased. As such, POLLACK's lack of knowledge argument is properly before this Court.

KELSO's suggestion that POLLACK should have raised the lack of knowledge issue at summary judgment or in the Court of Appeal ignores the state of the record. KELSO never argued that POLLOCK knew or should have known of the events of March 2017, including in the Court of Appeal (AA253:26-254:5, 752:22-753:3). Rather, based on the declaration testimony of Vice President Mullaney and Terminal Manager Severs, KELSO simply maintained that the promotion "occurred" in March 2017, because Gonzalez was offered and accepted the position at that time (AA261:15-23, Fact No. 5; AA762:23-28, Fact No. 5). Lack of knowledge did not become an issue until the Court of Appeal erroneously determine that POLLACK was aware of the promotion in March 2017.

KELSO ignores a reviewing court's role in determining the propriety of summary judgment – *de novo* review. *Samara v. Matar,* 5 Cal.5th 322, 228 (2018). This Court takes:

> [T]he facts from the record that was before the trial court when it ruled on that motion. We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained. We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party.

Hampton v. County of San Diego, 62 Cal.4th 340, 347 (2015); *Hartford Casualty Insurance Company v. Swift Distribution, Inc.,* 59 Cal.4th 277, 286 (2014)(citations omitted).

As set forth in POLLACK's Opening Brief and as the Court of Appeal recognized in this case, the statute of limitations begins to run when the plaintiff is made aware of the promotion (Opening Brief at 21). Given the lack of evidence that POLLACK was aware of the promotion in March 2017, that date cannot trigger the statute of limitations and summary judgment is improper.

Finally, even if POLLOCK is deemed to have waived her lack of knowledge argument, it is of no consequence. Under the *Romano* analysis, POLLOCK's knowledge or lack thereof is not determinative. In *Romano,* the employer notified the employee more than two years in advance of his future termination. Yet this Court held that said notification was of no import, because the discharge did not "occur" until the later date when the employee's termination was implemented. There exists no reason that this rationale should not apply to promotions. The Gonzalez promotion was implemented on May 1, 2017; on that date the statute of limitations began to run.

E. KELSO'S ANALYSIS REGARDING THE AWARD OF COSTS IS FLAWED AND SHOULD BE REJECTED.

KELSO argues that this Court's rationale in *Williams v. Chino Valley Independent Fire District,* 61 Cal.4th 97 (2015) is inapplicable to an award of costs on appeal in that the general costs provision in *Code of Civil Procedure* §1032(b) specifically defers to other statutes, while the cost provision is Rule 8.278 of the *California Rules of Court* does not. KELSO's argument is misplaced.

The proper comparison is between *Government Code* §12965(b) and Rule 8.278.

Government Code §12965(b) permits a trial court discretion to award costs. Rule 8.278 at subsection (a)(5) does likewise: "[I]n the interests of justice, the Court of Appeal may also award or deny costs as it deems proper."

Given the trial court's discretion to award costs to a prevailing defendant in *Government Code* §12965(b), in *Williams,* this Court held that as a matter of public policy that discretion should be limited to frivolous actions, otherwise, *FEHA*'s purpose *"*to encourage persons injured by discrimination to seek judicial relief" would be completely undermined if plaintiffs in non-frivolous actions could suffer the imposition of costs if they lose. *Williams*, *supra*, 61 Cal.4th at 112. This is no reason this Court should not equally apply this public policy to limit the discretion to award costs in Rule 8.278 to frivolous *FEHA* appeals.

KELSO argues that *Government Code* §12965(b) and Rule 8.278 are different in two respects. KELSO suggests that an appellate court's authority to award costs is absolute. KELSO has misread the statute. As noted, Rule 8.278(a)(5) restricts the court's authority to the "interests of justice."

KELSO further claims that Rule 8.278 and § 12965(b) are distinct because §12965(b) specifically provides that a prevailing defendant cannot recover costs, absent a finding that the underlying action is objectively frivolous. KELSO ignores the legislative history of §12965(b). The "frivolous" provision was added to §12965(b) in 2018 after this Court's 2015 *Williams* opinion. Clearly by amending §12965(b), the Legislature intended that the statute reflect this Court's public policy pronouncement.

KELSO suggests that unlike *Williams,* a *FEHA* appellant's rights would not be chilled because "recoverable trial costs are much more expansive than the limited recoverable appellate costs." (Answer Brief at 33). POLLOCK disagrees. Appellate costs can be significant, particularly where an appeal follows a trial on the merits. Regardless, in the case of a lower level employee, like POLLOCK, imposition of even minimal costs can be financially devastating and potentially lead to bankruptcy.

KELSO argues that restricting appellate costs to frivolous appeals will "incentivize" employees to appeal cases lacking in merit (Answer Brief at 33). This argument turns logic on its head. If this Court follows *Williams* here, this new rule would benefit both employers and employees. On the one hand, it will lack the chilling effect of the present rule, because employees will not fear an imposition of costs if they lose on appeal. Employers likewise will be protected in that pursuit of a frivolous appeal will expose the offending appellant to costs.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

III. CONCLUSION

For the forgoing reasons and for the reasons set forth in her Opening Brief, Appellant respectfully requests that this Court reverse the Court of Appeal's opinion that (1) her *quid pro quo claim* is barred by the statute of limitations, and (2) Respondents are entitled to costs.

Respectfully submitted,

LIPELES LAW GROUP, APC

DATED: November 18, 2020

By: /s/ *Kevin A. Lipeles*
Kevin A. Lipeles [SBN 244275]

DATED: November 18, 2020

By: /s/ *Thomas H. Schelly*
Thomas H. Shelly [SBN 217285]

DATED: November 18, 2020

By: /s/ *Julian B. Bellenghi*
Julian B. Bellenghi [SBN 129942]
Attorneys for Appellant
PAMELA POLLOCK

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.520(c)(1) of the *California Rules of Court*, we hereby certify that this Reply Brief On The Merits contains 5020 words. In making this certification, we have relied on the word count of the computer program used to prepare the petition.

DATED: November 18, 2020

By: /s/ *Kevin A. Lipeles*
Kevin A. Lipeles [SBN 244275]
Lipeles Law Group, APC

DATED: November 18, 2020

By: /s/ *Thomas H. Schelly*
Thomas H. Shelly [SBN 217285]
Lipeles Law Group

DATED: November 18, 2020

By: */s/ Julian B. Bellenghi*
Julian B. Bellenghi [SBN 129942]
Lipeles Law Group, APC
Attorneys for Appellant
Pamela Pollock

PROOF OF SERVICE

I, Vicky Daniels, certify and declare that I am over the age of 18 years and not a party to this action and that my place of employment is in the County of Los Angeles, State of California, located at 880 Apollo St., Suite 336, El Segundo, California 90245.

On this date hereon, I served a true copy of the following document(s):

APPELLANT'S REPLY BRIEF ON THE MERITS

☐ by personally delivering it to the person(s) indicated below in the manner as provided by Rule of the California Rules of Civil Procedure; ☐ by transmitting it via facsimile machine to a telephone number listed below and known or represented to me to be the receiving telephone number for the facsimile copy transmission of the parties/persons/firms listed below; ☑ by transmitting it via electronically to the electronic mail address listed below; ☑ by overnight delivery service to be delivered the next day to the parties/persons/firms listed below; ☐ by United States Mail – First Class Postage to the parties/persons/firms listed below:

Daniel K. Gaston, Esq. Gloria G. Medel Larson & Gaston, LLC 200 South Los Robles Ave Suite 530 Pasadena, CA 91101 Daniel.gaston@larsongaston.com gloria.medel@larsongaston.com *Attorneys for Respondents* *Scott's Labor Leasing Co., Inc. and* *Pacific Leasing, Inc.*	Hon. Lia Martin Los Angeles Superior Court 111 N. Hill Street – Dept 16 Los Angeles, CA 90012 *By Overnight mail* California Court of Appeal, Second Appellate District, Division 8 300 South Spring Street Los Angeles, CA 90013-1213 *eservice@capcentral.org*

Jack E. Jimenez, Esq. Lewis Brisbois Bisgaard & Smith, LLP 633 West 5th Street, Suite 4000 Los Angeles, CA 90071 Jack.Jimenez@lewisbrisbois.com *Attorneys for Respondent Michael Kelso* Lann G. McIntyre, Esq. Tracy Forbath, Esq. Lewis Brisbois Bisgaard & Smith, LLP 701 B Street, Suite 1900 San Diego, CA 92101 Lann.McIntyre@lewisbrisbois.com Tracy.Forbath@lewisbrisbois.com *Attorneys for Respondent Michael Kelso*	Karimah Lamar, Esq. Littler 501 West Broadway, Suite 900 San Diego, CA 92101 klamar@littler.com *Attorneys for Defendants Tri-Modal Distribution Services, Inc., Ability Tri-Modal Transportation Services, Inc. and Decoy Freight Systems, Inc.*

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

Executed on November 18, 2020 at El Segundo, California 90245.

/s/ Vicky Daniels
Vicky Daniels

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **DUCKSWORTH v. TRI-MODAL DISTRIBUTION SERVICES**
Case Number: **S262699**
Lower Court Case Number: **B294872**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **kevin@kallaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	Reply-11.18.20

Service Recipients:

Person Served	Email Address	Type	Date / Time
Gloria Medel Larson & Gaston 199462	gloria.medel@larsongaston.com	e-Serve	11/18/2020 3:37:02 PM
Lann Mcintyre Lewis Brisbois Bisgaard & Smith LLP 106067	lann.mcintyre@lewisbrisbois.com	e-Serve	11/18/2020 3:37:02 PM
Kevin Lipeles The Law Office of Kevin A Lipeles 244275	kevin@kallaw.com	e-Serve	11/18/2020 3:37:02 PM
Tracy Forbath Lewis, Brisbois, Bisgaard & Smith LLP 292711	tracy.forbath@lewisbrisbois.com	e-Serve	11/18/2020 3:37:02 PM
Jack Jimenez Lewis Brisbois Bisgaard & Smith 251648	jack.jimenez@lewisbrisbois.com	e-Serve	11/18/2020 3:37:02 PM
Thomas Schelly	thomas@kallaw.com	e-Serve	11/18/2020 3:37:02 PM
California Court of Appeal CCAP-0001	eservice@capcentral.org	e-Serve	11/18/2020 3:37:02 PM
Daniel K. Gaston	Daniel.gaston@larsongaston.com	e-Serve	11/18/2020 3:37:02 PM
Karimah Lamar, Esq. 246862	klamar@littler.com	e-Serve	11/18/2020 3:37:02 PM
Vicky Daniels	vicky@kallaw.com	e-Serve	11/18/2020 3:37:02 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with

TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

11/18/2020

Date

/s/Kevin Lipeles

Signature

Lipeles, Kevin (244275)

Last Name, First Name (PNum)

Lipeles Law Group, APC

Law Firm