No. S218734

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HIROSHI HORIIKE, Plaintiff and Appellant, v. COLDWELL BANKER RESIDENTIAL BROKERAGE COMPANY, a California Corporation, and CHRIS CORTAZZO, an individual, Defendants and Respondents.	B246606 (Los Angeles County Super. Ct. No. SC110477)

PETITIONERS' REPLY BRIEF ON THE MERITS

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INTRODUCTION

Even though the Legislature enacted the subject statutes thirty years ago, the Court of Appeal's opinion is the first published decision to hold that individual salespersons separately representing buyers and sellers are dual agents if from the same brokerage. As the amici supporting review (including the legislation's sponsor) confirmed, the real estate industry has read the statute far differently, and the Court of Appeal's construction, if upheld, would create chaos throughout the industry—chaos that would substantially harm buyers and sellers by stripping them of an exclusive agent while exposing salespersons and brokerages to inevitable liability based upon inherently-conflicting duties.

Horiike argues that none of this matters because, under his reading, one sentence buried in the definitions section of the statutory scheme so unambiguously makes the salespersons dual agents that there is no need to look beyond those few words. But that single sentence in Civil Code section 2079.13, subdivision (b) (section 2079.13(b)), does not support only Horiike's construction, nor can it be read apart from the surrounding text or commercial reality.[1] That sentence focuses on the *salesperson's* relationship with a buyer or seller (not the broker's), and simply means that the salesperson owes: (a) the same fiduciary duties to the salesperson's client that a broker would owe; and (b) the same non-fiduciary duties to the salesperson's non-client (a buyer or seller on the other side) that a broker

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[1] All further statutory references are to the Civil Code unless otherwise indicated.

would owe, with the broker vicariously liable for any breaches. Construed in the light of all the pertinent statutory language, commercial reality, controlling case law when the statutes were enacted, standard agency principles, and public policy, Petitioners' construction of section 2079.13(b) is the more reasonable interpretation.

Horiike distorts the implications of his construction. He claims the seller's fiduciary Cortazzo must be transformed into buyer Horiike's fiduciary to ensure the buyer is protected. But, like any buyer, Horiike already had full recourse for the alleged square-footage misunderstanding based upon *non-fiduciary* remedies against the seller's salesperson Cortazzo and *fiduciary* remedies against Horiike's own salesperson Namba—*remedies he either forsook or the jury rejected.*

Horiike similarly distorts reality by arguing his construction would only slightly modify a seller's salesperson's duties and let salespersons maintain all confidences except facts regarding home value or desirability. But his construction would:

- transform a buyer's exclusive salesperson into the *seller's* agent, forcing the buyer's salesperson to harm the buyer's interests by providing information and counsel to the seller that could prevent a sale or lead to rescission suits and the buyer being sued for damages;
- midstream, compel exclusive salespersons to assume a *non-consensual* yet fiduciary relationship with a complete stranger;

- force each salesperson to disclose to the other side *all* information the other side *would find material to his/her interests*, except for seller's willingness to sell below listing price and buyer's willingness to increase an offer;
- create chaos when multiple buyers or multiple sellers are represented by different salespersons from the same brokerage; and
- compel salespersons to provide *counsel and advice* on myriad matters to parties with conflicting interests, not just home-value-or-desirability disclosures.

Far from being "no big deal," as Horiike suggests, Horiike's construction would wreak havoc on the real estate industry, harming prospective buyers and sellers, not just salespersons and brokerages. Unsurprisingly, no state has adopted the approach Horiike attributes to the California Legislature. Under Petitioners' construction, buyers and sellers retain the protection of an *exclusive* fiduciary-salesperson while *avoiding* any problems associated with dual agency. The Court of Appeal's troubling judgment should be reversed.

DISCUSSION

I. HORIIKE'S "PLAIN MEANING" INTERPRETATION OF SECTION 2079.13(b) IS INSUPPORTABLE IN LIGHT OF THE STATUTORY LANGUAGE, THE STATE OF THE LAW WHEN ENACTED, COMMERCIAL REALITY, AND LEGISLATIVE HISTORY.

Horiike's primary argument is that the plain language of section 2079.13(b) *unambiguously* supports his construction. (Answer Brief on the Merits [ABM] 21-28.) For multiple reasons, his "plain meaning" argument fails.

A. Horiike Oversimplifies The Actual Statutory Language.

Horiike argues that section 2079.13(b) "[o]n its face . . . equates the duties that a salesperson *owes to clients* with the duties owed by the broker for whom the salesperson works." (ABM 22, italics added.) But the statute, on its face, does not use the term "clients," let alone focus on *the broker's* clients. Instead, the statute facially focuses on the *salesperson's* particular relationship with a buyer or seller, "[w]hen an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal . . . ." (§ 2079.13(b).) On its face, the statute focuses on whether the buyer or seller is a client (principal) or non-client (buyer or seller who is not a principal) of the *salesperson*, not the broker.

Had the Legislature intended Horiike's interpretation, it easily could have said, "When a broker owes a duty to a buyer or to a seller in a real

estate transaction, any associate licensee employed by the broker owes the same duties that the broker owes to that buyer or that seller." And, as our opening brief explained, if the Legislature had intended Horiike's construction, then in the context of this case the statute would effectively read that "[w]hen an associate licensee owes a *non*-fiduciary duty to the buyer or seller who is not a principal, *that non*-fiduciary duty is *equivalent* to the *fiduciary* duty owed by the broker to that party." (Petitioners' Opening Brief on the Merits ["POBM"] 29.) Since the word "equivalent" means "equal," Horiike's construction is an extraordinarily strained and awkward way of saying that the salesperson's non-fiduciary duty is *transformed* into a fiduciary duty. Horiike nonetheless contends that intent is crystal clear.

Moreover, Horiike's construction is fatally undermined by the context of the single sentence he relies on. (POBM 30-34.) His construction is plainly incompatible with the Legislature's specification that associate licensees are *not subagents* of brokers but rather "perform as agents of the agent." (§ 2079.13, subds. (b), (p); POBM 31 & fn. 8, 33.) This language necessarily invokes section 2022's mandate that "[a] mere agent of an agent is not responsible as such to the principal of the latter," which means a salesperson (unlike a subagent) does *not* owe duties as such *to the broker's principals*. (§§ 2022, 2350; *Kavanagh v. Wade* (1940) 42 Cal.App.2d 92, 97; POBM 32-33.) Thus, a salesperson's duties to a buyer or seller must arise from the salesperson's *own relationship* (or non-

relationship) with the buyer or seller—not the broker's relationship with *its* principals.

Horiike's construction is also incompatible with other statutory language. In arguing the Legislature plainly intended to transform exclusive salespersons *mid-stream* into dual agents, Horiike ignores the Legislature's *express* goal of ensuring buyers and sellers know *at the outset* of the agency relationship the type of agency involved. (See § 2079.16 [statutory disclosure form: "[w]hen *you enter into* a discussion with a real estate agent regarding a real estate transaction, you should *from the outset* understand what type of agency relationship or representation you wish to have with the agent in the transaction" (italics added)]; § 2079.14, subd. (a) ["[t]he listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement"].)

Finally, as the opening brief explained, the definition statute specifies that a "dual agent" means a broker acting "either directly or through *an* associate licensee," indicating that what the Legislature had in mind when drafting this Legislation was the situation where only *one* associate licensee represented the buyer and seller. (See § 2079.13, subd. (e) [formerly subdivision (d)], italics added; POBM 34.) Horiike argues Petitioners rely on the "wrong provision"; he claims section 2079.16 "defines the obligations of an 'agent representing both seller and buyer'" and it states that "'[a] real estate agent, either acting directly or through *one or more associate licensees*, can legally be the agent of both the Seller and Buyer . . . .'" (ABM 27.) But section 2079.16 merely delineates the

disclosure form—it does not "define" terms or duties. Section 2079.13, subdivision (e), defines the term "dual agent" for "Sections 2079.14 to 2079.24, inclusive," *which includes section 2079.16.* (§ 2079.13, first sentence.)

Moreover, the statutory form focuses on disclosing that *the broker* can be a dual agent, not the status of salespersons. (POBM 33-34.) The buried reference to "one or more associate licensees" in section 2079.16 comports with pre-1986 case law recognizing that a dual agency exists when two salespersons from the same brokerage *team* together as listing agents and agree to also represent the buyer. (See *Jorgensen v. Beach 'N' Bay Realty, Inc.* (1981) 125 Cal.App.3d 155, 158.) It does not mean separate salespersons *exclusively* on opposite sides are dual agents.

Horiike's argument that section 2079.13(b) unambiguously communicates the Legislature's intent to transform exclusive salespersons of a buyer or seller into a fiduciary of the other side is nonsense. Petitioners' construction is by far the more reasonable interpretation.

B. Pre-1986 Case Law Supports Petitioners' Construction That A Salesperson's Duties Rest On The Salesperson's Relationship With The Buyer Or Seller, Not The Broker's Relationship.

The legislative history unequivocally discloses that the 1986 Act at issue was merely a "disclosure" statute designed to enunciate *existing* law about agency relationships, not to create new liabilities. (RJN 45, 53-54,

82, 86; POBM 55; § 2079.24.) Thus, the law existing at the time of enactment best reflects legislative intent.

Horiike does not even attempt to claim that any pre-1986 case held or even intimated that salespersons exclusively representing a buyer or seller become dual agents if a salesperson from the same brokerage ends up on the other side. None exists.

Horiike instead argues that section 2079.13(b) must be read as focusing solely on the *broker's* clients, not the salesperson's relationship with the buyer or seller, because salespersons cannot contract in their own name, must act as agents of brokers, and can only receive commissions through a broker. (ABM 22-25.) He claims this means that duties must flow downward from the broker because that is the only fiduciary relationship. (*Ibid.*)

Authority contemporaneous with the statute's 1986 enactment is to the contrary. *Montoya v. McLeod* (1985) 176 Cal.App.3d 57 is instructive. There, plaintiffs sued a real estate salesperson for breach of fiduciary duty in connection with soliciting a loan on behalf of the broker for whom the salesperson worked. (*Id.* at pp. 62-63.) The salesperson claimed she was a mere employee of the broker, so only the broker could owe plaintiff a fiduciary duty. (*Id.* at pp. 63-64.) Disagreeing, the Court of Appeal held that (a) an agency relationship existed between the plaintiffs and the salesperson (not just with the broker), making the salesperson liable for breach of *her* fiduciary duty; and (b) the salesperson was the agent of the broker and thus her acts were, in legal effect, the broker's acts: "While [the

salesperson-defendant] was paid by [her employing broker-principal] and had no written agency agreement with the [plaintiffs], *her conduct nonetheless established an agency relationship*." (*Id.* at p. 64, italics added; see *id.* at p. 61 [holding the salesperson breached "*her* fiduciary relationship" with plaintiffs; italics added].)

Other pre-1986 law likewise indicates that whenever a salesperson agrees to represent a buyer or seller, an agency relationship *impliedly* arises regardless whether any enforceable contract with the broker might exist. (E.g., *Vargas v. Ruggiero* (1961) 197 Cal.App.2d 709, 715 ["An agency relationship may be informally created. No particular words are necessary, nor need there be consideration. All that is required is conduct by each party manifesting acceptance of a relationship whereby one of them is to perform work for the other under the latter's direction." (internal quotation marks and citations omitted)]; *Lombardo v. Santa Monica Young Men's Christian Assn.* (1985) 169 Cal.App.3d 529, 541 [agency "results from the act of one person, the principal, who authorizes another, the agent, to conduct one or more transactions with one or more third persons and to exercise a degree of discretion in effecting the principal's purpose"]; § 2295 ["An agent is one who represents another, called the principal, in dealings with third persons"], § 2308 [consideration not necessary]; see also 2 Miller & Starr, Cal. Real Estate (3d ed. 2014) § 3.6, pp. 3-20–3-21 ["The creation of an agency need not be by express agreement. No special formalities are required for the creation of the agency, and it may be implied from the conduct of the parties where the facts and circumstances show that the

parties intended that one person is to represent another in communications with third persons"].)

Thus, when the California Association of Realtors® (CAR) sponsored and the Legislature enacted the 1986 Act, it was with the understanding that agency relationships in the real estate industry are largely created by the conduct between salespersons and buyer/sellers, not by contract. The law recognized that even though salespersons cannot contract directly and must receive commissions through their broker, an agency relationship exists between salespersons and the buyer/seller who retains them and the broker is vicariously liable for the salesperson's acts. The Legislature knew agency relationships may be "implied from the acts of the parties." (RJN 82; accord RJN 81.)

Horiike tries to confuse matters by claiming *Montoya* held a salesperson "was subject to the same fiduciary duty that her *broker* owed to clients" and by emphasizing language from another one of Petitioners' cases that a salesperson """*can act only for, on behalf of, and in place of the broker* under whom he is licensed . . . ."""" (ABM 49-50, italics added.) But *Montoya* did not say the salesperson owed fiduciary duties to *any* clients of *the broker*. The court, rather, focused solely on the *salesperson's* client—the fiduciary relationship between the salesperson herself and the buyer or seller who retained *her*. Similarly, that a salesperson is an agent of the broker does not mean that the salesperson owes fiduciary duties to any party to the sale other than the *salesperson's* actual client.

Petitioners' construction also comports with commercial reality. Buyers or sellers seeking a real estate agent choose an *individual*, either a licensed broker or a broker's salesperson. Here, the seller chose Cortazzo because he was the number one Malibu sales agent, and Horiike chose Namba because they speak the same language and had a longstanding relationship. Since Cortazzo only served as the seller's agent, and Horiike was not Cortazzo's client, Cortazzo only owed Horiike *non-fiduciary* duties.

The disclosure forms here tracked that understanding—Cortazzo always signed as associate licensee of the "listing agent" and Namba always signed as associate licensee of the "selling agent"; neither signed as a *dual* agent. (1AA 154-158.) Properly construed, section 2079.13(b) supports that real-world view.

C. The Legislative History Does Not Support Horiike's Construction.

Horiike concedes that the 1986 Act's legislative history does not discuss salespersons from the same firm ending up on opposite sides. (ABM 52.) But he claims neither does it "discount that possibility." (*Ibid.*) Not so. If CAR, the realtor association that sponsored the statute, and the Legislature had intended to address this important issue, they certainly would have said something about it.

Horiike couches the 1986 Act as part of a "trend in the law toward providing greater protections for buyers . . . ." (ABM 29.) As explained in Section III.B below, Horiike's construction would actually *reverse* that trend. Regardless, the legislative history makes clear that CAR sponsored

the Legislation to help reduce rescission lawsuits and lost commissions resulting from the fact that most buyers and sellers did not realize the then-existing Multiple Listing Service (MLS) agreements made the broker working with a buyer the subagent of the listing agent (and thus the seller's agent) and the law prohibits non-consensual dual agencies. (POBM 55-58; Olazabal, *Redefining Realtor Relationships and Responsibilities: The Failure of State Regulatory Responses* (2003) Harv. J. on Legis. 65, 71-74, 112, fn 250.) The 1986 Act did not change those MLS requirements nor eliminate problems with the MLS-created dual agencies—those changes occurred decades *later*. (POBM 55-58; Olazabal, *supra*, 40 Harv. J. on Legis. at pp. 74-77.) And, while Horiike emphasizes that *Easton v. Strassburger* (1984) 152 Cal.App.3d 90 and section 2079 were law by 1986 (ABM 31-32), the Act's disclosure form simply discloses that *non-fiduciary* law to consumers; it does not create *new* liabilities (§ 2079.16; POBM 55-58).

Horiike argues the Legislature was not solely concerned about disclosing *broker's* agency relationships, because one bill report uses the term "real estate licensees." (ABM 51.) But that report seemingly uses the term to mean *the broker* (the person/entity with the broker's *license*); it does not mention "associate licensees" or "salespersons." (RJN 81-82.) Moreover, the report confirms that the problem motivating the disclosure statutes was "the manner in which real property is marketed, i.e., the use of multiple listing services which authorize subagency," which meant that "frequently and unknowingly to a buyer or seller, both the listing broker and

the selling agent agent [sic] may act solely as the agent of a seller or in other instances, the listing broker may act as a dual agent." (RJN 82.) The Act's focus was the *subagency* problem *at the broker level*, not what might happen when a seller and buyer each retained separate exclusive salespersons from the same brokerage. (See also RJN 54 [sponsor CAR: the bill will ensure buyer and sellers will know "the agency relationship of any and all brokers in the transaction"].)

D. The California Association Of Realtors® Would Not Have Sponsored Horiike's Version Of The Legislation.

As CAR explained in its amicus letter supporting review, CAR would never have sponsored legislation consistent with Horiike's construction, with all the ensuing problems it would create for the industry. Undaunted, Horiike asserts that CAR "anticipated" that construction because it stated in a sponsor letter that the legislation "'[c]larifies that salespersons (and other associate licensees) act as agents of brokers who in turn are agents of buyers or sellers and owe equivalent duties to those of the broker who employ them.'" (ABM 49, quoting RJN 53, emphasis omitted.)

But that language—with its use of "equivalent" mirroring the statute—must be construed in the context of pre-1986 case law and CAR's purpose of protecting realtors, not increasing their exposure. The language comports with pre-1986 case law recognizing that salespersons are not mere employees but rather are agents of their client and of their broker and owe the common law and statutory duties of real estate agents. (See § I.B, *ante*.) Further, a buyer and seller each choosing an exclusive salesperson from the

same brokerage *was merely a hypothetical possibility in 1986,* given that the then-existing MLS subagency requirements precluded buyers from having exclusive agents. There is no reason whatsoever to believe that CAR or the Legislature intended exclusive salespersons be deemed dual agents just because they worked for the same brokerage.[2]

II. ANY AMBIGUITY COMPELS ADOPTION OF PETITIONERS' CONSTRUCTION.

The opening brief explained that Petitioners' construction of section 2079.13(b) must prevail because Horiike's construction diverges from standard agency law in two respects—it imputes a principal's duties downward to the agent and it imposes non-consensual agency—and the Legislature would have used clearer language had it intended such dramatic departures. (POBM 35-38.)

Horiike largely ignores the issue. He claims he merely is pursuing a straightforward respondeat superior claim because he seeks to hold

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[2] Horiike claims two treatises endorse his construction. (ABM 24.) The Miller & Starr citation, however, is to an *October 2014* agency-chapter replacement that added substantial language based on the Court of Appeal's *Horiike* holding but then states the issue is on review before this Court. (See 2 Miller & Starr, Cal. Real Estate, *supra*, at § 3:23, p. 3-93, fn. 28, § 3:27, p. 3-108, fn. 10, § 3:36, p. 3-159, fn. 18.) The prior version only described the *broker* as a dual agent, not the salespersons. (POBM 48 & fn. 12.) Although the other treatise indicates the salespersons are dual fiduciaries, the only authority it cites does not support that proposition. (See Greenwald & Bank, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2014) ¶ 2:139, p. 2-32.12, citing *Fragale v. Faulkner* (2003) 110 Cal.App.4th 229, 235, 239 [case involving *one* salesperson representing both parties].)

Coldwell liable for Cortazzo's breaches. (ABM 26.) But the question is, Cortazzo's breaches of *what duties*? Under standard agency law, Cortazzo had no agency relationship with Horiike and therefore only owed Horiike *non*-fiduciary duties. So the only way Horiike could sue Cortazzo for breach of fiduciary duty was to impute to Cortazzo any fiduciary duty that Namba or Coldwell might owe.

Horiike cites no case where a court has imputed a principal's duties downward to the principal's agent. And in the only case that has addressed this precise issue, the New Mexico Supreme Court *applied standard agency law* to conclude that salespersons were *not* bound by the broker's fiduciary relationships. (See POBM 51-52, discussing *Moser v. Bertram* (1993) 115 N.M. 766 [858 P.2d 853].) Horiike simply ignores *Moser*. Nor does he explain how the Legislature could have intended to saddle Cortazzo with fiduciary duties that Coldwell or Namba owed Horiike when it expressly stated that salespersons *are not subagents* of their brokers (and therefore do not owe duties to their principal's principals).[3]

Horiike sidesteps the fact that his construction imposes *non-consensual* dual agency by claiming an agent's duties do not always rest on

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[3] Not only does *no case* support Horiike's view, *no other state legislature* has adopted the view that Horiike attributes to the California Legislature. (POBM 49-50.) Horiike tries to brush aside the thirty-two states *expressly* recognizing that salespersons from the same brokerage who separately represent a buyer or seller are *exclusive* agents by claiming, "[t]hese states presumably adopted this legislation because *without* it, salespeople, like the brokers for whom they work, would owe fiduciary duties to both sides." (ABM 52, italics added.) But the governing presumption is that statutes codify the common law. (*Dry Creek Valley Assn., Inc. v. Board of Supervisors* (1977) 67 Cal.App.3d 839, 844.)

consent. (ABM 41.) But his examples involve *consensual* agencies *implied by conduct*, such as a listing agent receiving the buyer's deposit to place in escrow. (ABM 41-43.) The 1986 Act's legislative history confirms the Legislature understood "[a]gency is a consensual relationship . . . ." (RJN 81, 82.) Pre-1986 law *uniformly* embraced that view: "'Agency is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.' (Citation.) 'The principal *must* in some manner indicate that the agent is to act for him, and the agent *must* act or agree to act on his behalf and subject to his control.'" (*Edwards v. Freeman* (1949) 34 Cal.2d 589, 592, citations omitted, italics added.)

Nothing indicates the Legislature intended to depart from this settled rule. Moreover, Horiike's argument flouts the Act's central purpose—ensuring disclosure of brokers' agency relationships because California law prohibits dual agencies *without the parties' express consent.* (POBM 57-58.)

Horiike alternatively argues that a salesperson's duties under his construction *do* arise from consent because "[t]he duties arise from the contract voluntarily entered into by the broker and the client." (ABM 43.) Not only does the assertion assume Horiike's conclusion, it ignores reality. The seller chose *Cortazzo* as listing agent because of his Malibu reputation; Horiike chose *Namba* as buyer agent because of their common language and longstanding relationship. The seller did not choose Namba as an agent (an agency that would make the seller vicariously liable for Namba's

conduct as her principal), nor did Horiike so choose Cortazzo. Nor did either salesperson agree to represent a complete stranger on the other side.

Horiike's construction results in *forced* dual agency based upon imputing the broker's duties to *its* principals *downward* to the broker's salesperson, contrary to settled agency law. If this was truly the Legislature's intent, it would have used clearer language. (POBM 35-36.)

III. PUBLIC POLICY COMPELS ADOPTION OF PETITIONERS' CONSTRUCTION.

Petitioners' opening brief explained that Petitioners' construction of section 2079.13(b) should prevail because it must be presumed the Legislature intended practical and workable results, not absurdity and mischief. (POBM 38-40.) Horiike responds with obfuscation.

A. There Is No Public-Policy Need To Transform Cortazzo Into Horiike's Fiduciary.

Horiike suggests that sellers' agents like Cortazzo must be transformed into buyers' fiduciaries to provide a remedy for the alleged square-footage misunderstanding. Wrong. As this case illustrates, Horiike already had adequate *non-fiduciary* remedies against seller's salesperson Cortazzo, and *fiduciary* remedies against Horiike's own salesperson Namba, that would exist in all single broker cases—remedies he either forsook or the jury rejected.

1. Horiike was fully protected by *non-fiduciary* remedies against Cortazzo that the jury rejected.

A salesperson exclusively representing a seller owes the buyer a *non-fiduciary* duty not to make misrepresentations. (*Furla v. Jon Douglas Co.* (1998) 65 Cal.App.4th 1069, 1077.) Buyers can also sue the seller's salesperson for negligent non-disclosure, based upon *non-fiduciary* duties to (a) act honestly, fairly, in good faith, and with reasonable care toward the buyer; and (b) disclose to the buyer "all facts materially affecting the value or desirability of the property that an investigation [of the property] would reveal." (§ 2079, subd. (a); *Easton v. Strassburger*, *supra*, 152 Cal.App.3d 90 [codified by § 2079]; *Holmes v. Summer* (2010) 188 Cal.App.4th 1510, 1518-1519, 1523-1528; *Cooper v. Jevne* (1976) 56 Cal.App.3d 860, 866.) These non-fiduciary duties require accurate house-size disclosures. (*Furla, supra*, 65 Cal.App.4th at pp. 1077-1079.)

In light of these non-fiduciary duties, the defense and its expert acknowledged to the jury that Cortazzo owed Horiike a duty to accurately explain the meaning of his statement that there was 15,000 square feet of "living area." (6RT 2509, 2512; 11RT 3909-3910, 3918-3919.) Cortazzo explained he *did* accurately tell Horiike, Namba, and Yokoi on the one day they visited the home and met Cortazzo: (a) that the "living area" figure included the day-lighted first floor, the garage space and all covered terraces; (b) how and why this differed from the square-footage listings in the public record; and (c) his understanding of Malibu's square-footage ordinances. (5RT 2259-2260; 6RT 2465-2466.)

Also, although Horiike concedes he sued after noticing figures on the building permit years later (ABM 16), it is undisputed that Cortazzo gave that permit to Namba *during escrow* and Horiike acknowledged in writing that he received it. (5RT 2289; 6RT 2577; 7RT 2743; 8RT 3156; 9RT 3348, 3398.)[4] After Namba received the permit, she contacted Cortazzo about the figures and Cortazzo again explained why they differed from the "living area" figure. (5RT 2273, 2290-2292.)

Horiike's brief claims Cortazzo lacked a reasonable basis for stating the house had 15,000 square feet of living area. (ABM 6-7.) But that ship has sailed: The jury expressly found Cortazzo "honestly believed" and "*had reasonable grounds* for believing" the representation was true, and also that he did not knowingly "fail to disclose an important or material fact that Hiroshi Horiike did not know and could not reasonably have discovered." (2AA 235-236, italics added.) Horiike's brief is suffused with re-argument of points the jury rejected:

- It argues Cortazzo "had information from two public sources" that the home "had less than 10,000 square feet of living area." (ABM 6.) But as was true of all pre-2005-built Malibu homes, the building permit facially did not purport to list either the home's total size or its "living area"; e.g., the entire bottom floor/basement—daylighted to the open air and always regarded

[4] A seller or seller's salesperson is not liable to the buyer for nondisclosure of facts that "are known to or within the diligent attention and observation of the buyer or prospective buyer." (§ 2079.5; *Furla*, *supra*, 65 Cal.App.4th at p. 1077.)

as living area—was omitted from the 1998 permit. (See 1AA 150; 4RT 1984-1985; 5RT 2135-2136; 8RT 3080-3086; 10RT 3656, 3702; ABM 8-9.) And plaintiff's own expert admitted that the tax assessor "public record"—which erroneously described the three-story home as one story, with no pool, and only a carport—was "off by several thousand square feet." (1AA 165; 5RT 2297-2298; 10RT 3698-3701, 3714.)

- It argues Cortazzo had "no documentation" to support the home owner's representation that the home had 15,000 square feet of living area (ABM 6), ignoring the architect's confirmation of that figure by letter (1AA 174; 5RT 2231, 2234).
- It argues Cortazzo "stated on the MLS form that the property had approximately '15,000 square feet of living area'" (ABM 6), ignoring that this initial listing said "per owner" and Namba and Horiike never saw it; the only listing they saw listed square footage as "0" and stated this was not guaranteed (1AA 167; 2AA 227; 2RT 1225; 5RT 2213; 9RT 3306, 3373-3378).
- It laments Horiike was not provided handwritten admonitions regarding the need to investigate home size as an earlier prospective buyer had received (ABM 8, 15), ignoring that Horiike was given the equivalent admonition in writing *three* times but Horiike admitted he never bothered reading *any* documents (2AA 213, 217 ¶2, 227; 6RT 2565-67, 2570-71; 7RT 2745-2748, 2752-2753, 2816-2821; 9RT 3377-3378, 3390).

Horiike's reliance on arguments the jury already rejected for good reason confirms Petitioners' point: Horiike already had a sufficient *non-fiduciary* remedy against Cortazzo for purportedly mis-describing square footage. The Court of Appeal missed this point when it stated a trier of fact could conclude that although Cortazzo did not intentionally conceal any information he "breached his fiduciary duty by failing *to communicate all of the material information he knew about the square footage*." (Opn. 10, italics added.) Cortazzo already owed a *non-fiduciary duty* to communicate such information. Had the jury disbelieved that evidence, it could have held Cortazzo liable for negligent misrepresentation—but it rejected Horiike's claim. And, to the extent any nondisclosure fell outside Horiike's negligent misrepresentation claim, Horiike forsook his non-fiduciary remedy by suing only for misrepresentation and *intentional* concealment, not for negligent nondisclosure or section 2079 violations.

There is no public-policy need to wreak industry-wide havoc by transforming Cortazzo into Horiike's fiduciary.

2. Horiike was fully protected by *fiduciary* remedies against Namba but chose not to sue her.

Horiike also could have sued his own agent Namba for the alleged square-footage misunderstanding, for breach of *fiduciary* duty (with Coldwell vicariously liable). A buyer's agent owes the buyer a *fiduciary* duty to investigate and research all facts that might affect the buyer's decision, including reviewing public records, and must provide the buyer all reasonably obtainable material information. (*Field v. Century 21 Klowden-*

Forness Realty (1998) 63 Cal.App.4th 18, 22-25; *Michel v. Moore & Associates, Inc.* (2007) 156 Cal.App.4th 756, 762-763.) This includes, when transmitting information from the seller's salesperson, the fiduciary duty to *verify* the information's accuracy or explain it is unverified. (*Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 562-563 [buyer's agent failed to tell buyer he had not verified acreage-and-boundary information].)

Namba conceded at trial she knew real estate agents do not measure or guarantee square footage, and that she assumed (correctly) that Cortazzo heard his square-footage figure from the owner or architect. (9RT 3371, 3378, 3384-3385.) Horiike, however, chose *not* to sue Namba, and he stipulated that the jury could *not* hold Coldwell Banker liable for Namba's conduct. (2RT 1248-1249; POBM 13.)

Horiike's brief confirms the obvious: Horiike's proper *fiduciary* recourse lay *against Namba*, not Cortazzo. Although Horiike (erroneously) claims the building permit and tax-assessor "public record" undermined Cortazzo's square-footage statements, Namba (and Horiike's vice president Yokoi) had the permit during escrow, and the tax-assessor public record was a mouse-click away. (8RT 3132-3133; 9RT 3348, 3376-3377, 3398, 3488.) Horiike's brief concedes Horiike never bothered reading any documents "[b]ecause he trusted *Namba*" (ABM 13, italics added), claims *Namba* never asked Horiike "to review the permit" and never "alerted him to the fact that the home might be smaller than the advertised 15,000 square feet of living area" (ABM 14), and claims Yokoi returned Horiike's signed

document-receipt acknowledgments to *Namba* (which Horiike never read) with the statement "'[w]e understand that each report which you received is all right in its content'" (ABM 14).

No public-policy reason exists to revolutionize the law so that Horiike can end-run his decision not to sue his true fiduciary (Namba) by transforming the seller's salesperson Cortazzo—someone who did not speak Horiike's language and who Horiike admitted he met only once and "had nothing to do with" (7RT 2823)—into Horiike's fiduciary.

B. Horiike's Construction Harms The Interests Of Buyers, Not Just Sellers.

Horiike claims his construction "is consistent with the trend in the law toward providing greater protections for buyers of residential real estate." (ABM 29.) No, his construction would *reverse* that trend.

Horiike focuses exclusively on how his construction would purportedly impact "salespeople working *with sellers*." (ABM 4, italics added; see ABM 2, 32, 34, 44.) But his construction equally transforms the *buyer's* exclusive salesperson into *the seller's* fiduciary. Rather than affording the buyer "greater protection" (ABM 29), the construction would severely harm buyers by stripping them of an exclusive agent. The buyer's salesperson would face a Catch-22. Either: (a) disclose information about the buyer and provide counsel to the seller that might cause the buyer to lose the sale; or (b) refuse to provide information and counsel to the seller, which may allow the seller to rescind the sale and/or sue the buyer and its salesperson for damages. Either route harms *the buyer's* interests.

Case law involving one salesperson who represented both sides proves the point. (See *Jorgensen*, *supra*, 125 Cal.App.3d at p. 160 [dual agent liable to seller for breach of fiduciary duty for failing to disclose that buyer intended to resell home]; *Alhino v. Starr* (1980) 112 Cal.App.3d 158, 165-166, 170-172, 179 [dual-agent salesperson liable to seller for breach of fiduciary duty for failing to disclose that unsecured promissory note used to pay balance lacked customary pro-seller clauses; and buyer was borrowing down payment—even though salesperson did not disclose because he thought he was buyer's exclusive agent]; *Wilson v. Lewis* (1980) 106 Cal.App.3d 802, 806-809 [seller entitled to rescind sale agreement and dual-agent salesperson liable for seller's attorney's fees for breach of fiduciary duty, where salesperson failed to disclose material information regarding buyer's deposit check].)

Under Horiike's construction, sellers could prosecute fiduciary-duty lawsuits against the buyer's salesperson and the buyer (vicariously as principal) merely because the seller's separate salesperson was from the same brokerage. This would *reverse* progress by buyers. As Horiike acknowledges, the biggest past problem for buyers (including when the 1986 bill was passed) was that MLS subagency agreements made brokers working with buyers the seller's agent, unbeknownst to buyers. (ABM 29-33.) That practice was later changed, allowing buyers to have exclusive agents. (*Ibid.*) But under Horiike's construction, buyers who choose an exclusive agent would, once again, be blind-sided by having that salesperson deemed an agent *for the seller*—this time not because of MLS

agreements but simply because the seller's salesperson was from the same brokerage. Horiike's construction would inject into real estate transactions the type of confusion over agent loyalties that the 1986 Act was intended to reduce.

C. Horiike's Construction Creates Chaos In Multiple-Buyer And Multiple-Seller Contexts.

Under Horiike's top-down duty approach, all salespersons would owe a *fiduciary* duty to *any* individual who retains a different salesperson from the same brokerage—which for large brokerages means thousands of strangers. *Any* time those salespersons crossed paths, chaos would result.

So, if different salespersons from the same brokerage represent different *buyers*, each salesperson becomes exposed to a fiduciary-breach claim if the separate representation of one buyer impacts another buyer's interests—such as making an offer on a home another buyer likes. Similar liability-exposure would result when salespersons from the same brokerage represent different *sellers* with competitive listings. Acts furthering the sale of one property could be deemed a fiduciary-breach to another seller. The Legislature could not have intended such nightmares—nightmares Horiike ignores.

D. Horiike's Construction Would Require Salespersons To Disclose Client Confidences And Other Injurious Information, Even If Unrelated To The Property's Value Or Desirability.

As the opening brief explained, the mid-stream transformation into dual agents would harm buyers and sellers, as each salesperson would have to disclose *any* information *each* principal might consider material, except for seller's willingness to take below listed price and buyer's willingness to pay more than an offer. (POBM 40-44.) Horiike downplays the impact by arguing dual agents need only disclose information affecting "the value or desirability of the property" and therefore salespersons "would *not* have to disclose the type of confidential information" identified in Petitioners' brief. (ABM 38-39, original italics.) Horiike misconstrues California law.

Under settled California law, "[a] fiduciary must tell its principal of *all* information it possesses that is material *to the principal's interests*" (*Michel, supra,* 156 Cal.App.4th at p. 762, italics added)—i.e., "all facts that might affect the principal's willingness to enter into or complete a transaction." (*Roberts v. Lomanto* (2003) 112 Cal.App.4th 1553, 1567). Thus, a *dual* agent must research and disclose to the buyer *and* seller *all* information that might affect their decision and what terms to propose or accept. (*Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 414-415; *Jorgensen, supra,* 125 Cal.App.3d at pp. 159-160; *Alhino, supra,* 112 Cal.App.3d at p. 169; *Wilson, supra,* 106 Cal.App.3d at p. 809.)

All means *all*. The disclosure duty is *not*, as Horiike claims, limited to information regarding a property's value or desirability. (See, e.g., *Jorgensen*, *supra*, 125 Cal.App.3d at p. 160 [liability for failure to disclose that buyer intended to resell home]; 2 Miller & Starr, *supra*, § 3:29, p. 3-125 ["An agent owes a duty to disclose *all* material facts to the principal, and when the agent knows confidential information regarding one principal that is information material to the second principal, *there is no common law protection against the duty to disclose this information to the second principal*" (first italics in original, second added)].)

The *only* disclosure exception is section 2079.21's limited statutory carve-out of disclosure "that the seller is willing to sell the property at a price less than the listing price" and "that the buyer is willing to pay a price greater than the offering price . . . ." A dual agent's common law duty to disclose confidential or other sensitive information otherwise remains in full effect: "This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price." (§ 2079.21.)

In arguing dual agents need only disclose "value or desirability of the property" information, Horiike relies entirely on a Miller & Starr excerpt. (ABM 38-39, quoting 2 Miller & Starr, Cal. Real Estate, *supra*, at § 3:29, pp. 3-125–3-126.) But that excerpt only addresses a *possible* interpretation of section 2079.16's disclosure form—an interpretation that Miller & Starr itself labels "confusing and ambiguous" and contrary to the rule that a dual agent "must disclose *all* material facts to each principal" except for section

2079.21's price carve-out. (2 Miller & Starr, Cal. Real Estate, *supra*, at § 3:29, p. 3-126, original italics.)

In any event, the issue is a red herring. First, the statutory disclosure form merely recites *already-existing* law, it does not *create* law. (POBM 55-58.) Second, the interpretation that Miller & Starr labels "confusing and ambiguous" rests on the assumption that the disclosure form "makes confusing statements that *the dual agent* 'is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.'" (2 Miller & Starr, Cal. Real Estate, *supra*, at § 3.29, p. 3-123, italics added.) *But the form does not actually say that.*

The form does contain language about an agent not being "obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above." But that language appears solely in the form sections that describe the duties of an *exclusive* "Seller's agent" and an *exclusive* "Buyer's agent," *not* the duties of a *dual* agent. (See § 2079.16.) The language appears *solely* in conjunction with statements that an exclusive seller's or buyer's agent must disclose all known facts "materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties." (*Ibid.*) That correctly recites California *non-fiduciary* law.[5]

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[5] Agents can reveal otherwise confidential information to protect a (continued...)

In contrast to the "Seller's agent" and "Buyer's agent" sections, the form's dual-agency section lacks the "not obligated to reveal" language. It instead correctly recites the common law that a dual agent owes both the buyer and seller "[a] fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer." (§ 2079.16.) The only stated limitation on those dual (inherently conflicting) duties is a recitation of section 2079.21's limited carve-out against having to "disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered." (*Ibid.*)

Thus, as Miller & Starr recognizes, properly construed, "[o]ther than price, [section 2079.16] seems to recognize a common law duty of a dual agent to disclose material information to one principal that was received as confidential information from the other principal." (2 Miller & Starr, Cal. Real Estate, *supra*, at § 3:28, p. 3-123, fn. 75.) Miller & Starr repeatedly acknowledges that California law requires dual agents to disclose *all* confidential information (other than section 2079.21's price carve-out) that might affect the other principal's decision, *not just facts regarding a home's desirability or value*. (*Id.* at § 3:27, p. 3-108 ["When one party confides in the dual agent, and the confidential information *does not relate to price*, the dual agent *must disclose* this fact to the other principal if it is material to the

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[5] (...continued)
third party's superior interest, such as the disclosures required by section 2079. (*Holmes*, *supra*, 188 Cal.App.4th at pp. 1524-1526; Rest.3d Agency, § 805, com. c, p. 317.) In the dual-agency context, however, the agent owes each co-principal an *equal* fiduciary interest.

decision of the other principal to buy or sell and to the price and terms of the transaction" (italics added)]; *ibid.* ["An agent who represents *both principals* must make a full and complete disclosure of all material facts to *both* parties regarding any matter that would affect *either* principal's decision to buy, and the price and terms of such purchase, **even though the facts relate to confidential information of the other party**" (original italics, bold added)].)

So, contrary to the theme of Horiike's brief, Horiike's construction *would* require each salesperson (transformed mid-stream into dual agents) to disclose the type of previously-imparted sensitive information outlined in Petitioners' opening brief. (POBM 42-43.) This would put salespersons in a "no-win" situation where they breach duties no matter what they do. (2 Miller & Starr, Cal. Real Estate, *supra*, at § 3:27, p. 3-108 [dual agent complying with duty to disclose non-price confidential information "to one party probably will breach fiduciary duties to the other"], p. 3-109 [disclosing "facts that might induce a seller to demand a higher price or more favorable terms" would conflict with the "duty to obtain the lowest price and most favorable terms for the buyer"]; *id.* at § 3:28, p. 3-124, fn. 76 [noting Catch-22 re confidential information].)

Horiike suggests his construction is no big deal because prospective buyers and sellers are "not like opposing parties in a lawsuit" and they "have a mutual interest in reaching agreement on a fair market price." (ABM 38.) But their interests typically conflict: "The duty of a [real estate] licensee when acting as the agent of the seller is to negotiate for the

sale of the property at the highest price and for the best terms for the seller. The duty of a licensee when acting as the agent for the buyer is to obtain the lowest price and a purchase of the property for the best terms for the buyer. *These duties are, almost, by definition, completely contradictory.*" (2 Miller & Starr, Cal. Real Estate, *supra*, at § 3:27, pp. 3-106–3-107, italics added.)

E. Horiike Ignores A Fiduciary's Duty To Provide Advice And Counsel.

Horiike further ignores that the public-policy imbroglio is not just about forced factual disclosures. A fiduciary also owes a client the duty to *research and provide counsel* on all matters relevant to the transaction, including endless matters that do not involve a property's value or desirability, such as "an explanation of the security for a loan, advice regarding the necessity for obtaining a title search before purchasing the property, verification of the economic information provided by the seller, advice regarding the effect of the amount of commission that can be charged depending on the type of the loan, the true value of the property to be received by the principal in an exchange, the contents and ramifications of the financing documents and title insurance policies . . ." and so on. (2 Miller & Starr, Cal. Real Estate, *supra*, §§ 3:36 at pp. 3-161–3-164, 3:40, pp. 3-184–3-185.) Under Horiike's construction, each salesperson would owe *duplicate* duties and be potentially liable for failing to determine the needs and interests of, and provide counsel to, a complete stranger (in Cortazzo's case, a complete stranger living half a world apart who speaks a different language). (POBM 45-46.)

F. Petitioners' Construction Is Consistent With The Best Public Policy.

After touting the benefits of his construction, Horiike does an about-face by arguing that "[t]he public is not well-served by dual agencies and would benefit if the practice were curtailed." (ABM 44, emphasis omitted.) Horiike misses the point. Even ignoring that dual agencies are viable where the parties' interests are well-aligned and all parties consent to the dual agency, *no dual-agency problems exist under Petitioners' construction.* Dual-agency problems only potentially arise in intra-firm transactions if, as under Horiike's construction, individual salespersons are forced to stop serving as exclusive agents and become dual agents whenever a salesperson from the same firm ends up on the other side. Petitioners' construction of section 2079.13(b), thus, better serves public policy as the buyer and seller retain the services of an *exclusive* agent, thereby *avoiding* any potential problems associated with dual agency.

Horiike argues separate salespersons must be deemed dual agents to allow brokerages to comply with their fiduciary duties. (ABM 44.) But brokerages best satisfy their dual-agency duties to buyers and sellers by ensuring each salesperson continues serving as an *exclusive* fiduciary of the buyer/seller who retained the salesperson, with the brokerage supervising salespersons to prevent fiduciary breaches (e.g., protecting confidential information) and providing a deep pocket for breach. (POBM 47.)

Horiike nonetheless argues that intra-firm transactions are bad because the buyer's salesperson might be less aggressive, causing higher

home prices. (ABM 45.) The assertion is facially dubious—a buyer's salesperson typically earns a commission based on the sales price, so the same financial disincentive against a lower price always exists. In fact, the study Horiike claims showed intra-firm transactions caused a 3.7% price *increase* in certain homes actually found the opposite (ABM 45)—it found a 3.7% *decrease* when agents from the same brokerage were used (Barondes & Slawson, *Examining Compliance With Fiduciary Duties: A Study of Real Estate Agents* (2005) 84 Or. L.Rev. 681, 705 [using two firms produced "higher sales prices"]).

Moreover, decreasing the availability of intra-firm transactions would deprive buyers of access to homes listed by their salesperson's brokerage (here, thousands of Coldwell homes) and deprive sellers of full market exposure. (POBM 46.) That *hurts* buyers *and* sellers. Horiike, citing no authority, baldly asserts that "[m]any firms represent *only* buyers, and they have access to all the homes on the market." (ABM 47, original italics.) He ignores that his construction would create chaos for *buyers-only* firms, as each salesperson would become the fiduciary of all other buyers. Regardless, far from "many" buyers-only firms existing, in truth almost all residential real estate agents represent buyers *and* sellers. (Nat. Assn. of Realtors, Member Profile 2012 (May 2012) p. 25 [84% of realtors do not practice exclusive buyer/seller agency]; Olazabal, *supra*, 40 Harv. J. on Legis. at pp. 84-85 ["economic and practical aspects of the marketplace may pressure firms to represent both buyers and sellers"; "exclusive buyer and seller agency firms" are not "the norm"].)

Horiike advocates a monumental shake-up of the real estate industry that will hurt consumers. Nothing indicates the Legislature intended to create these otherwise easily-avoidable problems. Presumably, the Legislature intended to avoid them. (POBM 39.)

IV. THE LEGISLATURE HAS NOT "IMPLICITLY ENDORSED" HORIIKE'S CONSTRUCTION.

Horiike contends the Legislature "implicitly endorsed" his construction when it amended section 2079.13 to extend the disclosure requirements to commercial property. (ABM 28-29.) Horiike is truly grasping at straws.

The legislative-acquiescence doctrine is notoriously "a weak reed upon which to lean." (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 382, internal quotation marks and citations omitted.) Courts must "be very sure" the Legislature approved a prior construction. (*People v. Daniels* (1969) 71 Cal.2d 1119, 1127, fn. 4, internal quotation marks and citation omitted.) They cannot elevate "acquiescence . . . into a species of implied legislation" based on the Legislature's "mere silence." (*Cianci v. Superior Court* (1985) 40 Cal.3d 903, 923.)

Instead, before a court can entertain the notion of legislative acquiescence, there must be: (a) "a *well-developed body* of law interpreting a statutory provision," *and* (b) "*numerous* amendments to a statute without altering the interpreted provision." (*Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1156, italics added; accord *People v.*

Escobar (1992) 3 Cal.4th 740, 750-751.) Courts refuse to presume legislative acquiescence when no legislative history acknowledges the prior construction (*People v. Carroll* (2014) 222 Cal.App.4th 1406, 1418, fn. 8), or when the Legislature only "address[ed] discrete aspects of the law" not involving the previously-interpreted language (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 506).

Horiike's argument violates *all* these settled limits. The bill was introduced two months *before* the Court of Appeal issued its *first-impression* decision in *Horiike*; by the time the legislation was enacted in August 2014, this Court had already granted review, so the appellate decision had *no* precedential value; the legislative history mentions neither *Horiike* nor any agency issue involved in *Horiike*; and the legislation solely added language to two subsections *other than* section 2079.13(b), with the sole purpose of extending disclosure requirements to commercial transactions. (See Request for Judicial Notice Supporting Reply.)

Horiike's "implicit endorsement" argument is not just "a weak reed upon which to lean" (*Lantzy*, *supra*, 31 Cal.4th at p. 382, internal quotation marks omitted), it is no reed whatsoever.

CONCLUSION

Horiike's construction misreads section 2079.13(b), contravenes commercial reality, and would impose absurd, catastrophic results on consumers and the industry. Petitioners' construction must prevail.

Dated: February 18, 2015 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies, pursuant to California Rules of Court, rule 8.520(c)(1), that the **PETITIONERS' REPLY BRIEF ON THE MERITS** contains 8,364 words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Dated: February 18, 2015

Edward L. Xanders

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On February 18, 2015, I served the foregoing document described as: **PETITIONERS' REPLY BRIEF ON THE MERITS** on the parties in this action by serving:

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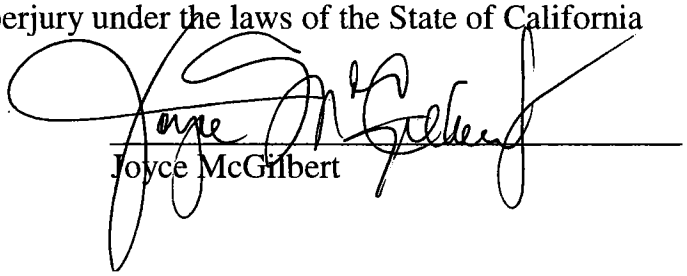

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