

No. S227228

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, an individual,
Plaintiff and Appellant,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Defendant and Respondent.

MARSHALLS OF CA, LLC,
Real Party in Interest.

SUPREME COURT
FILED

APR 07 2016

Frank A. McGuire Clerk

Deputy

AFTER DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE,
CASE B259967

FROM THE SUPERIOR COURT,
COUNTY OF LOS ANGELES, CASE NO. BC503806,
ASSIGNED FOR ALL PURPOSES TO JUDGE
WILLIAM F. HIGHBERGER, DEPARTMENT 322

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND
AUTHORITIES; PROPOSED ORDER**

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Attorneys for Plaintiff and Appellant
MICHAEL WILLIAMS

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Attorneys for Plaintiff and Appellant
MICHAEL WILLIAMS

MOTION FOR JUDICIAL NOTICE

Please take notice that, pursuant to Evidence Code section 452 (d) and California Rules of Court, rules 8.520(g) and 8.252(a), Appellant Michael Williams hereby moves for an order granting judicial notice of the “Declaration Of Stan Karas In Support Of Plaintiffs’ Opposition To Defendants’ Motion To Stay Proceedings” [“Karas Declaration.”], filed September 28, 2015, in the trial court below, a true and correct copy of which is attached hereto as Exhibit 1. The Karas Declaration is directly relevant to the issues raised in the merits briefing and was filed in the trial court after the order on appeal. The motion is based on this notice and the memorandum of points and authorities below.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Williams seeks judicial notice of the Karas Declaration, with its Exhibits A and B, which are true and correct copies of email correspondence between the parties concerning the scheduling of Williams’s deposition. Williams filed the Karas Declaration in the trial court in support of his opposition to Real Party in Interest Marshalls of CA, LLC’s motion to stay, which was filed and heard *after* the issuance of the order denying discovery (and after the Court of Appeal’s decision affirming the trial court order) that is at issue in this appeal.

II. JUDICIAL NOTICE SHOULD BE GRANTED

Evidence Code section 459(a) provides that a reviewing court may take notice of any matter specified in Evidence Code section 452. The matters that may be judicially noticed under Evidence Code section 452 include the “[r]ecords of . . . any court

of this state.” (Evidence Code §452(d).) Thus a reviewing court may judicially notice records from state court proceedings, including declarations. (See *Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 151 fn. 8 [taking judicial notice of declaration]; *Goldman v. KPMG LLP* (2009) 173 Cal.App.4th 209, 217 fn. 3 [same].)

The attached Karas Declaration ~~is~~ relevant to Williams’s appeal before this Court because it contains, as exhibits, email exchanges between Williams’s counsel and counsel for Marshalls of CA, LLC that directly refute an argument Marshalls makes in its Answer Brief On The Merits. Specifically, Marshalls claims that it has attempted to ascertain the basis of Williams’s claims, yet Williams refused to appear for his deposition. (Answer Brief at p. 17.) However, the Exhibits to the Karas Declaration make clear that while Williams had to postpone his deposition for personal reasons, Williams then remained available to be deposed. His counsel repeatedly invited Marshalls to propose dates for this deposition. (See Karas Decl., Exh. A.) Marshalls chose not to depose Williams and instead moved the trial court to stay the proceedings. (*Id.* at Exh. B.) The attached documents demonstrate Williams’s willingness to be deposed.

Because the evidence pertained to a proceeding that occurred after the record was created (and indeed, after the Court of Appeal rendered its decision), the evidence could not be included in the appellate record. Under these circumstances, judicially noticing this evidence is appropriate.

III. CONCLUSION

Based on the foregoing, Appellant Williams respectfully requests this Court to grant this motion for judicial notice.

Dated: April 6, 2016

Respectfully submitted,

Capstone Law APC

By: 

Glenn A. Danas

Ryan H. Wu

Robert Drexler

Liana Carter

Attorneys for Plaintiff-
Appellant
MICHAEL WILLIAMS

**PROPOSED ORDER GRANTING PLAINTIFF-
APPELLANT'S MOTION FOR JUDICIAL NOTICE**

The Motion For Judicial Notice filed by Plaintiff and Appellant Michael Williams, having been filed, and grounds for judicial notice appearing warranted under Evidence Code section 459 and section 452, IT IS ORDERED that Plaintiff and Appellant's Motion is granted in full and the Court takes judicial notice of the following documents:

Exhibit 1: Declaration Of Stan Karas In Support Of Plaintiffs' Opposition To Defendants' Motion To Stay Proceedings, including Exhibits A and B.

Date: _____

The Honorable Chief Justice
or Associate Justice of the
California Supreme Court

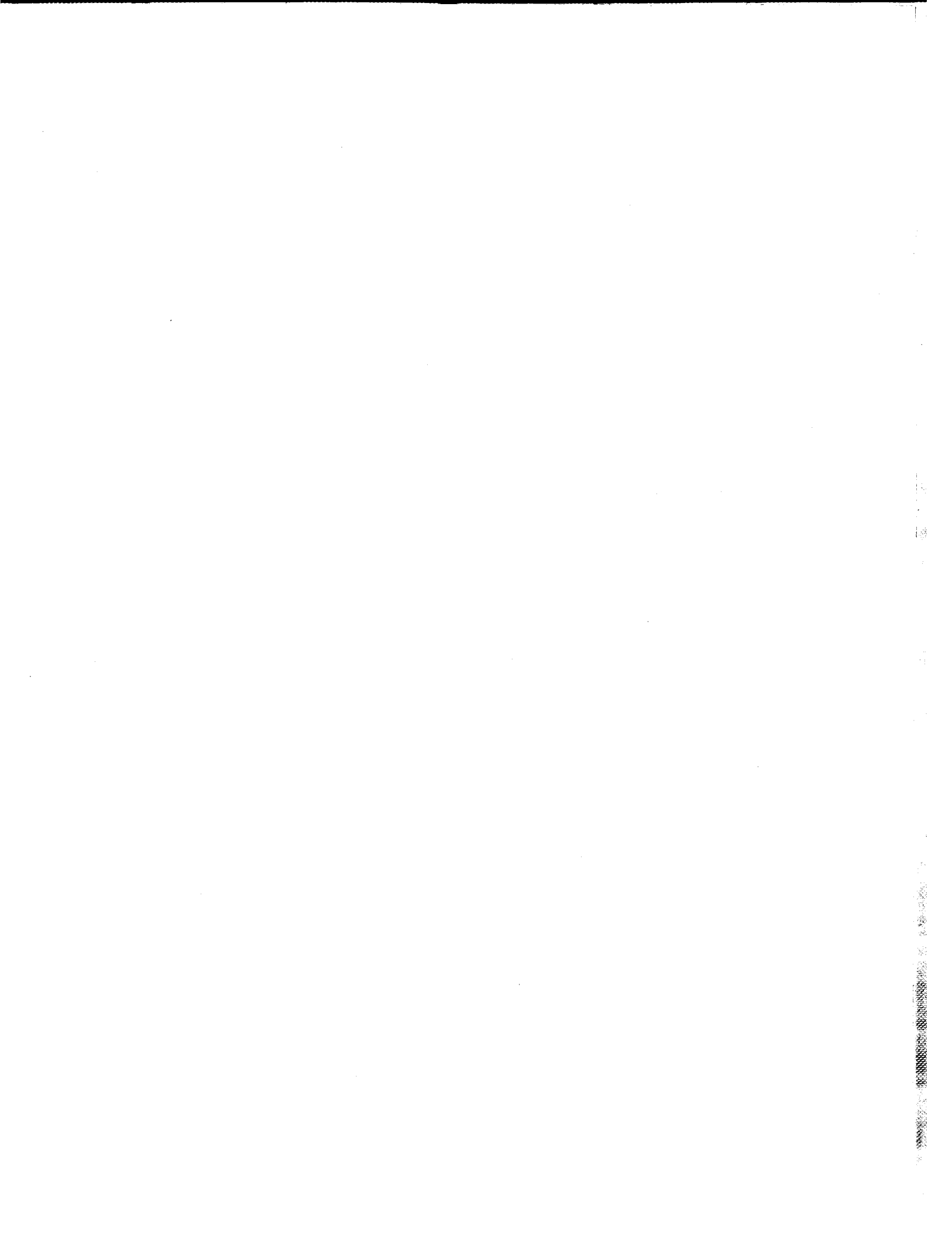


EXHIBIT 1

1 Robert J. Drexler, Jr. (SBN 119119)
2 Robert.Drexler@capstonelawyers.com
3 Stan Karas (SBN 222402)
4 Stan.Karas@capstonelawyers.com
5 Bevin Allen Pike (SBN 221936)
6 Bevin.Pike@capstonelawyers.com
7 Jonathan Lee (SBN 267146)
8 Jonathan.Lee@capstonelawyers.com
9 Capstone Law APC
10 1840 Century Park East, Suite 450
11 Los Angeles, California 90067
12 Telephone: (310) 556-4811
13 Facsimile: (310) 943-0396

14 Attorneys for Plaintiffs Michael Williams,
15 Craig Davis, and Darla Eblacas

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

18 MICHAEL WILLIAMS, CRAIG DAVIS,
19 DARLA EBLACAS, individually as
20 aggrieved employees and on behalf of other
21 aggrieved employees,

22 Plaintiff,

23 vs.

24 MARSHALLS OF CA, LLC, a Delaware
25 corporation; THE TJX COMPANIES, INC.,
26 a Nevada Corporation; T.J. MAXX OF CA,
27 LLC, a Delaware limited liability company;
28 HOMEGOODS, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 28 2015

Sherri R. Carter, Executive Officer/Clerk
By: Robin Sanchez, Deputy

BY FAX

Case No.: BC503806

ASSIGNED FOR ALL PURPOSES TO
JUDGE WILLIAM F. HIGHBERGER,
DEPT. 322

**DECLARATION OF STAN KARAS IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO STAY PROCEEDINGS**

Date: October 9, 2015
Time: 1:30 p.m.
Dept.: Department 322

Action Filed: March 22, 2013
Trial Date: None

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DECLARATION OF STAN KARAS

I, Stan Karas, declare:

1. I am an attorney licensed to practice before all courts of the State of California. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would testify competently thereto. I am senior counsel with Capstone Law APC (“Capstone”), counsel of record for Plaintiffs..
2. I have on several occasions invited Defendants’ counsel to propose a date on which they would like to depose Plaintiff Michael Williams. For example, during the meet and confer preceding the filing of Defendants’ Motion to Stay, I stated to Defendants’ counsel that Plaintiffs’ counsel is not seeking to avoid Mr. Williams’ deposition, and invited Defendants’ counsel to propose a possible deposition date(s), so that we could check on Mr. Williams’ availability.
3. On September 23, 2015, Plaintiffs’ counsel emailed Defendants’ counsel, stating in part “we requested that you provide dates of availability for Mr. Williams’ deposition so that we could confer with our client and determine mutually agreeable dates to conduct his deposition. To date, we have not received any proposed dates of deposition. We therefore reiterate our request so that we may secure a date for Mr. Williams’ deposition.” A true and correct copy of this email is attached hereto as Exhibit A.
4. On September 25, 2015, Defendants’ counsel responded stating in part “as a result of Mr. Williams’ appeal of Judge Highberger’s order to the California Supreme Court, and Defendants’ pending Motion to Stay all proceedings in this case, it is not reasonable to proceed to notice Mr. Williams’ deposition at this point.” A true and correct copy of this email is attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 28, 2015, in Los Angeles, California.



Stan Karas



Sandy Acevedo

From: Bevin Allen Pike
Sent: Wednesday, September 23, 2015 1:10 PM
To: Todd-Gher, Amy K.; Nageotte, Kyle W.
Cc: Robert Drexler; Stan Karas; Jonathan Lee
Subject: Williams v. Marshalls

Counsel,

Please allow this email to follow up on our discussions related to Plaintiff Williams' deposition. During our September 2, 2015, meet and confer regarding Defendants' *ex parte* motion to continue the hearing dates on Defendants' Demurrers and Motions to Stay, we requested that you provide dates of availability for Mr. Williams' deposition so that we could confer with our client and determine mutually agreeable dates to conduct his deposition. To date, we have not received any proposed dates of deposition. We therefore reiterate our request so that we may secure a date for Mr. Williams' deposition.

Thank you.

Bevin



Bevin Allen Pike

310.712.8010 Direct | Bevin.Pike@capstonelawyers.com

1840 Century Park East, Suite 450

Los Angeles, California 90067

310.556.4811 Main | 310.943.0396 Fax

CONFIDENTIAL COMMUNICATION:

The information contained in this e-mail and any attachments are legally privileged, confidential, and intended for the named recipients only. If you are not an intended recipient, you are hereby notified that any dissemination, distribution or copying of this email message is strictly prohibited and may violate the legal rights of others. If you have received this message in error please notify the sender immediately by reply e-mail or telephone, return the message to Capstone Law APC, 1840 Century Park East, Suite 450, Los Angeles, California 90067, and delete it from your system.

Exhibit A

Sandy Acevedo

From: Todd-Gher, Amy K. <ATodd-Gher@littler.com>
Sent: Friday, September 25, 2015 10:14 AM
To: Bevin Allen Pike; Nageotte, Kyle W.
Cc: Robert Drexler; Stan Karas; Jonathan Lee
Subject: RE: Williams v. Marshalls

Hello Bevin,

Thank you for your e-mail regarding the scheduling of Mr. Williams' deposition, which Defendant Marshalls has sought repeatedly since December 2013. During our **call on June 25, 2015**, as we agreed to postpone Mr. Williams' deposition yet again due to his family member's health condition, I reminded you that Defendants have been attempting to schedule Williams' deposition for over two years, and asked you to please inform me as soon as Mr. Williams was again available for his deposition. No one from your office reached out to us to schedule Mr. Williams' deposition. In fact, the topic did not come up until we contacted you to request that your office agree to a brief continuance of the hearing date on Defendants' Demurrers and Motions to Strike, given Defendants' Motion to Stay. It was only in that context, as Defendants were in the process of requesting a stay of all proceedings both from Plaintiffs and the Court, that Mr. Karas suggested that Mr. Williams was again available for deposition. Mr. Karas did not ask us for specific dates during our call, but instead simply stated that Mr. Williams' family member had passed and that Mr. Williams was now available for deposition.

However, as a result of Mr. Williams' appeal of Judge Highberger's order to the California Supreme Court, and Defendants' pending Motion to Stay all proceedings in this case, it is not reasonable to proceed to notice Mr. Williams' deposition at this point, when all proceedings, including all discovery, may be stayed by the Court on or about October 9, 2015. If the Court denies Defendants' Motion to Stay that is scheduled to be heard within the next two weeks, then we will certainly meet and confer with you at that time to find a mutually agreeable date for Mr. Williams' deposition.

Regards,
Amy

Amy Todd-Gher, Shareholder
619.515.1872 direct 415.852.2621 mobile 619.923.3711 fax ATodd-Gher@littler.com
501 W. Broadway, Suite 900 | San Diego, CA 92101-3577

Littler | littler.com
Employment & Labor Law Solutions Worldwide

From: Bevin Allen Pike [<mailto:Bevin.Pike@capstonelawyers.com>]
Sent: Wednesday, September 23, 2015 1:10 PM
To: Todd-Gher, Amy K.; Nageotte, Kyle W.
Cc: Robert Drexler; Stan Karas; Jonathan Lee
Subject: Williams v. Marshalls

Counsel,

Please allow this email to follow up on our discussions related to Plaintiff Williams' deposition. During our September 2, 2015, meet and confer regarding Defendants' *ex parte* motion to continue the hearing dates on Defendants' Demurrers

and Motions to Stay, we requested that you provide dates of availability for Mr. Williams' deposition so that we could confer with our client and determine mutually agreeable dates to conduct his deposition. To date, we have not received any proposed dates of deposition. We therefore reiterate our request so that we may secure a date for Mr. Williams' deposition.

Thank you.

Bevin



Bevin Allen Pike

310.712.8010 Direct | Bevin.Pike@capstonelawyers.com

1840 Century Park East, Suite 450

Los Angeles, California 90067

[310.556.4811](tel:310.556.4811) Main | [310.943.0396](tel:310.943.0396) Fax

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1840 Century Park East, Suite 450, Los Angeles, California 90067.

On September 28, 2015, I served the within document(s) described below as:

**DECLARATION OF STAN KARAS IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO STAY PROCEEDINGS**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Robert G. Hulteng
Joshua J. Cliffe
Emily E. O'Conner
Litler Mendelson
650 California Street, 20th Floor
San Francisco, CA 94108

Brian F. Van Vleck
Daniel J. Turner
Van Vleck Turner & Zaller LLP
6310 San Vicente Blvd., Ste 430
Los Angeles, CA 90048

Pursuant to the Court's August 15, 2013 Order Authorizing Electronic Service, the above named document(s) has been electronically served on counsel of record by transmission through the Case Anywhere system on the date below. The transmission of these documents to the Case Anywhere system was reported as complete and a copy of the Case Anywhere Transaction Receipt will be maintained along with the original document(s) and proof of service in our office.

EXECUTED this document on September 28, 2015 at Los Angeles, California.



Sandy S. Acevedo

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1840 Century Park East, Suite 450, Los Angeles, California 90067.

On April 6, 2015, I served the document described as: **MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; PROPOSED ORDER** on the interested parties in this action by sending on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof to interested parties as follows [or] as stated on the attached service list:

See attached service list.

BY MAIL (ENCLOSED IN A SEALED ENVELOPE): I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

BY E-MAIL: I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

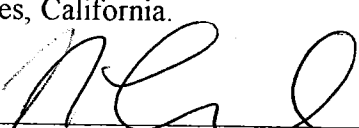
BY PERSONAL SERVICE: I personally delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

BY OVERNIGHT DELIVERY: I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

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

Executed this April 6, 2016, at Los Angeles, California.

Natalie Torbati
Type or Print Name


Signature

SERVICE LIST

Frederick Bennett
Superior Court of Los Angeles County
111 North Hill Street, Room 546
Los Angeles, CA

**Superior Court of Los Angeles
County: Respondent**

via U.S. Mail

Hon. William F. Highberger
Los Angeles Superior Court
600 S. Commonwealth Avenue
Los Angeles, CA 90005

**Superior Court of Los Angeles
County: Respondent**

via U.S. Mail

Robert Gordon Hulteng
Joshua Joseph Cliffe
Emily Erin O'Connor
Scott D. Helsing
Littler Mendelson, PC
650 California Street, 20th Floor
San Francisco, CA

**Marshalls of CA, LLC : Real
Party in Interest**

via FedEx