No. S165549

IN THE SUPREME COURT OF CALIFORNIA

ALAN RICHARD KLEIN; et al.

Plaintiff and Appellant,

vs.

UNITED STATES OF AMERICA; et al.

Defendant and Appellee.

On Certification from the United States Court of Appeals
for the Ninth Circuit
Ninth Circuit Court of Appeals No. 06-55510
United States District Court No. CV 05-5526-PA

APPELLANTS' REPLY BRIEF ON THE MERITS

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INTRODUCTION

Appellee United States of America seeks, through a series of contrived arguments, to distract this Court from compelling arguments advanced by Appellants Alan and Sheryll Klein in support of their interpretation of Civil Code Section 846 (hereinafter "Section 846").

Rather than advance alternative interpretations of the statutory language or identify relevant legislative materials evoking intent, Appellee seeks simply to argue that Appellants' interpretation would defeat the intent of the Legislature.

A critical analysis of the arguments presented makes clear that no substance or authority exists for the arguments advanced by Appellee. In fact, nearly every argument made by Appellee appears to support Appellants' position.

By way of example, the United States initially contends that "the language. . . of Section 846 does not support Appellants' position that immunity inures only to injuries to recreationists arising from the condition of the land." Appellee fails to offer a proposed interpretation as to the statutory language providing that a landowner "owes no duty of care to keep the premises safe for entry or use by others for any

recreational purpose. . . ." Without a proposed alternative explanation of this language, this Court should accept the plain meaning of the statutory language and enforce the law as written.[1]

Appellee goes on to argue that the legislative materials regarding the intent of the drafters of Section 846 clearly support its position that all forms of simple negligence resulting in injury to recreational users were intended to be immunized. But the passages cited by Appellee are so broadly worded, vague, and inconclusive that they provide nothing more than a simple indication of an intent to immunize landowners to encourage them to allow private land access to recreationists. Appellee, relying on this faulty foundation, strongly asserts its position that the "Legislature made plain its intent to immunize landowners for any negligently caused injuries suffered by recreational users upon their

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[1] Further, Appellee feebly attempts to use the language from the statute which provides "[n]othing in this section creates a duty of care or ground of liability for injury to person or property" to support its argument. This language could not be any less applicable to the arguments presented on this appeal, as it ignores the fact that Appellants' arguments have always been premised upon the duty of the landowner to safely operate a vehicle which existed before and has existed since Section 846 was enacted. Never during any proceeding have Appellants taken the position that this duty was created by Section 846.

land." (Appellee's Answering Brief "AAB" at 11.) Appellee makes this bold assertion, despite at least three prior courts, including this very Court,[2] indicating that little legislative history surrounding the enactment of California Civil Code Section 846 exists, and that the history which does exist is sparse and inconclusive. *Ornelas v. Randolph*, 4 Cal.4th 1095, 1105-06 fn.8 (1993) (en banc) (legislative history inconclusive); *Nelsen v. City of Gridley*, 113 Cal. App. 3d 87, 91 (1980) (legislature silent about underlying intent); *Donaldson v. United States*, 653 F.2d 414, 418 (9th Cir.1981) (history provides insufficient insight as to intent of legislature).

Finally, in a last futile attempt to argue legislative intent, Appellee contends that a letter written by an advocacy group in 1980 provides compelling evidence that the legislature considered and rejected Appellant's public policy position in the enactment of an amendment to Section 846. This argument would be more useful if the letter in question actually presented a specific argument of Appellants, and if the

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[2] As well as the Ninth Circuit's published opinion in *Klein v. United States* (9th Cir. 2008) 537 F.3d 1027.

amendment had anything to do with the provisions at issue herein. A reading of the letter makes clear that it does not.

Finally, Appellee argues that the critical case of *Avila v. Citrus Community College District,* (2006) 38 Cal.4th 148 "is of limited relevance" because that case dealt with a public entity and not private landowners (or their equivalent) subject to Section 846. Appellee goes to great lengths to explain the differences between the public entity statutory scheme and the private landowner statutes. What Appellee fails to do is explain why these differences matter in light of the *Avila* declaration concerning the identical nature of the two immunity statutes. Appellee further ignores the fact that the *Avila* decision represents the only parallel legal analysis ever conducted by the California Supreme Court on this legal issue weighing duty against immunity and deciding whether the immunity should apply.[3]

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[3] This, despite the fact that this Court in *Avila* explained that the code section at issue "was adopted as a premises liability measure, modeled on Civil Code section 846. . . . Nothing in the history of the measure indicates the statute was intended to limit a public entity's liability arising from other duties. . . ." *Avila v. Citrus Community College District*, supra, 38 Cal.4th at 157-158.

Each and every argument advanced by Appellee ignores those posed by Appellant and lacks sufficient authority to be given serious consideration by this Court.

LEGAL ARGUMENT

I. THE PLAIN WORDS OF CIVIL CODE SECTION 846 ARE NOT SUBJECT TO ANY ALTERNATIVE INTERPRETATION

Civil Code section 846, in pertinent part for this appeal, provides that a landowner:

> "owes no duty of care **to keep the premises safe for entry or use** by others for any recreational purpose. . . ." (emphasis added).

Appellee simply fails to offer an alternative interpretation of the language of the statute. The language is not subject to multiple interpretations because it is eminently clear. In such situations, this Court has adopted the plain meaning of the statute as the best and only indicator of the legislative intent. To reach beyond this when Appellee has not offered its proposed interpretation of the language at issue would

be contrary to settled authority of this Court related to statutory interpretation.[4]

This Court stated in *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1105, "[t]he statute, in short, may be read to mean precisely what it says. . . . Because the statutory language is clear and serves a rational purpose, resort to extrinsic sources is unnecessary and uncalled for. 'When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.' *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 800, 268 Cal.Rptr. 753." *Ornelas v. Randolph,* supra, 4 Cal.4th at 1105.

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[4] In construing a statute, courts consider extrinsic aids, such as legislative history, only if the statutory language is reasonably subject to multiple interpretations. As set forth in this Court's opinion in *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876: "Our task is a familiar one. 'We apply well-established principles of statutory construction in seeking 'to determine the Legislature's intent in enacting the statute, " 'so that we may adopt the construction that best effectuates the purpose of the law.' " . . . We begin with the statutory language because it is generally the most reliable indication of legislative intent. . . . If the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls. . . . We consider extrinsic aids, such as legislative history, only if the statutory language is reasonably subject to multiple interpretations." *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876. (citations omitted.)

The clear implication from the failure to offer an explanation of the language of the statute is that no alternative interpretation exists. The language used at the outset of Section 846, " . . . owes no duty of care to keep the premises safe for entry or use," includes terms that have been defined over the long history of legal jurisprudence and have a fixed and certain definition and meaning. The phrase is subject to only one meaning: no duty of care extends to claims arising from the failure to maintain the property itself and as to associated injuries. This phrase is not and cannot be interpreted to encompass landowner conduct causing injury, because it is drafted in a sufficiently narrow manner so as to exclude this possibility.

Again, the statute provides numerous protections for landowners as it relates to pure premises claims, invitee claims, and nearly every other conceivable premises based claim. The statute covers injuries caused by recreationists to themselves, as well as other situations where the condition of the land results in injury. It does not, however, purport to cover injuries caused by the landowner or its agents.

Appellants believe the Court's role in interpreting the statute is to examine the plain words, understanding the very general purpose behind

the enactment, and to appropriately interpret the statute "to provide clear guidance to landowners, to encourage access to recreationists, and to fairly balance the interests of both." *Ornelas v. Randolph*, supra, 4 Cal.4th at 1108.

The best and most appropriate means by which to accomplish this goal is to interpret Section 846 as inapplicable to vehicular negligence upon paved roads on private land.

II. CASE LAW IN CALIFORNIA AND OTHER JURISDICTIONS SUPPORT THE KLEINS' POSITION THAT SECTION 846 DOES NOT APPLY UNDER THE FACTS OF THIS CASE

A. *Avila* Represents the Only California Supreme Court Case That Has Considered The Interplay of Independent Duty As It Relates to Premises Based Immunity Statutes

In fact, the only time that this Court has considered the question of whether independent duties are subject to a premises based immunity

statute is in the *Avila* case. *Avila v. Citrus Community College District,* (2006) 38 Cal.4th 148, 41 Cal.Rptr.3d 299.[5]

In *Avila*, the Court critically analyzed the applicability of the Government Code section 831.7 immunity statute (hereinafter "Section 831.7"), modeled after Civil Code section 846, to an injury sustained as a result of the failure of a school to meet its independent duty to supervise. This kind of comprehensive analysis is simply devoid in the Court of Appeal's *Shipman* opinion. *Shipman v. Boething Treeland Farms*, (2000) 77 Cal.App.4th 1424 [92 Cal.Rptr.2d 566].

It is important to recognize that *Shipman* placed almost exclusive reliance for its legal extension of the applicability of Section 846 immunity on *Ornelas* when the case was not analogous in any conceivable way. While *Ornelas* represented the most recent pronouncement of the California Supreme Court interpreting Section

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[5] Despite Appellee's best efforts to cast the *Ornelas* case as analogous to the facts and legal issues presented herein, *Ornelas* is undoubtedly distinguishable on the facts and and more importantly the legal issues decided as it dealt specifically with "recreational use" applicability and the former "suitability" exception to Section 846.

846 at the time, it provided the *Shipman* court with no actual guidance into the resolution of the question presented on this appeal.

The same is the case herein, as the only real guidance for this Court comes from its own critical analysis of a virtually identical issue in *Avila*. This Court should adopt the reasoning developed in *Avila* and apply it consistently in this matter, as the well reasoned and critical analysis provided therein provides the type of clear guidance to the citizens of California necessary when a decision impacts such a large segment of the citizenry.

B. The *Avila* Court Carefully Weighed The Value Of Independent Statutory Duties Against the Potentially Applicable Statutory Immunities And Determined That the Important Duty To Supervise Students Overcame The Potentially Applicable Premises Liability Immunity

The *Avila* Court analyzed the tension between the statutory provisions providing for important duties of care and those granting immunity. The Court acknowledged the immunity language of Government Code section 831.7 on the one hand, and the fact that "long-standing statutory and common law duties of student supervision

schools have been recognized to have both before and after passage of section 831.7," on the other hand. *Avila v. Citrus Community College District,* supra, 38 Cal.4th at 158-59.

In contemplating Section 831.7, the Court noted that "[t]ension likewise exists between the legislative history of the statute, which establishes an intent focused exclusively on premises liability claims, and the language the Legislature chose to effectuate its purpose, which conceivably could be applied to a broader range of claims." *Id.* at 159.

Appellee misconstrues the Kleins' analysis of *Avila* regarding the applicability of the immunity statute in the context of premises liability claims. In *Avila*, the Court did not need to reach a decision as to whether the immunity created by section 831.7 extended to only premises liability claims.

Still, the Court analyzed the independent duty to supervise owed by the school district and the immunity created by section 831.7. When considering the facts in *Avila*, the section 831.7 immunity, and the independent duty to supervise, the Court found that the immunity did not abrogate the duty to supervise and the immunity did not protect the school district from liability.

Here, the parallels are striking. The pure legal issues addressed are directly on point. The best place for guidance is therefore this very Court's pronouncement in 2006 when confronted with a nearly identical matter.

1. This Court Has Already Determined That Government Code Section 831.7 Was Modeled After Civil Code Section 846

While Appellee argues that *Avila* is of limited relevance based on the differences between section 831.7 and section 846, the fact remains that this Court has determined in the *Avila* opinion that the statutes provide the same type of immunity with the same exceptions. (AAB at 22).

Despite the United States' attempts to distinguish the *Avila* case and its thorough analysis, the implications of *Avila* are clear. Not only can this Court draw a parallel between the immunity created by section 831.7 and section 846, but also to the facts in both *Avila* and the instant case.

The Court must consider in this case the immunity granted by section 846 as against the independent duty to drive safely as provided

by the California Vehicle Code.[6] This duty and like duties concerning public traffic safety have been codified and existed before and after section 846 was enacted.

There is no confusion as to the issue of liability under the Vehicle Code and the issue of immunity as the United States asserts. (AAB at 27). Appellee misinterprets the Kleins' emphasis upon the importance of the independent duty to drive safely on the roads of this state. Just as the Court found that the duty to supervise prevailed over the immunity granted by section 831.7 in *Avila,* so too should the Court find that the independent duty to drive safely on the paved roads of California prevails over the premises liability immunity granted by section 846. In both cases, an important independent duty exists which must be reconciled with an immunity statute that focuses on premises claims. The result should be the same in both *Avila* and this appeal.

Thus, contrary to the United States' position, the facts and law in the *Avila* case are in effect directly on point with the instant case.

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[6] If not the California Vehicle Code, then certainly the appropriate state and/or federal regulations concerning traffic safety upon the land at issue herein.

C. Cases from Other Jurisdictions Must Be Appropriately Considered, Because Other Courts Have Thoroughly and Impressively Analyzed the Issue from Every Conceivable Angle

Appellee's blanket statement that the cases cited from other jurisdictions are "inapposite" is simply bereft of any support.

Contrary to the United States' assertions, the parallel facts and law in *Scott v. Wright* (Iowa 1992) 486 N.W.2d 40, *Bush v. Valley Snow Trailers* (N.Y. Sup. 2004) 790 N.Y.S.2d 350, *Del Costello v. Hudson Railway Co.* (N.Y.A.D. 2000) 711 N.Y.S.2d 77, and *Linville v. City of Janesville* (Wis. 1994) 516 N.W.2d 427, as well as those respective courts' thorough and substantive analysis of the issues at hand, provide insight as to the balance between legislative intent, purpose of recreational use statutes, public policy considerations, and logical consequences of immunizing landowners from the separate and distinct duty to operate a vehicle on its recreational property with reasonable care. See *Del Costello v. Hudson Railway Co.*, supra, 711 N.Y.S.2d at 80.

Moreover, the United States misrepresents the Kleins' argument

with respect to the issue of active versus passive negligence as discussed in the New York Court of Appeal case of *Del Costello v. Hudson Railway Co.* (N.Y.A.D. 2000) 711 N.Y.S.2d 77.

The *Del Costello* court reviewed applicable legislative history for New York's recreational use statute and pointed to a bill memorandum stating:

> "The distinction between affirmative acts of negligence (which would result in liability) and mere failure to use care, to keep premises safe for entry by a licensee or to warn of hazards, is significant for this bill, which deals only with the duty to keep premises safe or warn of hazards. The bill would have no effect on liability of either an owner, lessee or occupant, or of a third party carrying on some activity on the premises, for acts of affirmative negligence. That liability does not arise from a duty to keep premises safe, or to warn of danger, and does not depend on a finding that the

person entering was an invitee, or on rules as to the duty of care owed to an invitee."

Del Costello v. Hudson Railway Co., supra, 711 N.Y.S.2d at 80.

In particular, the *Del Costello* opinion provides persuasive analysis, and is particularly important given that the immunity statute language tracks that of California's immunity statute.

1. Appellee Misstates This Court's Holding in *Ornelas*

Appellee misstates the Court's holding in *Ornelas* in making an assertion that it rejected the distinction between active and passive negligence. In *Ornelas*, this Court addressed the relevance of the plaintiff's subjective intent in entering the premises for "recreational" purposes and not the active or passive negligence by a defendant[7]. In fact, the Court did not even address the issue of active versus passive

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[7] In *Ornelas*, the Court stated: "[i]n these circumstances, whether plaintiff entered the property to play on the equipment, or merely accompanied the other children at play, is immaterial. In either case, his presence was occasioned by the recreational use of the property, and his injury was the product thereof. We discern no meaningful distinction, for purposes of section 846, between the passive spectator and the active participant. Both take advantage of the recreational opportunities offered by the property; neither, therefore, may be heard to complain when injury results therefrom." *Ornelas v. Randolph*, supra, 4 Cal.4th at 1102.

negligence by the defendant in *Ornelas* and thus, cannot reasonably stand for the proposition that this Court has rejected the "distinction between negligent acts of commission and those of omission" as the United States asserts. (AAB at 25.)

III. THE SPARSE LEGISLATIVE HISTORY OF SECTION 846 IS SUPPORTIVE OF APPELLANTS' POSITION

A. The Legislative Materials Relied Upon By Appellee Do Not Support Its Position, and In Fact Reinforce Appellants' Argument That the Statute Is Designed to Exclusively Immunize Premises Liability Claims

The primary authority relied upon in support of Appellee's contention that the legislature "specifically rejected arguments parallel to those asserted by Appellants" and that consequently "there is no basis for the Court to narrow the scope of the statute when the Legislature has declined to do so" is a single piece of correspondence within the legislative materials. (AAB at 12, 14.)

This argument advanced by Appellee in conjunction with the California Trial Lawyers Association correspondence connected to the 1980 amendment blatantly misconstrues the content of the document in

an effort to manufacture an argument relating to purported legislative intent. (See Appellee's Motion for Judicial Notice, Exhibit B, pgs. 56-57.) While Appellees concede that the "Legislature reiterated its intention that Section 846 be construed as a premises liability statute," they fail to appropriately advise the Court as to the true content of the argument set forth in the correspondence at issue.

Clearly, the California Trial Lawyers Association's ("CTLA") role in this context was to advocate on behalf of the injured victims in particular against the expansion of the immunity to a new class of persons not originally included under the case authority initially construing the statute. By doing so, this advocacy group was attempting to preserve victims' rights to compensation when injured by non-possessors of the land. Specifically, Mr. Werchick of the CTLA argued that the expansion of the immunity afforded by Section 846 "will endanger the public by undermining the immunized persons incentive to protect the public."

But the letter does not end there. Importantly, the correspondence continues to cite specific examples illustrative of the CTLA's position, all of which are examples where the non-possessing contractor leaves

the premises in a condition which causes injury to a recreational user. The examples cited involve the creation of an attractive nuisance, an exclusively premises liability concept and citing as specific examples "construction of electrical gas lines, excavations for fill dirt or minerals." These examples exclusively invoke premises based liability claims and make clear that the CTLA is not arguing the premises liability/conduct dichotomy at the heart of this case.

More simply stated, the mere fact that an advocacy group argued that the immunity should not be expanded as it would endanger the public does not mean that this argument was specifically rejected by the Legislature. The only argument identified in the correspondence at issue is the argument over whether a new group should be granted **premises liability** immunity under Section 846. While the effect of the amendment as explained by the CTLA correspondence is the exposure of additional recreationist injuries to the Section 846 immunity, the unrelated context renders the material irrelevant as it relates to this case.

To attempt to attribute this meaning to the content and subsequent passage of an amendment wholly unrelated to the factual question at hand is clearly an inappropriate analogy, and the conclusion advanced

by Appellee cannot logically follow from a reading of this correspondence.

Further, *Ornelas v. Randolph*, supra, 4 Cal.4th at 1105, instructed: "We have, nevertheless, reviewed the sparse legislative history of section 846 and find it inconclusive. A letter from the bill's Senate sponsor to the Governor urging favorable consideration suggests that it would encourage owners who might otherwise fear liability to grant access to their property. This does not, however, demonstrate that the statute was directed exclusively to such owners. Moreover, a possible inference from a single extrinsic source "is an insufficient basis on which to ignore the unrestricted and unambiguous language of the measure itself." *Id.* at 1105.

Appellee attempts to attribute a legislative intent to Section 846 which was never contemplated and runs contrary to the language of the statute itself. This Court should recognize the legislative materials for their true character as inconclusive in determining the appropriate determination herein.

IV. PUBLIC POLICY CONSIDERATIONS WEIGH HEAVILY IN FAVOR OF PRESERVING SAFETY OF CALIFORNIA CITIZENS ON THE ROADS OF THIS STATE

An interpretation giving meaning to the words of the statute would effectuate the legislative intent as determined by this Court. The statute was intended to broadly immunize land owners. But for what purpose? Appellants submit that its proposed interpretation also supports this purpose in that it broadly immunizes landowners for every conceivable premises liability claim, an immunity which is certainly sufficient to encourage landowners to open lands to the public. While Appellees contend that the purpose of the statute would be thwarted if the Court were to follow the language chosen by the legislature, this argument assumes too much. While it is Appellants' position that the best indicator is the language, the role of this Court is to determine which interpretation comports with the language and intent of the law.

The United States Supreme Court has consistently recognized the important interest that localities have in insuring the safety of persons using city streets and public forums. See *Heffron v. International Society for Krishna Consciousness, Inc.*, (1981) 452 U.S. 640, 650, 101 S.Ct.

2559, 2565; *Grayned v. City of Rockford*, (1972) 408 U.S. 104, 115, 92 S.Ct. 2294, 2302; *Cox v. New Hampshire*, (1941) 312 U.S. 569, 574, 61 S.Ct. 762, 765.[8]

When assessing the policy determination related to the fairness of exempting vehicular negligence from Section 846 immunity, it is important to note that the landowner has a much greater ability to control his own conduct while upon his land as opposed to becoming an insurer of the safety of the land to unknown recreational users. In fact, the courts and society have an expectation that private landowners will conduct themselves in a safe and non-reckless manner while upon their land. Certainly, there is an expectation of the presence of others upon a paved road or main thoroughfare even on private land, and as such landowner should be responsible to others upon the paved road and be subject to a duty of care to refrain from negligently injuring those expected persons. While Appellants' position is that this appeal only

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[8] The National Traffic & Motor Vehicle Safety Act of 1966 provides for the establishment, by the Secretary of Transportation, of safety standards for motor vehicles and equipment in interstate commerce, for the declared purpose of reducing "traffic accidents and deaths and injuries to persons resulting from traffic accidents." 15 U.S.C.A. §§ 1381, 1392(a).

confronts the issue of whether vehicular negligence upon paved roads is subject to Section 846 immunity, even if the Court were concerned about broader applicability of the statute to conduct of a landowner causing injury, as opposed to property based injuries, Appellants submit that the circumstances giving rise to such conduct based injuries are relatively rare, while the incidents of property based injuries to recreational users is far more common. Under these scenarios, the application of the immunity to property based injuries is a more logical approach which gives the landowner sufficient protections upon which to rely when granting recreational access to his or her land.

Further, to adopt the construction urged by Appellee would cause a harsh and unjust result. This Court should be reluctant to construe the statute in a way in which a premises based immunity prevails over an important independent duty to drive safely in the absence of a clear indication by the Legislature that it so intended. *County of Madera v. Gendron* (1963) 59 Cal.2d 798, 803 (court reluctant to construe statute in a way that would cause "harsh and unjust result" in the absence of "clear indication" of legislative intent).

As the Ninth Circuit stated, "[w]e are particularly reluctant to follow Shipman in light of the harsh result that granting immunity here would create, where Klein's injuries were so severe and where he would have been able to seek recovery for those injuries from Anderberg's employer if that employer had been anyone but the federal government." *Klein v. United States*, supra, 537 F.3d at 1032.

This Court should also refuse any alternative construction of Section 846 other than an exclusively premises based immunity in light of the harsh and unjust result in this particular case.

CONCLUSION

For the foregoing reasons, this Court should unequivocally confirm that the immunity created by California Civil Code section 846 extends only to premises liability claims and that the statute does not apply to immunize a landowner from liability for acts of vehicular negligence committed by the landowner's employee in the course and scope of his employment that causes personal injury to a recreational user of that land.

Dated: April 20, 2009

Respectfully submitted,
SANTIAGO RODNUNSKY & JONES
David G. Jones
Tamara S. Fong

By: Dave Jones

Attorneys for Plaintiffs and Appellants
ALAN RICHARD KLEIN AND SHERYLL KLEIN

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), counsel for Appellants Alan Klein and Sheryll Klein hereby certify that Appellants' Reply Brief on the Merits consists of 4,568 words, as counted by the WordPerfect 12 word-processing program used to generate this brief.

Dated: April 20, 2009

Respectfully submitted,
SANTIAGO RODNUNSKY & JONES
David G. Jones
Tamara S. Fong

By: _____
Attorneys for Plaintiffs and Appellants
ALAN RICHARD KLEIN AND SHERYLL KLEIN

CERTIFICATE OF SERVICE

I, Eugenia Kalomiris, declare as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 5959 Topanga Canyon Boulevard, Suite 220, Woodland Hills, California, 91367, in said County and State.

On April 20, 2009, I served the following document(s):

APPELLANTS' REPLY BRIEF ON THE MERITS

on the parties stated below, by placing a true copy thereof in an envelope addressed as shown below by the following means of service:

SEE ATTACHMENT A

☑ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing on affadavit.

☐ **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and giving same to a messenger for personal delivery before 5:00p.m. on the above-mentioned date.

☐ **BY FACSIMILE:** From facsimile number (818) 593-7086, I caused each such document to be transmitted by facsimile machine, to the parties and numbers indicated above, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission.

☐ **BY FEDERAL EXPRESS NEXT DAY AIR:** On the above-mentioned date, I placed a true copy of the above-mentioned document(s) in a sealed envelope or package designated by Federal Express with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by Federal Express or delivered same to an authorized courier or driver authorized by Federal Express to receive documents.

☑ I am employed in the office of David G. Jones, a member of the bar of this court, and that the foregoing document(s) was (were) printed on recycled paper.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20, 2009

Eugenia Kalomiris

Eugenia Kalomiris

ATTACHMENT A
Klein et al. v. United States of America et al.
California Supreme Court Case No. S165549

Respondents UNITED STATES OF AMERICA; DAVID ANDERBERG
(CRC 8.25(a)(1))

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