Civil 2-26-08

ORIGINAL

Supreme Court No. S161008

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

VILLAGE NORTHRIDGE HOMEOWNERS ASSOCIATION
Plaintiff and Appellant,
v.
STATE FARM FIRE AND CASUALTY COMPANY,
Defendant and Respondent.

REVIEW AFTER A DECISION BY THE COURT OF APPEAL
SECOND DISTRICT, DIVISION EIGHT, 2ND CIV. NO. B188718
LOS ANGELES COUNTY SUPERIOR COURT NO. BC265328

REPLY IN SUPPORT OF PETITION FOR REVIEW

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REPLY IN SUPPORT OF PETITION FOR REVIEW

INTRODUCTION

The answer filed by Village Northridge is thick on rhetoric, but lacking in any serious legal analysis of the enormous implications created by the Court of Appeal's published opinion in this case. Instead of addressing the numerous serious issues raised by the Court of Appeal's decision, the answer attempts to justify the Court of Appeal's ruling based solely upon the rule that where a party seeks rescission (which Village Northridge has never done), it does not have to return any consideration that was undisputedly owed to that party. (Answer at pp. 2-4.) With that rule,

State Farm has no quarrel. However, that rule only applies "where there is ***no dispute as to the sum due*** . . . ." (*Garcia v. California Truck Co.* (1920) 183 Cal. 767, 772-773, emphasis added) (*Garcia*). Here, Village Northridge does not in any way disagree that it was settling a *disputed* claim with State Farm. Village Northridge had no more entitlement to the $1.5 million in settlement proceeds than the plaintiffs in *Garcia* and *Taylor v. Hopper* (1929) 207 Cal. 102 (*Taylor*) had to the settlement monies in those cases. Moreover, the answer does not dispute that the settlement agreement contains binding recitals to the effect that the parties were settling a *disputed* claim and that those recitals are binding under Evidence Code 622.

The "bottom line" is this: State Farm and Village Northridge, each represented by counsel, settled a *disputed* claim and each party waived the provisions of Civil Code section 1542. Village Northridge "wants out" of the agreement, but does not want to return what it received under the settlement agreement. Village Northridge's position has not been the law in this state for 80-plus years since *Garcia* and *Taylor*. If review is not granted, and the Court of Appeal's published decision permitted to stand, the finality that accompanies the settlement of all non-personal injury claims in this state will be severely compromised.

I. THE COURT OF APPEAL CREATED ENTIRELY NEW LAW, CREATING CONFLICTS WITH *GARCIA, TAYLOR* AND OTHER CASES.

The Court of Appeal noted that it was reaching its conclusion "not without difficulty" (Typed opn. at p. 6) and further recognized the "apparent incongruity, noted by the trial court, in 'affirming' a contract and yet avoiding one of its principal terms: the release." (Typed opn. at p. 7.)

The answer does not attempt to harmonize this incongruity. Nor does it hint at justifying the Court of Appeal's refusal to follow *Garcia* and *Taylor* because those decisions involved personal injury cases. The answer implicitly concedes that the primary rationale of the Court of Appeal's decision -- that *Garcia* and *Taylor* "only apply to the release of personal injury claims" (Typed opn. at p. 2; *see also id.* at pp. 6, 12) -- is invalid and is contrary to the numerous cases that have applied *Garcia* and *Taylor* over the last 80 years, including those outside of the personal injury context.

Moreover, the answer does not in any way address this Court's rationale underlying *Garcia* and *Taylor* -- cases which have governed the settlement of civil disputes in this state for 80-plus years. Not only does the Court of Appeal's decision undermine two well-established decisions of this Court, it also jettisons a legislative enactment, Civil Code section 1691, which requires the return of consideration in order to rescind a contract.

The answer also does not dispute that under this Court's decision in *Rosenthal v. Great Western Fin. Securities Cor*p. (1996) 14 Cal.4th 394, 415 [Werdegar, J.], a party that believes that it has been fraudulently induced to enter into a contract "in order to *escape from its obligations* the aggrieved party *must rescind.*" (Italics added.) Here, the Court of Appeal's decision gives Village Northridge all of the benefits of rescission -- a complete and total disregard of all of its contractual obligations under the settlement agreement -- without the obligations of rescission. Nor does the answer dispute that the Court of Appeal's decision violates the rule against partial affirmation of a contract. That is, when a party believes they have been defrauded, and elects to "affirm" the agreement, they "affirm it wholly." (*Hickman v. Johnson* (1918) 36 Cal.App. 342, 348; *see also Bagdasarian v. Gragnon* (1948) 31 Cal.2d 744, 750-751; *McCauley v. Dennis* (1963) 220 Cal.App.2d 627, 633; *Gluskin v. Lehrfeld* (1955) 134 Cal.App.2d 804, 811.)

Instead, Village Northridge attempts to justify the Court of Appeal's decision based upon the rule that when a party seeks to rescind a contract, they are not required to return "that which in any event he would be entitled to retain either by virtue of the contract sought to be set aside, or of the original liability." (Answer p. 2, citing *Persson v. Smart Inventions* (2005) 125 Cal.App.4th 1141, 1155 (*Persson*).) However, as noted above, this rule

only applies "where there is ***no dispute as to the sum due*** . . . ." (*Garcia, supra*, 183 Cal. at pp. 772-773, emphasis added.) Here, there is no question that the parties were settling a *disputed* claim, as recited in the settlement agreement. (6AA 1355-1356; 1359-1360, ¶ 8.) The undisputed claim payments were made without a release and are not involved in this case. Indeed, the Court of Appeal itself recognized that this case "would not in any event fit precisely into the exception because, as State Farm points out, the amount of the claim settled for $1.5 million was disputed by State Farm, and it may be that [Village Northridge] was not entitled to the entire amount." (Typed Opn. at p. 9.) Moreover, Village Northridge has specifically and repeatedly disavowed any intention to rescind the settlement agreement. (*See* January 15, 2008 modification to opinion, fn. 7 [Village Northridge "has repeatedly stated, including in response to the court's express inquiry, that it does not seek to rescind the settlement agreement and release, but rather seeks to affirm the settlement and recover damages for fraud"].)

Village Northridge relies upon *Persson* to justify the Court of Appeal's decision. However, *Persson* involved the purchase and sale of a *res* (stock certificates) making the *Garcia/Taylor* rule facially inapplicable.[1]

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[1] State Farm has never disputed that when a *res* is bought or sold, the allegedly defrauded party may "affirm" the purchase agreement and sue for damages, without rescission. (*Bagdasarian v. Gragnon, supra*, 31 Cal.2d at (continued...)

In *Persson*, the parties exchanged money for stock certificates. In other words, equivalents were exchanged (money for stock) and the defendant retained what he/she bargained for, *i.e.*, the stock certificates. The only dispute was over the *price* the defendant had to pay for the stock certificates. However, even *Persson* recognized that *Garcia* controls whenever the release is "the sole object of the contract, for which the consideration was paid." (*Persson*, *supra*, 125 Cal.App 4th at pp. 1154-1155.) Here, the settlement agreement has no object *other than* the settlement of the disputed claim and the release. (6AA 1355-1362.)

The distinction between a settlement agreement and the purchase/sale of a *res* has been recognized by case law:

> In cases like those above cited [*Garcia*] if the plaintiff desires to go back to his original cause of action for tort, it is essential that he effect a rescission of the contract which purports to bar his cause of action. In other words, if he wants to sue on the original tort, he can neither stand on the release agreement nor act in violation thereof, but must move to set it aside. But in such a case as this, involving fraud in the sale of real property, it is well settled that a plaintiff may either rescind or stand on his contract and sue for damages.

(*Montes v. Peck* (1931) 112 Cal.App. 333, 340.) Other cases cited by the Court of Appeal are in agreement. (*See Stefanac v. Cranbrook Educational Community* (Mich. 1990) 458 N.W.2d 56, 60 ["A compromise and release is not to be confused with the law of contract, in which equivalents are

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[1](...continued)
p. 750.)

exchanged, for the very essence of a release is to avoid litigation, even at the expense of a strict right"]; *Shallenberger v. Motorists Mut. Ins. Co.* (Ohio 1958) 150 N.E.2d 295, 300 ["There is usually no analogy between the situation of one induced by fraud to release a tort claim and one induced by fraud to buy something."].)

For the same reason, Village Northridge's reliance on *Sime v. Malouf* (1949) 95 Cal.App.2d 81, 110-112, is irrelevant. In that case, the court discussed *Garcia* and *Taylor* and noted that those cases the plaintiff's claims "were disputed as to right and as to amount." The court reiterated the same general rule and the exception for *undisputed* debt:

> In such cases [*Garcia* and *Taylor*] it is clear that the *plaintiff must restore what he has received in settlement of the disputed claim before suing upon it. He cannot retain the benefits of the release and sue, for to sue would violate the terms of his bargain. To hold otherwise would frustrate the very purpose of the release and destroy its effectiveness as a favored device for eliminating litigation. Hence rescission is necessary; and may be effectively accomplished only by returning the entire consideration received, for if plaintiff should fail to establish his cause of action, he would not be entitled to retain anything*. The rule in such circumstances appears to be well settled. Equally well established, however, is the exception to the rule: A restoration is not necessary, in order to avoid the bar of a release, *where there is* ***no question*** *as to the right of the plaintiff, arising independently of the release itself, to retain what he received.*

(*Id.* at pp. 110-111, emphasis added.)

Thus, the "exception" to *Garcia/Taylor* that the Court of Appeal relied upon has no bearing in this case because Village Northridge and State

Farm were settling a *disputed* claim.[2] Moreover, Village Northridge does not dispute that State Farm was entitled to seek a release in exchange for payment of a disputed claim under the Insurance Regulations. (Cal. Code Regs., tit. 10, §§ 2695.4(e)(2), 2695.7(h).)

The Court of Appeal's decision is the only decision in the this state since *Garcia* and *Taylor* that has permitted a party to avoid a settlement agreement, the sole purpose of which was to resolve a *disputed* claim (as opposed to the purchase/sale of a *res*), without having to return the money paid specifically for the release. Review is warranted in order to address the important issues raised by this radical decision which creates new law in California.

II. THE COURT OF APPEAL'S DECISION, IF PERMITTED TO STAND, WOULD MEAN THAT THERE COULD NEVER BE A VALID WAIVER OF CIVIL CODE SECTION 1542, THEREBY UNDERMINING THE CERTAINTY OF CIVIL SETTLEMENT AGREEMENTS.

Nor does the answer address in any meaningful way another important aspect of the Court of Appeal's decision. Under the Court of Appeal's decision, there can never be a valid waiver of Civil Code section

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[2] It was undisputed that Village Northridge suffered approximately $2.5 million in earthquake damage. State Farm paid that undisputed claim without requesting a release. (1AA 61-62; 6AA 1264-1265, ¶ 17.) State Farm only requested a release in order to resolve the *disputed* portion of the claim, *i.e.*, Village Northridge's claim that it suffered *more than* $2.5 million in earthquake damage. (1AA 620-62; 6AA 1266, ¶ 23.)

1542 ("Section 1542") in non-personal injury civil cases. Section 1542 reads:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

(Civ. Code § 1542.) Because defendants generally settle cases on the basis of "buying peace" (*Cilibrasi v. Reiter* (1951) 103 Cal.App.2d 397, 399), it is well accepted that parties can waive the provisions of this statute in order to ensure the finality of civil settlements. (*See San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1053-1054; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1170-1172; *Larsen v. Johannes* (1970) 7 Cal.App.3d 491, 504.) Indeed, virtually every settlement agreement entered into in this state in the last several decades has contained a waiver of Section 1542.

A waiver of Section 1542 is essentially a risk-shifting mechanism, wherein the plaintiff assumes the risk that it will "discover" new facts or claims in the future, in exchange for the consideration it receives under the settlement. However, under the Court of Appeal's decision, parties represented by counsel can settle a disputed claim, waive Section 1542, and then, years later, if the plaintiff claims to have "learned something new,"[3] it

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[3] In this case, Village Northridge claims to have learned after the (continued...)

can still sue the defendant for damages, without having to return the consideration that it received from the defendant for the very purpose of *not* suing the defendant. Thus, under the Court of Appeal's rationale, there can never be an *effective* waiver of Section 1542 in any non-personal injury case.

The only response in both the Court of Appeal's decision (Typed opn. at p. 10) and Village Northridge's answer (at pp. 4-5) is that to avoid this consequence, a defendant "need only avoid misrepresenting policy limits when it settles claims." While that may sound convenient, in reality it means that the defendant must defend and prevail on the merits of a fraud claim. And where the defendant prevails on the fraud claim, proving the loss to be worth less than the settlement, under the Court of Appeal's decision, the plaintiff nonetheless keeps the windfall (*i.e.*, the settlement money). (Typed opn. at pp. 10-11, fn. 4.) Win or lose, the defendant always loses. The scheme created by the Court of Appeal's decision ignores the reality that defendants pay money, in exchange for a release and

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[3](...continued)
settlement agreement that it purportedly had $12 million in policy limits. According to the papers filed in connection with the earlier summary judgment motion (that is not the subject of this appeal), Village Northridge claims to have "learned" this new fact, by finding a declarations page in storage. (2AA 284, ¶ 6.) Presumably, Village Northridge had that declarations page in its possession at the time of the settlement agreement.

waiver of Section 1542, precisely in order to *avoid litigation*.[4] Forcing a defendant to defend and prevail on the merits of fraud litigation still deprives the defendant of what it bargained for: *not* being sued. More importantly, this Court could have said precisely the same thing 80 years ago in *Garcia* and *Taylor*. The fact that *Garcia* and *Taylor* were personal injury cases is irrelevant: defendants settle cases in order to "buy peace" and avoid litigation. The nature of the underlying dispute is irrelevant.

Village Northridge also argues that because it alleges that it spent the money on earthquake repairs that it should be permitted to keep the $1.5 million without rescission. (Answer at p. 6.) Of course, the same was true with respect to the plaintiffs in *Garcia* and *Taylor*: undoubtedly they too had already spent the settlement proceeds. Indeed, a personal injury plaintiff who spends the settlement proceeds on medical bills or surgery has a more compelling plea to keep settlement proceeds than a 146-unit condominium complex, which can easily obtain a loan or make an assessment on its owners in order to return the consideration.

The Court of Appeal's decision undermines the ability for settling parties to effectively and meaningfully waive Section 1542. Review is warranted in order to address these issues.

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[4] Note that *Taylor* was decided on demurrer.

III. THE COURT OF APPEAL'S NEWLY-CREATED DAMAGES THEORY IS BASED ENTIRELY UPON SPECULATIVE DAMAGES.

On pages 30-34 of the Petition, State Farm set forth in great detail the inherently speculative nature of damages under the Court of Appeal's decision. The answer does nothing to dispute the speculative nature of that inquiry. Nothing in the answer explains why this Court's pronouncements in *Taylor* -- that the "difficulty in determining the amount of damages is insurmountable" and that "an alleged value of the claim . . . is of a nature too speculative and wagering to be recognized by the law in this action for fraud" (*Taylor, supra*, 207 Cal. at pp. 103-104) -- apply to personal injury claims, but not to Village Northridge's claims here. And therein lies the Court of Appeal's error in failing to follow *Taylor*.

Village Northridge now claims that expert testimony would be admissible to demonstrate "the amount which the parties would have settled . . . ." had Village Northridge known their policy limits were allegedly $12 million. (Answer at p. 9.) However, in a very similar context, it has been held that a plaintiff in a legal malpractice case cannot introduce expert testimony on the ultimate issue to be proven, *i.e.* what the actual outcome of the underlying action would have been but for the attorney's alleged negligent. (*Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 972-973.) By this same reasoning, Village Northridge should not be permitted to

introduce expert testimony as to what the parties would have settled for but for the alleged misrepresentation. To the extent that Village Northridge's interpretation of the Court of Appeal's decision is correct, however, then the Court of Appeal's decision has created yet another conflict among published opinions justifying review by this Court.

IV. THE MINORITY RULE THAT THE COURT OF APPEAL FOLLOWED IS THE RESULT OF LEGISLATIVE CHANGE. IN CONTRAST, THE CALIFORNIA LEGISLATURE AMENDED THE RESCISSION STATUTES IN 1961 AND DID NOT ATTEMPT TO OVERTURN *GARCIA* AND *TAYLOR*.

The Court of Appeal justified its decision based upon non-California decisions. (Typed opn. at pp. 11-13.) As State Farm demonstrated in its Petition (at pp. 28-29), the position adopted by the Court of Appeal represents the minority view nationwide, a point not disputed by Village Northridge. The practical effect of the Court of Appeal's decision is to move California from the majority rule to the minority rule for all non-personal injury cases. Such a dramatic ruling is something only *this Court* should do.[5] If for no other reason, review is warranted to clarify whether California continues to follow the majority rule, as exemplified by *Garcia* and *Taylor*, or whether California now follows the minority rule.

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[5] Indeed, according to a recent study, this Court's decisions are followed by the courts of other states more frequently than any other state's highest court. (*See* Dear & Jensen, "*Followed Rates" And Leading State Cases* (2008) 41 U.C. Davis L.Rev. 683.) Review by this Court to address an issue on which there is a national split of authority will undoubtedly be a case of great significance.

New York is the genesis of the case law cited by the Court of Appeal. However, New York common law was the same as *Garcia* and *Taylor*, *i.e.*, rescission and return of consideration were required. (*Gilbert v. Rotchild* (N.Y. 1939) 19 N.E.2d 785, 787-788 ["The release was not void, but voidable. In such a case, the general release is an absolute bar to the action unless rescinded, and rescission can be effective only by returning or tendering back the consideration received"].) New York law changed in 1946 when the New York Legislature amended its rescission statute to allow a party to rescind and avoid returning consideration. (*Ciletti v. Union P. R. Co.* (2d Cir. 1952) 196 F.2d 50, 51 [Hand, A., J] [discussing change]; *see* NY CLS CPLR § 3004.) In contrast, the California Legislature has explicitly provided the return of consideration "must" occur. (Civ. Code § 1691.)

State Farm respectfully submits, that if *Garcia* and *Taylor* need to reexamined, it should only be done by the Legislature, as happened in New York. Our rescission statute is clear: the consideration "must" be returned. (Civ. Code § 1691.) The Legislature amended the rescission statutes in 1961 and, in contrast to New York, did not seek to revise the rules announced by this Court in *Garcia* and *Taylor*. (*See Runyan v. Pacific Air Industries, Inc.* (1970) 2 Cal.3d 304, 311-313 & fn. 9 [discussing legislative history of 1961 amendments].) The inference that should be drawn is that

Legislature did not intend to alter *Garcia* and *Taylor*. However, the practical effect of the Court of Appeal's decision is to allow a plaintiff to rescind a settlement agreement in violation of the legislative mandate that the consideration "must" be returned.

Therefore, review is warranted to address these issues.

V. BECAUSE THIS INVOLVES THE REVIEW OF A DEMURRER RULING, VILLAGE NORTHRIDGE'S FRAUD ALLEGATIONS MUST BE ACCEPTED AS TRUE, NO MATTER HOW FALSE THEY ARE.

This is a demurrer ruling and, as such, Village Northridge's fraud allegations must be presumed as true, no matter how specious they are. Nonetheless, rather than attempting to reconcile the Court of Appeal's decision with existing California law, Village Northridge instead attacks State Farm based upon factual arguments that are not, and never were, part of the record on appeal. (Answer at pp. 5-7.) Specifically, Village Northridge argues that State Farm continues to misrepresent the policy limits and invites State Farm to rebut the attack. Though it is not relevant to the underlying legal dispute, and certainly not relevant to the issues raised in the Petition, State Farm can explain its position on the earthquake limits, with reference to supporting documents.

The gravamen of Village Northridge's fraud claim is that State Farm allegedly represented that it had approximately $5 million in earthquake coverage when, according to Village Northridge, it actually had $12

million. For this, Village Northridge relies upon a declarations page attached to its complaint. (6AA 1264, ¶ 16; 1275.) However, Village Northridge's earthquake coverage was *not* determined or specified by this declaration page; it was determined by its policy. Hence, the declaration page very clearly states: "Other Limits and Exclusions May Apply -- Refer to Your Policy." (6AA 1275.)

State Farm's earthquake endorsement, policy form FE-56307.1, sets forth the applicable deductible and provides that the amount of the deductible "is the amount determined by applying the deductible percentage(%) shown in the Declarations, separately to each of the following: a. the amount of insurance on each covered building or structure *as shown in our records*..." (6AA 1314, ¶ 4, emphasis added.) Thus, the endorsement notes that the amounts of coverage are not set forth in the declarations page, but are instead governed by State Farm's records.

Within one week of the Northridge earthquake State Farm printed its "records" showing the applicable earthquake coverages. Attached as Exhibit A is a copy of the document reflecting those records as of January 21, 1994.[6] The coverage lines denoted "QB" reflect the amount of earthquake coverage. Not surprisingly, the three "QB" lines of coverage total exactly $5 million, not $12 million. In connection with the earlier

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[6] This document was produced by State Farm in discovery as part of the claim file.

motion for summary judgment, State Farm established that Village Northridge had almost exactly $5 million in earthquake coverage. (1AA 61, ¶ 5.)

During the entire time State Farm adjusted this loss from 1994 to 1998, Village Northridge never once questioned the earthquake limit or deductible. In 1999, when the parties negotiated the settlement agreement and Village Northridge claimed that its loss exceeded $8 million, there was no mention of a dispute over the correct policy limit or deductible. Indeed, Village Northridge never doubted the limit or deductible until October 2003, almost ten years after the earthquake and half-way through this litigation. The original complaint does not even mention a dispute over the earthquake policy limit or deductible. (1AA 3-10.) The allegation about the policy limit was first raised in opposition to State Farm's original motion for summary judgment. (1AA 228-233.)

As State Farm explained in its Petition (at p. 12, fn. 5), it was one of the only insurers in California that allowed commercial policyholders to buy earthquake insurance in amounts less than the limits applicable for other perils. Because of the 10% deductible, allowing Village Northridge this luxury saved it thousands in premium dollars and lowered its deductible to only $500,000 instead of the $1.2 million deductible that would apply to the limits now claimed.

In short, Village Northridge's ramblings about the declarations page are irrelevant, but since Village Northridge continues to press the issue, State Farm wanted to make the Court aware of its position.

CONCLUSION

For the foregoing reasons, review should be granted and the Court of Appeal's decision reversed.

DATED: March 20, 2008

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BRIEF FORMAT CERTIFICATION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.204(c)

Pursuant to California Rules of Court, Rule 8.204(c), I certify that Respondents' Reply Brief is

X Proportionately spaced, has a typeface of 13 points and contains 4,012 words, including footnotes.

DATED: March 20, 2008

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Requested by: SUSAN JOHNSON 01/21/94 04:16:16

STATE FARM FIRE AND CASUALTY COMPANY
CURR DATE 01/20/94 POLICY # 92-27-9547-6
INSURED VILLAGE NORTHRIDGE II HOA
C/O ROSS MORGAN & COMPANY INC

LOAN # LOAN #

	FLMP SCSPTA	CLASS	AMOUNT	LIAB	RSK NO	ITM	STA CL
13	AS	361	176622	61	1		
15	DO	300		61	1		
17	QB	360	4630400		1		
19	QB	360	169800		1		
21	SL	300	1	61	1		

	FLMP SCSPTA	CLASS	AMOUNT	LIAB	RSK NO	ITM	STA CL
14	AS	361	171668	61	1		
16	IL	300		61	1		
18	QB	360	174700		1		
20	QC	360	25100		1		

FORMS TITLE FORMS TITLE

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PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, 15th Floor, Los Angeles, CA 90071-2609.

On March 20, 2008, I served the foregoing document(s) described as:

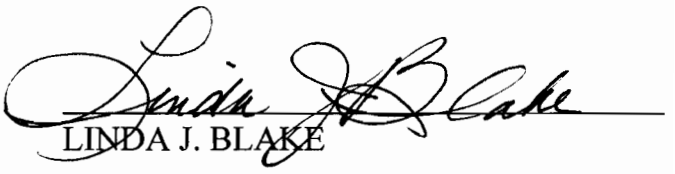
REPLY IN SUPPORT OF PETITION FOR REVIEW

on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

See Attached Service List

(X) **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 20, 2008, at Los Angeles, California.



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