Supreme Court Copy

Case No. S177075

IN THE

SUPREME COURT OF CALIFORNIA

OCTAVIANO CORTEZ,

Plaintiff/Appellant,

v.

MIGUEL QUEZEDA ORTIZ, LOURDES ABICH and OMAR ABICH,

Defendants/Respondents

After a Decision by the Court of Appeal,
Second Appellate District, Division Four
Case No. B210628

REPLY BRIEF ON THE MERITS

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INTRODUCTION

In their Answer brief, the property owner defendants don't really address the core issue in this case (does their extensive remodeling project fit within the household domestic service exception to the California Occupational Safety and Health Act?) Instead, they conveniently ignore that that Defendant Omar Abich elected to be the owner/builder on an extensive construction project. He was not an unsuspecting homeowner. Defendants improperly try to reframe the case to address whether homeowners owe a duty to protect a contractor's workers. *But*, Plaintiff and Ortiz were not contractors. There is no evidence that they were (or held themselves out as) "contractors" or that Defendants thought they were hiring "contractors". Plaintiff and Ortiz were workers hired to work on Defendant Abich's construction project.

Plaintiff does not advocate anything novel. Defendants' remodeling project, which added a new master bedroom, a new master bath, a new garage in place of a carport, and a new roof, was not a household domestic service. It did not involve the "household" and it was not "domestic". Acting as owner/builders engaging in extensive "demolition" and "construction" activity through unlicensed workers, Defendants were bound by Cal-OSHA safety regulations for those workers. (Labor Code §§ 6303(b) and 6400(a).)

In wording Labor Code Section 6303(b), the legislature addressed a homeowners responsibility to comply with OSHA safety regulations. Rather than categorically exempting homeowners, the statute only exempts a specific type of activity, "household domestic service." Defendants' argument that homeowners are exempt is simply not supported by the statutory language and is nothing more than an improper request that this Court rewrite the law.

Public policy favors Plaintiff injured worker and imposing liability on defendants. Public policy would most certainly not favor these owner/builder defendants. Affirming the judgment would send a very dangerous message.

Instead of using licensed, qualified, and competent contractors to perform extensive remodeling, demolition and construction projects, homeowners can save money and cut corners by acting as an owner/builder, even if they are not licensed, qualified or competent. They can use workers off the street, taking no safety precautions, and subject the workers and others on the premises to death or serious injury. All without any liability. Holding that a property owner who elects to be an owner/builder and acts as an unlicensed contractor performing extensive remodeling, construction and demolition work through unlicensed workers has to comply with safety regulations for those workers would deter unsafe practices and reduce the number and severity of future accidents. This Court has recognized that recent OSHA reforms had "the goal of deterring unsafe practices and reducing the number and severity of future accidents." (*Elsner v. Uveges* (2004) 34 Cal. 4th 915, 930)

Defendants' argument that Labor Code Section 2750.5 does not make them Plaintiff's employer is not properly before this Court as Defendants did not raise this issue in a petition for review or in the answer to Plaintiff's petition and this Court has not identified this as an issue on review. (*People v. Villa* (2009) 45 Cal. 4th 1063, 1076; *Scottsdale Ins. Co. v. MV Transportation* (2005) 36 Cal.4th 643, 654, fn. 2; see Cal. Rules of Court, rule 8.516.) Ultimately, as the Court of Appeal correctly held, Labor Code Section "2750.5 makes the Abiches appellant's employer with respect to potential tort liability." (Opinion, p. 6) (*Rosas v. Dishong* (1998) 67 Cal.App.4th 815, 817, 821–823, 826; *Foss v. Anthony Industries* (1983) 139 Cal. App. 3d 794, 797–800).

Finally, the fact remains that the Court of Appeal articulated a new interpretation of when an activity is exempt from OSHA (if the remodel is to enhance the owners' enjoyment of their residence) and Plaintiff was never given an opportunity to address this issue through discovery. If this Court

determines that the Court of Appeal did not err on the first issue and that a homeowner is now exempt from OSHA when the remodel is to enhance the owners' enjoyment of their residence, the matter should be remanded under C.C.P. Section 437c(m)(2) so that Plaintiff is afforded an opportunity to engage in further discovery and briefing to establish whether or not the activity in this case satisfies this newly articulated exemption.

ARGUMENT

I. DEFENDANT HOMEOWNERS WERE PLAINTIFF'S EMPLOYERS

A. Defendants Waived this Issue By Not Raising It

First, this Court should decline to decide the issue of whether the Abiches are Plaintiff's employer under Labor Code section 2750.5 as Defendants did not raise this issue in a petition for review or in the answer to Plaintiff's petition and this Court has not identified this as an issue on review. (*People v. Villa* (2009) 45 Cal. 4th 1063, 1076; *Scottsdale Ins. Co. v. MV Transportation* (2005) 36 Cal.4th 643, 654, fn. 2; see Cal. Rules of Court, rule 8.516.)

B. Defendants are Plaintiff's Employers Under Labor Code Section 2750.5

Nonetheless, the Court of Appeal correctly held that Labor Code section "2750.5 makes the Abiches appellant's employer with respect to potential tort liability." (Opinion, p. 6) (*Rosas v. Dishong* (1998) 67 Cal.App.4th 815, 817, 821–823, 826; *Foss v. Anthony Industries* (1983) 139 Cal. App. 3d 794, 797–800.)

Defendants' citation to *Lopez v. University Partners* (1997) 54 Cal.App.4th 1117 for the proposition that they could not be Plaintiff's employer because they did not supervise his work is improper. *Lopez* did not consider a hirer's liability as an employer under Labor Code section 2750.5. "It is axiomatic that cases are not authority for propositions not considered." (*In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388.) Further, Defendants' assertion that they "contracted with Ortiz" is false and unsupported by any citation to the record.

1. Section 2750.5 is Unambiguous

Defendants' assertion that the penultimate paragraph of section 2750.5 is confusing or at odds with other language is incorrect. The paragraph reads:

> In addition to the factors contained in subdivisions (a), (b), and (c), any person performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall hold a valid contractors' license as a condition of having independent contractor status.

This language is clear. An unlicensed person performing a licensed activity cannot be an independent contractor. Defendant owner/builder of this extensive remodeling project had unlicensed workers perform the demolition and construction activity that required a license. These workers (including Plaintiff) were Defendants' employees and could not be independent contractors as a matter of law.

In *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 5 (*State Compensation*), this Court concluded that even though the statute was part of division 3 of the Labor Code (Employment Relations) and not part of Divisions 4 and 4.5 of the Labor Code that deal with workers compensation, "[t]he language of section 2750.5 thus makes clear that the presumption of employee status was intended to apply in workers' compensation cases." (*Id.*, p. 12) *State Compensation* noted (and did not disapprove) the holding in *Foss v. Anthony Industries* (1983) 139 Cal. App. 3d 794 that section 2750.5 applies to both workers' compensation and tort cases ("Assembly Bill No. 3429 (1978 Reg. Sess.) which ultimately became the section did not refer to workers' compensation as originally introduced")

(*Id.*, pp. 10-11)

State Compensation concluded:

> It is not unreasonable for the Legislature to conclude that effective implementation of a system of providing for workers' injuries requires liability on the part of the ultimate hirer and that he should not be able to avoid liability on the ground that he dealt with a contractor when the contractor lacked a required license. . . . While it may seem anomalous to hold that the hirer is liable for compensation only if the contractor lacks the required license, and that he would not be liable if the contractor were licensed, the justification is apparent in that the Legislature has sought to assure that both licensed and unlicensed contractors and their employees will have compensation should they be injured on the job. (*Id.*, pp. 17-18)

In her 2003 concurring opinion in *Fernandez*, Justice Brown directed her disagreement with the court in *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 5 to the correct branch of government -- the Legislature:

> the Legislature should act promptly, by deleting or amending the penultimate paragraph of section 2750.5, to restore an apparently straightforward intent which has been undermined by the section's garbled syntax. (*Fernandez v. Lawson* (2003) 31 Cal.4th 31, 44)

Seven years later and no such amendment has been made by the Legislature. As discussed by *Rosas*:

> Although the Dishongs also contend applying section 2750.5 to subject a homeowner to potential tort liability for hiring an unlicensed worker is bizarre and unforeseen, we "presume that the Legislature intended all the consequences which flow from the plain meaning of the statute." (citation) Section 2750.5 does not purport to punish or penalize unlicensed contractors, but rather purports to determine the status of persons as independent contractors or employees. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd., supra*, 40 Cal. 3d at p. 15.) The section does not reflect legislative intent that an unlicensed contractor is an independent contractor for some purposes, but not for others. (*Ibid.*) If the statute results in a "windfall" to unlicensed contractors or an "undue burden" to unsuspecting homeowners as the Dishongs claim, "[i]t is for the Legislature, not the courts, to pass upon the social wisdom of . . . an enactment. And, if there is a flaw in the statutory scheme, it is up to the Legislature, not the courts, to correct it." (citation) (*Rosas, supra,* 67 Cal.App.4th at 823.)

2. Holding that Defendant Property Owner/Builders are the Employers of their Unlicensed Workers Would Promote Rather than Frustrate Contractor's State License Laws

Defendants do not dispute that the Contractors' State License Law "was enacted for the safety and protection of the public against imposition by persons inexperienced in contracting work. . ." *(Fraenkel v. Bank of America* (1953) 40 Cal. 2d 845, 848.) Rather, they incorrectly argue that contractors have to be licensed but homeowners do not under Bus. & Prof. Code section 7044, subd.(c)[1]. (Answer Brief, p. 17). Defendants then improperly recast the facts of this case arguing that the Contractor's State License law aims to deter those that offer unlicensed services versus those that use them and that Defendants would be unfairly punished.

First, there is no evidence that Defendants' activity fell under section 7044. Section 7044(a) (Property owner making own improvements) exempts from contractor license requirements:

> (1) An owner who builds or improves a structure on his or her property, provided that both of the following conditions are met: (A) None of the improvements are intended or offered for sale. (B) The property owner personally performs all of the work or any work not performed by the owner is performed by the owner's employees with wages as their sole compensation.
>
> (2) An owner who builds or improves a structure on his or her property, provided that both of the following conditions are met: (A) The owner directly contracts with licensees who are duly licensed to contract for the work of the respective trades

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[1] Section 7044 was amended, effective January 1, 2010, such that subdivision (c) was redesignated as (a)(3).

involved in completing the project. (B) For projects involving single-family residential structures, no more than four of these structures are intended or offered for sale in a calendar year. This subparagraph shall not apply if the owner contracts with a general contractor for the construction.

(3) A homeowner improving his or her principal place of residence or appurtenances thereto, provided that all of the following conditions exist: (A) The work is performed prior to sale. (B) The homeowner has actually resided in the residence for the 12 months prior to completion of the work. (C) The homeowner has not availed himself or herself of the exemption in this paragraph on more than two structures more than once during any three-year period.

Section 7044(b) further provides that:

In all actions brought under this chapter, both of the following shall apply: (1) Except as provided in paragraph (2), proof of the sale or offering for sale of a structure by or for the owner-builder within one year after completion of the structure constitutes a rebuttable presumption affecting the burden of proof that the structure was undertaken for purposes of sale. (2) Proof of the sale or offering for sale of five or more structures by the owner-builder within one year after completion constitutes a conclusive presumption that the structures were undertaken for purposes of sale.

Here, there is no evidence in the record that section 7044 applies. In fact, under section 7044(a)(1), Defendants would have had to have shown they used "employees" to do the work and thus this whole employment issue would be moot. Under section 7044(a)(2), Defendants would have had to have shown

they used "licensees" do to the work.

Defendants' citation to section 7044 actually supports Plaintiffs' position because it specifically defines when a homeowner would be exempt from licensing requirements and Defendants are not exempt. Thus, they remain Plaintiff's employer under Labor Code section 2750.5.

Defendants' argument that "[m]aking unlicensed workers employees would subject them to wage laws thereby defeating the prohibition on paying unlicensed contractors for their services" (Answer Brief, p. 19 (underline added)) is rooted on a faulty premise. Plaintiff was not a contractor. Defendants' reliance on *Fillmore v. Irvine* (1983) 146 Cal.App.3d 649 is misplaced because there "the plaintiff was a drywall finisher who acted as an unlicensed independent contractor and hired other drywall workers." (*Sanders Construction Co., Inc. v. Cerda* (2009) 175 Cal. App. 4th 430, 436). Here, Plaintiff did not act as unlicensed independent contractor. In *Sanders*, Plaintiff laborers worked for an unlicensed drywall subcontractor on a construction project and sought to recover unpaid from the defendant general contractor. The court concluded that the unpaid laborers were statutory employees of the general contractor under Lab. Code § 2750.5, thereby obligating the general contractor to pay their wages. The laborers did not act like unlicensed independent contractors and were not required to be licensed under Bus. & Prof. Code § 7031. (*Id.* at pp. 436 - 437.) Likewise, nothing prevents Plaintiff from being the statutory employee of the owner/builder defendants on this construction project under Lab. Code § 2750.5.

Further, Defendants' assertion that Labor Code section 2750.5 does not apply to homeowners would improperly require a rewriting of the statute as nowhere does it reflect an intent to exclude homeowners. "This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed. This court is limited to interpreting the statute, and

such interpretation must be based on the language used." *(Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 365; Code Civ. Proc. § 1858 ("In the construction of a statute. . . the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted. . .")

3. Plaintiff as a Worker is Not In Pari Delicto

Plaintiff is not *in pari delicto* as he never assumed the responsibility of being a contractor or subcontractor. Defendant owner/builder did. Again, Defendants' assertion that they did not have to have a contractor's license under Bus. & Prof. Code § 7044 is disingenuous. There is no evidence that Defendants would have qualified for an *exemption* from licensing requirements under § 7044 (no evidence the property was not intended or offered for sale and that they performed the work through employees, etc.) Defendants fail to concede or recognize the absurdity of this argument. Again, if they were exempted under § 7044 because Plaintiff was an "employee" then the employment issue under Labor Code § 2750.5 would be moot.

4. Employment under California's Labor Code Section 2750.5 Cannot be Compared to Other States

Defendants' reliance on out of state cases is improper as none of the cases dealt with the same statutory language and structure as California Labor Code Section 2750.5.

5. Labor Code Section 2750.5 Provides a Tort Remedy to Injured Workers.

Rosas also correctly addresses and rejects Defendants' remaining arguments:

Additionally, the position of section 2750.5 within the statutory scheme indicates the Legislature intended to provide a potential tort remedy to unlicensed workers injured while performing a job for which a license is required. The section is placed in division 3 (§ 2700 et seq.) of the statutes, dealing with the general obligations and liability of an employer to an employee rather than divisions 4 and 4.5 (§ 3200 et seq.) dealing with workers' compensation. Section 2700 provides that the provisions of division 3 shall fully apply to all cases where the provisions of divisions 4 and 4.5 are not applicable. Section 3602, subdivision (c) provides that where the conditions of workers' compensation liability set forth in section 3600 do not concur, the liability of the employer is the same as if division 4 had not been enacted. Section 3600, subdivision (a)(1) conditions workers' compensation coverage on both the employer and the employee being subject to the workers' compensation provisions at the time of the injury. Where a worker is excluded from workers' compensation coverage under section 3352, subdivision (h), the statutory scheme provides for potential liability under division 3, including section 2750.5.

Moreover, finding Rosas to be an

> employee under section 2750.5 furthers the policies identified in *Foss v. Anthony Industries, supra*, 139 Cal. App. 3d 794, i.e., 1) imposing liability on the one benefited by the labor and capable of spreading the risk through insurance; and 2) encouraging the hiring of workers with the competence and financial responsibility necessary to obtain a license. It is evident that potential tort liability for hiring an unlicensed worker to do a job requiring a license encourages a homeowner to hire a licensed worker. As to spreading the risk through insurance, all California comprehensive personal liability insurance policies must provide coverage for workers' compensation claims as well as general liability insurance. (Ins. Code, § 11590.) Whether an injured worker recovers through workers' compensation coverage or through general liability coverage, liability is still imposed on the homeowner benefiting from the work and able to spread the risk through the purchase of a comprehensive homeowners' liability policy. (*Rosas, supra,* 67 Cal.App.4th at 822)

Rosas goes on to hold:

> The Dishongs contend imposing tort liability under section 2750.5 would impose an unfair burden on unsuspecting homeowners. Based on the availability of workers' compensation

> insurance, our Supreme Court has rejected an argument that application of section 2750.5 in workers' compensation proceedings would subject unsuspecting homeowners to an undue burden. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd., supra*, 40 Cal. 3d at pp. 13-15.) Because comprehensive homeowners policies include both workers' compensation and liability coverage, the interaction of sections 3352, subdivision (h) and 2750.5 to allow an unlicensed worker who is excluded from workers' compensation coverage to sue in tort is unlikely to subject a homeowner to any greater burden than that envisioned by the Supreme Court in State Compensation Ins. Fund. (*Rosas, supra,* 67 Cal.App.4th at 822)

Defendants owners/builders were Plaintiff's employers under Labor Code section 2750.5.

II. THE EXTENSIVE REMODELING, CONSTRUCTION AND DEMOLITION PROJECT DOES NOT FIT WITHIN THE HOUSEHOLD DOMESTIC SERVICE EXCEPTION TO THE CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT

Defendants' argument that Cal-OSHA safety regulations do not apply to homeowners is simply inconsistent with the broad statutory language that has no categorical exemption for homeowners. Rather, Labor Code sections 6303(b), 6400(a) and 6401 are clear. Section 6400(a) requires that "*[e]very employer* shall furnish *employment* and a place of employment that is safe. ..".

(italics added.) Section 6401 requires that "*[e]very employer* shall furnish and use safety devices and safeguards. . ." (Italics added.) Section 6303(b) defines "Employment" as including "the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, **demolition**, and **construction work**, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, *except household domestic service*." (italics and bold added.))

In wording Labor Code section 6303(b), the legislature addressed a homeowners responsibility to comply with OSHA safety regulations. Rather than categorically exempting homeowners, the statute only exempts a specific type of activity, "household domestic service." This extensive remodel, demolition and construction project was not a household domestic service. Defendants' argument that homeowners are exempt is simply not supported by the statutory language and is nothing more than an improper request that this Court rewrite the law.

California and Plaintiff are not charting any new course. Defendants acted as homeowners/builders and their own general contractors using unlicensed workers on a construction project. With that election came the responsibility to provide for the safety of the workers.

As statutory employers under Labor Code § 2750.5, the Abich Defendants owed a duty to Plaintiff to comply with OSHA safety regulations and provide a safe place of employment because they were engaging in "**demolition**" and "**construction work**."

Plaintiff asks this Court to simply apply the Labor Code as written. As written, Labor Code sections 6303(b), 6400(a) and 6401 impose an obligation on *every* employer that engages in "demolition" and "construction work" to provide a safe place of employment, to furnish and use safety devices, and to do every other thing reasonably necessary to protect the safety of employees.

Here, the Abich Defendants made a choice to act as owner/builder and unlicensed general contractors on an extensive construction project using workers. These workers are not deemed "domestic servants" under case law and they are not recognized by wage regulations as part of "household occupations". Unlike the tree trimming in *Fernandez v. Lawson* (2003) 31 Cal.4th 31, it is not common for homeowners to act as unlicensed contractors performing extensive, year long remodeling, demolition and construction work.

Defendants' reliance on out of state authorities is misplaced as none of them involve the instant statutory language defining when an activity is not subject to OSHA safety regulations. None of these cases hold that the type of remodeling, demolition and construction activity in this case is a "household domestic service" exempt from safety regulations. We are applying the specific language of a California statute enacted by our legislature, not how the statute should be rewritten to be consistent with Defendants' collection of out of state cases.

Defendants' public policy arguments put the cart before the horse and are simply wrong. "The statute's plain meaning controls the court's interpretation unless its words are ambiguous." (*Green v. State of California* (2007) 42 Cal.4th 254, 260.) It is only where that "statutory language permits more than one reasonable interpretation, [that] courts may consider other aids, such as the statute's purpose, legislative history, and public policy." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) Here, the plain meaning of section 6303(b) provides only one exemption from safety regulations when the activity is a "household domestic service." This remodeling, demolition and construction activity cannot reasonably be interpreted to be a household domestic service.

Ultimately, public policy should favor Plaintiff worker. Holding that a property owner who elects to be an owner/builder and acts as an unlicensed contractor performing extensive remodeling, construction and demolition work through unlicensed workers has to comply with safety regulations for those workers would deter unsafe practices and reduce the number and severity of future accidents. This Court has recognized that recent OSHA reforms had "the goal of deterring unsafe practices and reducing the number and severity of future accidents." (*Elsner v. Uveges* (2004) 34 Cal. 4th 915, 930)

III. IF THIS COURT DETERMINES THAT HOMEOWNERS ARE NOW EXEMPT FROM OSHA WHEN THEIR REMODEL IS TO ENHANCE THEIR ENJOYMENT OF THEIR RESIDENCE, THE CASE SHOULD BE REMANDED

The Court of Appeal did in fact articulate a new standard for when an activity is exempt from OSHA (if the remodel is to enhance the owners' enjoyment of their residence.) Plaintiff was never given an opportunity to address this issue through discovery. If this Court agrees with this new standard, Plaintiff should be given an opportunity per C.C.P. section 437c(m)(2) to engage in further discovery and briefing to establish whether or not the activity in this case satisfies this newly articulated exemption.

CONCLUSION

This State has a law that makes unlicensed workers performing construction activity that requires a license an employee of the hirer. Labor Code Section 2750.5. This State also has laws that require all employers (including homeowners) to comply with safety regulations for the safety of their workers, unless the activity is a "household domestic service." Labor Code Sections 6303(b), 6400(a), and 6401. Defendants' year long extensive

demolition, construction and remodeling project was not a household domestic service. Despite Defendants' indirect attacks on the "wisdom, expediency, or policy" of these laws, these are legislative enactments and this Court should not rewrite the statutes to exempt homeowners from their application where there is no such exemption. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632-633.) Interpreting these laws as written, these homeowner/builders were Plaintiff's employer and had to (but failed to) provide safety devices and a safe place of employment. Judgment for defendants should be reversed.

DATED: May 24, 2010

Respectfully submitted,
THE HOMAMPOUR LAW FIRM
A Professional Law Corporation

By: _____
Arash Homampour, Attorneys for
Petitioner/Appellant/Plaintiff,
OCTAVIANO CORTEZ

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief is produced using 13-point Roman type including footnotes and contains 4,214 words. I am relying on the word count of the computer word processing program (Word Perfect) used to prepare this brief.

DATED: May 24, 2010

Respectfully submitted,
THE HOMAMPOUR LAW FIRM
A Professional Law Corporation

By: _____
Arash Homampour, Attorneys for
Petitioner/Appellant/Plaintiff,
OCTAVIANO CORTEZ

PROOF OF SERVICE

I am over the age of 18 and not a party to the within action. I am employed in the County of Los Angeles, State of California. My business address is 8383 Wilshire Boulevard, Suite 830, Beverly Hills, California 90211-2407.

On May 24, 2010, I served the following document(s) described as **REPLY BRIEF ON THE MERITS** on the interested parties in said action, by placing the ☐ original to the propounding party/ ☒ a true copy thereof to all other parties enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Correspondence so collected and processed is deposited with the United States Postal Service that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business.

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

Executed on May 24, 2010, at Beverly Hills, California.

ISELA MORENO

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