4th Civil No. D069556

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

YAVAPAI-APACHE NATION,

Plaintiff, Respondent and Cross-Appellant,

vs.

LA POSTA BAND OF DIEGUENO MISSION INDIANS,

Defendant, Appellant, and Cross-Respondent.

CROSS-APPELLANT'S REPLY BRIEF

Appeal from the Superior Court for the County of San Diego,
Case No. 37-2013-00048045-CU-BC-CTL
The Honorable Joan Lewis

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I. INTRODUCTION.

In its opening cross-appeal brief, plaintiff and cross-defendant the Yavapai-Apache Nation ("YAN") established that the evidence presented at trial entitled a reasonable juror to find for YAN on concealment or negligent misrepresentation, and therefore the trial court should have instructed on those theories of fraud.

In response, defendant and cross-complainant the La Posta Band of Diegueno Mission Indians ("La Posta") argues that (1) YAN should not have been permitted to try any type of fraud if La Posta's cross-complaint was not ripe, (2) YAN did not plead fraud with specificity, (3) unpleaded fraud may not be tried to a jury, (4) YAN was not entitled to instructions on concealment or negligent misrepresentation because YAN did not raise them in the pleadings, and (5) the jury's findings precluded a verdict on concealment or negligent misrepresentation.

The first three points – aimed at any trial of any type of fraud – are immaterial, although they will be addressed below: the trial court permitted YAN to try intentional misrepresentation, and La Posta does not appeal that ruling. The fourth point is wrong because concealment and negligent misrepresentation were encompassed within what YAN proffered as a potential pleading (although the trial court did not require YAN to amend its complaint). The fifth point is incorrect simply because a jury may find

no intentional misrepresentation while also finding that the defendant committed concealment or negligent misrepresentation.

II. UNRIPENESS OF LA POSTA'S CROSS-COMPLAINT DOES NOT BAR A TRIAL ON NEGLIGENT MISREPRESENTATION OR CONCEALMENT.

La Posta opens its argument with the assertion – wholly unsupported by authority – that the trial court may try YAN's affirmative defenses to La Posta's cross-complaint only if the cross-complaint is ripe. (Cross-Respondent's Response to Cross-Appeal and Appellant's Reply in Support of Appeal, filed Dec. 12, 2016 ("ARB") at 20-21.) This argument fails because YAN was entitled to try and prove fraud to counter La Posta's denials and affirmative defenses. But it is also wrong as a matter of law; even were fraud pleaded only an affirmative defense to La Posta's cross-complaint, the trial court may try an affirmative defense before trying the cross-complaint.

As a matter of efficiency, and within the discretion of the trial court, the court may try an affirmative defense before trying a complaint (or cross-complaint). (See *Gregory v. Hamilton* (1978) 77 Cal.App.3d 213, 218 ("[U]nder Code of Civil Procedure section 597, the defendant may have the court try the affirmative defense of compromise first, before proceeding to the merits of the action."); Code Civ. Proc., §§ 597 (court may try special defenses not involving the merits of the cause of action

before the trial of any other issue), 598 (court may order that the trial of any issue may precede the trial of any other issue).)

Therefore, it was possible for the trial court, at the same time it tried intentional misrepresentation, to permit the trial on negligent misrepresentation and concealment, on the ground that any such trial would obviate the need for a trial on the cross-complaint if the jury returned a verdict in YAN's favor on any of those claims.

This would have been especially efficient here because a finding of any species of fraud would have provided an alternate basis for this Court to affirm the judgment on the pleadings on La Posta's cross-complaint, in the event the Court finds that the cross-complaint is ripe for adjudication. A trial on all types of fraud may thus have avoided a second trial.[1]

Thus, La Posta's assertion is wrong: there is nothing inconsistent about seeking a trial on an affirmative defense even though the claim being defended against is unripe.

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[1] Indeed, it was even possible at the same time to have tried unripeness because YAN raised it as an affirmative defense to La Posta's cross-complaint. (1 AA 206:1-5.)

III. LA POSTA WAIVED ANY OBJECTION TO THE LACK OF SPECIFICITY IN YAN'S PLEADING.

La Posta next argues that the trial court properly excluded instructions on negligent misrepresentation and concealment because these claims were not pleaded with specificity. (ARB at 21-23.)

But La Posta should have raised this purported defect in the pleading by way of a demurrer to YAN's answer to La Posta's cross-complaint; it was not a basis to preclude a trial.

YAN pleaded as an affirmative defense that La Posta's cross-complaint was barred by "negligent, intentional or bad faith conduct." (1 AA 205:25-26.) Had La Posta desired further specificity, it could have demurred. (See Code Civ. Proc., § 430.20.)

Absent a demurrer, any pleading defect was waived. "It is the general rule that where a complaint alleges fraud in general terms and the parties go to trial without filing a special demurrer to the complaint on the ground that fraud has not been sufficiently alleged, such infirmity in the complaint is waived and may not be successfully urged for the first time on appeal." (*Mack v. White* (1950) 97 Cal.App.2d 497, 499-500.) "If the appellant wished to rely upon the alleged insufficiency of the answer of the defendants, she should have interposed a demurrer, or made a timely motion for judgment on the pleadings." (*Cooney v. Gray* (1920) 49 Cal.App. 664, 667.)

The cases La Posta cites on pages 21-22 of the ARB all describe the standard a pleading will be held to on a demurrer, but La Posta never demurred to YAN's answer. To the extent it was necessary for YAN to plead fraud – it was not, as discussed below – the trial court should not have given La Posta the benefit of having demurred when it waived the defect.

IV. PLEADING FRAUD WAS UNNECESSARY BECAUSE ABSENCE OF FRAUD IS BOTH A TRAVERSE OF LA POSTA'S DEFENSE AND AN ELEMENT OF LA POSTA'S CROSS-COMPLAINT.

La Posta next argues that unpleaded claims of fraud may not be tried to a jury. (ARB at 23-38.) La Posta is obviously incorrect because the trial court here permitted YAN to try intentional misrepresentation, although La Posta contends no fraud was pleaded. In any event, it was entirely proper for the trial court to allow YAN to try fraud here; the only problem is it should have allowed a trial on concealment and negligent misrepresentation in addition to intentional misrepresentation.

A. Pleading Fraud to Traverse La Posta's Answer Was Unnecessary.

YAN was entitled to prove fraud without have pleaded it because fraud was necessary to avoid the defense of absence of fraud implied in La

Posta's general denial.[2] La Posta denied owing YAN over $36 million (the amount pleaded in YAN's complaint). As explained in YAN's opening brief, La Posta's explanation for that denial was that YAN has no recourse to unpledged assets. (1 AA 337:23-338:6.) Recourse is governed by the Second Amended and Restated Loan Agreement ("SARLA"), which permits unrestricted recourse in the event of fraud. (1 AA 125 § 13.03(a); 1 RA 0158 § 13.03(a).) YAN was thus permitted to put on a case of fraud to counter the defense of absence of fraud raised in La Posta's answer.

As YAN argued below and in its opening brief on appeal, proof of fraud, sufficient to avoid a defense raised in an answer is admissible without further pleading. (*Jose Realty Co. v. Pavlicevich* (1913) 164 Cal. 613, 616; see *Wendling Lumber Co. v. Glenwood Lumber Co.* (1908) 153 Cal. 411, 414-15 ("It is elementary that a plaintiff is not required to anticipate in his complaint any defense that may be made by the defendant. [Citation.] The fact that a defendant owns and holds the property claimed because of a valid sale, or because he acquired the same from a fraudulent vendee, in good faith and for a valuable consideration, is purely a matter of defense, and when in such an action a defendant asserts any such claim,

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[2] It is immaterial whether absence of fraud is characterized as a denial of YAN's allegations or an affirmative defense because the effect is the same: it was necessary for YAN to prove fraud for YAN to have access to assets not pledged as collateral by La Posta.

plaintiff can meet it by proof that such sale was void because of fraud, without having made any allegation of fraud in the complaint.").) This is plainly necessary because California does not allow a pleading after an answer (a replication). (Code Civ. Proc., § 422.10.)

La Posta concedes that "*Jose Realty* was never overruled . . . ." (ARB at 34.) La Posta does not address *Wendling Lumber Co.*, which YAN also cited in the trial court. (1 AA 283:5-8.)

La Posta contends that *Jose Realty* is limited to actions involving "suspicious property conveyances" (ARB at 34), but no authority so holds.

La Posta contends that *Jose Realty* was effectively superseded by *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 214, which held: "And there are many cases holding that, where the legal title is in the defendant, and the plaintiff seeks to quiet title on the ground defendant's title was secured from plaintiff by fraud, the plaintiff must plead and prove facts constituting the fraud." *Leeper*, which cites *Jose Realty* (for another proposition) with approval (*Leeper, supra*, 53 Cal.2d at p. 213) merely holds an affirmative case of fraud must be pleaded with specificity, but says nothing about fraud proffered to avoid a defense. *Jose Realty*, however, directly addresses that point and holds that fraud in such circumstances need not be pleaded.

B. Pleading Fraud as Failure of Proof of La Posta's Cross-Complaint Was Unnecessary.

Fraud also amounts to failure of proof of La Posta's cross-complaint because absence of fraud is an element of La Posta's cross-complaint. La Posta incorporated the SARLA into its cross-complaint by reference (1 AA 77:4-8), and the terms of the SARLA therefore took precedence over the allegations in the cross-complaint. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 282 ("When a plaintiff attaches a written agreement to his complaint, and incorporates it by reference into his cause of action, the terms of that written agreement take precedence over any contradictory allegations in the body of the complaint.").)

The SARLA provides that La Posta "shall be obligated beyond its interest in the Collateral . . . from and after the date [La Posta] commits any act of fraud in connection with [YAN or the SARLA] . . . ." (1 AA 125 § 13.03(a); 1 RA 0158 § 13.03(a).)[3] La Posta alleged that it did not pledge its Revenue Sharing Trust Fund ("RSTF") payments as collateral. (1 AA 77:15.) This much is consistent between the SARLA and La Posta's cross-complaint.

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[3] Nothing in the SARLA limits La Posta's obligation in any way once there is a finding of fraud.

However, La Posta also alleged that it "did not provide recourse to its revenue sharing trust funds ('RSTFs') in case of a judgment adverse to La Posta" (1 AA 77:20-21), and that allegation is consistent with the terms of the incorporated SARLA, which takes precedence, only if La Posta did not commit fraud. By its plain language, the SARLA provides that whether or not YAN has recourse to assets beyond the collateral – such as the RSTF payments – depends on whether or not La Posta committed an act of fraud in connection YAN or the SARLA. Thus, when La Posta asks for a declaration that "YAN has no legal right to enforce any future judgment against La Posta's RSTFs" (1 AA 80:10-12), La Posta is necessarily asking for a declaration that it did not commit fraud. Had La Posta committed such fraud, it would, by the terms of the SARLA, be obligated beyond its interest in the collateral, and hence its RSTF payments would be available as recourse to YAN.

YAN's general denial "put in issue the material allegations of the complaint." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 383.) Because one of those material allegations is that La Posta did not provide recourse to its Revenue Sharing Trust Fund ("RSTF") payments, and because that allegation is only true – as indicated in the SARLA – if La Posta did not commit fraud, YAN necessary put at issue La Posta's allegation (by incorporation from the SARLA) that it did not commit fraud.

This is not unlike *Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621. There, a contractor cross-complained for breach of contract and pleaded that it had a license. The cross-defendant pleaded a general denial, and the contractor suffered a nonsuit because it was unable prove licensure. The contractor argued that nonlicensure was an affirmative defense, and was waived because it was not pleaded. The Court of Appeal disagreed, holding: "'Under a general denial, the defendant may urge any defense tending to show that the plaintiff has no right to recover or no right to recovery to the extent he or she claims. [Citations.]'" (*Id.* at p. 628.)

Here, La Posta pleaded absence of fraud by alleging that it did not provide recourse to its RSTF payments, and incorporated the SARLA. Absence of fraud was essential to the relief La Posta sought (a declaration). Just as the cross-defendant in *Advantec* was able to put the contractor to the proof of licensure with its general denial, YAN put La Posta to the proof of absence of fraud with its general denial. No specific allegation of nonlicensure was necessary in *Advantec*, and no specific allegation of fraud (i.e. absence of absence of fraud) should have been necessary here.[4]

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[4] There is no merit to La Posta's attempt to distinguish *Pullen v. Heyman Bros.* (1945) 71 Cal.App.2d 444, 448, which holds: "In the absence of a demurrer, fraud may be alleged in substance and effect and the evidence must conform thereto, but the proof need not be a verbatim recitation of the allegations of the complaint." (See ARB at 37.) YAN's affirmative

V. YAN RAISED CONCEALMENT AND NEGLIGENT MISREPRESENTATION IN ITS PROFFERED PLEADING AMENDMENT.

La Posta next argues that the trial court properly excluded jury instructions on concealment and negligent misrepresentation because YAN did not plead those torts, even in an amendment it suggested it would have made were the trial court to have required YAN to amend its complaint. (ARB at 38-40.) La Posta is incorrect because the trial court did not require YAN to amend its complaint and because concealment and negligent misrepresentation were encompassed within the proffered amendment.

At a pretrial hearing on September 19, 2014, the trial court ordered YAN to file a motion *in limine* "that says the elements [of fraud] can go before the jury without an affirmative defense and without a cause of action." (1 RT 17:10-13.) The court held out the possibility that it may require an amendment. (1 RT 25:8-12.) In its motion *in limine*, filed on September 24, 2014, YAN argued that it did not need to amend, but stated that were it given leave to amend, it would insert the following allegation in its complaint and answer which set forth La Posta's fraud as then known to YAN:

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defense alleged fraud in substance – La Posta's negligent, intentional, or bad faith conduct – and effect – La Posta's cross-complaint was barred. (1 AA 205:25-26.) La Posta could have, but did not, demur.

> ¶: YAN is entitled to, and seeks, a determination that La Posta committed fraud in connection with YAN and with the Second Amended and Restated Loan Agreement ("SARLA") because (1) on October 7, 2009, Eric LaChappa, Tribal Secretary/Treasurer of La Posta, wrote to YAN in a letter that La Posta sought a four-month forbearance on La Posta's obligation to make payments to YAN under the SARLA to "allow further time for Casino management to consider implementation of the findings of the Strategic Development Worldwide ('SDW');" (2) at the time the aforementioned representation was made, La Posta did not intend to consider implementing SDW's findings; (3) La Posta intended YAN to rely – in considering La Posta's request for a forbearance – on La Posta's representation that La Posta intended to consider implementation of SDW's findings; (4) YAN was justified in relying on (and did rely on) La Posta's representation because the representation was made by an officer of La Posta; and (5) YAN was damaged by La Posta's false representation because YAN granted the requested forbearance (in reliance on the representation), and, had YAN not granted the requested forbearance, La Posta's obligation to YAN under the SARLA would have been greater because YAN would have been entitled to compound interest four months earlier than it actually did begin compounding interest.

(1 AA 293:22-294:13.)

The trial court did not require YAN to amend its complaint, but on October 9, 2014 permitted YAN to put on a case of fraud based on the pleadings as they were. (2 AA 630.)

Therefore, there was no need to amend, and YAN's statement in its motion *in limine* of how it would amend if necessary should have been irrelevant: YAN was entitled to try fraud without a pleading expressly alleging the elements of fraud, and the jury should have been instructed on

all types of fraud supported by substantial evidence. (*Alcala v. Vazmar Corp.* (2008) 167 Cal.App.4th 747, 754.)[5]

Although La Posta contends otherwise, the allegation set forth in YAN's motion *in limine* and quoted above supports a claim for concealment and one for negligent misrepresentation, in addition to the claim for intentional misrepresentation that YAN was permitted to try. Indeed, our Supreme Court has considered most types of fraud as made up of a single set of overarching elements: "'The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, citing 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 676, p. 778.) The difference between intentional and negligent misrepresentation is "in a claim for negligent misrepresentation, the plaintiff need not allege the defendant made an intentionally false statement, but simply one as to which he or she lacked any reasonable

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[5] On April 1, 2015, long after YAN was ordered to and did file its motion *in limine*, the trial court noted that even though it did not require YAN to amend its complaint, "it was always the Court's intention that the fraud issue was limited to that framed by the motion itself . . . ." (3 AA 803:4-6.) Had YAN known this intention, which was not expressed at the September 19, 2014 hearing when YAN was ordered to file its motion, YAN may have worded its proposed allegation differently.

ground for believing the statement to be true." (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 184.) "The required elements for fraudulent concealment are: (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact." (*Graham v. Bank of Amer., N.A.* (2014) 226 Cal.App.4th 594, 606.)

YAN's proposed allegation supports a claim for negligent misrepresentation. The second element of the proposed allegation – "at the time the aforementioned representation was made, La Posta did not intend to consider implementing SDW's findings" – states that La Posta's representation was false, but does not identify whether it was intentionally false or simply made without any reasonable ground for believing it to be true. Hence, the proposed allegation equally supports both intentional and negligent misrepresentation.

The proposed allegation also supports a claim for concealment. The concealed fact was that La Posta did not intend to implement SDW's findings. The duty to disclose arises from the partial disclosure that La Posta's tribal government wanted time for its Casino management to

consider implementing SDW's findings without disclosing the Casino manager's disdain for the findings. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 877 ("A duty to disclose can arise from the making of affirmative representations with knowledge of undisclosed facts that '"materially qualify the facts disclosed, or . . . render [the disclosed facts] likely to mislead. . . ."'") (quoting *Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294).) The intent to defraud can be inferred from the intention to induce reliance (alleged element (3)). YAN's lack of knowledge can be inferred from the facts that La Posta disclosed and did not disclose. And YAN's damage is alleged (elements (4) and (5)).[6]

Hence, had YAN been required to amend – it was not – and had YAN made the allegation it proposed on September 24, 2014, it would have been entitled to jury instructions on concealment and negligent misrepresentation if the evidence supported such instruction. La Posta's suggestion is wrong that YAN's September 24, 2014 proposed allegation was lacking as to concealment and negligent misrepresentation.

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[6] As discussed in the next section, this is not to say that the facts necessary to prove concealment are the same as the facts necessary to prove intentional or negligent misrepresentations.

VI. THE JURY FINDINGS DID NOT FORECLOSE A VERDICT IN YAN'S FAVOR ON CONCEALMENT OR NEGLIGENT MISREPRESENTATION.

La Posta's final argument is that the jury findings on the special verdict foreclosed a verdict in YAN's favor on concealment or negligent misrepresentation. (ARB at 40-44.) Because the facts necessary to prove the various types of fraud differ, La Posta is wrong.

A. The Jury Was Not Instructed as to Causation for All Types of Fraud.

La Posta first argues that because all types of fraud require causation, a finding of no causation from an intentional misrepresentation implies a finding of no causation from any type of fraud. (ARB at 41-43.)

This is plainly wrong. For intentional misrepresentation, it is reliance on the representation that must cause the harm. (*Graham, supra*, 226 Cal.App.4th at p. 606.) For concealment, there is no misrepresentation, so proof of reliance is replaced by proof that the plaintiff would have acted differently had it known the concealed fact, and harm must be caused by the plaintiff having acted how it did as opposed to how it would have acted had it know of the concealed fact. (See *ibid.*)

Here, a jury instructed in intentional misrepresentation and concealment would be entitled to find both (1) that YAN did not rely in granting an extension on La Posta's representation that La Posta would

implement SDW's findings (for example because YAN had another reason for granting an extension), and (2) that YAN would not have granted an extension had YAN known that La Posta had no intention of implementing SDW's findings. Thus, a finding that an intentional misrepresentation did not cause harm would not preclude a finding – had the jury been instructed in concealment – that concealment caused harm.

As discussed in YAN's opening brief, had YAN been permitted to try negligent misrepresentation, it could have urged the jury to find fraud from a wider range of misrepresentations because the standard of scienter is lower, and the jury might have thereby found causation. (See Combined Respondent's Brief and Cross-Appellant's Opening Brief, filed Oct. 13, 2016, at 56-57.)

B. The Jury Did Not Find No Causation for All Types of Fraud.

La Posta's final, and related, argument is that YAN was precluded from prevailing on any fraud claim because the jury found no causation on intentional misrepresentation. (ARB at 43-44.) The jury answered question 5 – "Was YAN's reliance on La Posta's representation a substantial factor in causing harm to YAN?" – in the negative. (3 AA 808.) La Posta's argument fails for several reasons.

First, as discussed above, had YAN been able to try concealment, the jury may have found that La Posta's concealment caused harm even though it also found no causation from any representation by La Posta.

Second, the jury's finding is surplusage because the trial court had already determined, based on the parties' stipulation, that, if there were a misrepresentation, the misrepresentation caused harm. In a ruling after the bench trial phase that preceded the jury trial, the court held that the parties had stipulated that the granting of an extension "reduced YAN's breach of contract damages by $262,081.65 as of October 31, 2014 . . . ." (3 AA 797 ¶ 15.) Thus, if the jury found that YAN had granted the extension in reliance on La Posta's representation, it would have been required to find that reliance on the representation harmed YAN.

Third, the verdict form, submitted by La Posta over YAN's objection, was confusing because La Posta insisted on deleting the directions in the standard CACI verdict form (VF-1900) that instruct the jurors to skip the remaining elements once they find one element unsatisfied. On February 24, 2014, the parties submitted proposed special verdict forms for all three types of fraud[7], and on April 1, 2014, the Court selected La Posta's intentional misrepresentation special verdict form. (1 Cross-Appellant's Reply Appendix 13-17 (YAN's verdict forms), 34-37

[7] The parties also submitted proposed general verdict forms.

(La Posta's verdict form); 3 AA 804:1-7 (order accepting La Posta's forms but ordering it limited only to intentional misrepresentation); see 3 AA 808 (completed verdict form).) Because the jury was not asked to stop answering questions once it found in question 1 that La Posta did not make a false representation (3 AA 808:4-6), it is unclear what representation the jury is answering about in questions 2-5. It would be speculative for the Court to draw any conclusion about what the jury meant when it answered question 5 by finding YAN's reliance "on La Posta's representation" was not a substantial factor in causing harm. Certainly, it is speculative to conclude from the answer to question 5 that the jury necessarily found that no fraud that YAN could possibly adduce evidence of caused any harm to YAN.

In sum, the jury's finding cannot be taken as a determination that there was no causation from any type of fraud.

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VII. CONCLUSION.

For the foregoing reasons, YAN respectfully asks the Court to remand this action solely for a jury trial on whether La Posta committed either fraudulent concealment or negligent misrepresentation.

DATED: February 14, 2017

BROWNE GEORGE ROSS LLP
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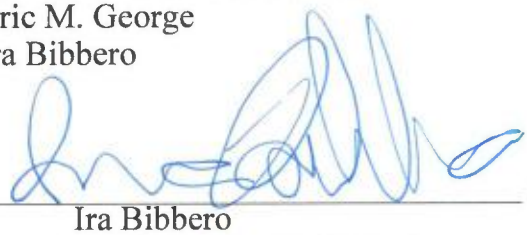
By 
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CERTIFICATE OF COMPLIANCE WITH RULE 8.204

Pursuant to Rule 8.204 of the California Rules of Court, the attached CROSS-APPELLANT'S REPLY BRIEF is proportionately spaced, has a typeface of 13 points or more and contains 4,413 words, including footnotes.

DATED: February 14, 2017

BROWNE GEORGE ROSS LLP
Eric M. George
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By _____
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2121 Avenue of the Stars, Suite 2800, Los Angeles, CA 90067.

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

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Jacqueline E. Baker

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Court of Appeal, Fourth District, Division One, Case No. D069556

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Court of Appeal, Fourth Appellate District Division 1

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Court of Appeal Case Number: **D069556**
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