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File No.: 04471.0039

**Via Federal Express**

Supreme Court of California  
350 McAllister Street  
San Francisco, Ca. 94102-7303

Re: No Doubt v. Activision Publishing, Inc., No. S 191787  
Letter by Amicus Motion Picture Association of America, Inc. (MPAA) Pursuant  
to California Rules of Court 8.500(g) and 8.1125 Supporting Depublication or  
Review of the February 15, 2011 Decision of the Court of Appeal, B 223996

To Chief Justice Cantil-Sakauye and Associate Justices:

The MPAA is an association of the six major motion picture studios in the United States: Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; and Warner Bros. Entertainment Inc. (hereafter "MPAA Members"). The MPAA advocates for strong intellectual property rights, free and fair trade, innovative consumer choices, and freedom of expression in the motion picture, home video, and television industries. The MPAA has litigated and participated as amicus in numerous cases involving intellectual property issues.

Amicus's interest in this case arises because the majority opinion of the Decision improperly states and misapplies two legal formulations intended to protect free speech interests against encroachment by the right of publicity tort. The majority misapplies this Court's transformative test by focusing solely on the celebrities and not their context in the larger work and by denying transformation because of the fame inherent in celebrity. Moreover, the majority also creates a new and unsupported rule that application of the federal Rogers test depends upon the application of the transformation test. The ruling is an unprecedented expansion of the right of publicity tort and threatens to subvert settled law and practices regarding the production and distribution of biographies, docudramas, documentary films and other works which depict, portray or mention real people in factual or fictional settings. The MPAA Members may be the biggest investors in the creation of works that regularly depict or refer to living and deceased personalities.

Amicus urges the Court to depublish the Decision below but even more appropriately to review the Decision, properly apply this Court's "transformative" test and clarify the proper

application of the Rogers v. Grimaldi test to California unfair competition cases. Amicus expresses no opinion regarding the contract-based claim or defense between the parties.

Because the right of publicity is said to be a “property” right, and the statutes and common law thus authorize the injunction remedy to enforce it, when that right comes into conflict with free speech interests, it is all the more critical that the lines be clearly delineated to avoid a chilling effect on speech. Motion picture projects require substantial investments of time, talent and money. Legal standards that promote predictability of outcome promote speech. Decisions such as that below threaten to create uncertainty and chill speech.

#### I. The Decision by The Court Of Appeal

Pursuant to a license, the Plaintiff musical group allowed defendant video game producer and distributor, Activision, to photograph the group members so their computer-generated images (“avatars”) could be integrated into a video game known as “Band Hero.” Activision agreed to license no more than three No Doubt songs for the game, subject to Plaintiff’s choice of songs. Plaintiff claimed that Activision breached the license agreement because an “unlocking feature” allowed players to cause the band’s avatars to perform songs they would have never performed. Activision admitted that it used impersonators to cause the avatars to sing songs not authorized by plaintiff and in other voices and to appear to perform alone or with other groups. Thus, the parties have a substantial contract dispute.

Plaintiff sued, alleging six causes of action including breach of contract, violation of statutory and common law rights of publicity and for unfair business practices under California Business & Professions Code § 17200. Defendant filed an anti-SLAPP motion to strike under Code of Civil Procedure §425.16, claiming the right to depict the group under free speech principles of the First Amendment to the U.S. Constitution. The trial court denied the motion, ruling that the suit did not qualify for anti-SLAPP treatment, that literal reproductions of band members were not “transformative” under the First Amendment, and that defendant had contracted away any First Amendment rights.

On appeal, the three judge panel held that the claims did qualify for anti-SLAPP treatment, stating that “[v]ideogames generally are considered ‘expressive works’ subject to First Amendment protections,” Op. at 8 “Activision’s use of No Doubt’s likenesses in Band Hero is a matter of public interest because of the widespread fame No Doubt has achieved.” Op. at 9 However, the majority held that plaintiff had shown that triable issues existed on the merits. Two of the Justices (the “Majority”) held that plaintiffs showed that the defendant’s use of the No Doubt avatars in the game did not merit First Amendment protection under either the “transformative” test first set out in Comedy III Prods., Inc. v. Gary Saderup, Inc., 25 Cal.4<sup>th</sup> 387 (2001) or the alternative First Amendment test set out in Rogers v. Grimaldi, 875 F.2d 994 (2d Cir. 1989) (“Rogers”). Typed Opinion [“Op.”] at 2, 21, 28. Justice Epstein wrote separately to note that he would not have reached the First Amendment issues, but instead would have decided the matter on the basis of the license agreement. Concurrence at 1.

The Decision became final in the Court of Appeal on March 17, 2011. Activision timely filed its Petition for Review in this Court on March 28, 2011.

II. Amicus Takes No Position Regarding The License Issue

Amicus agrees with Justice Epstein that this case should have been decided on the basis of the license agreement. Amicus takes no position on the merits of the breach of license issue. Amicus's concern is with the Majority's articulation of the application of the right of publicity to expressive works, which may directly affect Amicus's creative industry.

III. The Importance of the Free Speech Interest in Depicting or Portraying or Mentioning Real Persons, Living or Deceased, in Expressive Works

A. This Court and Other U.S. Authorities Recognize A Free Speech Interest That Allows The Unconsented Use of Likenesses, Names and Photographs of Living and Deceased Personalities in Factual and Fictional Expressive Works.

Absent defamation or invasion of the right of privacy, the names and likenesses of the famous and infamous are used everyday in expressive works and other protected forms of speech without consent, and without incurring liability under the right of publicity tort. See 2 J. McCarthy, Rights of Publicity & Privacy, §§ 8:73 – 8:82 (2d ed. 2011) (“McCarthy”) (collecting cases); Seale v. Gramercy v. Pictures, 964 F.Supp. 918, 930 (E.D. Pa. 1997) (movie portrayal of co-founder of Black Panther Party did not violate his right of publicity); Ruffin-Steinback v. dePasse, 17 F.Supp.2d 699 (E.D. Mich. 1998) (mini-series depicting fictionalized portrayals of The Temptations did not violate their right of publicity).

Nor does the fact that a real person is mentioned or depicted or portrayed in a work which may be fictional defeat the free speech interest. McCarthy, §§ 8:77-8:82; Polydorus v. Twentieth Century Fox Film Corp., 67 Cal.App.2d 305, 323-25 (1997) (fictional movie supposedly portraying writer's childhood friend); Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802 (Fla. 2005) (fictional depiction of real persons in “Perfect Storm” movie did not violate right of publicity; court finds no statutory violation to avoid conflict with First Amendment, relies on Guglielmi); Matthews v. Wozencraft, 15 F.3d 432 (5<sup>th</sup> Cir. 1994) (ex-husband's name and likeness not misappropriated in movie where script written by ex-wife portraying plaintiff in fictional setting); Ruffin-Steinbeck, *supra*.

As the majority noted in Guglielmi v. Spelling-Goldberg Prods., 25 Cal. 3d 860 (1979) in concluding that free speech interests in a television movie about the biography of actor Rudolph Valentino prevailed over publicity rights:

Contemporary events, symbols and people are regularly used in fictional works. Fiction writers may be able to more persuasively, or more accurately, express themselves by weaving into the tale persons or events familiar to their readers. The choice is theirs. No author should be forced into creating mythological

worlds or characters wholly divorced from reality. The right of publicity derived from public prominence does not confer a shield to ward off caricature, parody and satire. Rather, prominence invites creative comment. Surely, the range of free expression would be meaningfully reduced if prominent persons in the present and recent past were forbidden topics for the imaginations of authors of fiction.

The facts of the present case are strikingly illustrative. Valentino was a Hollywood star. His life and career are part of the cultural history of an era. As the title of respondents' film suggests, Valentino became a "legend," a symbol of the romantic screen idol and lover. His lingering persona is an apt topic for poetry or song, biography or fiction. Whether respondents' work constitutes a serious appraisal of Valentino's stature or mere fantasy is a judgment left to the reader or viewer, not the courts.

25 Cal. 2d at 870-71 (footnotes omitted.) In Comedy III Prods., Inc. v. Gary Saderup, Inc., 25 Cal.4<sup>th</sup> 387, 396 n.7 (2001), this Court concluded the quoted opinion by Justice Bird "commanded the support of the majority opinion of the court."

The Restatement summarizes the rule:

The name, likeness, and other indicia of a person's identity are used "for purposes of trade" under the rule stated in § 46 if they are used in advertising the user's goods or services, or are placed on merchandise marketed by the user, or are used in connection with services rendered by the user. However, use "for purposes of trade" does not ordinarily include the use of a person's identity in news reporting, commentary, entertainment, works of fiction or nonfiction, or in advertising that is incidental to such uses.

Restatement, "Unfair Competition," § 47 (1995).

B. The Threat of Injunctions Hampers Creativity, Investment and Promotes Self-Censorship or Censorship by Celebrities

Amicus' experience is that right of publicity claims are brought to attempt to give a plaintiff control over how the plaintiff or the plaintiff's relative is to be mentioned or portrayed in a movie or docudrama. The publicity right is often asserted as a surrogate for incomplete or defective claims of defamation or invasion of privacy. Thus, any judicial decision that improperly shifts the balance so that the right of publicity may be leveraged to impinge on free speech interests definitely will chill speech. Filmmakers will be reluctant to invest time, talent and money in a movie under the uncertain threat of an injunction. Nor does any filmmaker want to produce a work where its contents may be dictated by a plaintiff and his or her lawyer. This Court appreciated that concern when it wrote in Winter v. DC Comics:

“[B]ecause unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving free speech is desirable.” (*Good Government Group of Seal Beach, Inc. v. Superior Court* (1978) 22 Cal.3d 672, 685 [150 Cal.Rptr. 258, 586 P.2d 572]; see also *Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 269 [228 Cal.Rptr. 206, 721 P.2d 87]; *Aisenson v. American Broadcasting Co.* (1990) 220 Cal.App.3d 146, 154 [269 Cal.Rptr. 379].) As in *Comedy III, supra*, 25 Cal.4th 387, courts can often resolve the question as a matter of law simply by viewing the work in question and, if necessary, comparing it to an actual likeness of the person or persons portrayed. Because of these circumstances, an action presenting this issue is often properly resolved on summary judgment or, if the complaint includes the work in question, even demurrer.

30 Cal.4<sup>th</sup> at 891-92 (2003).

However, the No Doubt Majority has upset those expectations and tipped the balance by its announcement of a rule that diminishes free speech interests merely because individuals are depicted “life-like” or constitute “literal depictions” of people “doing exactly what they do as celebrities.” Op. at 19-20. This same activity occurs in every biography or documentary.

#### IV. The No Doubt Majority Misapplied The Transformative Test

##### A. The Comedy III and Winter Descriptions of the Transformative Test

Comedy III created the transformative test to formulate “what is essentially a balancing test between the First Amendment and the right of publicity based on whether the work in question adds significant creative elements so as to be transformed into something more than a mere celebrity likeness or imitation.” 25 Cal.4<sup>th</sup> at 391. “We ask, in other words, whether a product containing a celebrity’s likeness is so transformed that it has become primarily the defendant’s own expression rather than the celebrity’s likeness. And when we use the word “expression,” we mean expression of something other than the likeness of the celebrity. *Id.* at 407.

In Comedy III, although the Court acknowledged that celebrity images could be transformed by their context in a larger “work,” the drawings of the Three Stooges as marketed were the only “work;” they were not part of a broader context, e.g., part of story or a video game. The next case in which this Court applied the transformative test involved images within a broader context of a comic book; this Court explained that in such a case the transformative test was properly focused on the entire work. In Winter v. DC Comics, 30 Cal.4<sup>th</sup> 881 (2003), this Court considered comic books that included depictions of the “Autumn Brothers,” giant worm-like creatures with pale faces and long white hair, who were singing cowboys. Plaintiffs were well-known performing and recording musicians, with white hair and albino features, originally from Texas. This Court held that the First Amendment interest in the transformative use

outweighed the plaintiffs' right of publicity. In doing so, the Court clarified that the transformative test must be applied to the work as a whole. It described the subject "work" as the comic books, not merely the images in the comic:

In this case, we apply the same balancing test to comic books containing characters that evoke musician brothers Johnny and Edgar Winter. We conclude that, in contrast to a drawing of The Three Stooges, the comic books do contain significant creative elements that transform them into something more than mere celebrity likenesses. Accordingly, the comic books are entitled to First Amendment protection.

30 Cal.4<sup>th</sup> at 885 (Emphasis added). The Court repeated its focus: "We granted the defendants' petition for review to decide whether the comic books are protected under the *Comedy III* transformative test." (Emphasis added.). *Id.* at 887.

B. By Putting Undue Weight On The "Imitative" Aspects of The Game While Disregarding The Overall Expression of The "Work" -- The Video Game -- And By Giving Undue Emphasis To The Fame Inherent Whenever Celebrities Are Involved In An Expressive Work, The No Doubt Majority's Misapplication Of This Court's Transformative Test Threatens To Create Uncertainty In Applying That Test To Biographies, Docudramas And Documentaries And Other Depictions Or Portrayals In Expressive Works.

First, the No Doubt Majority improperly focused on the avatars instead of the entire work to determine transformation. The Majority acknowledged the significance of "context" and then by an odd application created a rule to strip "context" of constitutional significance. The Majority noted that No Doubt complained that their images were carefully imitated in the videogame, but the Panel conceded that

as *Comedy III* held, even literal reproductions of celebrities can be "transformed" into expressive works based on the context into which the celebrity image is placed. ( *Comedy III, supra*, 25 Cal.4<sup>th</sup> at p. 409, 106 Cal.Rptr.2d 126, 21 P.3d 797).

*Id.* at 18. But the Majority did not apply that test – instead shifting the focus away from the work as a whole and instead to the avatars themselves:

That the avatars can be manipulated to perform at fanciful venues including outer space or to sing songs the real band would object to singing, or that the avatars appear in the context of a videogame that contains many other creative elements, does not transform the avatars into anything other than exact depictions of No Doubt's members doing exactly what they do as celebrities. (Emphasis added).

Op. at 20.

By misapplying the test and improperly shifting the focus of the transformative analysis from the entire work, the game, as required by Comedy III and Winter, instead to the avatars alone, the Majority creates a holding inconsistent with this Court's opinion in Guglielmi as it regards biographies, docudramas and documentaries. It could equally be said that every documentary, using film clips of political leaders and celebrities, "does not transform [them] into anything other than exact depictions of [the subjects] doing exactly what they do." Op. at 20. Moreover, in film biographies and docudramas, actors are typically cast or made up to look like imitative depictions of the subjects of the biographies and docudramas. The whole point of such expressive works is to depict their subjects "doing exactly what they do." Op. at 20.

Second, the Majority improperly focused on the fame of the celebrities to diminish First Amendment protection. The subjects of many biographies, documentaries and docudramas are famous, and that fame often increases the marketability of the expressive work. Until the Panel's decision, no court had suggested that an otherwise expressive work would lose its First Amendment protection if it "is motivated by the commercial interest in using the [subject's] fame to market [an expressive work]." Op. at 21.

The No Doubt Majority elaborated:

Moreover, Activision's use of life-like depictions of No Doubt performing songs is motivated by the commercial interest in using the band's fame to market *Band Hero*, because it encourages the band's sizeable fan base to purchase the game so as to perform as, or alongside, the members of No Doubt. Thus, insofar as the depiction of No Doubt is concerned, the graphics and other background content of the game are secondary, and the expressive elements of the game remain "manifestly subordinated to the overall goal of creating a conventional portrait of [No Doubt] so as to commercially exploit [its] fame." (Comedy III, supra, 25 Cal.4th at p. 408, 106 Cal.Rptr.2d 126, 21 P.3d 797.) (Emphasis added). Op. at 20.

However, in Guglielmi, the majority opinion of this Court, approved in Comedy III and Winter, stated that such motivations do not defeat the First Amendment interests:

[A]ppellant contends that Valentino's name and likeness were used because they increased the value or marketability of the film. It is argued that such motivation diminishes the constitutional protection otherwise mandated. ...

... The First Amendment is not limited to those who publish without charge. Whether the activity involves newspaper publication or motion picture production, it does not lose its constitutional protection because it is undertaken for profit. (Time, Inc. v. Hill (1967) 385 U.S. 374, 397 [17 L.Ed.2d 456, 472, 87 S.Ct. 534]; Joseph Burstyn, Inc. v. Wilson, supra, 343 U.S. at p. 502 [96 L.Ed. at p. 1106].) The fact that respondents sought to profit from the production and

exhibition of a film utilizing Valentino's name and likeness is not constitutionally significant.

The second prong of appellant's argument is more subtle. In essence, it is that the use of Valentino's name and likeness in the film was unnecessary, that Valentino's identity was incorporated in the film solely to increase the film's value. If this analysis were used to determine whether an expression is entitled to constitutional protection, grave harm would result. Courts would be required not merely to determine whether there is some minimal relationship between the expression and the celebrity ..., but to compel the author to justify the use of the celebrity's identity. Only upon satisfying a court of the necessity of weaving the celebrity's identity into a particular publication would the shadow of liability and censorship fade. Such a course would inevitably chill the exercise of free speech - limiting not only the manner and form of expression but the interchange of ideas as well.

25 Cal. 2d at 870-71 (footnotes omitted.)

In conflict with this Court's controlling precedent in Guglielmi, the No Doubt Majority's "fame" test would seemingly make every biographical work ineligible for First Amendment protection. People who attended the movie "Patton" presumably wanted to see a portrayal of Patton, just as viewer of the Valentino biography analyzed in Guglielmi wanted to see a portrayal of Valentino. However, Comedy III cited the fictionalized portrayal in Guglielmi as an example of "the transformative elements or creative contributions that require First Amendment protection." 25 Cal.4<sup>th</sup> at 406. The Majority's attempt to explain its result is overbroad and will cause undue litigation.

V. The Majority's Dictum Distorted And Misapplied The Rogers v. Grimaldi Test

The Majority noted that for over twenty years several federal circuit courts of appeal have been applying a special test to balance First Amendment interests when a trademark, alleged to create a "likelihood of confusion" as to source, origin or sponsorship, appears in an artistic work. Op. at 22-25. Rogers v. Grimaldi, 875 F.2d 994 (2d Cir.1989) ("Rogers"), created an alternative to the standard "likelihood of confusion" test to be used for titles of artistic works that borrow names protected by trademark concluding that the standard "likelihood of confusion" test is inadequate to address First Amendment concerns. Rogers held that a defendant is liable under the Lanham Act when he uses a celebrity name in a movie title only if the name has no artistic relevance to the work. And even if the celebrity name does bear some artistic relevance to the content of the book, the title cannot explicitly deceive the public as to its source or content, such as by claiming that it is an "authorized biography" of the celebrity when it is not (an explicit misrepresentation as to the source or content). Ibid.



In Mattel, Inc. v. MCA Records, Inc., 296 F.3d 894, 902 (9th Cir.2002) (MCA), the Ninth Circuit adopted the Rogers test and found that it barred the Barbie trademark holder's Lanham Act claim over a song entitled "Barbie Girl," an expressive work poking fun at the values Barbie represented. The Ninth Circuit, along with several other federal circuit courts, has since extended the Rogers test to marks used within the body of artistic works. See, e.g., E.S.S. Entertainment 2000 v. Rock Star Videos, 547 F.3d 1095, 1099 (9th Cir.2008) (E.S.S.) (holding that the Rogers test could be applied to the use of a trademark in the body of the work); ETW Corp. v. Jireh Publishing, Inc., 332 F.3d 915, 928, n. 11 (6<sup>th</sup> Cir. 2003) (holding the rule of Rogers is generally applicable to all Lanham Act cases involving literary or artistic works where the defendant "has articulated a colorable claim" that the use of the celebrity's name is protected by the First Amendment); Cliffs Notes, Inc. v. Bantam Doubleday Dell Pub. Group, 886 F.3d 490, 495 (2d Cir. 1989) (holding that Rogers is generally applicable to Lanham Act claims against works of artistic expression).

Acknowledging twenty years of case law holding that state unfair competition claims are "substantially congruent" with the Lanham Act test, the Majority stated without explanation that "we do not reach" the question whether such congruency exists.. Op. at 25-26. It stated only that the Rogers test was not applicable because "it would make little sense to require No Doubt to make the almost impossible showing that Activision's non-transformative use of the No Doubt avatars was 'explicitly misleading'" Id at 27. This is of course reasoning backwards from a conclusion. Whether the Rogers test applies in this case cannot turn solely on whether No Doubt can satisfy an element of that test.

Having refused to decide whether Rogers is relevant to state law claims, the Majority then muddled up twenty years of federal Lanham Act case law by purporting to hold that the Rogers "explicitly misleading" requirement comes into play only after a determination has been made that a challenged use of a trademark is worthy of "heightened" First Amendment protection, Op. 27, citing ETW, *supra*, 332 F.3d at 926 and Facenda v. N.F.L. Films, Inc., 542 F.3d 1007, 1015. By requiring a "heightened" showing, the Majority has unwittingly put its thumb on the scale. Neither ETW nor Facenda required a "heightened" showing. ETW required only that the "work" was artistic, i.e., expressive. 332 F.3d at 927. Similarly Facenda only required a showing that the work there was a work of expression and not a disguised ad. 542 F.3d at 1015-18. Nor did Rogers or MCA require such a showing. Activision showed that its game – the only work at issue – was an expressive work. Indeed, the Majority earlier acknowledged that video games "generally are considered 'expressive works' subject to First Amendment protections." Op. at 8.

The Majority reasoned that because it had already concluded that Activision's use of No Doubt's avatars was not "transformative" "because the avatars are simply precise computer-generated reproductions of the band members that do not meld with the other elements of *Band Hero* to become, in essence, Activision's own artistic expression," Op. at 27, "the public interest in avoiding consumer confusion outweighs the public interest in free expression" quoting Rogers, *supra*, 875 F.2d at 999. Nothing in Rogers supports this attempt to twist its holding to

suit the Majority's purpose. All that was taken in Rogers was the name "Rogers." There is nothing in the Rogers' opinion to suggest the name "Rogers" became defendant's "own artistic expression."

The Majority simply confused its narrow view that the avatars were not sufficiently "transformative" with the Rogers test which asks whether the entire work is "expressive."

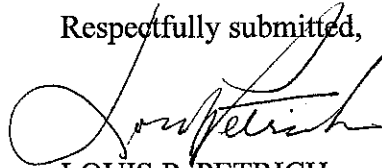
Satisfaction of the "transformative" test has never been a precondition to application of the Rogers test. A "name" is an aspect of the right of publicity. In Rogers v. Grimaldi, Ginger Rogers unsuccessfully argued that the use of her name both constituted a Lanham Act claim and violated her right of publicity. How could the name "Rogers" be transformed? Similarly, the Barbie doll's name was not transformed by defendants' song in Mattel v. MCA Records. Yet, both decisions held that the Rogers rule applied.

More importantly, following the Majority's reasoning, how could General Patton's name be used in the movie "Patton" or any other historical or popular figure's name be used in a literary work or filmed biography or docudrama? Would the name have to be transformed? None of this makes sense because the Majority's reasoning was flawed. Unfortunately, if the decision stands, it will likely cause havoc in the literary and motion picture businesses as celebrities and heirs seek to cash in what looks like a new tool to disrupt important artistic and business endeavors protected by the First Amendment.

## CONCLUSION

For all the foregoing reasons, Amicus supports the depublication of the Decision or a review of the Decision by this Court.

Respectfully submitted,



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## PROOF OF SERVICE

### STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274.**

On April 15, 2011, I served the foregoing document described as **LETTER TO CHIEF JUSTICE CANTIL-SAKAUYE AND ASSOCIATE JUSTICES** on the interested parties in this action.

- ☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

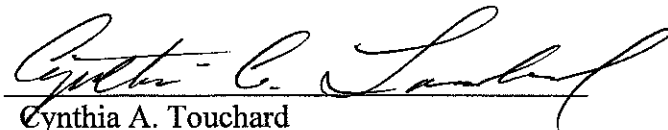
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- ☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274. The envelope was mailed with postage thereon fully prepaid.

I am "readily 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 the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

- ☐ **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
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- ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- ☒ (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 that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 15, 2011, at Los Angeles, California.

  
Cynthia A. Touchard

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