BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIV. v. SUNGHO PARK

S229728

Supreme Court of California

October 5, 2015

Reporter
2015 CA S. Ct. Briefs LEXIS 2539

BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Defendant and Appellant, vs. SUNGHO PARK, Plaintiff and Respondent.

Type: Petition for Appeal

Prior History: After the Published Decision of the Court of Appeal, Second Appellate District, Division Four, Case No. B260047. Superior Court for the County of Los Angeles Case No. BC546792. Honorable Richard E. Rico.

Counsel

[*1] ALAN S. YEE, SBN 091444, JANE BRUNNER, SBN 135422, SIEGEL & YEE, Oakland, CA, Attorneys for Plaintiff-Petitioner and Respondent SUNGHO PARK.

Title

Petition for Review

Text

ISSUE PRESENTED

Is a professor's claim that a public university denied him tenure because he was Korean, in violation of the Fair Employment and Housing Act, subject to California Code of Civil Procedure § 426.16, the anti-SLAPP statute [1] merely because the tenure review process involves written communications by faculty members and academic administrators?

The Court of Appeal for the Second Appellate District, Division 4, answered this question in the affirmative in a 2-1 decision (with Presiding Justice Norman L. Epstein dissenting) inconsistently with this Court's decision in *Equilon Enterprises v. Consumer Causes, Inc. (2002) 29 Cal.4th 53* **[*2]** (*Equilon*) and with *San Ramon Valley Fire Protection District v. Contra Costa County Employees' Retirement Association (2004) 125 Cal.App.4th 343* (*San Ramon*).

FACTUAL AND PROCEDURAL BACKGROUND

Professor Sungho Park filed a verified complaint on May 27, 2014, alleging that his former employer, defendant Board of Trustees of the California State University (CSU), discriminated against him based on his national origin, Korean, when it denied his application for a tenured faculty position and consequently terminated him. (Opn. at p. 2) Professor Park alleged that he met or exceeded the requirements under CSU policies for promotion to the rank of Associate Professor, a tenured position. He also alleged that at least three Caucasian faculty members in his division received tenure with records similar or inferior to his. (Opn. at 3)

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[1] SLAPP is an acronym for Strategic Lawsuits Against Public Participation. All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

CSU moved to strike Professor Park's complaint pursuant to section 425.16, arguing that the complaint was based on communicative acts of CSU within the tenure and grievance processes. (Opn. at p.4) The trial court denied the anti-SLAPP motion to strike, holding that the gravamen of Professor Park's complaint was not CSU's communicative **[*3]** conduct but rather the act of denying Professor Park tenure based on his national origin. Plaintiff could have omitted the allegations regarding communicative acts or filing a grievance and still state the same claims. (Opn. at p. 7)

CSU appealed. On August 27, 2015, the Court of Appeal for the Second District, Division 4, issued a split decision, which was certified for publication. The two-justice majority held that the anti-SLAPP statute applied because the gravamen of Professor Park's complaint - CSU's decision to deny him tenure - was entirely based on the evaluations of his performance and competence during the tenure and grievance proceedings. Thus, Park's claims were based on communications CSU made in connection with the tenure decision, rather than any alleged discriminatory conduct ″outside of the RTP process.″ (Opn. at pp. 13-14.)

Presiding Justice Epstein dissented. Citing and quoting *Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53,* he argued that, for the anti-SLAPP statute to apply, the act underlying the plaintiff's cause ″must *itself* have been an act in furtherance of the right of petition or free speech.″ *Equilon, supra, at 66.* **[*4]** In this case, Presiding Justice Epstein reasoned, the act underlying Professor Park's claim was the decision to deny him tenure. Although the tenure decision involves a process that necessarily requires communications and formal evaluations of the academic candidate, the act of denying tenure ″itself is not a basis for the application of the anti-SLAPP statute.″ Presiding Justice Epstein pointed out that his colleagues in the majority would construe the anti-SLAPP statute as applying whenever the action of the defendant under attack in a lawsuit ″is informed by protected free speech activity.″ ″It is difficult to conceive of any collective governmental action that is not,″ Justice Epstein declared. He warned, ″[R]eviewing courts must be careful not to conflate the process by which a decision is made with the ultimate governmental action itself.″ (Dissenting Opinion, p. 1)

The decision was modified on September 1, 2015. The majority decision became final on Saturday, September 26, 2015.

NECESSITY FOR REVIEW

The majority's holding in this case will eviscerate the Fair Employment and Housing Act in relation to public entities. It will mean that whenever a public entity reaches **[*5]** a decision based on writings and communications, the decision will be subject to the anti-SLAPP statute. The majority's view is in conflict with this Court's holding in *Equilon* and its related cases and fundamentally undercuts existing law.

The anti-SLAPP statute applies only if the plaintiff's cause of action ″aris[es] from any act of [the defendant] *in furtherance of the [defendant's] right of petition or free speech.*″ (§ 425.16(b)(1), italics added.) It is not enough that the plaintiff's complaint refers to writings or statements that were part of an ″official proceeding″ such as the tenure process. The mere fact that an action was filed after protected activity took place does not mean it arose from that activity. The wrongful act alleged in the complaint must have been an act in furtherance of the right of petition or free speech. *Equilon, supra, at 66.* The distinction between the action taken by a defendant and the process which led to the action is important because a process often may involve protected activities while the action itself is not. In addressing the possible misuse and misapplication of the anti-SLAPP statute, this Court noted that **[*6]** § 425.16 contains express limitations on the availability and impact of anti-SLAPP motions because the ″arising from″ requirement is not always easily met because of this distinction. *Equilon, supra, at 66.*

In the context of public entities where governmental action follows a process involving protected communications, the distinction between the action and the process required by *Equilon* is central in protecting against the misuse of the anti-SLAPP statute. In the context of public entities, an act of governance mandated by law, without more, is not an exercise of free speech or petition. *San Ramon, supra, at 354.* An action or decision by a public entity in violation of law is not in furtherance of the public entity's right of petition or free speech. *San Ramon*, at p. 346-347. To conclude otherwise would allow the anti-SLAPP statute to be used to discourage attempts to compel public entities to comply with the law. *Graffiti Protective Coatings, Inc. v. City of Pico Rivera (2010) 181 Cal.App.4th 1207, 1211.*

Here, the Professor Park alleged that the California State University (CSU) violated laws prohibiting employment discrimination **[*7]** when he was denied tenure and terminated. The tenure process in the CSU system is one mandated by

statute. A violation of employment discrimination laws in denying tenure is not the free speech of CSU. The majority opinion directly conflicts with existing California decisions and the requirements of the anti-SLAPP statute.

The majority opinion relies on several cases misapplying the anti-SLAPP statute in the context of hospital staffing decisions following a peer review proceeding. *Nesson v. Northern Inyo County Local Hospital District (2012) 204 Cal.App.4th 65, 83* (*Nesson*), *disapproved on other grounds in Fahlen v. Sutter Central Valley Hospitals (2014) 58 Cal.4th 655, 686, fn.18.* In *Neeson*, the court held that the anti-SLAPP statute applied because the decision to terminate the plaintiff followed letters and a report which were part of a peer review process. The majority opinion found CSU's tenure decision to ″arise from″ protected activity because the tenure review process included written communications by faculty members and academic administrators. To the extent that the majority opinion holds that these decisions allow the anti-SLAPP **[*8]** statute to be applied simply because a governing body's decision came after a peer review process that may have involved protected free speech of faculty or administrators, there is a conflict between decisions of the Courts of Appeal which must be resolved.

This misapplication of the anti-SLAPP statute will chill the free speech and petitioning activity the anti-SLAPP law was intended to protect. This Court must grant review to settle this important issue of law.

LEGAL DISCUSSION

I. This Court Should Grant Review Because the Majority's Decision is Inconsistent with This Court's Decision in Equilon Enterprises v. Consumer Cause, Inc.

Anti-SLAPP motions are limited under § 425.16 because they may be brought only if the plaintiff's cause of action ″aris[es] from any act of [the defendant] *in furtherance of the [defendant's] right of petition or free speech.*″ (§ 425.16(b)(1), it al. added.) In applying this requirement, this Court noted that there is an important distinction between the process by which a decision is made, which may involve protected activity and which precedes the action, and the ultimate action itself.

> . . . Most importantly, **[*9]** section 425.16 requires every defendant seeking its protection to demonstrate that the subject cause of action is in fact one ″arising from″ the defendant's protected speech or petitioning activity. (§ 425.16, subd.(b).)
>
> As courts applying the anti-SLAPP statute have recognized, the ″arising from″ requirement is not always easily met. [citation] The only means specified in section 425.16 by which a moving defendant can satisfy the requirement is to demonstrate that the defendant's conduct by which plaintiff claims to have been injured falls within one of the four categories described in subdivision (e), defining subdivision (b)'s phrase, ″act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue.″ [citation].
>
> As discussed more fully in the companion case *City of Cotati v. Cashman (2002) 29 Cal.4th 69,* the mere fact an action was filed after protected activity took place does not mean it arose from that activity. [citation] Rather, ″'the act underlying the plaintiff's cause' or 'the act which forms the basis for the plaintiff's cause of action' must *itself* have **[*10]** been an act in furtherance of the right of petition or free speech.″ [citation]

Equilon, supra, 29 Cal.4th at 66.

Similarly, in *City of Cotati v. Cashman (2002) 29 Cal.4th 69,* this Court warned that focusing on anything other than the substance of a lawsuit risks allowing the defendant to circumvent the showing expressly required by § 425.16, subdivision (b)(1) that an alleged SLAPP *arise from* protected speech or petitioning.

> That a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such.

City of Cotati, supra, 29 Cal.4th 69 at 78.

In the context of an official proceeding of a public entity, this distinction between the process which precedes an action and the action itself was addressed in *San Ramon, supra, 125 Cal.App.4th 343,* affirming the denial of a special motion

to strike filed by a county retirement board against a mandamus petition challenging its decision to increase pension contributions. The court emphatically noted: ″This case requires us to decide whether litigation seeking judicial review of an action or **[*11]** decision by a public entity is subject to a special motion to strike under the anti-SLAPP statute merely because the challenged action or decision was taken by vote after discussion at a public meeting. Our answer is no.″ *Id. at pp. 346-347.* The Court went further to draw the distinction between the conduct of individual public officials as opposed to the public entity's action or decision:

> . . . Even if the conduct of individual public officials in discussing and voting on a public entity's action or decision could constitute an exercise of rights protected under the anti-SLAPP statute - an issue we need not and do not reach - this does not mean that litigation challenging a public entity's action or decision always arises from protected activity. In the present case, *the litigation does not arise from the speech or votes of public officials, but rather from an action taken by the public entity administered by those officials. Moreover, that action was not itself an exercise of the public entity's right of free speech or petition*. We therefore affirm the trial court's order denying the entity's special motion to strike. (emphasis added)
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> *Id., 125 Cal.App.4th 343, 346-347.* **[*12]**

Governance decisions of public entities are not protected by the anti-SLAPP statute. If they were, it would burden and chill the very petition activity the law is intended to protect. As Presiding Justice Epstein noted in his dissent, it is difficult to conceive of any collective governmental action that is not informed by protected free speech activity. Almost all governmental employment decisions involve some form of written communications or a grievance process which precedes the final decision. The majority opinion will discourage and chill any attempts to compel public entities to comply with the law. (Dissenting Opinion, p. 1)

Here, CSU similarly seeks to misuse the anti-SLAPP statute against Professor Park's claim that he was denied tenure by CSU in violation of laws prohibiting discrimination. Professor Park brought an action against CSU for discrimination on the basis of national origin and failure to prevent discrimination, alleging that he was denied tenure due to his national origin. CSU's discriminatory conduct in denying Park tenure and terminating his employment violated state laws prohibiting discrimination in employment. This conduct is not the protected speech **[*13]** of the public entity.

The anti-SLAPP statute does not apply to a public entity's action denying tenure in violation of laws prohibiting discrimination. CSU endeavors to obscure the difference between the core injury-producing conduct with collateral or incidental allusions to protected activity. The gravamen of Professor Park's complaint was not CSU's communicative conduct in denying Professor Park's tenure or his grievance. It was based on the act of denying Professor Park's tenure based on national origin. As noted by the trial court, Professor Park could have omitted any allegations regarding communicative acts and still state the same claims.

That a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such. *City of Cotati v. Cashman (2002) 29 Cal.4th 69, 78.* The statutory phrase ″cause of action . . . arising from″ means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. *Id., 29 Cal.4th at 78.* Here, CSU's conduct in denying Park tenure and terminating his employment violated **[*14]** state laws prohibiting discrimination in employment. This conduct is not protected activity.

CSU argued that its conduct falls under C.C.P. § 425.16(1) and (2), i.e., written or oral statements or writings made ″before″ or made ″in connection with an issue under consideration or review by″ a judicial proceeding, or any other official proceeding authorized by law. However, Professor Park's claims are based on state laws requiring CSU to not discriminate based on national origin when considering tenure for its professors. Professor Park's claims are not based on any statement, writing, or conduct by the CSU in furtherance of its right of free speech or its right to petition the government for the redress of grievances.

The majority opinion will allow public entities to immunize their discriminatory actions by relying on a pre-decision process involving written communications by employees or managers and thereafter invoking a claim of free speech.

Professor Park's claim is similar to that in *Graffiti Protective Coatings, Inc. v. City of Pico Rivera (2010) 181 Cal.App.4th 1207* (*Graffiti*). There, the public entity's action was to terminate a contract. In our case, **[*15]** CSU's action was to terminate Park's contract by denying him tenure. The plaintiff in *Graffiti* alleged that the public entity's action violated the competitive bidding laws required of the city. Here, Park alleges that CSU's action violated the laws prohibiting discrimination in employment. The city, like CSU here, claimed that the conduct complained of arose out of the city's protected speech in an official proceeding. *Id. at 1218.* The Court held that the City's conduct in terminating the contract in violation of competitive bidding laws, did not ″arise out of″ the city's protected speech, even though the decision was reached in an official proceeding.

> . . . We conclude that, even if plaintiff's claims involved a public issue, they are not based on any statement, writing, or conduct by the city in furtherance of its right of free speech or its right to petition the government for the redress of grievances. Rather, plaintiff's claims are based on state and municipal laws requiring the city to award certain contracts through competitive bidding. Thus, the claims are not subject to the anti-SLAPP statute. . . . Were we to conclude otherwise, the anti-SLAPP **[*16]** statute would discourage attempts to compel public entities to comply with the law.
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> *Id. 181 Cal.App.4th at 1211.*

The anti-SLAPP statute may not be used as a shield against lawsuits attempting to compel public entities to comply with the law. A public entity's conduct in violation of law cannot be considered in furtherance of the public entity's right of petition or free speech. See also, *Schwarzburd v. Kensington Police Protection & Community Services District Board, et al. (2014) 225 Cal.App.4th 1345, 1352-1353* (anti-SLAPP statute does not apply to the public entity itself, though it applied to the individual defendants who were members of the board).

Citing this Court's ruling in *Cotati*, the Court in *San Ramon* summarized this rule in the context of public entities.

> . . . Acts of governance mandated by law, without more, are not an exercise of free speech or petition. ″[T]he defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation]″
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> *San Ramon, supra, 125 Cal.App.4th 343, 354.*

Here, the decision **[*17]** by CSU to deny Professor Park tenure in violation of the FEHA is not protected speech, even if the tenure process may have included protected speech of faculty or administrators.

The opinion below conflicts with *Equilon*. The majority opinion summarized its holding as follows:

> Here, the gravamen of Park's complaint - CSU's decision to deny him tenure - is entirely based on the evaluations of his performance and competency during the RTP proceedings. Park has provided no basis for his claims of discrimination outside of the RTP process, which culminated in his termination. [Citation] As such, his claims are based squarely on CSU's tenure and termination decisions, ″and concomitantly, communications [CSU] made in connection with making those decisions.″ [Citation]

(Opinion, page 13.)

Presiding Justice Epstein's dissenting opinion summarized how this decision ignores *Equilon*.

> . . . The tenure decision involves a process that necessarily requires communications and, in this case, formal written evaluations of the academic candidate. But reviewing courts must be careful not to conflate the process by which a decision is made with the ultimate governmental **[*18]** action itself. As discussed in *Equilon*, ″the act underlying the plaintiff's cause″ or ″the act which forms the basis for the plaintiff's cause of action″ must *itself* have been an act in furtherance of the right of petition or free speech.″ (*Equilon*, quoting *ComputerXpress, Inc. v. Jackson (2001) 93 Cal.App.4th 993, 1003.)* In this case, that act was the decision to deny tenure to Professor Park. While the process

> which led to it may be protected by various privileges and immunities, the act itself is not a basis for application of the anti-SLAPP statute.

(Opinion, page 13.)

In ignoring *Equilon*, the majority opinion directly conflicts with the holdings in *San Ramon* and the cases that have consistently followed it.

II. This Court Should Grant Review Because the Majority's Decision Will Result in Two Different Interpretations of the ″Arising From″ Requirement of the Anti-SLAPP statute.

If left undisturbed, the majority decision will create a conflict in interpreting the ″arising from″ requirement of the anti-SLAPP statute. The majority relied on several cases involving the misapplication of the anti-SLAPP statute in the context of a **[*19]** hospital staff peer review proceeding. *Nesson v. Northern Inyo County Local Hospital District (2012) 204 Cal.App.4th 65, 83,* (*Nesson*) *disapproved on other grounds in Fahlen v. Sutter Central Valley Hospitals (2014) 58 Cal.4th 655, 686, fn.18.;Decambre v. Rady Children's Hospital* - San Diego (2015) 253 Cal.App.4th 1 (*Decambre*).

In its decision, the majority found that because Professor Park's discrimination claim is based on the tenure and termination proceedings and therefore ″concomitantly, communications made in connection with making those decisions,″ Professor Park's discrimination claim is based on protected speech. (Opinion, page 12-14.) No distinction is made between the protected speech of faculty or administrators and the subsequent action of the university. The majority reasoned that its conclusion would be different if the discrimination claim allegedly arose from incidents of mistreatment that occurred throughout Park's employment. (Opinion, page 13.) According to the majority opinion, these hospital termination cases hold that because the adverse employment action ″rests-on,″ ″stemmed from,″ ″necessary result **[*20]** of,″ or ″made in connection with″ the protected peer review process, they are subject to the anti-SLAPP statute. See e.g. *Decambre*, at p. 22; *Nesson*, at pp. 81, 83. These decisions do not draw a distinction between the process of review and the subsequent governance action itself.

> . . . The defendants showed that their decision not to renew DeCambre's contract stemmed from the protected peer review activity that began in 2009. This showing is sufficient to satisfy the first prong of the anti-SLAPP analysis.

Decambre, supra, at 22.

Though these cases purport to rely on this Court's decision in *Kibler v. Northern Inyo County Local Hospital Dist. (2006) 39 Cal.4th 192,* they fail to note that *Kibler* was careful to distinguish the peer review process from the termination decision itself.

> . . . Membership on a hospital's peer review committee is voluntary and unpaid, and many physicians are reluctant to join peer review committees so as to avoid sitting in judgment of their peers. To hold . . . that hospital peer review proceedings are *not* 'official proceedings authorized by law' . . . would further discourage participation in **[*21]** peer review by allowing disciplined physicians to file harassing lawsuits against hospitals and their peer review committee members rather than seeking judicial review of the committee's decision by the available means of a petition for administrative mandate.
>
> *Id., 39 Cal.4th at p. 201.*

Both *Decambre* and *Nesson* fail to follow this distinction drawn in *Kibler*. Instead, they simply conclude that the employment action arose from the peer review process and is therefore is protected activity. These holdings are contrary to *Equilon*.

When the requirements of *Equilon* were applied to the hospital peer review process, a different conclusion was reached. In *Young v. Tri-City Healthcare District (2012) 210 Cal.App.4th 35* (*Young*), the court followed the holdings in *San Ramon* and *Graffiti* and found the anti-SLAPP statute inapplicable because the substance of the decision was not protected activity.

The cause of action was ″triggered″ by protected activity, but did not ″arise″ from it as required by the anti-SLAPP statute. *Young, supra, at 58.*

CSU must not be allowed to use the anti-SLAPP law to avoid judicial **[*22]** liability for discriminatory conduct when it denied the grant of tenure to Professor Park and then terminated Professor Park's employment. The issue here is not the speech of the CSU in communicating its decision to deny tenure. The issue is the violation of state law prohibiting discrimination in employment when the CSU governance decision was made to deny Professor Park tenure.

It is well established that although a public entity's communications may be of evidentiary value in establishing that it violated the law, liability is not based on the communications themselves. *Graffiti Protective Coatings, Inc. (2010) 181 Cal.App.4th 1207, 1224.* Similarly, a cause of action may have been ″triggered″ by protected activity and may be ″evidence in support of the complaint,″ they are not the basis of the complaint. *Gotterba v. Travolta (2014) 228 Cal.App.4th 35, 42.* See also, *Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments, LLC (2007) 154 Cal.App.4th 1273, 1284;City of Cotati v. Cashman (2002) 29 Cal.4th 69, 78.* As the Court in *Gotterba v. Travolta* noted:

> . . . That ″protected activity **[*23]** may lurk in the background - and may explain why the rift between the parties arose in the first place - does not transform a [contract] dispute into a SLAPP suit. [Citation.]

Gotterba v. Travolta, supra, at p. 42.

To the extent that the majority opinion holds that the hospital peer review process cases allow the anti-SLAPP statute to be applied simply because a governing body's decision came after peer review proceedings that may have involved the protected free speech of its members, there is a conflict between decisions of the Courts of Appeal which must be resolved. This Court must grant review to settle this important issue of law.

CONCLUSION

If left undisturbed, the majority opinion will result in SLAPP motions being filed in all cases where any employment decision by a public entity is made following a review process. Entities will attempt to immunize their discriminatory actions by relying on a process that involves written communications by employees or managers and thereafter invoking a claim of free speech. *Equilon* and the anti-SLAPP statute require the act which forms the basis for the cause of action *itself* be an act in furtherance **[*24]** of the right of petition or free speech. This requirement could very well become meaningless. No other case is likely to present a better vehicle to resolve this question of widespread importance in protecting employee rights.

This case presents the Court with the opportunity to clarify the requirements of the anti-SLAPP statute and its holding in *Equilon*. It also gives this Court the chance to provide clarity on the use of the anti-SLAPP statute and prevent the use of the anti-SLAPP statute as a weapon to discourage and chill the exercise of protected petitioning activity by people with legitimate grievances.

This Court must address the misapplication of the anti-SLAPP statute to public entities which will certainly discourage and chill litigation challenging acts of governance by public entities mandated by law. It is especially appropriate to do so in this case because Professor Park's discrimination claim is based solely on CSU's action in denying him tenure. Professor Park has not brought defamation claims or any other tort claims against the faculty or academic administrators involved in the review process. The only action complained of is the tenure action made by CSU **[*25]** pursuant to the Education Code. *San Ramon* holds squarely that these mandatory governing actions, without more, are not protected speech or petitioning activity and therefore cannot trigger the application of the anti-SLAPP statute. [2]

Dated: October 5, 2015

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[2] *See also* Anderson v. Geist (2015) 236 Cal.App.4th 79, 87 (the legislative purpose of the anti-SLAPP statute is not served by extending its protection to the execution of a search warrant because a peace office has no discretion in whether or not to execute a warrant issued by the court).

Respectfully submitted,

Siegel & Yee

Alan S. Yee

Attorneys for Plaintiff/Petitioner and Respondent

SUNGHO PARK

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c)(1)

The text of this brief consists of 4,442 words as counted by the Microsoft Word version 2010 word-processing program used to generate the brief.

Dated: October 5, 2015

Alan S. Yee

PROOF OF SERVICE

I, the undersigned, **[*26]** certify that I am a citizen of the United States and employed in the City of Oakland, County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 499 14th Street, Suite 300, Oakland, California 94612.

On October 5, 2015, I served copies of the following documents:

Petition For Review

on the Parties in this action by placing true copies thereof in a sealed envelopes with first class postage thereof fully prepaid and depositing the same in the United States mail at Oakland, California, addressed to:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on October 5, 2015, at **[*27]** Oakland, California.

Elizabeth Johnson

[SEE APPENDIX IN ORIGINAL]

[SEE APPENDIX IN ORIGINAL]