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June 13, 2014

[Corrected 6/14/2014]

Hon. Chief Justice of California
and Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, California 91402-4797

Re: *Roger Cleveland Golf Co., Inc. v. Krane & Smith, APC*
(No. B237424, April 15, 2014) 225 Cal.App.4th 660
Association of Southern California Defense Counsel's
Request for Depublication Under California Rule of Court 8.1125

Your Honors:

The Association of Southern California Defense Counsel (hereafter ASCDC or association) pursuant to Rule 8.1125 of the California Rules of Court respectfully submits this request for depublication of the Court of Appeal's opinion issued on April 15, 2014 which reported as *Roger Cleveland Golf Co., Inc. v. Krane & Smith, APC* (No. B237424, April 15, 2014) 225 Cal. App.4th 660 (*Roger Cleveland Golf*).

IDENTITY AND INTEREST OF ASCDC

ASCDC is a voluntary membership association consisting of approximately 1,100 attorneys, among whom are some of the leading trial lawyers of California's civil defense bar. The association is dedicated to promoting the administration of justice, providing education to the public about the legal system, and enhancing the standards of civil litigation, trial and appellate practice in this State.

ASCDC has been actively involved for many years assisting courts in the resolution of legal issues of interest to its members, and the clients they represent. The association has appeared as amicus curiae before this court in *Howell v. Hamilton Meats & Provisions, Inc*. (2011) 52 Cal.4th 541, *Cassel v. Superior Court* (2011) 51 Cal.4th 113, *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, and *Kibler v. No. Inyo County Hosp. Dist.* (2006) 39 Cal.4th 192, among numerous other cases.

On December 5, 2013, the Court of Appeal in this case sent a letter to counsel for the parties requesting supplemental letter briefs to further address the following question of statutory interpretation concerning the applicability of section 340.6 to claims for "malicious prosecution" brought against opposing counsel:

> In the briefs and during oral argument to the court, the parties appear to be in agreement that *Yee v. Cheung* (2013) 220 Cal.App.4th 184, and *Vafi v. McCloskey* (2011) 193 Cal.App.4th 874, correctly held that Code of Civil Procedure section 340.6, subdivision (a), is the applicable statute of limitations for a malicious prosecution action against an attorney. This court has concerns as to whether *Yee* and *Vafi* are contrary to the plain language and legislative history of that Code of Civil Procedure section 340.6, subdivision (a).

At-issue was whether Code of Civil Procedure section 340.6, subdivision (a) (hereafter section 340.6"), the one-year statute of limitation for claims against attorneys arising out of performance of professional services, or section 335.1, the two-year limitation period generally applicable to personal injury claims should govern the timeliness of Roger Cleveland Golf's suit against another party's legal counsel. Because ASCDC members often represent attorneys in litigation, the association is interested in the proper interpretation of section 340.6 to claims against members of the legal profession brought *either* by the "clients" of those lawyers, or by third parties who are strangers to the attorney-client relationship; for example, having participated before this court as amicus curiae in *Beal Bank v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503 (*Beal Bank*) to address whether judicially-created "tolling" rules may properly be engrafted upon the legislated time periods set forth in section 340.6. When the parties in *Roger Cleveland Gol*f were requested by the Court of Appeal after oral argument to submit letter briefs regarding the applicable statute of limitations, ASCDC as amici curiae for Respondents Krane & Smith, APC, et al., applied for leave to file a letter brief which the Court of Appeal granted on January 13, 2014.

On April 15, 2014, the Court of Appeal issued its published opinion affirming the trial court's dismissal under the anti-SLAPP statute, but curiously took the opportunity to explicitly reject *Vafi* and *Yee* in the application of section 340.6 to malicious prosecution actions against opposing lawyers. Specifically, the court held:

> Applying these principles, the malicious prosecution action against Attorneys is not time barred as the statute of limitations was tolled during the seven-month period in which the Sportsmark action was pending on appeal. *Vafi, supra,* 193 Cal.App.4th 874 did not address this issue. *Because section 340.6, subdivision (a)* [the one year statute of limitation arising out of an attorney's professional services] *appears to exclude tolling in these circumstances,* we respectfully disagree with *Vafi* and *Yee v. Cheung* (2013) 220 Cal.App.4th 184 (*Yee*) that section 340.6 is the applicable statute of limitations governing a malicious prosecution action against an attorney. Instead, we conclude the applicable statute of limitations for malicious prosecution is section 335.1 [the two year limitation period generally applicable to personal injury claims], irrespective of whether the party being sued for malicious prosecution is the former adversary (Sportsmark) or the adversary's attorneys (Attorneys).
>
> We further conclude, however, that the trial court properly granted the anti-SLAPP motion. RCG did not establish the probability of prevailing on the merits as it did not make the minimal evidentiary showing of malice. Thus, we affirm the orders granting the anti-SLAPP motion and awarding fees to Attorneys pursuant to section 425.16, subdivision (c)(1).
>
> (Slip opn. at p. 3, brackets and emphasis added.)

Review has not been sought by either side. However, ASCDC, its members and the entire legal community continue to be substantially interested in the important question of legislative intent and statutory construction posed by the Court of Appeal's December 5 request for supplemental briefing, and in the ultimate outcome of its published decision.

Both sides to this appeal, in their original briefing and arguments to in the Court of Appeal, agreed that Section 340.6 applies—as Division 8 of the Second Appellate District concluded in *Vafi* and as the Fourth Appellate District more recently followed that reasoning in *Yee*. In ASCDC's view, *Vafi* and *Yee* were correctly decided. Section 340.6 remains the most specific (and, indeed, the exclusive) statute of limitations governing claims asserted by anyone (including third parties) against attorneys arising out of the "performance of professional services" on behalf of their clients in the underlying lawsuit—for the reasons that *Vafi* and *Yee* have cogently articulated. Section 340.6, by the plain language of the statute and consistent with established rules of statutory construction applied by this court, is the statute of limitations applicable to malicious prosecution actions against attorney-defendants.

The Court of Appeal's published decision in *Roger Cleveland Golf* to the extent it disagrees with *Yafi* and *Yee* is the classic definition of "dictum"[1]—the analysis of section 340.6 under the circumstances of this case was unnecessary to the outcome, and in light of the parties declining to seek review of any issue raised on appeal, this will outcome allow a published precedent to remain in conflict with those prior reported decisions by other appellate courts creating uncertainty, conflict and potential mischief in future cases.

As explained in greater detail below, there is substantial doubt whether in rejecting 340.6 as the applicable statute for malicious prosecution claims brought by adverse parties against opposing counsel, *Roger Cleveland Golf* properly construed the statutory language of section 340.6 and the Legislative History of its enactment. *Yafi* and *Yee* were correct in reaching the opposite conclusion when addressing the same issue.

REASONS WHY THE OPINION SHOULD BE DEPUBLISHED

A. Background of the Legislature's Enactment of Section 340.6 and the Historically Consistent Judicial Application of That Specific Statute of Limitation to All Claims of Attorney Misconduct ***"Arising in the Performance of Professional Services"***

In the trial court, Roger Cleveland Golf's malicious prosecution action against Krane & Smith and its client was dismissed pursuant to a special motion to strike under the anti-SLAPP statute. On appeal, Roger Cleveland Golf did not challenge the trial court's conclusion that its malicious prosecution claim fell within the purview of the anti-SLAPP statute. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735 [a malicious prosecution action alleges that the defendant committed a tort by filing a lawsuit, and therefore, California courts routinely conclude that malicious prosecution causes of action fall within the purview of the anti-SLAPP statute].) Addressing the second prong of the anti-SLAPP analysis, the trial court concluded that appellant had failed to present evidence sufficient to "[establish] that there is a probability that [he] will prevail on the claim" (§ 425.16, subd. (b)(1)), for among other reasons there was not sufficient evidence of the "malice" element and because the lawsuit was time-barred under section 340.6. (AOB at pp. 15-16; 11 CT 2585-2586.)

ASCDC's letter brief in the Court of Appeal addressed only the question of whether section 340.6 is the proper limitation period applicable to the suit against the lawyers. Prior to *Roger Cleveland Golf*, *Vafi* and *Yee* exhaustively reviewed the competing arguments that

[1] Webster's defines **obiter dictum** in as "an incidental or supplementary opinion by a judge in deciding a case, upon a matter not essential to the decision, and therefore not binding as precedent." (Webster's Collegiate Dictionary (9th ed. 1985); Encarta World English Dictionary (6th ed.) ["any comment, remark, or observation made in passing … Latin: a passing remark"].)

the one-year statute of limitation set forth in section 340.6, as opposed to the more general two-year statute of limitation governing personal injury claims, controls the accrual and filing of a cause of action for malicious prosecution against opposing counsel in the position of Krane & Smith. (See generally *Yee, supra*, 200 Cal.App.4th at pp. 193-194.)[2]

More than two decades ago, in *Laird v. Blacker* (1992) 2 Cal. 4th 606, 611-612 (*Laird*), this court also digested and tracked the development of section 340.6 which was originally enacted by the Legislature in 1977. Before 1977, the statute of limitations for legal malpractice actions was governed by section 339, subdivision 1, which provides a two-year limitations period for any action based on "a contract, obligation or liability not founded upon an instrument in writing ...." Although section 339, subdivision 1, did not establish an accrual date for legal malpractice actions, courts generally adopted, as the date of accrual, the date on which the malpractice *occurred*. (*Id*. at pp. *Hays v. Ewing* (1886) 70 Cal. 127 [cause of action for attorney malpractice barred at expiration of two years after neglect occurred].) Recognizing the harshness of a strict occurrence rule, later cases held that a cause of action for legal malpractice accrued when a plaintiff suffered "irremediable damage." (See, e.g., *Heyer v. Flaig* (1969) 70 Cal.2d 223, 230 [statute of limitations for legal malpractice begins to run on date attorney performs last negligent act].)

Ultimately, when the Legislature adopted section 340.6 in 1977, it implicitly rejected the term "irremediable damage" and codified the discovery rule of *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176 (*Neel*), and *Budd v. Nixen* (1971) 6 Cal.3d 195, 198 (*Budd*). (See generally *Laird, supra*, 2 Cal.4th at p. 611.) These cases held that a cause of action for legal malpractice accrues when the client discovers or should discover the facts essential to the malpractice claim, and suffers appreciable and actual harm from the malpractice. Discovery of any appreciable and actual harm from the attorney's negligent conduct establishes a cause of action and begins the running of the limitations period. (*Id*., citing *Budd, supra*, 6 Cal.3d at p. 201.)

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[2] Section 340.6, subdivision (a) provides in relevant part: "*An action against an attorney for a wrongful act or omission*, other than for actual fraud, *arising in the performance of professional services* shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first." (Italics added.)

Before *Vafi* and *Yee*, section 335.1, which applies to claims for "injury to ... an individual caused by the wrongful act or neglect of another," had been held to govern claims for malicious prosecution generally, but not specifically to claims against lawyers. (See *Yee, supra*, 200 Cal.App.4th at pp. 193, fn. 8; *Stavropoulos v. Superior Court* (2006) 141 Cal.App.4th 190, 197.)

Section 340.6 codified the general rule of "accrual" of a cause of action in favor of a "plaintiff" (the statute of limitation for claims of attorney misconduct explicitly uses the word "plaintiff" and does not restrict its application to a lawsuit brought by a "client") embodied in *Budd, supra,* 6 Cal.3d 195, and *Neel, supra,* 6 Cal.3d 176. (See also Jordache, addressed the former two-year legal malpractice statute of limitations (§ 339), but did not specifically determine whether actual injury occurs when the client suffers an adverse judgment or after an appeal of right is concluded and the judgment is final. Rather, *Neel* and *Budd* suggested the time of discovery is often a question of fact for the jury. *Neel*, however, explained the holding in *Hays v. Ewing, supra,* 70 Cal. 127, which interpreted the limitations period of section 339 when the malpractice occurred in the course of litigation. *Neel* stated that the *Hays* court "accepted the date of dismissal of the suit—that is, the date upon which the client suffered damage—as the crucial point from which the statute of limitations should run. Indeed, the court refused to adopt as the critical time the date of the affirmance of the dismissal on appeal." (*Laird, supra,* 2 Cal.4th at p. 611; *Neel, supra,* 6 Cal.3d at p. 183.)

After reviewing this background, *Laird* determined that "actual injury" for purposes of accrual of the one-year statute accrued when the *underlying judgment was entered* against the plaintiff—regardless of whether an appeal was filed after that judgment. (*Laird, supra*, 2 Cal.4th at p. 618; see also *id*. at p. 621 (dis. opn. by Mosk, J.) [majority opinion rejecting the dissent's view that statutory tolling exceptions were "intended to toll the limitations period for filing legal malpractice actions when, as here, a client takes an appeal of right from the underlying judgment and is awaiting its outcome"]; That same rule is applied to the accrual of a cause action for malicious prosecution—entry of the trial court judgment in the underlying action, without "tolling" even if when appeal is taken from that judgment. (Resp. Br. at p. 23, citing *Feld v. Western Land & Dev. Co*. (1992) 2 Cal.App.4th 1328.)

Section 340.6 by its plain language thus applies to *any* "action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services…" The tolling provisions of these statutes of limitations (four years for actual fraud, and one year for any other contract or tort liability claim) set forth in section 340.6 are *exclusive*. (*Laird, supra,* 2 Cal.4th at p. 618 ["the Legislature expressly intended to disallow tolling under any circumstances not enumerated in the statute."]; accord *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 755 (*Jordache*) [following *Laird*]; *Beal Bank, supra,* 42 Cal.4th at pp. 510-511 [digesting the case law interpreting and legislative history of section 340.6].)

Over the years, the principles embodied in section 340.6 have been consistently applied by the California courts to claims brought by third parties against *someone else's* attorneys; i.e., claims arising out of their performance of professional services for the lawyer's actual clients, whether or not sounding in tort. (See *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1363; *Levin v. Graham & James* (1995) 37 Cal.App.4th 798, 805;

Quintilliani v. Mannerino (1998) 62 Cal.App.4th 54, 68; *Yee*, *supra*, 200 Cal.App.4th at pp. 193-194.) *Vafi* and *Yee* are simply among the most recent third party cases to do so.

B. *Vafi* and *Yee* Correctly Applied the One-Year Time Limit of Section 340.6 to Actions for Malicious Prosecution Against Opposing Lawyers

Logically, and consistently with the plain meaning and the sound legislative purposes of section 340.6, the one-year time limit was correctly applied by *Vafi* and *Yee* to third party claims against opposing lawyers for malicious prosecution. Since long before the enactment of section 340.6, this court has consistently recognized that statutes of limitation and repose are not simply "procedural" means of avoiding potentially meritorious claims, but in themselves encompass the defendant's substantive legal rights: (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 777; accord *Jordache*, *supra*, 18 Cal.4th at pp. 755-756 (stating, in the specific context of section 340.6: "Limitations statutes are intended to enable defendants to marshal evidence while memories and facts are fresh and to provide defendants with repose for past acts.").

In *Yee*, the Court of Appeal observed that *either* the one-year statute of limitation under section 340.6 or the more "general" statute of limitations for malicious prosecution of two years under section § 335.1 might arguably apply to malicious prosecution claims against attorneys. Although the Fourth Appellate District did not feel it was constrained by Division 8's earlier decision in *Vafi*, *supra*, 193 Cal.App.4th 874 applying the one-year statute to malicious prosecution claims against attorneys, *Yee* nonetheless independently agreed with *Vafi's* conclusion—but only after thoroughly analyzing the language of section 340.6, its stated purposes and controlling precedents. (*Yee*, *supra*, 200 Cal.App.4th at pp. 193-195.)

Questions of statutory interpretation begin with the words of the statute. If the statutory language is clear and unambiguous, the inquiry ends there. Words are given their plain and commonsense meaning, and a court should avoid a construction that would produce absurd consequences. When a general and a particular provision are inconsistent, the latter is paramount to the former. Particular intent prevails over general, inconsistent intent. Thus, a specific statute of limitations applicable to professional services performed by a lawyer takes precedence over a general one, even though the latter *might* be broad enough to include the subject covered by the more particular provision. (*Yee*, *supra*, 200 Cal.App.4th at pp. 194, citing *Vafi*, *supra*, 193 Cal.App.4th at p. 880.)

As in *Vafi*, the Fourth Appellate District disagreed with the notion that section 340.6 applied only to disputes between attorneys and clients, a position which is contrary to the plain language of the statute. (*Yee*, *supra*, 200 Cal.App.4th at pp. 194.) The *Yee* court also did not agree that the statute's term "wrongful act or omission" could only refer to attorney malpractice, as that word does not appear in the statute. (*Id.* at pp. 195-196.) Applying

section 340.6 to malicious prosecution actions would not produce an absurd result. Malicious prosecution is a disfavored tort, a policy that arguably applies with additional force to attorneys who are likely to be involved in more litigation than the average citizen. At least one legitimate legislative purpose in enacting section 340.6 was to reduce the costs of legal malpractice insurance, including the costs of defense which are significantly impacted by malicious prosecution claims. (*Id.* at pp. 196-197.)[3]

Thus, the Legislature could have articulated many valid policy reasons for shortening the statute of limitations for malicious prosecution actions brought by a third party "plaintiff" against opposing attorneys arising from professional services performed for that plaintiff's adversary in the underlying litigation. (*Yee*, *supra*, 200 Cal.App.4th at pp. 194-197.) Discussing these purposes, and agreeing with *Vafi's* interpretation and analysis of section 340.6's plain language, *Yee* explained:

> As noted, where more than one statute might apply to a particular claim, "'a specific limitations provision prevails over a more general provision.' [Citation.]" (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1316-1317[.]) Given that section 340.6 is a more specific statute of limitations, applicable only to actions against attorneys for their wrongful acts or omissions, its provisions prevail over the more general "catchall" statute of limitations for claims against any defendant based on his or her alleged "wrongful act or neglect" of another.
>
> We are not persuaded by Yee's argument that the language of section 340.6 "contemplates situations where the wrongful act is related to the duties of an attorney to the *client*." (Italics added.) We are bound by the plain language of the statute, which clearly applies when "the plaintiff" discovers the wrongful act on the part of the attorney. There is no requirement in the statute that the plaintiff have been a client of the attorney. (§ 340.6.) Rather, the Legislature chose to use the term "plaintiff" and not "client," in framing the entire provision. *Yee*, *supra*, 200 Cal.App.4th at p. 195 (internal citations omitted).

As in the context of accrual of claims for malpractice brought by an actual client, commencing the statute of limitation upon entry of judgment in the underlying action works no particular hardship on the plaintiff who desires to bring a timely lawsuit for malicious prosecution. This court notes that "case management tools available to trial courts, including

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[3] As the same Division of the Court of Appeal that decided this case aptly observed in *Downey Venture v. LM Ins.* (1998) 66 Cal.App.4th 478, 507-509, many forms of liability insurance, including professional liability policies, customarily promise to provide for a "full defense" of malicious prosecution claims, despite the statutory prohibition on indemnification of claims involving "willful" injury or malicious torts.

the inherent authority to stay an action when appropriate and the ability to issue protective orders when necessary, can overcome problems of simultaneous litigation if they do occur." (*Jordache, supra,* 18 Cal.4th at p. 758.)

Conversely, extending the statute of limitations to two years, or applying a more liberal "tolling" rule in favor of *non-clients* who bring malicious prosecution actions against opposing lawyers, likely *would* produce "absurd" results that are contrary to the commonsense purposes of section 340.6. For public policy reasons similar to the recognition of malicious prosecution as a "disfavored tort," the circumstances giving rise to a civil cause of action that might be brought by adversaries in litigation against another party's counsel are few and far between. (*Thayer v. Kabateck, Brown & Kellner, LLP* (2012) 207 Cal.App.4th 141, 161 [anti-SLAPP statute applied to dismiss claims pursued by a non-client who challenged class action counsel's advice and strategic settlement decisions made on behalf of the firm's actual clients in the underlying action].)

The courts thus have often observed: "We are wary about extending an attorney's duty to persons who have not come to the attorney seeking legal advice" or adversaries with whom the attorney deals at arms-length, as in virtually every litigation context. (*Hall v. Superior Court* (2003) 108 Cal.App.4th 706, 714; see also *Chang v. Lederman* (2009) 172 Cal.App.4th 67, 82-83 [describing the limited nature of duties owed by attorneys to third parties and rejecting the necessity for expansion of "third party beneficiary" claims]; *Thayer, supra,* 207 Cal.App.4th at 157-161 [digesting cases that compelled dismissal of "fraud," "unfair business practices" and "breach of fiduciary duty" claims asserted by a non-client against litigation attorneys for their conduct in representing "actual clients"].)

Legal commentators have expressed that same concern regarding the conflict resulting from the "dictum" offered by *Roger Cleveland Golf* in suggesting a longer time limit applies: See, e.g., 111 *North Hill Street—A Blog of California Civil Procedure*, "Deep Dicta on the Statute of Limitations on Claims Against Lawyers," (Monday, April 21, 2014), found at http://caccp.blogspot.com/2014/04/deep-dicta-on-statute-of-limitations-on.html (copy attached), penultimate paragraph ("Of course, none of the court's twelve pages of analysis on the statute of limitations actually matters, because plaintiff did not come forward with *prima facie* evidence of the defendants' malice. So even though the claim wasn't time barred, because plaintiff could not show a probability of prevailing, the anti-SLAPP motion was nonetheless properly granted.");see also *Haight, Publications & Insights,* "Professional Liability Alert: California Appellate Courts In Conflict Regarding Statute of Limitations for Malicious Prosecution Suits Against Attorneys," (April 17, 2014), found at http://www.hbblaw.com/Professional-Liability-Alert-California-Appellate-Courts-In-Conflict (copy attached), pp. 2-3 ("[B]y also holding that Section 335.1 should apply and recharacterizing Section 340.6 as a "legal malpractice statute" applicable only to claims by clients, the court needlessly and erroneously rejected well-settled California law. … [T]his split among the Districts, and between separate Divisions of the same District, renders the

issue of the proper statute of limitations for malicious prosecution claims against attorneys ripe for Supreme Court intervention.")

There is no sound public policy reason or legislative purpose justifying departure from the result correctly reached by *Vafi* and *Yee* in applying section 340.6 to malicious prosecution claims against opposing counsel.

CONCLUSION

Vafi and *Yee* are soundly reasoned decisions that were rightly decided in light of the plain meaning of section 340.6—the most specific statute of limitation applicable to malicious prosecution claims brought by a "plaintiff" against attorneys arising out of a lawyer's "professional services." *Vafi* did so in the identical procedural context presented by this record; namely, an anti-SLAPP motion requiring the plaintiff to demonstrate the probable merits of its claims. These appellate courts, and the trial court in this case, properly construed and applied section 340.6 in light of the plain language of the statute and this court's controlling precedents.

Accordingly, ASCDC respectfully submits that the Court of Appeal's decision should be ordered depublished.

Respectfully submitted,

MANATT, PHELPS & PHILLIPS LLP

By: 
Harry W.R. Chamberlain II

THE COLTON LAW FIRM

By: 
Michael A. Colton

Attorneys for Amicus Curiae Association of Southern California Defense Counsel

cc: See attached Service List

PROOF OF SERVICE [CAL. R. CT. 8.25]
AND ELECTRONIC SUBMISSION

I am over the age of 18 and not a party to the within action. I am a member of the California Bar (SBN 95780) employed in the County of Sacramento, State of California with offices located at 1215 K Street, Suite 1900, Sacramento, CA 95814 and in the County of Los Angeles, State of California with offices located at 11355 W. Olympic Boulevard, Los Angeles, CA 90064.

On the date set forth below, I electronically submitted (and caused to be delivered eight paper copies to the Clerk of the Supreme Court) and served the within document entitled**:**

ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL'S REQUEST FOR DEPUBLICATION (Corrected)

by placing a true and correct copy thereof in a sealed envelope addressed to the parties as follows:

SEE ATTACHED SERVICE LIST

X By United States Postal Service – I am readily familiar with my firm's practice for collecting and processing of correspondence for mailing with the United States Postal Service. In that practice correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, with the postage thereon fully prepaid in Los Angeles County California. The envelope was placed for collection and mailing on this date following ordinary business practice.

X By U.S Express Mail/Overnight Delivery – I am readily familiar with my firm's practice for collecting and processing documents for overnight delivery the next business day with the United States Postal Service. In that practice correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, with the postage thereon fully prepaid in Los Angeles County California with charges fully prepaid. The envelope was placed for collection on this date and delivery by Express Mail on the next business day following ordinary business practice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of June 2014 at Los Angeles, California.

By: 
HARRY W.R. CHAMBERLAIN II

SERVICE LIST

***Roger Cleveland Golf Co. Inc. v. Krane & Smith*, No. B237424**

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Krane & Smith, APC, Marc Smith and Ralph C. Loeb: Defendants and Respondents	Michael C. Denison Towle, Denison, Smith & Maniscalco, LLP 10866 Wilshire Blvd., Suite 600 Los Angeles, CA 90024
Trial Court Super. Court Case No. LC093721	Los Angeles County Superior Court Clerk/Executive Officer 111 N. Hill Street Los Angeles, CA 90012 For: Hon. James A. Kaddo, Judge
Court of Appeal No. B237424	Clerk of the California Court of Appeal Second Appellate District, Division 3 300 S. Spring Street Second Floor, North Tower Los Angeles, CA 90013
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