No. S167169

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEARSON DENTAL SUPPLIES, INC., *et al.*,
Defendants/Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent,

LUIS TURCIOS,
Plaintiff/Real Party in Interest.

After a Decision by the California Court of Appeal,
Second Appellate District, Division 4, Case No. B206740
Los Angeles County Superior Court Case No. BC359605
Hon. Alan S. Rosenfield, Judge

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INTRODUCTION

This Court granted review to decide what standard courts should apply in reviewing an arbitration award, issued pursuant to a mandatory pre-dispute employment arbitration agreement, that an employee challenges as violating non-waivable FEHA rights, public policy, and/or the California Arbitration Act ("CAA"). *See* Petition for Review at 1-2.

This Court's prior cases establish that some level of heightened review is required in such cases, "to ensure that arbitrators have complied with the law respecting such claims." *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1077, 1081; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 101, 106-07; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 32; *see also Gentry v. Superior Court* (2007) 42 Cal.4th 443, 457-58. All seven Justices of this Court voted to grant review after the Court of Appeal held that the Superior Court erred in applying such heightened review to the arbitrator's award in this case. *See* Order in S167169 (Nov. 19, 2008).

Plaintiff/Real Party in Interest Luis Turcios explained in his Opening Brief why an employee asserting unwaivable statutory or common law claims pursuant to a mandatory pre-dispute arbitration agreement should be entitled to *de novo* judicial review under two narrow circumstances: 1) when the employee contends that the award violated a clearly expressed

public policy; and 2) when the employee challenges the arbitrator's legal reasoning (including any application of law to findings of fact) in contending that the award deprived him or her of fundamental, unwaivable statutory rights or rendered the arbitration agreement unconscionable. Opening Br. at 21-33.

The Answer Brief filed by defendant Pearson Dental Supplies, Inc. almost entirely ignores plaintiff's analysis, and makes no effort to address plaintiff's legal, policy, or historical arguments.[1] Not until page 46 of the Answer Brief, in Section IV.E, does Pearson begin to address the appropriate standard of review. Even then, Pearson's arguments do not address plaintiff's analysis in any detail, but instead rest on conclusory assertions and critical comments, without real engagement in the issues.

Pearson warns, as its principal policy argument, that if employers are deprived of their "right" to shorten the limitations periods applicable to their employees' statutory claims or are otherwise precluded from contractually restricting their employees' ability to vindicate non-waivable rights, employers will no longer require their employees to arbitrate

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[1] While Pearson's Answer Brief attempts to raise 12 new "Questions Presented" – none of which were asserted in its Answer to Petition for Review (and none of which are framed in the "concise, nonargumentative" form required by Rule 8.504(b)(1)) – only one of those Questions even addresses the scope-of-judicial-review issue raised by plaintiff's Petition. *See* Answer Br. at 12-15.

workplace claims.[2] Pearson's speculative prediction may or may not be true (and the predicted result may or may not be undesirable). But it is far too late for any employer seriously to argue that it has the "right" to impose upon its employees an adhesive, pre-dispute mandatory arbitration agreement that has the purpose or effect of chilling or denying those employees' exercise of fundamental statutory and common law rights. *See, e.g., Armendariz*, 24 Cal.4th at 101; *Little*, 29 Cal.4th at 1077; *Gentry*, 42 Cal.4th at 457-58. This Court has repeatedly rejected arguments that the goals of arbitral efficiency and finality can override the fundamental public policies that protect employees' non-waivable statutory and common law rights.

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[2] *See* Answer Br. at 10 ("Such a result as that ordered by the trial court blatantly annulled the function, reason and purpose that an employer seeks to include in employment agreements reasonable arbitration terms and conditions, including limitation periods. Why would any employer, including PEARSON, enter into arbitration agreement with its employees, when it fails to serve its intended purpose?"), 11 ("This instant happenstance is predicated on an arbitration agreement in which the employer, PEARSON, believed it would reduce its cost of doing business by arbitral resolve of disputes with its employees"), 32 ("If, like in this very case, an employer like PEARSON cannot rely on the reasonable terms and conditions of its Arbitration Agreement, and the doctrine of arbitral finality, then no good reason, whatsoever, exists for it, as an employer, to contract with its employees to arbitrate"); *see also id.* at 3-4, 12, 47-48. At a minimum, these arguments acknowledge that Pearson, like plaintiff, perceives the contractually-shortened limitations period as having a substantive impact on plaintiff's ability to exercise statutory and common law rights.

As plaintiff has shown, the arbitrator in this case "exceeded his powers" by denying plaintiff's age discrimination claims on statute-of-limitations grounds, both by denying plaintiff the full limitations periods provided by law and by failing to toll those limitations periods (or even the one-year period under the DRA) as required by C.C.P. §1281.12 and equitable tolling principles. Opening Br. at 17-21. Pearson essentially ignores the limitations periods guaranteed by FEHA and common law, stating that they were "overridden" by the DRA; and contends with respect to §1281.12 tolling that the arbitrator got it right – and that his award should therefore have been confirmed no matter what standard of review is applied.

By treating this case as an inconsequential dispute over an arbitrator's application of law to facts, Pearson trivializes the issues presented. Moreover, Pearson's underlying premise (that the arbitrator correctly applied the CAA's tolling provision, C.C.P. §1281.12) is indefensible. Even if the one-year DRA limitations period could override the longer limitations periods governing plaintiff's age discrimination claims, plaintiff's commencement of arbitration would still be timely once §1281.12's mandatory tolling period is factored in.

Section 1281.12 requires tolling from "the date [plaintiffs'] civil action is commenced" until the date of the "final determination by the court

that [plaintiff] is required to arbitrate the controversy" *plus* another 30 days. The arbitrator presumably calculated the tolling period as if §1281.12 provided only 30 days' of tolling *in total* (although we cannot know for sure, because the arbitrator stated no reasons and offered no analysis). Had the arbitrator applied §1281.12 in accordance with its plain language and the Legislature's evident intent, he could not have dismissed plaintiff's age discrimination claims on statute of limitations grounds, *even if* the DRA's one-year period were the governing limitations period.

For these reasons, the arbitrator's summary judgment award was legally and factually incorrect (as the Court of Appeal and Superior Court both agreed, *see* Opening Br. at 14 *citing* Pet. App. at 865 *and* Ct. App. Slip Op. 19). Consequently, this case squarely presents the question that plaintiff addressed at length in his Opening Brief, but that Pearson almost entirely avoids: What standard of review should apply in reviewing the arbitrator's award, in the circumstances of this case?

The statutory and public policy issues raised by that question are of the utmost importance, given the increasing number of companies throughout California that require employees and customers to arbitrate workplace and consumer disputes, and the considerable uncertainty over what standard of review should apply to cases involving mandatory arbitration of non-waivable rights. How that question is resolved will make

all the difference in determining whether employees' non-waivable rights and California's critical public policies are adequately protected in the future.

ARGUMENT

I. THE ARBITRATOR PLAINLY MISAPPLIED THE CALIFORNIA ARBITRATION ACT'S TOLLING PROVISION, C.C.P. §1281.12, BY PROVIDING ONLY 30 DAYS OF TOLLING RATHER THAN BY TOLLING ALL TIME BETWEEN THE FILING OF PLAINTIFF'S CIVIL ACTION AND THE FINAL ORDER COMPELLING ARBITRATION, PLUS AN ADDITIONAL 30 DAYS

Pearson rests much of its Answer Brief on the factual assertion that the arbitrator's calculation of C.C.P. §1281.12's tolling period was correct, and should have been confirmed no matter what standard of judicial review was applied. *See, e.g.,* Answer Br. at 35-46. This argument is entirely without factual or legal support.

Pearson begins by assuming that the DRA's one-year limitations period is valid and enforceable (despite the longer periods guaranteed to plaintiff by statute and common law, as discussed in Opening Br. at 17-18). Pearson then baldly asserts that it "knows of no facts that would support TURCIOS' claim of inaccurate calculation," Answer Br. at 5-7, 24-25, even though plaintiff discusses those facts at length in Opening Br. at 17-20.

For the reasons stated in plaintiff's Opening Brief at 18-20, 28-30, 36-44, 48-49, Pearson is wrong as a threshold matter in assuming that an

employer can shorten the limitations periods on its employees' claims for unlawful discrimination through an adhesive contract provision imposed as a condition of continued employment. Moreover, even if the one-year DRA limitations period were legally enforceable, the "facts" set forth in Opening Br. at 17-20 plainly establish the arbitrator's error in applying the mandatory tolling provision in §1281.12. As a result, while the Superior Court's Order vacating the arbitration award would have been correct even without tolling (because plaintiff commenced arbitration well within the longer limitations periods guaranteed by Civil Code §335.1 and §339(1), even under the DRA's one-year period (and certainly under FEHA), plaintiff's submission of his claims to arbitration was timely, given the applicable tolling law.

C.C.P. §1281.12 is part of the CAA.[3] By its express terms, §1281.12 requires arbitrators to toll all applicable limitations periods *from the date a claim is filed in court* until *30 days after issuance of a final judicial order compelling arbitration*, as it provides:

> **Tolling arbitration time period**
>
> If an arbitration agreement requires that arbitration of a controversy be demanded or initiated by a party to the arbitration agreement within a period of time, the commencement of a civil action by that party based upon that controversy, within that period of time, shall toll the applicable time limitations contained in the arbitration

[3] For that reason, §1281.12 cannot be "overridden" by the CAA, as Pearson asserts in its Answer Brief at 8-9, 38, 45-46.

> agreement with respect to that controversy, from the date the civil action is commenced until 30 days after a final determination by the court that the party is required to arbitrate the controversy, or 30 days after the final termination of the civil action that was commenced and initiated the tolling, whichever date occurs first.

Pearson contends that the arbitrator correctly applied this tolling provision in finding that plaintiff's claims were untimely. That cannot be. If the time spent in litigation were tolled "from the date the civil action [was] commenced until 30 days after [the] final determination by the court that the party is required to arbitrate the controversy," only eight months could be found to have elapsed from the date plaintiff was fired until the date he commenced arbitration.

Plaintiff was terminated on January 31, 2006. Opening Br. at 17; RP App. 14. He filed his age discrimination claim as a civil action in L.A. County Superior Court on October 2, 2006 (after having timely exhausted his DFEH remedies and obtaining a right-to-sue letter). Opening Br. at 17; Pet. App. 175, 315-16, 436.

On May 2, 2007, the Superior Court compelled plaintiff to arbitrate his claims pursuant to the parties' DRA. Opening Br. at 9; Pet. App. 180-83, 396-97; RP App.1-15. Later that month, on May 31, 2007, the Court of Appeal denied plaintiff's writ petition, which had challenged the order compelling arbitration. Opening Br. at 10; Pet. App. 187, 409.

Under the plain language of C.C.P. §1281.12, then, plaintiff's claims were tolled – meaning the running of the statute of limitations clock was suspended – from October 2, 2006 (which was "the date the civil action [was] commenced" until July 1, 2007 (which was "30 days after a final determination by the court that the party is required to arbitrate the controversy").[4]

The parties agree that plaintiff initiated arbitration of his claims no later than June 13, 2007. *See* Opening Br. at 18; Answer Br. at 6. That date was well within even the one-year DRA limitations period, as tolled, because by June 13, 2007 the §1281.12 tolling period had still not expired (as noted above, it continued until July 1, 2007). Consequently, the only passage of time that should have been counted against plaintiffs' limitations period were the eight months between January 31, 2006 and October 2, 2007 – which was four months *less* than even the one-year DRA period.[5]

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[4] Even if the "final determination" date was when the Superior Court ruled (rather than when the Court of Appeal denied plaintiff's writ petition challenging that ruling, therefore making it "final" for purposes of §1281.12), the limitations period would still have been tolled until June 1, 2007, 30 days after the Superior Court's May 2, 2007 order compelling arbitration.

[5] Even if tolling expired 30 days after May 2, 2007, when the Superior Court issued its order compelling arbitration, only two more weeks (from early June to mid-June 2007) could be added to those previous eight months in which the limitations period was running. Under *any* conceivable application of §1281.12, then, the arbitrator was wrong – even without considering plaintiff's right to a longer limitations period under

(continued...)

Pearson construes §1281.12 as if it only tolled the statute of limitations for a 30-day period *after* the Superior Court issued its order compelling arbitration. Answer Br. at 24. That erroneous construction provides the only possible explanation for the arbitrator's conclusion that the limitations period had expired even with §1281.12 tolling (a conclusion the arbitrator never attempted to explain or justify – despite this Court's requirement that an arbitrator's award in these circumstances must be sufficiently detailed to permit meaningful judicial review, *see* Opening Br. at 49-50, *citing Little*, 20 Cal.4th at 1081, *and Armendariz*, 24 Cal.4th at 106), considered).

Under the plain language of §1281.12, all limitations periods were tolled *not only* during the 30 days after the writ denial, but also during the entire time the case was pending in Superior Court, beginning on the "date the civil action [was] commenced." C.C.P. §1281.12. The plain statutory language is controlling. Moreover, that plain language construction of §1281.12 is the only one that makes any sense. What possible reason would there be for the Legislature to enact a tolling statute, specifically for the purpose of enabling parties to litigate claims in court that may later end up in arbitration, *see* Opening Br. at 40-41, that did not toll the running of the limitations period while the case was actually being litigated in court?

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[5] (...continued)
FEHA or common law. *See* Opening Br. at 17-20.

In *Woods v. Young* (1991) 53 Cal.3d 315, this Court explained how tolling works:

> Tolling may be analogized to a clock that is stopped and then restarted. Whatever period of time that remained when the clock is stopped is available when the clock is restarted, that is, when the tolling period has ended.

53 Cal.3d at 326 n.3; *see also Parra v. City and County of San Francisco* (2006) 144 Cal.App.4th 977, 993 n.10 ("If a limitation provision is tolled, it means the period in which one is required to act is suspended, that is, it does not run during the tolling period."). Under this commonly accepted understanding, which is incorporated into §1281.12's plain statutory language, the one-year DRA limitations period was tolled between October 2, 2006 until July 1, 2007, 30 days after the final determination.

Statutes must be construed, of course, to give meaning to their every word and phrase – and to make them reasonable, coherent, and consistent with the stated statutory purposes. Pearson's proposed construction, however, would render superfluous the highlighted language in the statutory phrase, "shall toll the applicable time limitations contained in the arbitration agreement with respect to that controversy, *from the date the civil action is commenced until* 30 days after a final determination by the court that the party is required to arbitrate the controversy" (replacing it with, perhaps "for 30 days"). There is no basis for a construction – especially when the

consequence is to deprive a plaintiff of his non-waivable statutory right to be protected against unlawful age discrimination.

Pearson's threshold argument cannot be accepted. Because plaintiff's commencement of arbitration was timely under §1281.12 (no matter which underlying limitations period applied), the arbitrator plainly erred in granting summary judgment to defendant Pearson on plaintiff's age discrimination claims. The question then becomes whether the courts had any authority to rectify that error, given its impact on plaintiff's non-waivable statutory rights.

II. THE ARBITRATOR'S SUMMARY JUDGMENT AWARD WAS PROPERLY VACATED BECAUSE IT EXCEEDED HIS POWERS, VIOLATED PUBLIC POLICY, AND DEPRIVED PLAINTIFF OF FUNDAMENTAL, UNWAIVABLE, STATUTORY AND COMMON LAW RIGHTS

Not only did the arbitrator's summary judgment award deprive plaintiff of his right to statutory tolling under the CAA, but for the additional reasons stated in plaintiff's Opening Brief (and all but ignored by Pearson), that award also: 1) deprived plaintiff of his right to equitable tolling and to the full limitations periods guaranteed by FEHA and Civil Code §§335.1 and 339; 2) was contrary to California public policy; and 3) rendered the parties' DRA unconscionable. *See* Opening Br. at 37-44, 50-

54.[6] The question now before the Court is whether, for these reasons, the award was properly vacated on the ground that the arbitrator in this mandatory arbitration context exceeded his powers by issuing an award that deprived plaintiff of fundamental statutory and common law rights, violated California public policy, and improperly construed the CAA's tolling provision.

Pearson asserts that the Court should treat the arbitral goals of efficiency and finality as paramount, and for that reason hold that the arbitrator had essentially unreviewable authority to apply the DRA's one-year limitations period, without regard to tolling or any other statutory or public policy considerations. Pearson contends "that both the **California Arbitration Act** and the **Federal Arbitration Act** compel and required that, the DRA terms and conditions, override and stand in the place, and

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[6] Pearson argues that plaintiff has no right to *equitable* tolling because he "implicitly conceded that he knew of his duty to arbitrate" yet "deliberately, and in breach of the DRA, sought judicial relief." Answer Br. at 19, 53-54. However, equitable tolling is not limited to cases where plaintiffs were unaware of their agreements to arbitrate, any more than statutory tolling is limited to these cases. In enacting §1281.12, the Legislature listed a broad range of legitimate reasons why a party may file a civil lawsuit to adjudicate a dispute potentially covered by an arbitration agreement. *See* Assem. Comm. on Judiciary, Analysis of AB 1553 (2005-06 Leg. Sess.) at 3; Opening Br. at 40-41. These *legitimate* reasons include the plaintiff's desire for a court trial or jury trial, plaintiff's belief that arbitration agreement is unconscionable, and plaintiff's contention that the dispute does not fall within the arbitration agreement. *Id.* Only one of these instances raises the possibility that plaintiff "might not even be aware that there is an arbitration agreement." *Id.*

stead, of the statutes of limitations provisions set out in the **Fair Employment and Housing Act**, as well as the statute of limitations tolling provisions of **California Code of Civil Procedure § 1281.12**." Answer Br. at 8-9; *see also id.* at 8-9, 12, 15, 44, 45-46.[7] Pearson also contends that under the CAA (despite its provision authorizing vacatur where the arbitrators "exceeded their powers," C.C.P. §1286.2(a)(4)), courts may *never* "review the merits of the controversy, the sufficiency of the evidence supporting the award, or the validity of the arbitrator's reasoning." Answer Br. at 12.[8] And Pearson further asserts (again without any case support or reasoned analysis) that neither "Public Policy" nor this Court's analysis in *Armendariz* of minimum statutory standards, exculpatory contract clauses, and unconscionability can ever justify heightened judicial review of an arbitrator's decision, for "[to] permit[] the courts to review the arbitration for its sufficiency, including the application of an arbitral limitation period defense . . . patently[] destroys arbitral finality, and exposes employers to

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[7] Pearson's references to the Federal Arbitration Act are completely irrelevant. The FAA has no application to this case, as the parties themselves have agreed. *See* Pet. App. 149.

[8] *See also id.* at 48 ("The issues and matters resolved by the Arbitrator were required not to be searched, prodded or poked in a review fashion by the trial court, or any other court."), 49 ("nor was the trial court permitted to engage in any inquiry into the reasoning used and utilized by the arbitrator.").

elongated judicial litigation and review which was intended to be avoided, completely, by arbitration." Answer Br. at 30-31.

For the reasons stated in Turcios' Opening Brief, Pearson's conclusory assertions cannot survive scrutiny, and application of this Court's precedents dictates that heightened judicial review be provided in mandatory arbitration cases, like this, which challenge an arbitrator's decision on the ground that it deprived plaintiff of non-waivable statutory or common law rights and/or violated California public policy or the structural protections of the CAA. Without such heightened review, there would be no way to ensure that the arbitration process sufficiently protected the rights that the California Legislature and this Court have held so fundamental.

The CAA authorizes vacatur of an arbitrator's decision when the arbitrator has "exceed[ed his] powers" in issuing an award. C.C.P. §1286.2(a)(4). In the vast majority of cases, arbitrators – who are not even required to strictly apply the law – can make erroneous factual findings and can rest their awards on mistakes of law without exceeding their powers or otherwise being subject to vacatur. *See, e.g., Cable Connection*, 44 Cal.4th at 1360. However, as this Court has held, and for the reasons set forth in the Opening Br. at 22-25, arbitrators have *no* authority to violate public policy, or to violate the CAA, or to construe an agreement in a manner that makes it illegal or otherwise revocable. Even in *Moncharsh*, which Pearson

relies upon so heavily (and which involved a truly voluntary arbitration agreement, unlike here),[9] this Court acknowledged that greater judicial scrutiny is warranted where "granting finality to an arbitrator's decision would be inconsistent with the protection of a party's statutory rights." *Moncharsh*, 3 Cal.4th at 32; *see also City of Palo Alto v. Service Employees Intl. Union* (1999) 77 Cal.App.4th 327, 334 (quoting *Moncharsh*, 3 Cal.4th at 32-33) (vacatur required "where 'according finality to the arbitrator's decision would be incompatible with the protection of a statutory right' or where the award contravenes 'an explicit legislative expression of public policy.'"). Especially when a mandatory, pre-dispute agreement is involved, as here, arbitrators have no authority to construe the agreement in a manner that deprives employee claimants of non-waivable statutory or common law rights. *See Armendariz*, 24 Cal.4th at 100, 106-07; *Little*, 29 Cal.4th at 1076-77; *see also Moncharsh,* 3 Cal.4th at 32. In such circumstances, the reviewing courts must determine in the first instance whether the arbitrator's award violates public policy or deprives a claimant of unwaivable statutory or common law rights, a determination that requires application of a *de novo* standard of judicial review to the issues presented.

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[9] *See, e.g.,* Answer Br. at 49, citing *Moncharsh*, 3 Cal.4th at 8-10 ("The trial court was further not permitted to review any of the merits of controversy between employer PEARSON and employee TURCIOS, nor was the trial court permitted to engage in any inquiry into the reasoning used and utilized by the arbitrator.").

III. THE SUPREME COURT HAD AUTHORITY TO VACATE THE ARBITRATOR'S AWARD

Pearson also contends that the arbitrator's award should be confirmed on an alternate ground, not raised or discussed in the Petition for Review or Answer to Petition for Review. According to Pearson, the Superior Court should have been required to confirm the arbitrator's award as a matter of law because plaintiff failed to oppose Pearson's Petition to Confirm within 10 days of filing, under C.C.P. §1290 and §1290.6. *See* Answer Br. at 25-26. However, as Pearson acknowledges, plaintiff filed a Motion to Vacate within that 10-day period (and later filed an opposition to Pearson's Petition to Confirm); and the Superior Court denied Pearson's motions to strike plaintiff's Opposition to Petition to Confirm and Motion to Vacate. *Id.* at 28; *see* Opening Br. at 11-12.

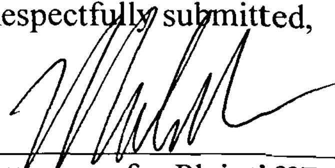
Pearson also acknowledges that the Superior Court based its discretionary decision in part on C.C.P. §1286.4(b)(2), another provision of the CAA, which allows a trial court to vacate an arbitration award on its own motion, as long as the parties are given an opportunity to be heard. *See* Answer Br. at 51, citing Pet. Appx. Vol. III, Ex. 25, at 862 (Jan. 28, 2008 Order). Thus, even if the issue were properly before this Court, which it is not, the Superior Court acted well within its discretion in denying confirmation to, and vacating, the arbitrator's erroneous, rights-stripping award.

CONCLUSION

For the reasons stated, this Court should affirm the Superior Court's Order vacating the arbitrator's award and should either remand the matter to a new arbitrator (as the Superior Court did, Pet. App. 868) or remand for trial in Superior Court (after finding the arbitration agreement unenforceable, based on the severability analysis presented in plaintiff's Opening Br. at 56-60).

Dated: July 27, 2009

Respectfully submitted,



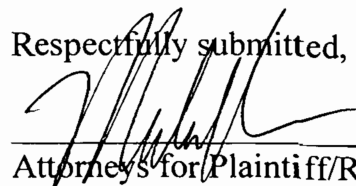
Attorneys for Plaintiff/Real Party in Interest, Luis Turcios

CERTIFICATE OF WORD COUNT

I hereby certify pursuant to Rule 8.204(c)(1) of the California Rules of Court that the REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS is proportionally spaced, has a typeface of 13 points or more, and contains 4,164 words, excluding the cover, the tables, the signature block and this certificate. Counsel relies on the word count of the word-processing program used to prepare this brief.

Dated: July 27, 2009

Respectfully submitted,



Attorneys for Plaintiff/Real Party in Interest, Luis Turcios

PROOF OF SERVICE

CASE NAME: *Pearson Dental Supplies, Inc., et al., v. Luis Turcios*
CASE NO.: S167169

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On July 27, 2009, I served the following document(s):

1) **REAL PARTY IN INTEREST'S REPLY BRIEF ON THE MERITS**

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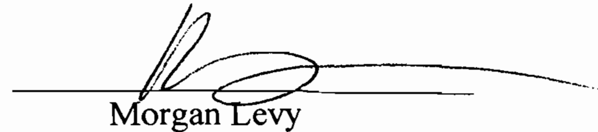
A	Superior Court of Los Angeles Central District Stanley Mosk Courthouse 111 N. Hill Street Los Angeles, CA 90012	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of July 2009 at San Francisco, California.



Morgan Levy