IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LORENZO CHAVEZ, Defendant and Appellant.	S238929 C074138 (Yolo County Superior Court No. 04-2140)	

APPELLANT'S REPLY BRIEF ON THE MERITS

After A Published Decision by the Court of Appeal,
Third Appellate District
Filed November 3, 2016

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INTRODUCTION

In Argument I, respondent claims that Penal Code section 1385[1] simply does not apply when a defendant is placed on felony probation, because a grant of probation is a final judgment which terminates the action. His sole source of authority for such a position is this Court's 1974 decision in *People v. Flores* (1974) 12 Cal.3d 85, which holds no such thing. *Flores* held only that an order of probation could be deemed a final judgment for purposes of applying statutory rules about when the degree of an offense must be fixed. *Flores* did not overturn the longstanding rule that an order of probation is not a final judgment, and is not authority for such a proposition.

In Argument II, respondent's position is that section 1203.4 must have overridden a court's authority under section 1385, because a court could otherwise use section 1385 to undermine section 1203.4's rehabilitative system of post-conviction relief. However, the fact that a court could *abuse* its authority under section 1385 by undermining

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[1] Further statutory references are to the Penal Code unless otherwise specified.

section 1203.4 does not mean that the court *lacks* such authority in the first place. Respondent is simply using the outer limits of the acceptable use of section 1385's authority to argue that such power should not exist in the first place. Respondent is unable to explain in general why courts cannot retain an equitable power of dismissal for use in appropriate circumstances without undermining section 1203.4. This is because a court's equitable authority to dismiss a post-probation case does not, in general, interfere with the rehabilitative scheme of section 1203.4.

ARGUMENT

I. COURTS RETAIN AUTHORITY TO GRANT RELIEF UNDER SECTION 1385 AFTER PROBATION HAS BEEN COMPLETED

Respondent argues that because section 1385 only extends to criminal actions, when a criminal action is concluded so is the court's section 1385 authority. (ABOM at p. 12.) As respondent notes, a criminal action is, "[t]he proceeding by which a party charged with a public offense is accused and brought to trial and punishment." (§ 683.) That much is uncontroversial; where respondent takes a step too far is

to argue that criminal actions are concluded upon a grant of probation. Respondent relies exclusively on *People v. Flores* (1974) 12 Cal.3d 85 ("*Flores*") for his claim that a "proceeding" within the meaning of section 683 is concluded upon a grant of probation. However, *Flores* is not authority for respondent's argument.

In *Flores*, the parties had agreed that the degree of burglary would be fixed at the time of sentencing, but the court inadvertently failed to do so. (*Flores*, 12 Cal.3d at pp. 92-93.) The defendant, relying on section 1192,[2] argued that the crime should be determined to be a lesser degree; this Court agreed. (*Id.*, at p. 93.) The Court also considered the contrary argument that because the imposition of sentence had been suspended, the defendant was not entitled to the benefit of section 1192, which applies only when the court fails to fix the degree of the crime "before passing sentence." (*Id.*) Since sentence had

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[2] Penal Code section 1192 provides: "Upon a plea of guilty, or upon conviction by the court without a jury, of a crime or attempted crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree. Upon the failure of the court to so determine, the degree of the crime or attempted crime of which the defendant is guilty, shall be deemed to be of the lesser degree."

not been imposed, the argument went, section 1192 could not apply. The Court disagreed and concluded an order granting probation constitutes imposition of "sentence" for the purposes of fixing the degree of the offense. The Court reasoned:

> Section 1192, by its own language, purports to be applicable only when the court has in fact imposed a sentence. It states in effect that the crime will be deemed to be of the lesser degree if the degree has not been determined by the court when sentence is imposed. It is silent as to the determination of the degree when sentence has not or is not to be imposed. It is thus manifest that when the imposition of sentence is not contemplated, as when proceedings are indefinitely suspended and probation is granted, section 1192 is not intended to constitute legislative authorization for a continuing, indefinite delay until the time of sentencing before making a finding as to an important factual element of the charged criminal conduct.

(*Flores*, 12 Cal.3d at pp. 94-95.)

Flores was interpreting the statutes that govern when the degree of an offense must be fixed, it was not interpreting *generally* whether an order of probation is a final judgment. At play in *Flores* were two potentially

conflicting statutes, Penal Code sections 1157 and 1192. Section 1157 provides: "Whenever a defendant is convicted of a crime which is distinguished into degrees, the jury, or the court if a jury trial is waived, must find the degree of the crime of which he is guilty. Upon the failure of the jury or the court to so determine, the degree of the crime of which the defendant is guilty shall be deemed to be of the lesser degree."

Flores ultimately relied on section 1157 to find that the failure to fix the degree of the offense in a timely manner required a determination that the offense was of the lesser degree.

> In the absence of specific legislative direction applicable when sentencing has not been imposed, the general language of section 1167 controls the timeliness of the determination of the degree of the crime, and the general language of section 1157 controls as to the effect of the failure to act in a timely manner. Although we are not directly aided by the Legislature as to the time limits within which a trial is or must be concluded (§ 1167) we are, however, clearly advised by indirection. When the Legislature has directed that an order granting probation may be deemed a "final judgment" from which an appeal may be taken (§ 1237), it must follow that trial

proceedings were to be deemed concluded with the granting of that "final judgment" order.

(People v. Flores, supra, 12 Cal.3d at p. 95.)

Nothing about *Flores* requires or even supports respondent's conclusion. If anything, in *Flores,* this Court re-affirmed that an order of probation is *not* a final judgment, and that section 1237 represents an *exception* to that general rule for purposes of appealability. At most, *Flores* can be read to create an additional exception to that general rule for the purpose of determining when a defendant can benefit from the requirements of section 1192 and section 1157. *Flores* does *not* stand for the proposition that a criminal proceeding within the meaning of section 683 is terminated upon a grant of probation. Indeed, *Flores* never addresses section 683, or concerns itself with the definition of a "proceeding" or "criminal action." Thus it is not authority for the proposition for which respondent offers it.

Notably, no published case has even characterized *Flores* in the manner respondent urges. In *People v. Parks* (2004) 118 Cal.App.4th 1, 9, the court explained that, "Flores dealt with an exception to the general

rule stated in section 1167 that a verdict is entered at the conclusion of the evidence and is entered upon the minutes." In *People v. Ramirez* (1979) 25 Cal.3d 260, 265, this Court cited *Flores* as authority for the treating an order of probation as a final judgment for purposes of appeal. And in *People v. Martinez* (1998) 62 Cal.App.4th 1454, 1461-1462, the court correctly noted that *Flores'* statements that "trial proceedings were to be deemed concluded with the granting [of probation]" was *only* in the context of whether the trial court's failure to fix the degree of the defendant's crime required a finding that it was of a lesser degree.

Thus, it remains the long-standing law of this state that an order granting probation is not a final judgment, except for certain limited purposes, such as taking an appeal. (*People v. Howard* (1997) 16 Cal.4th 1081, 1092; *People v. Superior Court of San Francisco* (1974) 11 Cal.3d 793, 796.) Upon a grant of probation, criminal proceedings are suspended and the court retains jurisdiction over the action, including its power under section 1385.

Respondent also unpersuasively tries to limit the application of *People v. Orabuena* (2004) 116 Cal.App.4th 84, which appellant cited in

his opening brief. In *Orabuena,* the Court of Appeal affirmed the trial court's exercise of authority under section 1385 to dismiss a count after a grant of probation for the purpose of qualifying the defendant for drug treatment under Proposition 36.

Respondent seeks to distinguish this case by pointing out that there were still active charges for which *Orabuena* had not been sentenced. According to respondent, even though the defendant in *Orabuena* had already been granted probation on one count and (by respondent's reckoning) he was therefore ineligible for section 1385 relief, the court could nonetheless dismiss that count because there were other, unresolved charges. But it makes little sense to say a pending charge gives a court authority to dismiss a *different* charge which has already been resolved. Indeed, respondent's attempt to distinguish *Orabuena* undermines his claim that a grant of probation is a final judgment which terminates a court's authority under section 1385. If this were so, then the *Orabuena* court would have had no authority to dismiss the charge, regardless of whether other charges were pending.

Ultimately, the fact that other charges were still pending does not render *Orabuena* so different from the case at bar that it can have no application. *Orabuena* still provides support for the proposition that under appropriate circumstances, a court can use its authority under section 1385 to dismiss a matter after a grant of probation.

Respondent thus has no rejoinder to long-established law holding that a grant of probation is not a final judgment, except for certain limited circumstances as enumerated by the legislature.

II. A COURT'S POWER TO DISMISS PURSUANT TO SECTION 1385 IS NOT LIMITED BY SECTION 1203.4

A. Section 1385 and Section 1203.4 Are Addressed to Different Circumstances and Can Co-exist Without Contradiction

Respondent argues that "interpreting section 1385 as appellant proposes, renders section 1203.4 and all of its subsequent amendments a nullity." (ABOM at p. 20.) This hyperbolic claim fails to fairly address the issue. Courts' authority to dismiss a matter under section 1385 after a grant of probation does not, as respondent claims, render section 1203.4 "pointless." (ABOM at p. 20.) Respondent relies on a

fallacy that a court's overlapping authority over a case undermines the purpose of section 1203.4 . Yet respondent offers no reasoned argument as to why a court cannot retain discretionary authority to dismiss under section 1385 and also adhere to the strictures of section 1203.4, should a defendant invoke that provision.

Respondent discusses at length the rehabilitative scheme embodied in section 1203.4 and describes the way in which disabilities from a conviction can be partially ameliorated through section 1203.4. (ABOM at pp. 21-25.) Respondent's recitation of the details of section 1203.4 only succeeds in demonstrating appellant's point - that the statute reflects a system of rehabilitation that is separate and distinct from a court's authority under section 1385. The fact that the Legislature has developed such a rehabilitative system does not undermine a court's *pre-existing* authority to dismiss an action.

If a court sought to use section 1385 to dismiss a registration requirement or other disability for a probationer, then Respondent's argument would have some weight. But that is not what is at issue here. Rather the question is whether the establishment of a

rehabilitative system necessarily eliminates a court's pre-existing authority to dismiss an action in the interests of justice.

Respondent argues that because section 1203.4 "effectively cover[s] every felony probation...[this] demonstrat[es] .. legislative intent that section 1203.4 be the exclusive remedy for any felony probation." (ABOM at p. 25.) But it is simply unsound reasoning to argue that the existence of an exclusively rehabilitative system of relief for probationers proves the legislature intended that courts exercise *no other authority* over cases in which probation has been granted. Appellant *agrees* that for the typical probationer, section 1203.4 is the sole means for the courts to acknowledge and reward a probationer's rehabilitation. However, this does not mean courts lack authority to dismiss a case in which probation has been granted when the interests of justice may be served.

Respondent complains that section 1385 gives courts broader power than they have under section 1203.4, including, for example, the ability to dismiss certain convictions that are not eligible for relief under section 1203.4, such as those involving sexual exploitation of children.

This is a false comparison because the two powers are distinct and addressed to different concerns, indeed if the two powers had the same scope this would support respondent's argument. Again, it is entirely appropriate for a court to retain the authority to dismiss a case in the interests of justice - rather than as a reward for rehabilitation. While such authority is likely to be exercised only rarely, it is appropriate and important that court retain such authority.

Consider, for example, a case in which a court becomes aware of significant constitutional infirmities in a probationer's case, but that a variety of reasons - procedural hurdles, death or incapacity of a witness, and so forth, a proper habeas petition cannot be presented. Under such circumstances, it would be entirely appropriate for the court to exercise its authority to dismiss the case. Such discretion would not be an act of clemency, but rather remediation of a constitutional infirmity.[3]

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[3] Respondent muses in a footnote that "an expansive interpretation of a court's authority pursuant to section 1385 would likely violate the doctrine of separate of powers." (ABOM at p. 22, n. 5.) However, respondent offers no argument as to how or why that would be the case, instead citing to *In re Rosenkrantz* (2002) 29 Cal.4th 616, 662. In that case, this Court observed that the "purpose of the [separation of powers] doctrine is to prevent one branch of

Respondent urges that the Legislature could not have intended for a court "to ignore the comprehensive scheme created by section 1203.4." (ABOM at p. 31.) Appellant agrees. A court should *not* ignore section 1230.4, and generally should *not* use section 1385 to grant rehabilitative relief in *place of* the procedures and remedies available in section 1230.4. Where appellant disagrees with respondent is with his contention that because a court should follow section 1203.4 in order to grant rehabilitative relief to a probationer, it can therefore *never* exercise its authority under section 1385 to dismiss a case when the interests of justice otherwise so require. Respondent repeats over and over that

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government from exercising the complete power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the incidental effect of duplicating a function or procedure delegated to another branch.' [Citation.]" (*Id.*) Respondent fails to explain how the court's exercise of a legislatively granted power of dismissal exercises a complete power constitutionally vested in another branch. Nor does it make sense to argue that court's dismissal of a case interferes with the Governor's ability to pardon or otherwise relieve a defendant of disabilities stemming from a conviction. A court's determination that there is insufficient evidence, or some other constitutional infirmity in a charge or conviction, is different in kind from a pardon in which the executive acknowledges the legitimacy of a conviction but nonetheless grants clemency.

such a circumstance is "illogical" and renders section 1203.4 "meaningless" and a "nullity." (ABOM at pp. 20, 28, 29.) But respondent never actually explains *why* a court's ability to dismiss a case for reasons other than rehabilitation is *inconsistent* with following the legislative prescription for run-of-the-mill post-conviction relief from the disabilities created by a conviction. This is because the two powers are not in contradiction.

Respondent briefly addresses the contention that section 1385 and section 1203.4 have different purposes, but again fails to explain why section 1385 as an equitable power of dismissal and section 1203.4 as a rehabilitative inducement cannot simultaneously co-exist. (ABOM at p. 36.) The closest respondent comes is to argue that because section 1203.4 also has language allowing a court to grant relief "in the interests of justice," section 1385 can never apply to a felony probationer. This argument is misplaced for several reasons.

First, because the nature of the power exercised in section 1385 and section 1203.4 are fundamentally different, it is erroneous to infer that the authority embodied in section 1385 has been somehow

transferred to section 1203.4. And the use of the phrase interests of justice does not only have one meaning in the law. For example, a court can grant probation to a defendant who is presumptively ineligible in the interests of justice (§ 1203), or can waive a mandatory jail term (§ 186.22, subd. (g)).

Second, it is clear from the context of section 1203.4 that phrase the "interests of justice" is intended to address circumstances in which probationers are not strictly eligible for relief (because, for example, of a minor probation violation) but are nonetheless deserving of such relief. The Legislature clearly understood that the interests of justice would be served by affording relief to deserving probationers. Moreover, this discretionary authority provides further *rehabilitative* incentive for probationers. A court's ability to grant relief even if a probationer has stumbled along the way provides for the possibility of a second chance. Probationers seeking relief who know the court must make an "interests of justice" finding will have to do more than simply apply for relief - they will have to make a showing of why they are deserving - whether through remorse, reform or otherwise. The existence of the interests of

justice phrase is directly connected to the rehabilitative purpose of the statute; it is an entirely different set of considerations than the interests of justice analysis in section 1385.[4]

For these reasons, then, the mere fact that section 1203.4 also has an "interests of justice" analysis does not thereby remove a court's discretionary authority to dismiss under section 1385.

B. Respondent's Reliance on Authority is Based on a Misinterpretation of the Cases

Respondent seeks to distinguish this Court's decision in *People v. Fuentes* (2016) 1 Cal.5th 218, which again refused to find a limitation on courts' section 1385 authority without clear legislative intent to do so. According to respondent, *Fuentes* reached its conclusion because of the

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[4] Respondent complains that because appellant suggests rehabilitation could be one of the many considerations a court evaluates in deciding whether to dismiss the case, this renders appellant's argument inconsistent. (ABOM at p. 37.) Not so. Any discretionary decision, particularly one involving broad considerations of equity, should be able to take account of any relevant circumstances. Clearly section 1385 should not be used to replace relief granted under section 1203.4. And, as discussed in the Opening Brief, section 1385 is not a tool of rehabilitation. (*People v. McAlonan* (1972) 22 Cal.App.3d 982, 987.)

long history of dispute amongst the branches of government, a factor missing here. (ABOM at p. 36.) This is an incorrect reading of *Fuentes*; the history of dispute merely served to "underscore" the Court's already-drawn conclusion. (*Fuentes, supra,* 1 Cal.5th at p. 230.) *Fuentes* rested its reasoning firmly on the shoulders of *Romero,*[5] and not on the particular history of the statutory provision at issue. (See *Id.* at p. 226, "We agree with defendant that there must be "a clear legislative direction" eliminating the trial court's section 1385 authority," [citing *Romero, supra,* 13 Cal.4th at p. 518; *People v. Fritz* (1985) 40 Cal.3d 227, 230 and *People v. Williams* (1981) 30 Cal.3d 470].) Thus, *Fuentes,* like *Romero, People v. Thomas* (1992) 4 Cal.4th 206, 210, *People v. Fritz* (1985) 40 Cal.3d 227, 230, and *People v. Williams* (1981) 30 Cal.3d 470, should still guide this Court's consideration of this case.

Respondent also references the opinion below's (erroneous) reliance on *People v. Tanner* (1979) 24 Cal.3d 514 ("*Tanner*"), but does not attempt to justify it. As discussed in the opening brief, *Tanner* was

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[5] *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 ("*Romero*").

concerned that using section 1385 to strike a probation ineligibility allegation thereby undermined the mandatory *prohibition* on probation. That is not the same as using section 1385 to dismiss a case where a defendant, if he applied, would be otherwise be eligible for mandatory post-conviction relief.

In other words, use of section 1385 does not undermine legislative intent to create a post-conviction rehabilitative benefit. Use of section 1385 to *replace* section 1203.4 relief *would* undermine legislative intent, and would therefore be an abuse of discretion. But the fact that a judicial power can be used in a way that is contrary to legislative intent does not mean the power must be deemed not to exist in the first place. Respondent is simply using the outer limits of the acceptable use of section 1385's authority to argue that such power should not exist in the first place. *Tanner* does not stand for such a proposition, nor does Respondent offer authority for such a radical claim. Indeed, if this were so, the whole premise of *Romero* would be up-ended. On respondent's theory, a court's dismissal of strike prior out of, say, antipathy to the Three Strikes Law, rather than representing

an abuse of discretion, would simply invalidate section 1385. This is not what the law contemplates.

Respondent also tries to defend the Court of Appeal's reliance on *In re Disbarment of Herron* (1933) 217 Cal. 400, *In re Phillips* (1941) 17 Cal.2d 55, and *Stephens v. Toomey* (1959) 51 Cal.2d 864, but is unable to do so. Those cases are in no way authority for respondent's conclusions. Respondent argues those cases were relevant "because they recognized section 1203.4 established the authority to dismiss a case following probation." (ABOM at p. 39.) But the authority to dismiss a case following probation under section 1203.4 was never in question in those cases. Those cases only considered the *effect* of a dismissal under section 1203.4 on disbarment proceedings; they did not consider section 1385. Cases are "not authority for a proposition not therein considered." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 496.)

Respondent also argues that *People v. Barraza* (1994) 30 Cal.App.4th 114 is direct authority for his position, but it clearly is not. In *Barraza,* the parties petitioned the Court of Appeal for a stipulated reversal of the conviction and replacement of the judgement of

conviction with a conviction of a different statute. The only question before the court was whether to grant the request. (*Barraza, supra,* 30 Cal.App.4th at pp. 116-117.) The court held that it lacked authority to grant such a motion. (*Id.* at p. 121.) The court briefly discussed section 1203.4 and section 1385, but only insofar as it found neither statute conferred authority on the Court of Appeal to grant the relief being sought. (*Id.* at pp. 120-121, n. 7 and 8.) The statement that section 1203.4 was "the only post-conviction relief from the consequences of a valid criminal conviction available to a defendant under our law" was clearly dictum. (*Id.* at p. 121) The court noted that *neither* section 1203.4 nor section 1385 applied to the question before the court: whether the Court of Appeal could grant a stipulated reversal and substitution of a judgment. (*Id.* at p. 120-121, n. 7 and 8) *Barraza* is certainly not authority supporting respondent's that a court lacks authority to dismiss under section 1385 once probation has been granted.

C. The Differences in Procedures Between Section 1385 and 1203.4 Are Significant Only Insofar as They Demonstrate the Statutes' Differing Purposes

Respondent argues that the procedural differences between section 1385 and section 1203.4 are evidence and reason to believe that section 1203.4 eliminates a court's authority to dismiss a case pursuant to section 1385. (ABOM at pp. 29, 37) However, these differences actually support the conclusion the two statutes can co-exist without contradiction because it shows they are meant to be employed differently.

In particular, respondent raises the concern that a court could simply dismiss a conviction on its own motion and deprive the prosecution of an opportunity to object, or potentially, even appeal the dismissal. (ABOM at p. 37.) This is only a fictional concern. The language of section 1385 states that the reasons for the dismissal shall be stated on the record. (§ 1385, subd. (a).) Thus it clearly contemplates that any such dismissal will take place in open court. It defies reason to imagine that a Superior Court judge would convene a case in open

court and order a dismissal without notice to the prosecution (or the defense, for that matter). Furthermore, the statute clearly contemplates that both parties will be present because it gives *either* party the right to request that the reasons for the dismissal be entered in the minutes. (*Id.*) Such a right would be meaningless if the court could act in the party's absence. Nor is there any reason at all to believe that section 1385 confers authority on a court to act *ex parte*, which is the only way respondent's problematic scenarios could unfold.

As part of his parade of horribles, respondent speculates that a defendant could invite a court to dismiss, and the prosecution would never know and thereby be deprived of its appellate rights. But in order to file such an invitation, the defense would have to calendar a hearing date, and thereby provide notice to the prosecution.[6] It is simply unreasonable to imagine that a court would dismiss a case without notice to the prosecution. Ironically, on respondent's theory, a court could dismiss a case without even notice to the defense. The

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[6] In the absence of a local rule, it is likely that Rule of Court 4.111, pertaining to pretrial motions, governs any such filing, which requires a ten-day notice period.

absurdity of such a situation shows the Court need not concern itself with respondent's imagined horrors of ex-parte post-probation dismissals under section 1385.

Finally, respondent makes a policy point that post-probation dismissals under section 1385 could invite unlimited defense invitations and thereby create unlimited appellate challenges. (ABOM at p. 42.) Respondent fails to appreciate that the same could be said of section 1203.4 when an otherwise ineligible defendant petitions the court for post-conviction relief in the interests of justice. There is no limit to the number of times a defendant could seek such relief and then appeal when it is denied. Since the Legislature was apparently unconcerned with such a consequence, the Court need not concern itself with this issue.

Ultimately, respondent's concerns about the differing procedures each statute involves are unpersuasive. As discussed above, section 1203.4 is the benefit to which deserving probationers are entitled or can aspire if they can demonstrate good cause. It is the only such benefit to which they are entitled. This is completely consistent with courts

retaining their authority to dismiss a case in the interests of justice under appropriate circumstances.

CONCLUSION

Courts retain jurisdiction over probationers when - as here - no judgment has been imposed. A court's power to dismiss under section 1385 survives so long as it has authority over the action. Here, Mr. Chavez invoked the fundamental jurisdiction of the court in requesting that it exercise its authority under section 1385, and the court was empowered to act.

Section 1203.4 does not eliminate a trial court's authority to dismiss an action under section 1385 because there is no clear legislative intent to support such a limit on section 1385. Furthermore, the statutes are addressed to different purposes and different circumstances, and section 1385 authority only applies when there has been no judgment imposed. Respondent's concern that improper exercise of section 1385 authority would undermine the legislature's purpose in enacting section 1203.4 simply delineates the boundaries of a court's discretion in exercising its authority.

For the reasons stated herein, the Court should reverse the Court of Appeal and remand the matter to the Superior Court to determine whether to exercise its discretion under section 1385.

Dated: August 22, 2017

Respectfully submitted,

MATTHEW A. SIROKA
Attorney for Appellant
Lorenzo Chavez

CERTIFICATE OF WORD COUNT

Counsel for hereby certifies that this brief consists of 4,657 words (excluding tables, proof of service, and this certificate), according to the word count of the computer word-processing program.

(California Rules of Court, rule 8.504(d)(1).)

Dated: August 23, 2017

MATTHEW A. SIROKA

DECLARATION OF SERVICE BY MAIL

Re: *People v. Lorenzo Chavez* **Supreme Court Case No. S238929**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of San Francisco, State of California. My business address is 1000 Brannan Street, Suite 400, San Francisco, CA 94103. On August 23, 2017, I have caused to be served a true copy of the attached **Appellant's Reply Brief on the Merits** on each of the following as follows:

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via e-filing

Lorenzo Chavez
via e-mail
(Appellant)

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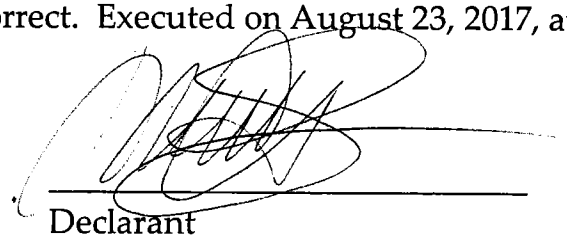
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 23, 2017, at San Francisco, California.



Declarant