No. S184929

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

JAMSHID ARYEH,
Plaintiff and Appellant,

v.

CANON BUSINESS SOLUTIONS, INC.,
Defendant and Respondent.

After a Decision By the Court of Appeal,
Second Appellate District, Division Eight
Case No. B213104

Appeal from Los Angeles County Superior Court
Robert L. Hess, Judge
Case No. BC 384674

RESPONSE TO BRIEF OF THE ATTORNEY GENERAL AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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I. INTRODUCTION

This is a commercial dispute between two businesses concerning charges purportedly incurred pursuant to a contractual relationship. One of those businesses is asserting a claim against the other under the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* ("UCL"), as a substitute for a claim at law for damages and as a basis for a putative class action. The Attorney General of the State of California ("AG") has chosen to intervene in this dispute on the side of the business asserting the UCL claim. While the AG asserts no interest in the parties' underlying commercial relationship, the AG's *amicus curiae* brief ("AG Brief") contends that, unless the UCL claim at issue is reinstated, UCL plaintiffs in general and the AG's prerogatives in bringing public actions in particular will be harmed.

The AG's stated concerns are misplaced, and the arguments seeking reversal of the Court of Appeal's affirmance of the dismissal of the UCL claim asserted by Plaintiff-Appellant Jamshid Aryeh ("Plaintiff") are insufficient. Contrary to the AG's (and Plaintiff's) arguments, affirmance of the dismissal of Plaintiff's UCL claim does not require, nor is Defendant-Respondent Canon Business Solutions, Inc. ("Canon") seeking, a draconian ruling that would grant UCL violators the freedom to engage in wrongful conduct with impunity. Instead, Canon contends only that, based upon Plaintiff's own allegations in his pleadings, his UCL claim is time-barred, and there is no factual basis upon which he can legitimately invoke any rule or doctrine (such as the "continuous accrual" doctrine) to circumvent the applicable statute of limitations.

Moreover, the AG's arguments regarding the merits of the case flatly contradict those made by Plaintiff, ignore crucial undisputed facts, and cannot be squared with this Court's precedents. Like the dissenting Court of Appeal panelist below, the AG constructs an argument concerning the accrual of Plaintiff's UCL claim that has never been addressed by either party and overlooks critical facts alleged by Plaintiff. There is nothing in the AG Brief that casts doubt upon the propriety of the decision below that, because Plaintiff's single, integrated UCL claim accrued more than four (4) years prior to the commencement of this action, it must be dismissed on the basis of the expiration of the statute of limitations.

II. ARGUMENT

A. THE AG'S POLICY ARGUMENTS FOR REVERSAL ARE WITHOUT MERIT

1. The AG Inaccurately Construes the Court of Appeal's Ruling

The AG Brief predicts dire consequences for UCL plaintiffs and the public at large should this Court affirm the Court of Appeal's ruling affirming the dismissal of Plaintiff's UCL claim. The AG sets the stage for these contentions by characterizing the Court of Appeal's determination as a sweeping ruling that "flowed from its rejection in UCL cases of the 'continuous accrual' doctrine," and that precludes the prosecution of any UCL claims involving "recent bad acts [where] the defendant committed similar acts outside the limitations period" (*see* AG Brief at 2, 3). This misinterprets the Court of Appeal's decision.

The Court of Appeal did not "reject" application of the "continuous accrual" doctrine, either to Plaintiff's case or to "any UCL claims," because

that doctrine was neither briefed nor argued by either Plaintiff or Canon at any point in this litigation prior to Plaintiff's Petition for Review to this Court. *See* Canon's Answer Brief on the Merits ("Canon Br.") at 23-24. Rather, Plaintiff argued, both to the trial court and the Court of Appeal, that the separate and distinct "continuing violations" doctrine should be applied to salvage his claim, and cited case law applying the "continuing violations" doctrine, and not the "continuous accrual" doctrine, in support of his argument. *See* Plaintiff's Opening Brief on the Merits ("Pl. Opening Br.") at 16.

The "continuous accrual" doctrine was injected into this case for the first time by the dissenting Court of Appeal panelist, on his own initiative, in theorizing that it could be applied to rescue Plaintiff's UCL claim. *See Aryeh v. Canon Business Solutions, Inc.*, 185 Cal. App. 4th 1159, 111 Cal. Rptr. 3d 211, 221-225 (2010). Thus, there was no need for the Court of Appeal majority to address, let alone "reject," application of the "continuous accrual" doctrine to Plaintiff's claim, or to UCL claims generally.

Moreover, the Court of Appeal's holding that Plaintiff's UCL claim is time-barred because it accrued in early 2002, more than six (6) years prior to the commencement of this action, was based upon facts alleged by Plaintiff in his pleadings, and not on a sweeping pronouncement that no timely UCL claim could ever be based upon conduct that began outside the limitations period and continued into it. The Court of Appeal held that, because Plaintiff affirmatively alleged he had incurred and paid the disputed charges in early 2002 and had discovered at that time Canon's

alleged deception concerning such charges, his UCL claim accrued then, even though he purportedly continued to incur and pay such charges for the next several years. *See Aryeh,* 111 Cal. Rptr. 3d at 216-218. This holding does not, as the AG suggests, imply that *any* UCL claim involving purported misconduct beginning outside the limitations period and continuing into it, regardless of the alleged facts, is untimely. Instead, the Court of Appeal correctly held that a UCL claim which *accrues* outside the limitations period is time-barred, even if further related alleged misconduct continued into the limitations period.

2. The AG's Concerns Regarding the Potential Impact of an Affirmance Upon Law Enforcement Agencies' Ability to Pursue Public UCL Actions Are Misplaced

The AG contends that affirmance of the Court of Appeal's decision would "hinder public actions brought by the Attorney General and other law enforcement agencies because courts would doubtless apply similar reasoning to bar public actions" (AG Brief at 3). This conjecture is neither supported nor well considered.

The AG cites no evidence or authority supporting the notion that the statute of limitations has ever been applied by a California court to "hinder" a UCL public action, nor is Canon aware of any. It is difficult to conceive a scenario in which a UCL public action commenced by a law enforcement agency on behalf of the citizens of California would be susceptible to dismissal on the basis of the expiration of the statute of limitations. Public actions typically are pursued by such agencies to enjoin ongoing UCL violations by obtaining injunctive relief, assessing penalties and seeking restitution for those already injured.

By definition, then, such actions are always timely, in that ongoing UCL violations necessarily have caused harm to members of the public within the previous four (4) years, and public claims based upon the harm suffered by those individuals therefore accrued within the limitations period. The AG provides no explanation, nor does there appear to be any, as to how affirmance of the Court of Appeal's ruling would result in public actions being dismissed as untimely. Thus, there is no viable basis for the AG's admonition that affirming the dismissal of Plaintiff's UCL claim will somehow "hinder" the prosecution of public actions.

3. The AG's Concerns Regarding "Immunity" for "Those Who Have Been Most Persistent in Breaking the Law" Are Misplaced

Echoing Plaintiff, the AG further contends that affirming the dismissal of Plaintiff's UCL claim would mean that "a new species of immunity" would be awarded "to the worst [UCL] offenders – those who have been the most persistent in breaking the law" (AG Brief at 3), and "would render the UCL virtually useless in deterring the most persistent offenders" (AG Brief at 6). This unsupported admonition is just as misguided when repeated by the AG as it was when originally expressed by Plaintiff (*see* Pl. Opening Br. at 6, 46-47).

Dismissal of Plaintiff's claim against Canon on the basis of the expiration of the statute of limitations will only "immunize" Canon with respect to the claims of an individual (*i.e.*, Plaintiff) who admits that he could have filed his action against Canon nearly six (6) years before he did so, and has offered no excuse or explanation whatsoever for his dilatory conduct. If, as Plaintiff and the AG intimate, Canon has imposed, and

continues to impose, improper "excess copy charges" for "test copies" upon customers other than Plaintiff,[1] relief (including an injunction prohibiting the challenged conduct) can be sought by those whose claims are timely.

Thus, no grave implications to UCL jurisprudence legitimately arise if this Court bars Plaintiff from pursuing his UCL claim against Canon by reason of the expiration of the statute of limitations. Plaintiff admits that "it is undisputed that Plaintiff could have commenced a lawsuit against Canon on [sic] or about February 2002" (Pl. Reply Br. at 30), but he waited almost six (6) years before finally doing so in January 2008, long after the UCL's statute of limitations had expired. Canon's "immunity" from suit by Plaintiff under these circumstances, arising from Plaintiff's own unexplained dilatory conduct, is precisely what is intended by the policies underlying statutes of limitations as articulated by this Court. *See, e.g., Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389 (2010); *Shively v. Bozanich*, 31 Cal. 4th 1230, 1246 (2003); *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 395 (1999).

4. The AG's Reassurance That Reversing the Court of Appeal's Decision Would Not Reward Dilatory Conduct Is Unpersuasive

The AG denies that reinstating the time-barred UCL claim that Plaintiff waited nearly six (6) years to pursue would reward Plaintiff's dilatory behavior. The AG argues that, "because damages are not available in [UCL] actions," a "wrongdoer cannot plausibly claim prejudice" by

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[1] Canon does not concede either that it imposed "excess copy charges" for "test copies" upon Plaintiff, or that it is Canon's policy to impose such charges upon its customers. *See* Canon Br. at 7 n.3.

being subject to a UCL claim for injunctive relief and/or restitution even if the claim was not diligently pursued. (AG Brief at 6-7.) The logic of this argument, difficult to comprehend at best, is belied by the facts of this case.

Plaintiff seeks to recover by means of a "restitution" award the amount that he claims he paid in "excess copy charges" for "test copies." This is precisely the same recovery that he necessarily would have sought had he pursued a timely fraud or contract claim for damages. Moreover, Plaintiff purports to represent a putative class of customers in this UCL action that is identical to the putative class that he could have sought to represent in an analogous class action based upon fraud or contract claims, and seeks "restitution" for such class members no different in nature or amount than the damages that he would have sought had he asserted his class claim at law rather than pursuant to the UCL.

There is no question that Plaintiff's UCL claim is a substitute for a claim at law in every respect.[2] The AG's notion that relaxing application of the statute of limitations to Plaintiff's UCL claim would not reward his patently dilatory conduct because the UCL does not afford him a damages remedy, or that Canon would not be prejudiced by a failure to enforce the limitations period because it is facing a class action nominally seeking an equitable remedy rather than a remedy at law, is not borne out by the facts. There is no legitimate reason to excuse Plaintiff's failure to take diligent action to protect his purported interests simply because he seeks an

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[2] As Canon argued in its opposition brief, it is obvious that Plaintiff has chosen to assert his claim pursuant to the UCL in order to seek to capitalize upon the UCL's substantive and procedural advantages for class action plaintiffs. *See* Canon Br. at 43-44.

equitable remedy pursuant to the UCL, rather than an equivalent legal remedy pursuant to a common law claim.

5. Plaintiff and the AG, and Not Canon, Seek an Unnecessarily Broad Ruling Beyond the Bounds of the Case At Bar

The AG also follows Plaintiff's lead in urging the Court to make a sweeping ruling holding that the "continuous accrual" and "continuing violations" doctrines are generally applicable to UCL claims. *See* AG Brief at 5-7, 9-13; *see also* Pl. Opening Br. at 15-26, 39-46. In contrast, Canon takes no position as to these issues, because they are not relevant to the disposition of this appeal.

There is no need for the Court to reach the question of whether the "continuous accrual" doctrine may apply to theoretical UCL claims not before the Court because, as Canon has demonstrated, the facts as alleged by Plaintiff himself conclusively show that "continuous accrual" cannot apply to Plaintiff's claim. *See* Canon Br. at 23-34. The AG and Plaintiff, and not Canon, are lobbying for a result that would extend beyond the parameters of the facts presented by the case at bar.

Canon also declines to address the broad applicability of the "continuing violations" doctrine to the UCL, despite the AG's devotion of nearly a third of the *amicus* brief to that question (*see* AG Brief at 9-13), because both Plaintiff and Canon (and all three Court of Appeal panelists who heard this case) agree that the doctrine is irrelevant to Plaintiff's claim. *See* Pl. Opening Br. at 39-40; Canon Br. at 46; *Aryeh,* 111 Cal. Rptr. 3d at 218-220, 221-222. Like Plaintiff, the AG urges the Court to issue an unnecessary advisory opinion on the theoretical applicability of the

"continuing violations" doctrine to UCL claims other than the one asserted by Plaintiff. Canon respectfully submits that the Court need not expend time and resources to opine on matters not relevant to the case at bar.

B. THE AG'S ARGUMENTS REGARDING THE MERITS OF PLAINTIFF'S CLAIM DO NOT ADDRESS DISPOSITIVE FACTS AND ARE UNAVAILING

The AG's amicus brief is not simply an effort to argue policy issues that the AG believes are important. Instead, the AG goes further by choosing sides in a rather unexceptional commercial dispute between two businesses. The AG attempts to bolster Plaintiff's case by arguing a new theory of claim accrual to warrant the reinstatement of Plaintiff's claim. In doing so, the AG effectively provides Plaintiff with an extra reply brief on the merits.[3] However, the AG's merits argument actually contradicts positions which Plaintiff, and the other amicus parties that have submitted briefs supporting Plaintiff, have taken before this Court. The AG also ignores crucial facts conclusively demonstrating that Plaintiff's claim

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[3] In contrast, the other amicus parties who have submitted briefs in support of Plaintiff confine themselves to policy arguments favoring a prospective ruling holding the "delayed discovery rule" generally applicable to UCL claims, an issue which Plaintiff admits is irrelevant to the case at bar. *See* Brief of the Consumer Attorneys of California in Support of Real Parties in Interest as *Amicus Curiae,* dated March 21, 2011 ("Consumer Attorneys Amicus Br."); Brief *Amicus Curiae* of Beverly Clark, Warren Gold and Linda M. Cusanelli, On Behalf of Themselves and All Others Similarly Situated, In Support of Petitioner, dated March 24, 2011 ("Clark/Gold/Cusanelli Amicus Br."); *see also* Pl. Opening Br. at 26-27. The decision by these amicus parties to take no position with respect to reinstating Plaintiff's case on the merits is a telling indicator of the weakness of that case.

accrued nearly six (6) years before Plaintiff commenced this action, and is therefore time-barred.

1. The AG Contradicts Plaintiff by Recognizing that Plaintiff's UCL Claim is Founded Entirely Upon Canon's Alleged Deception

In its answering brief, Canon argued that the integrated, fraud-based UCL claim that Plaintiff alleges cannot be subdivided into a series of separate and distinct claims in order to circumvent the statute of limitations. In his reply brief, Plaintiff responded to Canon's argument by shifting the focus away from the "fraudulent practices" prong of the UCL to the "unfair acts" prong. Admitting that, "if the fraud prong [of the UCL] was the only variant being asserted, then the timeliness of Plaintiff's UCL claim might be legitimately questioned" (Pl. Reply Br. at 23), Plaintiff devoted the thrust of his reply to arguing that he had alleged seventeen (17) "separate and distinct" UCL claims based upon the purportedly self-evident "unfairness" of his incurrence of "excess copy charges" for "test copies," without reference to Canon's alleged fraud. *See* Pl. Reply Br. at 9-22.

The AG argues precisely the opposite in urging that Plaintiff's UCL claim should be reinstated. The AG recognizes, as Canon has argued, that the crux of Plaintiff's UCL claim is that "Canon misled the class members into believing that they would be charged only for the actual number of copies . . . that they made" (AG Brief at 4), and thus that the claim as alleged by Plaintiff is based upon a purported fraud. It is noteworthy that the AG declines to argue that Plaintiff has alleged a sustainable claim pursuant to the "unfair acts" prong of the UCL, asserting that such question

"is outside the scope of the petition for review in this case." AG Brief at 8 n.2.

Even though that contention is not entirely accurate,[4] it is apparent that the AG recognizes that Plaintiff's UCL claim is expressly based upon Canon's purported deception in allegedly failing to inform Plaintiff that he could incur "excess copy charges" for "test copies." Plaintiff's attempt in his reply to divorce the viability of his UCL claim from his allegations concerning Canon's alleged fraud is thus unconvincing even to the AG.

2. The AG's Claim Accrual Theory Is Both Illogical and Fatally Inconsistent With the Purposes of Statutes of Limitations as Articulated by This Court

The AG's principal substantive argument in favor of reversal is that the Court should not, as Canon proposes, look to the standards governing the accrual of fraud-based claims in determining when Plaintiff's fraud-based UCL claim accrued, but instead be guided by the substantive requirement that Plaintiff demonstrate "that members of the public are likely to be deceived by the challenged business practice" in order to prevail. AG Brief at 8. The AG does not explain how application of this standard would determine when a UCL claim accrues. But it appears that the AG is suggesting that the Court should accept Plaintiff's characterization of his claim as not one, but seventeen (17) "discrete act[s]

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[4] The AG asserts that the issue of whether Plaintiff has alleged a sustainable claim pursuant to the "unfair acts" prong of the UCL "has not been briefed by the parties." *See* AG Brief at 8 n.2. However, Canon addressed this issue in its answering brief, as did Plaintiff in his reply. *See* Canon Br. at 34-41, Pl. Reply Brief at 9-22.

of misconduct," and hold that a separate UCL claim accrued when each such "discrete act" took place. *See* AG Brief at 7-8.

Canon will not reiterate here its arguments conclusively demonstrating that Plaintiff's contention that he alleged not one, but seventeen (17) discrete UCL claims is belied by the allegations in his own pleadings. *See* Canon Br. at 24-29. However, even accepting Plaintiff's position *arguendo* for purposes of scrutinizing the AG's claim accrual theory, it is apparent that such theory fails both as a matter of logic and of policy.

First, the AG's theory contradicts arguments made by Plaintiff and by the other *amicus* parties who submitted briefs on behalf of Plaintiff. The AG's theory appears to be that a fraud-based UCL claim accrues at the time the alleged conduct was committed if the general public "is likely to be deceived" by such conduct, regardless of when such conduct was "discovered" by its victim. The AG thus appears to agree with the Court of Appeal's decision in *Snapp & Associates Ins. Services, Inc. v. Robertson*, 96 Cal. App. 4th 882 (2002), which holds that a UCL claim accrues when the alleged misconduct occurred, rather than when a plaintiff learns of such conduct. In contrast, Plaintiff repeatedly and at length has taken issue with *Snapp*. *See* Pl. Opening Br. at 34-39; Pl. Reply Brief at 25-26. Moreover, the AG's position is inconsistent with application of the "delayed discovery rule" to UCL claims, since that rule in essence holds that a claim does not

accrue until a plaintiff learns of the facts giving rise to it.[5] The AG's position thus contradicts the arguments made by Plaintiff and the other *amicus* parties supporting Plaintiff that the Court should determine that the "delayed discovery rule" generally applies to UCL claims. *See* Pl. Opening Br. at 26-34; Consumer Attorneys Amicus Br.; Clark/Gold/Cusanelli Amicus Br..[6]

Moreover, the AG's theory that the Court should be guided by the "likely to deceive the public" standard for proving a fraud-based UCL claim when determining when such a claim accrues becomes wholly untenable when, as in this case, a particular plaintiff was admittedly *not* deceived by the alleged misconduct. Here, Plaintiff affirmatively admits that he was no longer deceived by "excess copy charges" for "test copies" after February 2002. *See* Pl. Opening Br. at 7; Original Complaint, ¶ 14. But both Plaintiff and the AG contend that the only purported "discrete

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[5] Notably, the AG argued in the letter filed with this Court in support of Plaintiff's Petition for Review that the Court should accept review in order to, *inter alia*, affirm the application of the "delayed discovery rule" to UCL claims (*see* Letter of the Attorney General to this Court, dated August 30, 2010, at 1, 4). The AG Brief, however, says nothing about the "delayed discovery rule," presumably because that rule is inconsistent with the theory of accrual for UCL claims articulated in the AG Brief.

[6] The AG's argument that the Court should refrain from considering the underlying nature of the UCL claim (in this case, fraud) when determining when the claim accrued (*see* AG Brief at 7-8) also contradicts the position taken by Plaintiff and the other *amicus* parties supporting Plaintiff, all of whom contend that, because the "delayed discovery rule" applies to the types of common law and statutory claims that underlie UCL claims (such as common law fraud), the rule should apply to UCL claims as well. *See* Pl. Opening Br. at 32-33; Consumer Attorneys Amicus Br. at 20-21; Clark/Gold/Cusanelli Amicus Br. at 14-15.

acts" that can form the basis for a timely UCL claim against Canon were Plaintiff's incurrence of "excess copy charges" for "test copies" in 2004, two years later. Accordingly, even if the general public was "likely to be deceived" by such charges in 2004, it is undisputed that Plaintiff was not. Neither Plaintiff nor the AG cite any authority supporting the proposition that an individual who was *not* deceived by a purportedly discrete "fraudulent business practice" nevertheless should be able to maintain a viable UCL claim based upon that practice because the public, unlike him, was "likely to be deceived" by it.

Finally, the AG admits that the claim accrual theory articulated in the AG Brief is dependent upon shifting the focus of accrual analysis away from the plaintiff's conduct and toward the defendant's conduct, which is supposedly justified by this Court's inapposite statement in *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009), that "the UCL's focus [is] on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices." *See* AG Brief at 8.[7] But this position fails to take into account the fact that statutes of limitations, by their very nature, focus on the plaintiff and whether he or she has acted with sufficient dispatch in commencing his or her lawsuit.

This Court has held time and again that statutes of limitations exist "to protect defendants from the stale claims of dilatory plaintiffs." *Norgart*

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[7] The Court's statement in *In re Tobacco II Cases* quoted by the AG is inapposite because it refers to the substantive standard for proving a UCL claim, and not the UCL's statute of limitations.

v. Upjohn Co., 21 Cal. 4th 383, 395 (1999); *see also, e.g., Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389 (2010); *Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 499 (2010); *Shively v. Bozanich*, 31 Cal. 4th 1230, 1246 (2003). Eliminating the focus on a UCL plaintiff's conduct in determining when a UCL claim accrues would essentially exclude consideration of whether such plaintiff acted in a dilatory manner and whether his or her claim is stale, and would thereby subvert the policies served by statutes of limitations with respect to UCL claims. That clearly was not the legislature's intent when it established that a UCL claim may only be pursued within four (4) years of the date of the claim's accrual. *See* Cal. Bus. & Prof. Code § 17208.

3. The AG, Like Plaintiff, Fails to Account for Critical Facts in Arguing that Plaintiff's UCL Claim Should Be Reinstated

The AG's arguments for reversal are further undermined by a failure to address, let alone reconcile, critical facts that, for the most part, Plaintiff also ignored. These include:

- Plaintiff's failure to even attempt, over the course of three successive pleadings, to explain why he waited nearly six (6) years to commence this action after learning in or about February 2002 that he was being charged "excess copy charges" for "test copies." Plaintiff still has offered no explanation for his remarkable lack of diligence, and the AG makes no attempt to justify it.

- Plaintiff's acquiescence to "excess copy charges" for "test copies" by knowingly paying such charges, over and over, for several years without taking action seeking to enjoin or to be reimbursed for the charges.

The AG does not consider the fact that, by the time the charges that the AG and Plaintiff contend form the basis for timely claims were imposed in 2004, Canon had every reason to believe that Plaintiff's purported objections to such charges no longer existed, because he had by then knowingly paid the charges on numerous occasions without taking any action to challenge them.

- Plaintiff's failure to assert a counterclaim against Canon based upon his payment of "excess copy charges" for "test copies" in the intervening lawsuit between the parties in 2005, well after the last charges had been incurred and paid. Plaintiff has never provided an explanation for this failure, nor does the AG address it.

- Plaintiff's decision to wait until after his contractual relationship with Canon expired before commencing this action in 2008. Plaintiff has never denied that he strategically delayed springing his UCL class action lawsuit upon Canon until after he had obtained the full benefits of the parties' contractual relationship. The AG's *amicus* brief is silent about this gamesmanship, but the arguments in the brief favoring the reinstatement of Plaintiff's claim implicitly endorse it.

- Plaintiff's pleading of a single, integrated UCL claim for "overcharges" that commenced in early 2002 in his original Complaint, prior to improperly reversing field and attempting to split his claim into seventeen (17) separate UCL claims in his subsequent pleadings after it became clear that his claim was time-barred. The AG says nothing about this pleading gamesmanship, and completely ignores the fact that Plaintiff originally alleged only a single, integrated claim based on the alleged facts

which he subsequently argued gave rise to seventeen (17) claims. Instead, the AG simply echoes Plaintiff's self-serving contention that he has properly alleged a series of "separate and distinct" UCL claims, rather than a single claim.

Accordingly, the AG fails to account for inconvenient facts demonstrating that Plaintiff could and should have pursued his action in a timely fashion. There is no legitimate reason, whether offered by the AG or otherwise, for absolving Plaintiff's unexplained, patently dilatory behavior, and no reason to fail to apply the statute of limitations to dismiss Plaintiff's claim.

III. CONCLUSION

This is a simple business dispute, the outcome of which is dictated by application of a generous four-year statute of limitations to bar the prosecution of a lawsuit that Plaintiff admits he could have commenced as early as February 2002, nearly six (6) years before it was filed. *See* Pl. Reply Br. at 30.

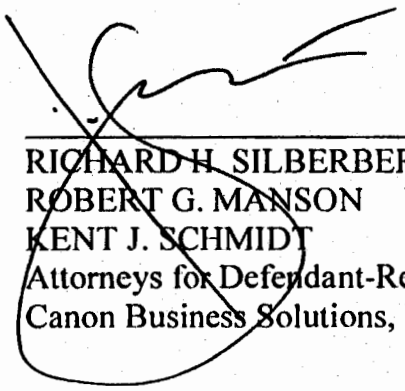
Plaintiff's unsuccessful efforts to avoid dismissal before the trial court and the Court of Appeal received a boost when the dissenting Court of Appeal panelist theorized that a legal doctrine which Plaintiff had never briefed or argued could be applied to salvage his claim. Relying upon that theory to convince this Court to review the dismissal of his case, Plaintiff has had the further good fortune of having the AG intervene to urge that his claim be reinstated based upon yet another new theory of claim accrual that Plaintiff never argued. However, just as the dissenting Court of Appeal panelist's theory cannot withstand scrutiny, neither can the arguments made

by the AG. There simply is no legal theory that can alter the inescapable facts alleged in Plaintiff's own pleadings conclusively demonstrating that Plaintiff failed to act to protect his interests in a timely manner, despite a wealth of opportunities to do so. Accordingly, the dismissal of Plaintiff's UCL claim should be affirmed.

Dated: June 2, 2011

Respectfully submitted,

DORSEY & WHITNEY LLP



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IV. CERTIFICATION OF WORD COUNT

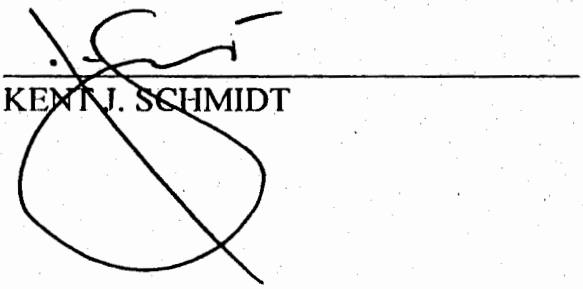
I, Kent J. Schmidt, state and declare as follows:

1. I am one of the attorneys for Canon Business Solutions, Inc. ("Respondent").

2. I certify that the number of words contained in this Response to Brief of the Attorney General as *Amicus Curiae* in Support of Appellant is 4,321, based on the Word Count feature of Microsoft Word (excluding tables, certificate, verification and supporting documents).

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing matters are true and correct.

Executed on June 2, 2011 in Irvine, California.



KENT J. SCHMIDT

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 38 Technology Drive, Suite 100, Irvine, California 92618-5310. On June 2, 2011, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: **RESPONSE TO BRIEF OF THE ATTORNEY GENERAL AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT**

SERVED UPON: **SEE ATTACHED SERVICE LIST**

☐ (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Irvine, California. I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

☐ (BY PERSONAL SERVICE) I delivered to an authorized courier or driver authorized by Time Machine Network, Inc. to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.

☒ (BY FEDERAL EXPRESS) I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on June 2, 2011, at Irvine, California.

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