No. 15-56021

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHEILA CRUZ, DEBORAH ESPARZA, and CATHERINE SILAS

Plaintiffs-Appellants

v.

ANHEUSER-BUSCH, LLC

Defendant-Appellee

On appeal from the United States District Court for the
Central District of California
Civil Case No. 2:14-cv-09670-AB-AS (Honorable André Birotte, Jr.)

PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING AND REHEARING EN BANC PURSUANT TO FED. R. APP. P. 35 AND 40

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Plaintiff-Appellants Sheila Cruz, Deborah Esparza, and Catherine Silas ("Appellants") hereby submit their Petition for Rehearing and Rehearing En Banc ("the "Petition") from the March 17, 2017 Majority Opinion of Graber, J. and Bybee, J. (Christen, J. dissenting) affirming the district court's Order dismissing Appellants' claims for misrepresentation and omission under California law. For the reasons stated herein, Appellants respectfully request that their petition be granted.

I. INTRODUCTION

Bud Light Lime-A-Rita products[1] are labeled as "malt beverage[s] with natural flavoring" and are produced, marketed, and sold by Defendant-Appellee Anheuser Busch Companies, LLC ("AB"). Packages of Lime-A-Rita products are prominently emblazoned with large "Bud Light Lime" logos despite being AB's highest calorie line of products. ER 2-2(¶ 2). By way of comparison, Bud Light Lime-A-Rita products contain 220 calories per eight ounces, while a larger twelve ounce Bud Light Lime contains only 116 calories. ER 2-4(¶ 6). AB officials acknowledge publicly that Lime-A-Rita products compete in the "beer industry" ER 2-9(¶ 23) and that the use of the "Bud Light" label "attracts people who are who are interested in the Bud Light brand…." ER 2-5(¶ 10). However, AB does

[1] The Bud Light Lime branded products at issue include the Lime-A-Rita, Cran-Brrr-Rita, Straw-Ber-Rita, Raz-Ber-Rita, Mang-O-Rita, and Apple-Ahhh-Rita. (collectively "Lime-A-Rita Products").

not disclose the caloric content of Bud Light Lime-A-Rita products on its outer packaging. ER 2-12(¶¶ 8, 39).

Appellants alleged that the Bud Light Lime-A-Rita products were deceptively labeled as "light," or "low calorie" products, and pursued claims for misrepresentation and omission under California consumer fraud laws. ER 2-17-23. A panel majority affirmed the district court's dismissal of their claims, and concluded that "no reasonable consumer would be deceived by the label into thinking that 'Bud Light Lime Lime-A-Rita,' which the label calls a 'Margarita With A Twist,' is a low-calorie, low-carbohydrate beverage or that it contains fewer calories or carbohydrates than a regular beer." *Cruz v. Anheuser Busch Companies, LLC* , No. 15-56021, ECF No. 46-1 at 2 (9th Cir. March 16, 2017) ("Mem."). In reaching this conclusion, the panel majority cited "pictures of a bright green drink, served over ice, in a margarita glass" and the slogan "Margarita With a Twist" on the label. Mem. at 2. The panel majority further held that based on these observations there were only two products which reasonable consumers might compare with a Lime-A-Rita in assessing whether or not the "light" label was misleading: a "Budweiser Lime-A-Rita," which does not exist, and a "tequila margarita." Mem. at 3. Because the majority concluded that both of these products have "typically contains at least as many calories" as a Lime-A-Rita, they also concluded that the "light" representation was not misleading. *Id.*

In a dissent, Judge Christen disagreed:

> [T]he label on the carton of this product could deceive reasonable consumers into thinking that Bud Light Lime Lime-A-Rita is a 'light' beverage. In fact, in my view that result is likely because the most natural comparison is between Bud Light Lime-A-Rita and Bud Light Lime. If those two products are compared, Bud Light Lime has far fewer calories and carbohydrates.

Cruz v. Anheuser Busch Companies, LLC , No. 15-56021, ECF No. 46-2 at 1 (9th Cir. March 16, 2017) ("Dissent"). Judge Christen further rejected the panel majority's conclusion as to the only plausible comparison products. "I do not agree that reasonable consumers would compare Bud Light Lime Lime-A-Rita with 'Budweiser Lime-A-Rita' or with a margarita; the former does not exist and the latter is made with tequila—and is decidedly not a malt beverage." Dissent at 1.

Consistent with Judge Christen's dissent, the panel majority overlooked material facts in the record demonstrating that Bud Light Lime beer or other malt beverage margarita products could be reasonably compared to the Lime-A-Rita products. Based on these comparisons, reasonable consumers were likely to be deceived that the Bud Light Lime-A-Rita products were light or low calorie beverages, when in fact they were not. Further, the panel majority decision improperly resolved issues of fact and conflicts with prior decisions of this Court. Appellants thus contend that the Majority Opinion (1) overlooked points of material fact, (2) conflicts with another decision of the Court that was not addressed in the opinion, (3) and concerns a question of exceptional importance.

II. LEGAL STANDARD

It is undisputed that Appellants allegations under California's consumer protection statutes are governed by the "reasonable consumer" test. Under this test, Appellants must "show that 'members of the public are likely to be deceived.' " *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995) (quoting *Bank of West v. Superior Court*, 833 P.2d 545 (1992)). The California Supreme Court has recognized "that these laws prohibit 'not only advertising which is false, but also advertising which [,] although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public.' " *Kasky v. Nike, Inc.*, 45 P.3d 243, 250 (2002) (citations omitted).

A district court should grant a motion to dismiss only if plaintiffs have not pled "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 580 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level." *Id*. at 555; *see also* 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 ("[T]he motion [to dismiss] is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff's case.").

III. ARGUMENT

A. THE MAJORITY OPINION OVERLOOKED MATERIAL FACTS DEMONSTRATING THE PLAUSIBLE COMPARISON OF BUD LIGHT LIME AND OTHER MALT BEVERAGE PRODUCTS TO LIME-A-RITA PRODUCTS.

The panel majority relied exclusively on the Lime-A-Rita product label's bright green theme, its slogan, and picture of a margarita with ice to conclude that, as a matter of law, no reasonable consumer would compare the caloric content of a Bud Light Lime-A-Rita product with a beer. Mem at 2. However, the Majority overlooked other facts pled which, if construed in favor of the Appellants, demonstrate that comparison with a Bud Light Lime beer or other malt beverage products is plausible and meets California's "reasonable consumer" test. In fact, AB invites comparisons to beer and other malt beverage products through its own public characterization of the Lime-A-Rita products, the Bud Light website, and details of the Lime-A-Rita labels and packaging.

1. AB's Public Comments and Representations Demonstrate that Reasonable Consumers Would Compare the Lime-A-Rita Products to Beer.

First, AB expressly acknowledges that the Lime-A-Rita products compete in "beer industry." ER 2-9(¶ 23). AB also acknowledges that the Lime-A-Rita "Bud Light" label "attracts people who are who are interested in the Bud Light brand….," which connotes a low calorie beer. ER 2-5(¶ 10). Third, the Lime-A-

Rita products follow labeling regulations that pertain to malt beverages. ER 2-37. In contrast, margaritas are categorized as Distilled Spirits and have different labeling requirements.[2] Fourth, Bud Light Lime beer packaging was redesigned to feature the "brand's iconic green color more prominently" consistent with the Lime-A-Rita products packaging, and further inviting comparison. ER 2-9(¶ 25). Fifth, AB describes the Lime-A-Rita products as only a "margarita-flavored malt beverage" without providing information as to the ingredients, and thus suggesting a flavored beer. ER 2-9(¶ 22). Finally, even now on Anheuser Busch's website, and in its website address, the Bud Light Lime-A-Rita products are categorized as, and listed as, a "beer." *See* http://www.budlight.com/**our-beers**/lime-rita-margarita.html (emphasis added). [3]

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[2] *https://www.ttb.gov/spirits/bam/chapter4.pdf.*

[3] Notably, the United States Department of Justice also described AB's hierarchy of products as follows: "ABI groups beer into four segments: sub-premium, premium, premium plus, and high end. … The premium plus segment consists largely of American beers that are priced somewhat higher than premium beers, made from more expensive ingredients and are generally perceived to be of superior quality. **Examples of beers in the premium plus category include** Bud Light Lime, Bud Light Platinum, **Bud Light Lime-A-Rita** and Michelob Ultra." *U.S. v. Anheuser Busch InBEV SA/NV and Grupo Modelo S.A.B. de C.V*, No. 13-cv-00127 (D.D.C January 31, 2013), ECF. No. 1 at ¶ 28 (emphasis added).

2. The Lime-A-Rita Product Labeling and Packaging Demonstrate that Reasonable Consumers Would Compare Lime-A-Rita Products to Beer.

In addition to AB's own public characterization of the Lime-A-Rita products as beer, the labels and packaging themselves demonstrate it is plausible that reasonable consumers would compare Lime-A-Rita products to a beer, such as Bud Light Lime. First, AB places the brightly colored "Bud Light Lime" logo prominently on the packaging, suggesting that it is a type of Bud Light Lime beer. ER 2-5(¶ 10). Second, Bud Light Lime-A-Rita products are labeled as a "malt beverage with natural flavoring," further suggesting that it is a flavored beer. ER 2-36. As noted by the Judge Christen's dissent, Margaritas are "decidedly not malt beverages." Dissent at 1. Third, the percentage of alcohol content by volume displayed prominently on the Lime-A-Rita packaging varies between 6-8%, which is similar to beer and not comparable to a tequila margarita, which typically has a 33% alcohol content.[4] ER 2-36. Fourth, there is no indication that the Lime-A-Rita has *any* of the same ingredients as a tequila margarita.

The combination of AB's public statements and labeling as alleged by the Appellants invite a plausible comparison between Lime-A-Rita products, Bud Light Lime beer, and other malt beverages. Because the Lime-A-Rita products are

[4] https://www.rethinkingdrinking.niaaa.nih.gov/tools/Calculators/cocktail-calculator.aspx

higher in calories than these comparison products, the Lime-A-Rita packaging could likely deceive a reasonable consumer, and Appellants adequately pled claims for misrepresentation and omission under California law. Appellants' Petition should therefore be granted.

3. The Majority Decision Overlooked Material Facts Demonstrating that Competitor Malt Beverage Margarita Products Are Plausible Comparisons to Lime-A-Rita Products.

The panel majority also overlooked the fact that Lime-A-Rita products compete in the malt beverage margarita market with products that include B&J Margarita Wine Coolers and Cayman Jack Margaritas. *See* SER 11. Critically, even among competitor products offering the same margarita flavored malt beverages, the Lime-A-Rita products (220 calories per 8 ounces) actually contain far more calories than either B&J Margarita wine coolers (187 calories per 8 ounces) and Cayman Jack Margaritas (171 calories per 8 ounces) despite the fact that neither of these other products are labeled or advertised as "light." *See* SER 11. Thus, on this basis too rehearing should be granted because the Lime-A-Rita's "light" labeling is plausibly deceptive as it related to the caloric content of competitor malt beverage margarita products.

B. THE MAJORITY OPINION IS INCONSISTENT WITH PRIOR DECISIONS OF THIS COURT.

The panel majority's decision conflicts with authorities holding that whether "a business practice is deceptive will usually be a question of fact." *Williams v. Gerber Products Co.*, 552 F.3d 934, 938 (9th Cir. 2008) (citing *Linear Technology Corp. v. Applied Materials, Inc.*, 152 Cal.App.4th 115, 134–35 (2007)) ("Whether a practice is deceptive, fraudulent, or unfair is generally a question of fact which requires consideration and weighing of evidence from both sides and which usually cannot be made on demurrer.").

The Ninth Circuit permits dismissal based on a judicial finding that a reasonable consumer could not plausibly have been deceived only in "rare situations." *See Williams*, 552 F.3d at 938–39; *see also Reid v. Johnson & Johnson*, 780 F.3d 952, 958 (9th Cir. 2015) (the reasonable consumer standard "raises questions of fact that are appropriate for resolution on a motion to dismiss only in 'rare situations'"). Such rare situations exist only where there is no necessity to evaluate additional evidence regarding whether labeling is deceptive. For instance, in *Freeman v. Time, Inc.*, 68 F.3d 285 (9th Cir. 1995) the Ninth Circuit affirmed the dismissal of UCL, FAL, and CLRA claims challenging a mailer that suggested plaintiff had won a million dollar sweepstakes. The district court had taken judicial notice of the mailer in question, and the Ninth Circuit relied on the fact that the mailer explicitly stated multiple times that plaintiff would

only win the prize if he had the winning sweepstakes number. *See Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995). Thus, it was not necessary to evaluate additional evidence to determine whether the advertising was deceptive, since the advertisement itself made it impossible for plaintiff to prove that a reasonable consumer was likely to have been deceived.

However, the facts of this case do not amount to a "rare situation" in which claims of deception should be rejected as a matter of law. The panel majority's single interpretation of the labeling at the pleading stage cannot properly address whether the label is deceptive, particularly when other facts and label characteristics, as described above, contradict the panel majority's interpretation and were overlooked. Instead, discovery is necessary to properly determine the appropriate comparison beverage, and whether the Bud Light Lime-A-Rita "light" representation is deceptive. For example, discovery is necessary on AB's marketing and product placement strategies, the factors AB considered in the Lime-A-Rita label and packaging design, the comparison in design and coloring with other AB or competitor products, including Bud Light Lime beer, consumer opinion studies, the ingredient content of the Bud Light Lime-A-Rita products themselves, identification of products AB considers competitors to Lime-A-Ritas, and expert analysis and testimony. Thus, it is appropriate to permit Appellants to "demonstrate by extrinsic evidence, such as consumer survey evidence, that the

challenged statements tend to mislead consumers." *Heighley v. J.C. Penney Life Insurance Co.*, 257 F.Supp.2d 1241, 1260 (C.D. Cal. 2003). There are "question[s] of fact, requiring consideration and weighing of evidence from both sides before [they] can be resolved." *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1380 (2012), *as modified on denial of reh'g* (Feb. 24, 2012).

C. THE MAJORITY OPINION CONCERNS AN ISSUE OF EXCEPTIONAL IMPORTANCE.

The Majority Opinion also concerns an issue of exceptional importance because it undermines the standard by which future trial courts may properly determine when a "reasonable consumer" would be deceived under California's consumer protection laws. As discussed, this is most commonly a factual issue, and should be determined by a judge only under the strictest set of circumstances. The Opinion in this case did not meet that high bar. In light of the facts pled by the Appellants, and construing those facts in their favor, this Opinion weakens the application of precedent intended to restrict the judiciary's ability to substitute its judgment for that of the jury on an issue of fact. Rehearing should therefore be granted on this basis as well.

IV. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that their petition be granted.

Dated: March 30, 2017

Respectfully submitted,

ZIMMERMAN REED, LLP

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Certificate of Compliance

The undersigned certifies under Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 32-1, that the attached reply brief is proportionally spaced, has a type face of 14 points or more and, pursuant to the word-count feature of the word processing program used to prepare this brief, contains 2,464 words, exclusive of the matters that may be omitted under Rule 32(a)(7)(B)(iii).

Pursuant to Ninth Circuit Rule 28-2.6, Appellants confirm that they are not aware of any related cases pending in this Court.

Dated: March 30, 2017

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Certificate of Service

I hereby certify that on March 30, 2017 I electronically transmitted the foregoing documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHEILA CRUZ; DEBORAH ESPARAZA; CATHERINE SILAS, Plaintiffs-Appellants, v. ANHEUSER-BUSCH COMPANIES, LLC, Defendant-Appellee.	No. 15-56021 D.C. No. 2:14-cv-09670-AB-AS MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andre Birotte, Jr., District Judge, Presiding

Argued and Submitted February 7, 2017
Pasadena, California

Before: GRABER, BYBEE, and CHRISTEN, Circuit Judges.

Plaintiffs Sheila Cruz, Deborah Esparza, and Catherine Silas sued Defendant Anheuser-Busch, LLC, on behalf of themselves and a proposed class of California consumers, for false advertising, omission, and breach of warranty under California law. Plaintiffs allege that the labels on cartons containing cans of "Rita"

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

malt beverages, including Lime-a-Rita, are misleading by using the word "Light," because the products contain considerably more calories and carbohydrates per ounce than other Budweiser products. The district court dismissed the action with prejudice under Federal Rule of Civil Procedure 12(b)(6). On de novo review, accepting all facts alleged in the complaint as true and construing them in Plaintiffs' favor, Ebner v. Fresh, Inc., 838 F.3d 958, 962 (9th Cir. 2016), we affirm.

We assume, without deciding, that Plaintiffs' claims are not preempted by federal law, 27 U.S.C. § 205(e), and that California's "safe harbor" doctrine does not bar their claims. We hold that no reasonable consumer would be deceived by the label on the carton into thinking that "Bud Light Lime Lime-a-Rita," which the label calls a "Margarita With a Twist," is a low-calorie, low-carbohydrate beverage or that it contains fewer calories or carbohydrates than a regular beer. It is clear from the label that the beverage is not a normal beer. In addition to describing the product prominently as a "Margarita With a Twist," the Lime-a-Rita label pictures a bright green drink, served over ice, in a margarita glass.

A reasonable consumer, seeing that label, might compare "Bud Light Lime Lime-a-Rita" to one of two other products: (a) a hypothetical product "Budweiser Lime-a-Rita," made with Budweiser instead of with Bud Light, or (b) a tequila

margarita. The hypothetical product would contain more calories and carbohydrates than does the beverage at issue, because the hypothetical beer component (Budweiser) has more calories and carbohydrates than the actual ingredient (Bud Light). And a tequila margarita typically contains at least as many calories and carbohydrates as a "Bud Light Lime Lime-a-Rita." The same reasoning applies to the cartons containing the other "Rita" products. Accordingly, Plaintiffs' claims for misrepresentation and omission fail.

With respect to the claim for breach of express warranty, Plaintiffs have not pleaded facts showing a "specific and unequivocal written statement" of warranty, as required under California law. Maneely v. Gen. Motors Corp., 108 F.3d 1176, 1181 (9th Cir. 1997). Therefore, this claim also was properly dismissed.

AFFIRMED.

Cruz v. Anheuser Busch, 15-56021

CHRISTEN, Circuit Judge, dissenting in part:

I write separately because I conclude that the label on the carton of this product could deceive reasonable consumers into thinking that Bud Light Lime Lime-a-Rita is a "light" beverage. In fact, in my view that result is likely because the most natural comparison is between Bud Light Lime Lime-a-Rita and Bud Light Lime. If those two products are compared, Bud Light Lime has far fewer calories and carbohydrates. I do not agree that reasonable consumers would compare Bud Light Lime Lime-a-Rita with "Budweiser Lime-a-Rita" or with a margarita; the former does not exist and the latter is made with tequila—and is decidedly not a malt beverage.

Reasonable consumers buying Bud Light Lime Lime-a-Rita could be misled by the "light" label on the packaging because the calorie and carbohydrate counts of Lime-A-Ritas only exist in small print on the side of the cans and this information is not visible to a shopper looking at the outside of the cartons. *See Williams v. Gerber Products Co.*, 552 F.3d 934, 949 (9th Cir. 2008) ("We disagree with the district court that reasonable consumers should be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box."). I agree with my colleagues that plaintiffs did not adequately plead facts showing an express

warranty claim, but I would hold the plaintiffs adequately pleaded misrepresentation and omission claims and would reverse the district court's dismissal of plaintiffs' complaint.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ► A material point of fact or law was overlooked in the decision;
  - ► A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ► An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms.*
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms.*

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

Form 10. Bill of Costs ..... ***(Rev. 12-1-09)***

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:
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Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

_____ v. _____ 9th Cir. No. _____

The Clerk is requested to tax the following costs against: _____

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	**REQUESTED** *(Each Column Must Be Completed)*				**ALLOWED** *(To Be Completed by the Clerk)*			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record			$	$			$	$
Opening Brief			$	$			$	$
Answering Brief			$	$			$	$
Reply Brief			$	$			$	$
Other**			$	$			$	$
			TOTAL:	$			**TOTAL:**	$

* *Costs per page*: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other*: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - *Continued*

I, _____ , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature _____

("s/" plus attorney's name if submitted electronically)

Date _____

Name of Counsel: _____

Attorney for: _____

(To Be Completed by the Clerk)

Date _____ Costs are taxed in the amount of $ _____

Clerk of Court

By: _____ , Deputy Clerk