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April 18, 2017

Justice Patricia Bamattre-Manoukian

Justice Franklin Elia

Justice Nathan Mihara

Sixth District Court of Appeal

333 W. Santa Clara Street, Ste. 1060

San Jose, CA 95113

Re: Request for Publication of *Kin v. Sun*, H042413 (April 10, 2017)

Honorable Justices:

The Association of Southern California Defense Counsel respectfully requests that this Court certify its April 10, 2017 opinion in *Kin v. Sun* for publication.

The Association is a preeminent regional organization of over a thousand California lawyers, specializing in defending civil actions. The Association is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. The Association is also actively engaged in assisting courts by appearing as amicus curiae, or filing requests for publication, in cases involving issues of significance to its members. The Association has no connection to any of the parties, lawyers, or law firms involved in this appeal.

This Court's 37-page opinion in *Kin* holds that the primary assumption of the risk doctrine may apply to a parent or other caregiver responsible for a child's participation in skiing. The opinion contains thoroughly researched and exhaustive sections on general principles regarding assumption of the risk doctrine, the duty not to increase inherent risks of a sport, and application of those doctrines to minors. Because the case arises from a family ski trip, the opinion also discusses application of these doctrines about co-participant versus coach or instructor liability in a novel family context. The opinion also discusses the sufficient level of evidence necessary to create a triable issue of fact about reckless conduct by coaches or instructors.

The *Kin* opinion applies existing rules of law to facts that are significantly different than in existing published opinions. In particular, it makes clear that a primary assumption of the risk defense may be invoked by an adult responsible for a minor. Existing precedent addresses schools and youth groups, but *Kin* usefully extends that law by analogy to other adults—especially parents—supervising children. The *Kin* opinion also provides thoughtful policy reasons for its analysis extending the primary assumption of risk doctrine to parents and other adults.

Kin also helpfully collects and quotes from over twenty years' worth of skiing liability cases. This compilation will prove to be valuable precedent if published. California is home to several of North America's geographically largest ski resorts: Squaw Valley, Heavenly Mountain, and Mammoth Mountain. These and other resorts are consistently ranked among the best and most popular ski resorts in North America (e.g., Kirkwood, Alpine Meadows, Sierra-at-Tahoe, Homewood Mountain, Bear Valley, June Mountain, Boreal Mountain, Donner Ski Ranch, Soda Springs, China Peak, Snow Summit). Skiing is a significant recreational and economic activity in California. A 2012 study by San Francisco State's Patrick Tierney, Professor of Recreation, Parks and Tourism, found the economic impact of ski resorts in California was over \$2 billion—even despite the historic drought in recent years.

Accordingly, *Kin* satisfies numerous criteria for publication by applying existing law to new situations, by explaining and cataloging existing law, and addressing an area of importance to Californians. *Kin* would make valuable precedent and the Association urges that it be published.

Respectfully submitted,

Manatt, Phelps & Phillips, LLP

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cc: See attached Proof of Service