ORAL ARGUMENT REQUESTED

Case No. 21-CV-0695

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

THE CORCORAN GALLERY OF ART &

THE TRUSTEES OF THE CORCORAN GALLERY OF ART

Appellants,

v.

SUSANNE JILL PETTY, TRUSTEE OF THE ALICE C. TYLER ART TRUST,

Appellee.

On Appeal from the District Of Columbia Superior Court
Case Number 2019 CA 008131 F; Judge Shana Frost Matini

BRIEF FOR PLAINTIFF-APPELLEE

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PARTIES, INTERVENORS, AMICI

I. ***Appellants.*** The Corcoran Gallery Of Art and The Trustees Of The Corcoran Gallery Of Art (collectively, "Corcoran"), were the only defendants before the District of Columbia Superior Court (Case No. 2019 CA 008131 F), and are the only appellants.

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II. ***Appellee***. Susanne Jill Petty, Trustee of the Alice C. Tyler Art Trust ("Trust") was the sole plaintiff before the District of Columbia Superior Court (Case No. 2019 CA 008131 F), and is the sole appellee.

III. ***Intervenors/Amici*.** There were no intervenors or *amici* in the District of Columbia Superior Court proceedings. There are no intervenors or *amici* on appeal.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

The California Superior Court entered a judgment against the Corcoran Gallery Of Art and The Trustees Of The Corcoran Gallery Of Art (collectively, "Corcoran"), which was upheld in full by the California Court of Appeal after full briefing and argument. Susanne Jill Petty, Trustee of the Alice C. Tyler Art Trust ("Trust" or "Petty"), filed her Request to File Foreign Judgment in the District of Columbia Superior Court pursuant to D.C. Code §§ 15-351 *et seq*. and D.C. Superior Court Civil Rule 62-III. JA4-45.

The District of Columbia Superior Court denied the Corcoran's Motion For Relief From Enforcement Of Foreign Judgment under Superior Court Rule 60(b)(4) & (6) in a final order dated September 13, 2021 (the "Order"). JA46-58.

The Corcoran filed a timely Notice of Appeal from the Order on October 5, 2021. JA-2. This Court has jurisdiction to resolve the Corcoran's appeal pursuant to D.C. Code § 11-721(a)(1).

STATEMENT OF THE ISSUES

1. Did the D.C. Superior Court correctly hold that the California courts fully and fairly litigated and finally decided that California had personal jurisdiction over the Corcoran under California law, and therefore, the California court's decision was entitled to full faith and credit?

2. Did the D.C. Superior Court correctly hold that the California courts fully and fairly litigated and finally decided that the Judgment entered in California was consistent with the D.C. Superior Court's *cy pres* order and therefore, the California court's decision was entitled to full faith and credit?

INTRODUCTION

Having argued and lost the same issues in the California Superior Court, California Court of Appeal, and D.C. Superior Court, the Corcoran Gallery of Art and the Trustees of the Corcoran Gallery of Art (together, the "Corcoran") now hope to re-litigate the exact same issues that were already analyzed and decided in an exhaustive and detailed 37 page opinion by the California Court of Appeal in an effort to try to get a different ruling the fourth time around.

But the Corcoran's appeal is meritless. As the D.C. Superior Court correctly held, the Full Faith and Credit clause of the United States Constitution requires D.C. Courts to honor the judgments of the California courts—including decisions regarding jurisdiction. Thus, as here, where the Corcoran had a full and fair opportunity to raise its jurisdictional issues to the California courts, and those courts considered and rejected the Corcoran's arguments, the Corcoran cannot retry those issues in D.C. Indeed, if full faith and credit means anything, it has to mean an entity cannot seek *de novo* review of the same issues in the same case four different times in front of four different courts in the hope that one will give it the ruling it seeks.

Even if the Corcoran could obtain *de novo* review of the California court's judgments, its claims are still meritless. As three courts have now explained, the Corcoran waived any challenge to personal jurisdiction because it generally

appeared in the California courts under California law, filed motions seeking affirmative relief, and failed to move to quash service of the Trust's Petition. The Corcoran incorrectly argues that the California judgment conflicts with this Court's *cy pres* order because it would require delivery of the artwork outside of DC. Not so. Each court to review this issue—including the D.C. Superior Court itself—has correctly concluded that the California Superior Court judgment did not conflict with the *cy pres* order because the Trust's artwork was not subject to the *cy pres* order and because the *cy pres* order itself compelled the Corcoran to abide by its prior agreements – such as the one it had with the Trust that resulted in the judgment.

The Court should affirm the D.C. Superior Court Order and put an end to this relentless relitigation of claims by a party seeking desperately to avoid complying with a valid and binding judgment.

STATEMENT OF THE CASE

Alice C. Tyler's Charitable Donation. Alice C. Tyler, whose husband John Cummings Tyler co-founded Farmers Insurance Group in 1928, was a Los Angeles-based philanthropist and lifelong environmentalist. JA60 at ¶ 1. Ms. Tyler was a major benefactor of the University of Southern California, Pepperdine University, and other charitable organizations such as the Greater Los Angeles Zoo, Carr Foundation, Project Hope, and Childhelp USA, and co-founder of the

John and Alice Tyler Prize for Environmental Achievement. *Id.* On April 6, 1988, Ms. Tyler amended a previous trust to create the Alice C. Tyler Art Trust (the "Trust"). *Id.* Ms. Tyler died on March 23, 1993, at the age of 80. *Id.* Pursuant to the terms of the Trust, upon Ms. Tyler's death, the then-trustees of the Trust made a conditional gift of the Alice and John Tyler Collection of Art, a collection of more than one hundred pieces of art by the acclaimed artist Pascal (the "Collection"). *Id.*

The agreement between the Trust and the Corcoran stated that the co-trustees of the Trust would provide the Corcoran a cash gift of $1 million to cover costs associated with establishing and maintaining the permanent gallery and the Collection. JA75 (the "Agreement") ¶ 8. As a condition of receiving the Collection and cash gift, the Corcoran promised to display permanently the Collection, as it was Ms. Tyler's intent that the Collection be on display for public viewing. *Id.* ¶ 3. The Agreement provided that, should the Corcoran fail to honor its terms, the Corcoran would be obligated to return the Collection and accompanying financial gift to the Trust. *Id.* ¶ 7.

In 2014, the Corcoran effectively closed its doors and stopped displaying the Collection, thereby triggering the Corcoran's obligation to return the Collection and the $1 million gift to the Trust. Id. ¶ 7. On May 15, 2014, the National Gallery of Art and the Corcoran entered an Art Accession and Custodial Transfer

Agreement, transferring the Corcoran's art to the National Gallery of Art. JA66 at ¶ 27. This Transfer Agreement provided a procedure by which the National Gallery of Art could choose whether to accession[1], or take as part of its collection, works in the Corcoran collection, and the Corcoran would dispose of art that the National Gallery of Art chose not to accession. *Id.*

On July 1, 2014, Peggy Loar, Interim Director and President of the Corcoran, informed the Trust by letter that the National Gallery of Art had advised the Corcoran that it would not accession the Collection. JA80. Ms. Loar noted that the Collection was "never accessioned." *Id*. Further, Ms. Loar confirmed that the Corcoran would honor the terms of the Agreement, stating "[i]f there are any museums or venues you are aware of that would be interested in the collection, or up to three locations that could each take a part, please advise and as I mentioned earlier, we will pack and ship at our expense." *Id.*

The Trust was subsequently able to locate two institutions that wished to receive and display the Collection on behalf of the Trust: the Dunbar Historical Society in Dunbar, Pennsylvania, and Marymount High School in Los Angeles, California. *See* JA246-47.

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[1] To "accession" means to formally make something part of one's collection. JA199; *see* Oxford Living Dictionaries, *available at* https://en.oxforddictionaries.com/definition/accession (last visited March 15, 2022).

***Cy Pres* Opinion *And Order*.** While the Trust was working to preserve Ms. Tyler's legacy and display the Collection, the Corcoran, without informing the Trustee, filed a *cy pres* proceeding in the D.C. Superior Court seeking approval of their plan for transfer of art to the National Gallery of Art. *See* JA201 (noting "Corcoran did not give the Tyler trust notice of the cy pres proceeding"); JA248-302.[2] Regardless, the *cy pres* Opinion and Order covered only the "Corcoran collection," which are the works the Corcoran had accessioned. JA297-98 at n.30. In other words, because the Corcoran never accessioned any part of the Collection, the Collection was outside the scope of the Opinion and Order. *Id.* Judge Okun, who presided over the *cy pres* proceeding, confirmed this by letter to the Trust, dated September 29, 2015, stating that disposition of the Collection pursuant to the terms of the Agreement was outside the scope of his Order. JA81.

California Superior Court. Despite Ms. Loar's assurances, the parties' agreement, and the express will of Alice Tyler, the Corcoran and the National Gallery of Art hid the Collection away in storage and refused to transfer it back to the Trustee. JA47. As a result, the Trust had no choice but to seek judicial redress,

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[2] There is no evidence for the Corcoran's assertion in its opening brief that the Tyler Trust "chose not to participate" in the *cy pres* proceeding. The reality is the Trust was *never notified* of this proceeding while it was pending. JA201. The Corcoran's citations to a 2021 email between counsel regarding the disposition of the artwork (JA246) and to a page from the Trust's Petition to the Superior Court of California (JA66) do not show otherwise.

filing its Petition in the Los Angeles Superior Court on April 5, 2018. JA59-74. The Trust asked the Court to return the trust assets under Probate Code section 850 and to confirm the existence of the Trust under Probate Code section 17200(a). *Id.*; JA204.

After receiving the Trust's Petition, the Corcoran appeared at the initial hearing on the Petition on June 14, 2018, through its attorney, Valerie Marek of Paul Hastings LLP. JA83-88. At the hearing, the Trust asked for an extension of time in which to serve its Petition. JA85. Ms. Marek stated the Corcoran did not "object to that timeline as we, too, would prefer to file a written objection." JA86. Ms. Marek then confirmed the date on which the Corcoran should file its objections with the Court. *Id.*

The Trust served notice of the July 30 hearing date more than 30 days before the hearing. JA89-152 & JA156-159. The Trust filed a supplement to its Petition on July 27, 2018, attaching proof of service, and on July 26, 2018, the Corcoran's counsel corresponded with the Trust regarding the hearing. JA89-152 & JA205. The Corcoran neither filed objections to the Petition per the California Superior Court's instruction and Ms. Marek's representations, nor appeared at the continued hearing on July 30, 2018. JA154-161. At the hearing, the California Superior Court reviewed the proof of service submitted by the Trust as well as the Petition. JA158-59. The Court held, "[w]ith no appearance by the respondents, and I'm

finding that notice is proper, and I'm clearing the notes in total on this matter. The Court is going to grant the Petition as requested." JA159.

On August 15, 2018, the California Superior Court entered Judgment confirming the existence of the Trust and ordering the Corcoran to return the $1 million cash gift to the Trustee, return the Collection to the Trustee, and pay costs and attorneys' fees to the Trustee later determined to be $1,365.94 in costs and $58,353.62 in attorneys' fees. JA162-190 & JA191-194.

Unsatisfied with the decision of the California Superior Court, the Corcoran filed a motion for reconsideration. JA330-341. Notably, the Corcoran failed to file a motion to quash service of the petition, or to apprise the probate court of the existence of its motion for reconsideration. JA207. Nevertheless, in its motion, the Corcoran not only argued notice issues but also sought relief on the merits. The Corcoran argued it had not been properly served and did not have reasonable notice of the July 30, 2018. JA338. The Corcoran further argued that any order from the California Superior Court would conflict with the D.C. Superior Court's *cy pres* order, and "urge[d] this Court to reweigh its order and deny Petitioner's request on this basis." JA339-340. The Corcoran also asked the California Superior Court for "additional discovery" and asserted it had other "good defenses" to the Trust's Petition. JA340. In other words, the Corcoran addressed the underlying merits of the petition and did not restrict its arguments solely to

personal jurisdiction issues. *Id.* Because the Corcoran failed to appraise the Court of the motion for reconsideration, the Court entered its order before ruling on the motion for reconsideration. JA54 at n.4. As a result, the motion was deemed denied. *Id.*

California Court of Appeal. The Corcoran appealed the Judgment to the California Court of Appeal, arguing the California Superior Court lacked jurisdiction and that the California Superior Court's Order conflicted with the D.C. *cy pres* order. JA196. The Court of Appeal, like the California Superior Court, rejected these arguments. JA195-231.

First, The Court of Appeal held the Corcoran waived any objections to personal jurisdiction or service defects when it appeared at the June 14, 2018, hearing and subsequently failed to file a motion to quash. JA219-224. The Corcoran also made a general appearance under California law, thereby waiving personal jurisdiction objections, when it filed its motion for reconsideration affirmatively seeking specific relief on the merits unrelated to personal jursidiction issues. JA220. In other words, the Corcoran "sought relief available only if the court had jurisdiction over it." JA221.

Second, the Court of Appeal considered the Corcoran's argument that the California Superior Court erred in entering a judgment without first ruling on the Corcoran's motion for reconsideration. JA213-215. The California Court of

Appeal explained, "[a]lthough Petty served Corcoran with a proposed judgment, Corcoran did not object to the proposed judgment or apprise the probate court of the motion for reconsideration. Because the probate court entered the judgment that Petty submitted . . . the probate court was without jurisdiction to adjudicate the motion for reconsideration." JA214. But even if the Corcoran had timely apprised the Superior Court of its motion, the motion itself was "defective as a matter of law" because it failed to point to any "new or different facts, circumstances or law" that were not available to it at the July 30, 2018, hearing. JA215-16. As a result, "any error in not hearing the motion for reconsideration was harmless because the motion could not have been properly granted." JA216.

Third, the Court of Appeal also fully analyzed the Corcoran's argument that the Judgment conflicted with the D.C. Court's *cy pres* order. JA201-203 & JA226-230. The Court considered the Corcoran's argument that the "full faith and credit clause obligate[d] California to enforce" its interpretation of the *cy pres* order. JA228. The California Court of Appeal rejected that argument, holding that the Tyler trust was not before the District of Columbia in the *cy pres* proceeding, the District of Columbia did not render any adjudications regarding the Collection, and the transfer agreement between the Corcoran and National Gallery of Art "contemplat[ed] maintaining then-existing liabilities, commitments and

obligations," which included the agreement with the Trust that the Corcoran violated here. JA229.

In accordance with the California Court of Appeal's Order, the California Superior Court awarded the Trustee an additional $1,163.80 in costs on appeal, and $140,999.50 in attorneys' fees. JA239.

California Supreme Court. The California Supreme Court denied review of the California Court of Appeal's Order. Appellant Br. at 14.

Corcoran Refuses To Honor The California Courts' Judgments. Despite having twice litigated —and twice lost—the same issues, the Corcoran still refused to honor the California court's judgment, return the artwork and cash gift, and pay Petty's attorney fees. As a result, Petty was forced to file a Request to File Foreign Judgment in the D.C. Superior Court to enforce the Judgment. JA4-45. The Corcoran filed a motion for relief from the foreign judgment, arguing in front of a *third court* that the judgment against it was void for lack of jurisdiction and the judgment conflicted with the *cy pres* order. JA49.

Order Of The D.C. Superior Court. On September 13, 2021, the D.C. Superior Court became the third court to hear the Corcoran's case and to deny it its requested relief. In a well-reasoned opinion, the D.C. Superior Court again held the California courts properly exercised jurisdiction over the Corcoran. JA46-58. It explained that the Corcoran made a general appearance in the case by appearing

at a June 14, 2018 hearing at which it requested an extension of time to file objections. JA53. As a result, "there is no indication to this Court that the Corcoran ever affirmatively contested the jurisdiction of the California court prior to the Probate Motion for Reconsideration." JA53. And even after the Corcoran filed a motion for reconsideration it "did not confine itself solely to arguments regarding jurisdiction, but rather asked for . . . relief which can only be granted upon the hypothesis that the court has jurisdiction." JA54. The Corcoran's assertions that the California Probate Court "completely ignored" its jurisdictional arguments and invoked "gotcha jurisdiction" were therefore "unavailing." JA52-53.

The D.C. Superior Court further found the California Court of Appeal's decision "contemplated not only jurisdictional service arguments, but also arguments on the merits of the agreement between the Corcoran and the Trust." JA55. In particular, as the D.C. Superior Court noted, the California Court of Appeal considered and rejected the Corcoran's arguments that the California Superior Court lacked jurisdiction, that the judgment conflicted with the *cy pres* order, and that it erred in entering judgment even though the Corcoran had (improperly) filed a motion for reconsideration. JA55-56.

The D.C. Superior Court similarly found "the Corcoran's argument that the California courts failed to provide full faith and credit to this Court's *Cy Pres*

Order to be without merit." JA57. As the D.C. Superior Court noted, the California Court of Appeal addressed the *Cy Pres* order at length in its opinion. JA57. In particular, the Corcoran failed to "me[et] its burden in establishing that the Collection was subject to the *Cy Pres* order," and "any move of the Collection will not be opposed by the Attorney General for the District of Columbia" in any event. JA57-58.

Following the D.C. Superior Court's Order, Petty once again asked the Corcoran to honor the judgment and return the artwork and cash gift. Instead, the Corcoran filed an appeal seeking to relitigate issues in front of a *fourth court*.

STANDARD OF REVIEW

This case is governed by familiar standards. The Court reviews *de novo* the Superior Court's conclusions of law. *Thai Chili, Inc. v. Bennett*, 76 A.3d 902, 909 (D.C. 2013). The Court reviews factual findings for clear error. *Id.*

SUMMARY OF THE ARGUMENT

The Court should afford the judgment of the California court full faith and credit in accordance with Article IV of the United States Constitution. The judgment of a foreign court is entitled to full faith and credit in the District of Columbia, including as to questions of jurisdiction, where the issue was fully and fairly litigated and finally decided in the court which rendered the original judgment.

Here, the D.C. Superior Court correctly concluded the Corcoran had the opportunity to and did fully and fairly litigate its jurisdictional issues in California. In the California Superior Court, the Corcoran made a general appearance at the parties' initial hearing, joined a motion requesting a continuance, and filed a separate motion requesting affirmative relief on the merits. The D.C. Superior Court did not err in concluding that, under California law as decided by the California courts, those choices waived any objection to personal jurisdiction the Corcoran later sought to assert.

The D.C. Superior Court likewise did not clearly err in finding the Corcoran also fully and fairly litigated its claims in front of the California Court of Appeal. As the D.C. Superior Court explained, the California Court of Appeal considered––and rejected—each of the issues the Corcoran now raises on appeal. Further, because the Corcoran addressed the merits on appeal, the D.C. Court also properly concluded that it waived jurisdiction again on appeal. The California courts' determinations of each of the issues now raised by the Corcoran are entitled to full faith and credit.

But even if the California courts' judgments were not entitled to full faith and credit—they plainly are—the Corcoran's case is, and always has been, meritless. As explained above, the Corcoran generally appeared in the California Superior Court by attending a hearing and joining a motion to continue without

raising any jurisdictional objections or referencing a limited appearance at all. The Corcoran further waived any objection to personal jurisdiction by declining to file a motion to quash service of the Trust's Petition.

But even if it had not waived its jurisdictional objections, the California Superior Court correctly held the Corcoran had proper notice and opportunity to be heard on the Trust's Petition. And California courts have jurisdiction over the Corcoran because of its substantial contacts with a California entity—the Trust—and the substantial benefit it reaped from that relationship. Further, the Corcoran did not submit any evidence to the D.C. Superior Court that would allow that Court or this Court to reach any other conclusion on the personal jurisdiction issue.

Finally, there has never been any real dispute that the California judgment does not conflict with the D.C. Superior Court's *cy pres* order because (1) that order does not apply to the Trust's Collection, (2) the Trust was not a party to the D.C. Superior Court *cy pres* proceeding, (3) the artwork was never accessioned by the Corcoran, National Gallery, or other entity that would control its disposition, and (4) as the California Court of Appeal noted, the D.C. Superior Court's *cy pres* order expressly required the Corcoran to comply with its pre-existing agreements such as the one with the Trust. As a result, and as the Corcoran itself noted at the time, the proper course of action would have been to send the artwork to the Trust by way of venues that agreed to display it.

The Court should affirm the D.C. Superior Court.

ARGUMENT

I. The D.C. Superior Court Did Not Clearly Err In Holding The Judgment Of The California Superior Court And Opinion By The California Court Of Appeal Are Entitled To Full Faith And Credit.

This case begins and ends with the Full Faith and Credit clause of the United States Constitution. Article IV § 1 of the United States Constitution commands "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." In "furtherance of federalism and national unity, Congress has provided that judgments 'shall have such faith and credit . . . in every court within the United States as they have by law or usage in the courts of the State from which they are taken.' " *Fehr v. McHugh*, 413 A.2d 1285, 1287 (D.C. 1980). Recognizing this constitutional edict, D.C. mandates that a foreign judgment filed in the D.C. Superior Court is "entitled to full faith and credit in the District of Columbia." Rule 62-III; *Nader v. Serody*, 43 A.3d 327, 332 (D.C. 2012).

The Full Faith and Credit clause of the U.S. Constitution unequivocally applies to determinations regarding jurisdiction. As the Supreme Court explained in *Durfee v. Duke*, "a judgment is entitled to full faith and credit – *even as to questions of jurisdiction* – when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which

rendered the original judgment." 375 U.S. 106, 111 (1963) (emphasis added). Thus, where "the question of . . . jurisdiction had been fully litigated in the original forum, the issue could not be retried in a subsequent action between the parties." *Id.* at 112.

The Supreme Court, D.C. Court of Appeal, and numerous other courts have all repeatedly affirmed this principle. For example, in *Underwriters National Assurance Company v. North Carolina Life And Accident And Health Insurance Guaranty Association*, the Supreme Court held the North Carolina Court of Appeal violated the Full Faith and Credit clause by refusing "to recognize the *limited scope of review* one court may conduct to determine whether a foreign court had jurisdiction to render a challenged judgment." 455 U.S. 691, 705-06 (1982) (emphasis added). The *Underwriters* court explained "the principles of *res judicata* apply to questions of jurisdiction as well as to other issues." *Id.* at 706. Thus, even where a determination as to jurisdiction "may well have been erroneous as a matter of . . . law," where the "jurisdictional issue was fully and fairly litigated and finally determined" the conclusion is entitled to full faith and credit. *Id.* at 714-15. Any other determination would result in "two state courts reaching mutually inconsistent judgments on the same issue" – "precisely the situation the Full Faith and Credit Clause was designed to prevent." *Id.* at 715.

This Court has similarly recognized *Durfee*'s holding and the limited ability of parties to relitigate jurisdictional holdings. In *Wilburn v. Wilburn*, the appellant asked the court to "re-examine the challenged jurisdiction of the North Carolina court over both the subject matter and the parties." 210 A.2d 832, 834 (D.C. 1965). Again citing to *Durfee*, this Court declined, holding that where both parties "participated in the foreign proceedings and the jurisdictional issue . . . was fully and fairly tried, then the District of Columbia courts are required to give full faith and credit" to the foreign judgment. *Id.*[3]

The cases cited by the Corcoran in its brief do not refuse this well-established principle. *See, e.g.*, *Jerez v. Republic of Cuba*, 775 F.3d 419, 423 (D.C. Cir. 2014) (noting "a judgment rendered by a court assuming subject matter

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[3] Many other courts have similarly held jurisdictional issues, once decided, are not open for collateral attack in other forums. *See, e.g.*, *Cutler v. Hayes*, 818 F.2d 879, 888 (D.C. Cir. 1987) ("[T]he doctrine of res judicata has application to questions of jurisdiction as well as to other issues . . . A valid jurisdictional judgment has preclusive effect, we note, even if erroneous"); *Northern Indiana Commuter Transp. Dist. v. Chicago SouthShore and South Bend R.R.*, 685 N.E.2d 680, 685-86 (Ind. 1997) (Noting the scope of review of the "jurisdictional basis of the foreign court's decree" is "a limited one . . . that does not entail de novo review of the jurisdictional issue by the second court. Rather, the general rule is that a judgment is entitled to full faith and credit – even as to questions of jurisdiction – when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment . . . Preclusive effect must be given even where the first court's conclusion as to jurisdiction was erroneous as a matter of law.") (citations omitted); *Goeke v. Woods*, 777 S.W.2d 347, 350 (Tenn. 1989) ("*Res judicata* applies to questions of jurisdiction, if jurisdiction is litigated or determined by the court").

jurisdiction is preclusive, even if the judgment is incorrect . . . where the defendant had an opportunity to litigate the question of subject-matter jurisdiction"); Appellant Br. at 18-19. In other words, the Corcoran is incorrect that a court must entertain a jurisdictional attack on the merits if another state's courts have already considered and ruled on the issue. Appellant Br. at 19. And this rule makes good sense. "The concept of full faith and credit is central to our system of jurisprudence." *Underwriters*, 455 U.S. at 704. Because our nation is a nation of States, "each having its own judicial system capable of adjudicating the rights and responsibilities of the parties brought before it[,] . . . there is always a risk that two or more States will exercise their power over the same case or controversy, with the uncertainty, confusion, and delay that necessarily accompany relitigation of the same issue." *Id.* But "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the results of the contest; and that matters once tried shall be considered forever settled as between the parties." *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525-26 (1931).

Thus, the only question on appeal to this Court—which the Corcoran studiously avoids—is whether the D.C. Superior Court clearly erred in holding that the question of jurisdiction had been fully and fairly litigated in the original forum,

entitling the California courts' judgments to full faith and credit in D.C. The Superior Court did not err, and this Court should affirm.

As the Superior Court acknowledged, the California courts fully and fairly considered whether they had jurisdiction to enter a judgment against the Corcoran. The D.C. Superior Court explained the Corcoran "made an appearance at the June 14, 2018 hearing" at which the Corcoran was "silent as to any objection . . . over service." JA53; JA82-87; JA154-161; *supra* pages 10-12. At the subsequent hearing, the Corcoran failed to appear even though the presiding judge found "notice is proper." JA159. Thus, the D.C. Superior Court found the Corcoran's "assertions that their arguments on personal jurisdiction were 'completely ignored' by the California Superior Court" were "unavailing." JA52-53. And as the D.C. Superior Court further explained, the Corcoran's motion for reconsideration "did not confine itself solely to arguments regarding jursidiction, but rather asked 'for . . . relief which can only be granted upon the hypothesis that the court has jurisdiction." JA54; JA330-41.

The D.C. Superior Court also found the issue of jurisdiction had been raised and decided by the California Court of Appeal. The D.C. Superior Court explained, "[i]t is clear to this Court that the California Court of Appeal's decision contemplated not only jurisdictional and service arguments, but also arguments on the merits of the agreement between the Corcoran and the Trust and any conflict

between the California Probate Court's judgment order and this Court's *Cy Pres* Order." JA55. And indeed the Superior Court is correct: the California Court of Appeal issued a comprehensive, 37 page opinion analyzing and dismissing each of the arguments the Corcoran now raises. JA195-230; *supra* pages 8-10. As a result, it is clear the Superior Court found the issue of jurisdiction had been fully and fairly litigated in California such that "the California decisions are entitled to full faith and credit." JA56.

The Corcoran attempts to muddy the D.C. Superior Court's ruling by insisting it found jurisdiction based on the Corcoran's appearance in the California Court of Appeal. Appellant Br. at 24-25. The Corcoran mischaracterizes the D.C. Superior Court's opinion. While the D.C. Superior Court may have looked to the California Court of Appeal decision to determine which issues were raised by the Corcoran below[4], it did not base any jurisdictional determination solely on an

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[4] Of course, the Corcoran could not have raised new issues on appeal. *A Local & Regional Monitor v. City of Los Angeles*, 12 Cal. App. 4th 1773, 1804 (Cal. Ct. App. 1993) ("It is well established that a party may not raise new issues on appeal not presented to the trial court."). That is likely why the D.C. Superior Court noted, in reviewing the California Court of Appeal opinion, "[t]his contemplation on numerous issues by the California Court of Appeals makes clear that again the Corcoran did not confine itself to solely jurisdictional arguments, but rather expanded its arguments to the merits of the probate petition and California Probate Court's order." JA55-56; *see United Clay Products Co. v. Linder*, 119 F.2d 456, 457 (D.C. 1941) ("We must assume that the court found all disputed facts . . . in appellee's favor").

appearance in the D.C. Court of Appeal. JA52-56. Instead, it found "unavailing" the Corcoran's argument that the "California Probate Court" "completely ignored" its "arguments on personal jurisdiction." JA52-53.

The bottom line is this: while the Corcoran spends a great deal of time attempting to relitigate its alleged issues related to service and personal jurisdiction, it does not and cannot contest it had the opportunity to, and did, litigate these issues in California. *See, e.g.*, Appellant Br. at 22. The Corcoran chose to generally appear in the California Superior Court, chose not to appear at the second hearing, filed a motion seeking relief on the merits, and chose not to file a motion to quash service of the Trust's Petition. The Corcoran then chose to fully litigate the personal jurisdiction issues as well as the merits in the California Court of Appeal. While it now may wish its choices had been different, the Corcoran is not entitled to relitigate its case in another forum *when it had a full and fair opportunity to do so, and did so, in California*. *Durfee*, 375 U.S. at 111; *Underwriters*, 455 U.S. at 714-15.

II. The Corcoran Submitted To The Jurisdiction Of The California Courts.

Even if the Court does not afford the California Courts' order Full Faith and Credit and allows the Corcoran to again argue its case anew, the California Superior Court plainly had jurisdiction over the Corcoran, and the Corcoran submitted no evidence in the record to support any other conclusion.

A. The Corcoran Waived Objections To Personal Jurisdiction By Generally Appearing In The California Superior Court.

The Corcoran generally appeared at the parties' June 14, 2018, hearing. "A general appearance by a party is equivalent to personal service of summons on such party." Cal. Civ. Proc. Code § 410.50. Under California law, "[a] general appearance occurs when the defendant takes part in the action and in some manner recognizes the authority of the court to proceed." *In re Vanessa Q.*, 114 Cal. Rptr. 3d 294, 299 (Cal. Ct. App. 2010) (holding an attorney made a general appearance by requesting a continuance); *In re Marriage of Obrecht*, 245 Cal. App. 4th 1, 7 (Cal. Ct. App. 2016) (same); *Serrano v. Stefan Merli Plastering Co., Inc.*, 76 Cal. Rptr. 3d 559, 569 (Cal. Ct. App. 2008) (noting "seeking affirmative relief . . . ordinarily constitute[s] a general appearance"). "It is well settled that if a defendant wishes to insist upon the objection that he is not in court for want of jurisdiction over his person, he must specially appear for that purpose only, and must keep out for all purposes except to make that objection . . . otherwise he waives any right he may have to insist that jurisdiction of his person had not been obtained." *Cal. Dental Ass'n. v. American Dental Ass'n*., 23 Cal. 3d 346, 352 (Cal. 1979) (citations omitted). In other words, a party's appearance is general unless that party "appear[s] and object[s] only to the consideration of the case or any procedure in it because the court had not acquired jurisdiction of the person of the

defendant or party[.]"[5] *Slaybaugh v. Superior Court*, 70 Cal. App. 3d 216, 222 (Cal. Ct. App. 1977).

For example, in *Obrecht*, an attorney's attendance at a hearing constituted a general appearance where the attorney made "no reference to any claim of a limited or special appearance" and did "not allude to any jurisdictional objection" during the hearing. 245 Cal. App. 4th at 8. Because the party could not affirmatively demonstrate his attorneys' objections at the hearing were "limited to matters of jurisdiction," the court concluded it "must presume" there were no such limitations, and that the party "opposed [the opposing party's] prayers for relief on the merits, and that he thus submitted to the court's jurisdiction by making a general appearance." *Id.* at 9. Similarly, in *City of Riverside v. Horspool*, the defendant made a general appearance by appearing at the initial hearing and requesting a continuance to answer the complaint. 223 Cal. App. 4th 670, 679 (Cal. Ct. App. 2014).

Here, Ms. Marek's appearance at the June 14, 2018 hearing constituted a general appearance, and therefore the Corcoran Gallery and Trustees have waived any jurisdictional objections on appeal. Ms. Marek made no statements at the

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[5] Further, an attorney of record who generally appears for a party is deemed to have authority to accept service of process in the same case in which the attorney already represented the party. *Estate of Moss*, 204 Cal. App. 4th 521, 534 (Cal. Ct. App. 2012).

hearing confining her objections to jurisdictional issues, and thus did not "keep out for all purposes except to make that objection." *Cal. Dental Ass'n.,* 23 Cal. 3d at 352; JA82-88.

Just as in *Obrecht*, here Ms. Marek also did not state she was specially appearing on behalf of the Corcoran Gallery and Trustees and did not limit her participation at the hearing to a jurisdictional. *Id.* She did not even reference jurisdiction. Rather, Ms. Marek stated in general terms that she was "here on behalf of Respondents, Corcoran Gallery of Art and the Board of Trustees for the Corcoran Gallery of Art." JA84-85. Further, Ms. Marek stated in general terms that the Corcoran Gallery and Trustees would be filing written objections. JA86. Ms. Marek did not limit these objections to purely jurisdictional objections. Accordingly, this court "must therefore presume that [Ms. Marek] did not limit [her] objections at the [June 14,2018] hearing to matters of jurisdiction, that [the Corcoran Gallery and Trustees] opposed [Trustee Petty]'s prayers for relief on the merits, and that [the Corcoran Gallery and Trustees] thus submitted to the court's jurisdiction by making a general appearance." *Obrecht*, 245 Cal. App. 4th at 9. This is especially true because an "objection" in probate court is the means by which a party opposes a petition on the merits. *See* Cal. Prob. Code §§ 853, 1043(a). Thus, just as in *City of Riverside*, in which the party generally appeared by attending a hearing and requesting a continuance to answer the complaint, here

Ms. Marek generally appeared by attending the June 14, 2018 hearing, joining in the request for continuance, and stating the intent to file objections to the Petition. 223 Cal. App. 4th at 679.

The Corcoran also generally appeared in its motion for reconsideration. Instead of confining itself to jurisdictional arguments, the Corcoran asked the court to deny the Trust's Petition on the merits because it purportedly conflicted with the D.C. Superior Court's *cy pres* order, asked the court for discovery, and requested permission to present other "good defenses." JA339-40. In other words, it sought affirmative relief the court only could have granted if it had jurisdiction.[6] *Vanessa Q.*, 114 Cal. Rptr. 3d at 299; *Obrecht*, 245 Cal. App. 4th at 7; *Serrano*, 76 Cal. Rptr. 3d at 569. As a result, under California law, it waived any objection to personal jurisdiction. *Id.*

B. The Corcoran Failed Properly To Challenge The California Superior Court's Ruling.

Even if the Corcoran Gallery and Trustees had not submitted to jurisdiction by making a general appearance, they waived their challenge to personal jurisdiction and inadequate service by failing to file a motion to quash in the

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[6] The Corcoran points to *Tom Brown & Co. v. Francis* as support for its argument that its motion for reconsideration could not have been a general appearance. 608 A.2d 148, 150 (D.C. 1992); Appellant Br. at 29. This case is off point. It has nothing to do with motions for reconsideration and utterly failed to apply the fully and fairly litigated standard set forth in *Durfee*.

probate court. "Failure to make a motion [to quash] . . . at the time of filing a demurrer or motion to strike constitutes a waiver of the issues of lack of personal jurisdiction, inadequacy of process, inadequacy of service of process, inconvenient forum, and delay in prosecution." Cal. Code Civ. Proc. § 418.10(e)(3); *see also City of Riverside*, 223 Cal. App. 4th at 680 ("Failure to make a motion to quash constitutes a waiver of the issues of lack of personal jurisdiction, inadequacy of process, inadequacy of service of process, inconvenient forum, and delay in prosecution."). The time to file an answer or demurrer is 30 days from service. Cal. Code Civ. Proc. § 430.40(a). Even assuming that service was not effectuated until July 13, 2018, the Corcoran still had until August 12, 2018 to file a motion to quash. JA89-152. They failed to do so. Consequently, pursuant to Code of Civil Procedure section 418.10(e)(3), the Corcoran Gallery and Trustees have waived any challenge they may have had to personal jurisdiction or inadequate service of process. JA222.

Nor was the Corcoran's motion for reconsideration proper. As the Court of Appeal explained, the Corcoran's motion was "defective as a matter of law" because it failed to point to any "new or different facts, circumstances or law" that were not available to it as the July 30, 2018, hearing, in accordance with California Code of Civil Procedure section 1008. JA215-16. Regardless, as the California Court of Appeal stated, once a court entered judgment, it loses jurisdiction to rule

on a motion for reconsideration. *APRI Ins. Co. v. Superior Court*, 76 Cal. App. 4th 176, 180 (Cal. Ct. App. 1999) ("[W]e conclude that the trial court may not grant reconsideration after judgment has been entered"); JA213. The California Court of Appeals further noted the "Corcoran has not cited any authority to support its contention that the probate court's entry of judgment prior to ruling on Corcoran's motion [for reconsideration] requires reversal of the judgment." JA214. Instead, a trial court's "entry of judgment . . . operate[s] as an implied denial of the pending reconsideration motion." *Kasper v. Cedars-Sinai Medical Center*, 62 Cal. App. 4th 780, 782 (Cal. Ct. App. 1998); JA214. Such was the case here. JA54.

C. The California Superior Court Had Personal Jurisdiction Over The Corcoran.

Contrary to the Corcoran's assertions on its (second) appeal, the California Superior Court properly exercised personal jurisdiction over the Corcoran. *See* Appellant Br. at 36-37. California courts may exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. Code Civ. Proc. § 410.10. The exercise of jurisdiction over a nonresident defendant comports with the California and U.S. Constitutions "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice." *Vons Companies, Inc. v. Seabest Foods, Inc*., 14 Cal. 4th 434, 444 (Cal. 1996) (quoting *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945)).

Courts may exercise specific jurisdiction over a nonresident defendant if: (1) the defendant purposefully availed itself of forum benefits; (2) the controversy is "related to" or "arises out of" the defendant's contacts with the forum; and (3) the assertion of personal jurisdiction would comport with "fair play and substantial justice." *Snowney v. Harrah's Entm't, Inc.*, 35 Cal. 4th 1054, 1062 (Cal. 2005).

Regarding the first prong, a defendant purposefully avails itself of the benefits of a forum where it (1) directs its activities at forum residents; (2) derives benefits from its forum activities; (3) creates a "substantial connection" with the forum; (4) engages in significant activities within the forum; or (5) has created continuing obligations between itself and forum residents. *Id.* at 1063. While a contract with an out-of-state party does not automatically establish purposeful availment in the other party's home forum, it is indicative of purposeful availment. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 481 (1985).

Here, the Corcoran Gallery and Trustees purposefully directed activities towards California by specifically signing an agreement with a California trust to receive artwork from California that was made by a California resident-artist. Further, the Corcoran Gallery and Trustees purposefully derived substantial benefits—namely, free art and $1 million—by these California connections. JA75-79. The California-centered nature of the Trust and its assets has required the

Corcoran Gallery and Trustees to interact extensively with persons in California and their associated property, and has thus created a "substantial connection" with California. *Id.* The Corcoran Gallery and Trustees have created continuing obligations between themselves and the California trust by agreeing to return the artwork and cash gift upon termination of their rights under the Agreement. *Id.* Moreover, the Agreement specifies that it is to be governed by California law, demonstrating the Corcoran Gallery and Trustees purposefully availed themselves of the benefits and protections of California law by entering into an agreement that expressly provided California law would govern a dispute. *Id.* That the forum-selection clause is crossed out within the Agreement does not negate California's jurisdiction over the matter, especially where no alternative forum is specified. Appellant Br. at 37.

Regarding the second prong, the relatedness requirement is satisfied if "there is a substantial nexus or connection between the defendant's forum activities and the plaintiff's claim." *Snowney*, Cal. 4th at 1068. Here, the Petition arises directly out of the Agreement, as it seeks the return of Trust assets that were provided to the Corcoran Gallery and Trustees pursuant to the Agreement. JA59-73. Therefore, there is a substantial nexus between the Corcoran Gallery and Trustees' California activities, described above, and the claim at issue here.

As to the third prong, "[o]nce a plaintiff has shown the requisite minimum contacts to support jurisdiction, the burden shifts to defendant to show jurisdiction is not reasonable." *Integral Development Corp. v. Weissenbach*, 99 Cal. App. 4th 576, 591 (Cal. Ct. App. 2002). "In making this determination, the court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." *Snowney*, 35 Cal. 4th at 1070. "It must also weigh in its determination the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." *Id*. A defendant "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional." *Integral Development,* 99 Cal. App. 4th at 591.

Here, the Corcoran has not cited any evidence in the record to show that jurisdiction is unreasonable. There is no heavy burden on them, as this action does not require substantial witness travel time, California-specific discovery, or other considerations placing any burden on them to travel to California. In contrast, California's interests in this action are strong. This dispute involves a California trust, an agreement governed by California law, and the return to California of art created by a California resident. JA75-79. Further, Trustee Petty has a substantial

interest in obtaining relief, as demonstrated by the great lengths she has undergone thus far to obtain the subject art so it may be displayed at a California venue.

The Corcoran does not dispute these facts, and cites no evidence to the contrary. Appellant Br. 36-37. Instead, it asserts it is not subject to personal jurisdiction in California because it is not a California resident and did not agree to a venue clause in its agreement with the Trust. *Id.* But the test for personal jurisdiction "is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." *Snowney*, 35 Cal. 4th at 1061. Where the Corcoran established substantial connections with California, as explained above, it cannot escape jurisdiction by cherry picking facts that are irrelevant in isolation. *Id.* When the parties' relationship is considered as a whole, it is clear California had jurisdiction over the Corcoran.

D. The Corcoran Had A Full And Fair Opportunity To Litigate This Case.

Nor is there any dispute the Corcoran had fair notice and the opportunity to defend the Petition. California Probate Code section 1260 states, "[i]f notice of a hearing is required, proof of giving notice of the hearing shall be made to the satisfaction of the court at or before the hearing." Cal. Prob. Code § 1260(a). "If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order." *Id*. §

1260(b). "The finding described in subdivision (b), when the order becomes final, is conclusive on all persons." *Id*. § 1260(c).

Here, Mr. Patrizia, counsel for the Corcoran Gallery and Trustees, was served via certified U.S. mail on June 25, 2018. JA92-93. Ms. Marek, also counsel for the Corcoran Gallery and Trustees, was served via certified U.S. mail on June 27, 2018. *Id*. This service meets the 30-day notice requirement of California Probate Code section 851(d), and establishes the Corcoran had actual notice of the hearing.[7] *Supra* pages 6-7; *see In re Steven H*., 86 Cal. App. 4th 1023, 1032 (Cal. Ct. App. 2001) (holding the failure to serve a statutorily-required notice of a hearing on counsel was harmless error where it was "beyond dispute" that counsel "was aware of the hearing").

And indeed, the California Superior Court determined that the Trustee's notice efforts complied with Probate Code section 851(d). At the July 30, 2018 hearing on the Petition, the probate court stated, "I'm finding that notice is proper[.]" JA159. Therefore, notice was given "to the satisfaction of the court" and was "conclusive on all persons."[8] Prob. Code § 1260.

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[7] The First Supplement details the many attempts to serve the Corcoran Gallery and Trustees well before the date of the hearing and their associated evasion of service. JA89-152.

[8] The Corcoran asserts now, on appeal, that it "understood" a hearing would not actually take place on July 30, 2018. Appellant Br. at 5. This contention is unsupported by the record. Indeed, the Corcoran's citation for its new

III. The California Superior Court's Decision Does Not Conflict With The *Cy Pres* Order.

It is similarly clear the California Superior Court's decision does not conflict with the District of Columbia's *cy pres* order because the Collection was not subject to the *cy pres* order. Indeed, Judge Okun**,** *the D.C. judge who presided over the cy pres proceeding*, confirmed the disposition of the Collection pursuant to the terms of the Agreement was "outside the scope" of the *cy pres* order—a detail curiously absent from the Corcoran's brief. JA81. The California Court of Appeal considered the Corcoran's argument and similarly concluded the District of Columbia did not render any adjudications regarding the Collection. JA201-203 & JA226-230; Appellant Br. at 43-44. On the Corcoran's third bite at the apple, the D.C. Superior Court agreed, and found the California Court of Appeal had already addressed the issue with "comprehensive detail and analysis" in any event. JA56-57. In short, this issue has been more than "fully and fairly litigated," and the decisions of the California courts are entitled to full faith and credit.[9] *Durfee*, 375 U.S. at 111.

"understanding" is the Tyler Trust's supplement to address probate notes, which does not evidence the Corcoran's understanding or intent. Appellant Br. at 5; JA90.

[9] The Corcoran did not submit any of the ample briefing that was submitted in the California Court of Appeal. As a result, the Corcoran has failed to meet its burden of showing in the record on this appeal that these issues were not fully and fairly litigated and decided by the California Court of Appeal. *See Obrecht*, 245 Cal.

Instead of identifying any law or fact that would entitle this Court to overturn the California courts' judgment, the Corcoran seeks to have this Court re-litigate a decision it does not like. Appellant Br. at 37-47 (acknowledging "the California Court of Appeal at least acknowledged the existence of the *cy pres*"). But the Corcoran may not simply re-argue the issues already validly decided in California. *Nader*, 73 A.3d at 333 (noting the Uniform Enforcement of Foreign Judgments Act, and D.C.'s corresponding statues, do not allow "the same range of collateral attack as the judgment of the receiving court; to do so would defeat the purpose of the Full Faith and Credit Clause"); *Habib v. Keats*, 286 A.2d 854, 855-56 (D.C. 1972) (holding "parties who have finally litigated issues cannot continue to relitigate them in the same or other courts, else there would be no end to litigation"). The Corcoran is bound by the California courts' rulings, whether or not it personally finds those rulings "erroneous." Appellant Br. at 38; *Underwriters*, 455 U.S. at 714-15.

Even if that were not the case, the Corcoran's disingenuous argument that the D.C. Attorney General has not authorized it to move the artwork is wrong (as it

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App. 4th at 8 (stating "A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown"). The detailed 37 page opinion by the California Court of Appeal is more than sufficient to show that the same issues raised by this appeal were fully and fairly litigated and decided by the California Court of Appeal.

knows). Appellant Br. at 47; JA246-47 (stating the Corcoran's attorney "agree[s] that the AG has told us that if The Corcoran were to propose to move the works outside of DC, the AG would not oppose"). The Attorney General does not oppose the planned distribution of the artwork, nor would it have any reason to do so. *Id.*

CONCLUSION

For all of the foregoing reasons, the Court should affirm the Superior Court and bring this case to its long-awaited conclusion.

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CERTIFICATE OF SERVICE

I certify that on April 5, 2022, the foregoing Brief For Plaintiff-Appellee was filed on this Court's electronic case file system, which sent notice to The Corcoran's attorneys of record. In addition, a copy of the Brief For Plaintiff-Appellee was sent via overnight FedEx to the following individuals:

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District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

Signature

21-CV-0695

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