



**Association of Defense  
Counsel of Northern  
California and Nevada**



January 31, 2018

Honorable Presiding Justice Tricia A. Bigelow  
Honorable Associate Justices, Division 8  
2nd District Court of Appeal  
Ronald Reagan State Building  
300 S. Spring Street  
2nd Floor, North Tower  
Los Angeles, CA 90013

Re: ***Ford Motor Company, Petitioner, v. S.C.L.A., Respondent,***  
Case No. B287367  
Letter Brief in support of Petition for Writ of Mandate (Rule 8.487)

Dear Presiding Justice Bigelow and Associate Justices of Division 8,

We write on behalf of the Association of Southern California Defense Counsel (ASCDC) and the Association of Defense Counsel of Northern California and Nevada (ADCNCN) as amici curiae (the Associations) to ask this Court to issue an alternative writ or order to show cause in order to address the pending writ petition on its merits. To the extent necessary, we ask that this Court treat this letter as a formal application to file this letter as an amicus brief in support of the pending petition. Review on the merits is necessary because the petition raises important issues regarding trade secret protections for litigating business enterprises.

**Authority for amicus curiae support for pending writ petitions**

Rule 8.487 of the California Rules of Court expressly permits the filing of amicus briefs after an appellate court issues an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) However, the Judicial Council's Advisory Committee Comment to Rule 8.487 clarifies that amicus letters are also permissible before a court issues an alternative writ or order to show cause. Courts retain authority to permit such filings "*before the court has determined whether to issue an alternative writ or order to show cause* or when it notifies the parties that it is considering issuing a peremptory writ in the first instance." (Cal. Rules of Court, 8.487, italics added.)

Indeed, Division Seven has stated in a published opinion that the filing of amicus letters in connection with a writ petition was one factor the court considered in deciding whether to issue an order to show cause. (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558 [Second Dist., Div. Seven; noting that amicus letters were filed in support of a writ petition and that “based on the amici curiae submissions we have received” the matter “appears to be of widespread interest” such that writ review was appropriate]; see also *Los Angeles County Bd. Of Supervisors v. Superior Court of Los Angeles County* (2015) 235 Cal.App.4th 114 [Second Dist., Div. Three; “The Association of Southern California Defense Counsel, as amicus curiae, filed a letter in support of issuance of the writ”], rev’d (2016) 2 Cal.5th 282.)

Therefore, we ask the Court to consider this amicus letter in deciding the threshold issue of whether to issue an alternative writ or order to show cause so that the Court can address the petition on its merits.

#### **Interest as amici curiae**

ASCDC is the nation’s largest and preeminent regional organization of lawyers devoted to defending civil actions, comprising approximately 1,100 attorneys in Southern and Central California. ASCDC members routinely represent and defend professionals, businesses, public entities, and religious institutions that provide education, goods, services, jobs, investments and, as here, develop, manufacture and sell products vital to the country’s economic health and prosperity. ASCDC is actively involved in assisting courts in addressing legal issues of interest to its members and the public. It has appeared as amicus curiae in numerous cases. (E.g., *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536.)

ADCNCN is an association of approximately 900 attorneys primarily engaged in the defense of civil actions. Its Nevada members are interested in the development of California law because Nevada courts often follow California law. ADCNCN has appeared as amicus curiae in numerous cases before the California Supreme Court and Courts of Appeal across the state. Its members have a strong interest in the trade secret issues raised by the petition in the present case.

The two Associations are separate organizations, with separate memberships and governing boards. They coordinate from time to time on matters of shared interest, such as this letter. Their memberships have a shared interest in this petition because both organizations represent organizations and businesses that must protect the confidentiality of trade secret information to maintain a competitive edge in their respective industries.

**This Court should address this petition on the merits**

Virtually every company has important interests in protecting trade secrets and other confidential commercial information. Moreover, with electronically stored information (ESI), the volume of materials containing confidential information can grow rapidly, even exponentially. The days of document productions through discovery with carefully Bates-stamped notebooks and page after page of materials tediously marked “CONFIDENTIAL” are necessarily yielding to the production of electronically stored “information.” That information, although easily transferrable, is no less confidential than the hardcopies produced in the past, and it is just as deserving of the designations that have traditionally protected trade secrets.

As a result, the within petition raises important and significant issues for every business enterprise that participates in litigation. The Evidence Code recognizes trade secret protection as a privilege. (See Evid. Code, § 1060, et seq.) In fact, Evidence Code section 1060 recognizes only two exceptions to the assertion of the privilege, e.g., where “the allowance of the privilege will not tend to conceal *fraud* or otherwise work *injustice*.” (Evid. Code, § 1060.) In the case now before this Court, the 100,000 documents that the petitioner sought to protect were wholly immaterial to the merit of the plaintiff’s claims against petitioner. Nevertheless, in good faith, petitioner sought to produce them requesting only that the asserted privilege be protected in the litigation through a protective order. It was ultimately an *injustice* under these procedural facts for the superior court – without any explanation – to deny the requested protection.

This type of ruling threatens to impose inordinate burdens on courts and parties (e.g., *in camera* review), particularly where the confidentiality of produced materials is highly technical and it is not *central* to the merits of the case. To be sure, the confidentiality interests of the producing party are no less *central* to the viability of the producing party’s business – especially where the producing party is operating in a highly competitive industry.

A producing party’s interest in confidentiality should be protected, especially where the producing party has made a well-articulated showing for its request for protection. It is not realistic to expect parties to make individualized showings for each piece of information, or to expect courts to conduct careful *in camera* review for innumerable documents. As a result, it is important for the Court to address the issues raised in this case and to provide workable guidelines for trial courts and parties.



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Riverside, State of California. My business address is 3610 Fourteenth Street, Riverside, 92502.

On January 31, 2018, I served true copies of the following document(s) described as **Letter Brief in support of Petition for Writ of Mandate** (Cal. Rules of Court, rule 8.487) on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

  **x** **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Thompson & Colegate LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

  **x** **BY ELECTRONIC SUBMISSION:** I transmitted a true copy of said documents electronically via TrueFiling to all parties in the case and no error was reported.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2018, at Riverside, California.

\_\_\_\_\_  
/s/  
Erminia Olivas

Presiding Justice Tricia A. Bigelow  
and Associate Justices, Second Appellate District, Division 8  
January 31, 2018  
Page 6

**SERVICE LIST**  
**Ford Motor Company v. Superior Court of Los Angeles County**  
**B287367**

Paul R. Johnson  
Matthew H. Dawson  
King & Spaulding LLP  
633 West Fifth Street, Suite 1700  
Los Angeles, CA 90017

Attorneys for Petitioner  
FORD MOTOR COMPANY

Christine J. Haw  
Caitlin J. Scott  
Strategic Legal practices, APC  
1840 Century Park E., Ste 430  
Los Angeles, CA 90012

Attorneys for Real Party in Interest  
GUADALUPE OCHOA

Frederick Bennett  
Superior Court of Los Angeles County  
111 North Hill Street, Room 546  
Los Angeles, CA 90012

Attorneys for Respondent

Hon. Joseph R. Kalin  
Los Angeles Superior Court  
111 N. Hill Street  
Los Angeles, CA 90012

Superior Court Case No.:  
BC610964