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July 11, 2018

Justice Ronald B. Robie

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Justice Elena J. Duarte

Third District Court of Appeal

914 Capitol Mall

Sacramento, CA 95814

Re: Request for Publication of
Willhide-Michiulis v. Mammoth Mountain Ski Area, LLC,
C082306 (June 27, 2018)

Honorable Justices:

The Association of Southern California Defense Counsel respectfully requests that this Court certify its June 27, 2018 opinion in *Willhide-Michiulis v. Mammoth Mountain Ski Area* 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 29-page opinion in *Willhide-Michiulis* reads like it was intended for publication, and it should be published. The opinion holds that the operation of a snowcat and snow-grooming tiller on a ski run open to the public is not gross negligence and is an inherent risk of using the slopes, even though ski resorts generally strive not have snowcats operating on open ski runs. As the opinion notes, it is a common practice for skiers and snowboarders “to chase snowcats that operate on public runs” because freshly tilled snow “is considered desirable and ‘more fun’ because it has not been tarnished by other skiers.” (Opn. at 3, 20.)

The opinion catalogues prior precedent involving inherent risks on ski slopes, and notes that no published case specifically addresses snow-grooming equipment. (Opn. 18-19.) Such precedent is needed to counter arguments like

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that offered by the plaintiff, e.g., that snow-grooming equipment is somehow different from other collision risks, such as ski lift towers or trees. The opinion will be useful precedent for the point that colliding with snow-grooming equipment is an inherent risk of recreation on ski slopes.

California is home to several of North American'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.

The opinion is also useful precedent on an evidentiary point because it affirmed the trial court's exclusion of plaintiff's expert declarations opposing summary judgment by alleged safety experts. The opinion acknowledged that the declarations were properly excluded because they were "irrelevant opinions more akin to advocating, not testifying." (Opn. 13; see also Opn. 26-27.) The Association's members frequently encounter this sort of improper expert testimony and would appreciate being able to cite this Court's analysis as authority.

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

Respectfully submitted,
Manatt, Phelps & Phillips, LLP

By: *s/Benjamin G. Shatz*

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**ASSOCIATION OF SOUTHERN CALIFORNIA
DEFENSE COUNSEL**

cc: See attached Proof of Service

PROOF OF SERVICE

**Willhide-Michiulis et al. v. Mammoth Mountain Ski Area, LLC
C082306**

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 Los Angeles, State of California. My business address is 11355 W. Olympic Boulevard, LA, CA 90064.

On July 11, 2018, I served true copies of the following document(s) described as **REQUEST FOR PUBLICATION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

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

Executed on July 11, 2018, at Los Angeles, California.

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C082306

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