Association of Corporate Counsel

1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425 USA
tel +1 202.293.4103
fax +1 202.293.4701
www.acc.com

January 10, 2017

The Honorable Chief Justice Tani Cantil-Sakauye and Associate Justices
The California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Statement in Support of Grant of Review of *Sun v. Superior Court (Young)*, Case No. S239018

Dear Justices of the Supreme Court:

On behalf of the Association of Corporate Counsel (ACC), we urge this Court to grant review in *Sun v. Superior Court (Young)*. ACC is a global bar association representing the common professional and business interests of over 42,000 in-house counsel working for more than 10,000 organizations in over 85 countries. Our four California chapters have more than 5,300 members.

As managers of corporate litigation and discovery, in-house counsel have a strong interest in ensuring that inadvertently produced non-privileged, confidential business information is returned during litigation. This case presents an excellent vehicle for this Court to clarify what action is required of an attorney who inadvertently receives such information. Two trends drive the need for clearer guidance on this issue. First is e-discovery and the vast volumes of electronically stored information (ESI) that are collected during the internal document review process as part of the discovery process. Due to the volume of information involved in most matters, e-discovery technology and human review cannot always identify information that should be protected. Second is the growing risk of cybercrime and the potential for liability associated with the document exchange process during discovery. Law firms are known hacking targets of cyber-criminals and there is the omnipresent threat that confidential information received during discovery will be inadvertently disclosed to the court or in some other manner be mishandled and made public.

Allowing an attorney to retain and continue to review non-privileged confidential business information, after being informed of its unintended production, is bad policy. The confidential information in this case – medical records, tax returns, confidential financial information of other companies – is precisely the type of information that courts need to protect in the case of inadvertent production during the discovery process. Continued review of such sensitive information increases the opportunities for mishandling and misuse of confidential information.

Continued review also increases the potential for liability on the part of the corporate client that inadvertently produced the confidential information. For example, a company and its lawyers inadvertently could produce personnel records that include employee PII during the course of an employment case. The law firm that receives the inadvertent production reviews the materials, and itself inadvertently discloses the records with employee PII in a filing with the court. It is the inadvertently producing company that would be liable for any damages done to employees as a result of this disclosure. While we'd like to live in a world where the potential for this chain of events is remote, the nature of e-discovery and digital communications ensure that this is not an occasional happenstance. Indeed, this scenario has likely happened to a number of our members' companies. The need for clarity on this issue is particularly strong in California, which is known for having some of the nation's toughest consumer data protection laws.

Sun's attorneys in this case maintain that it was proper to continue to review the inadvertently produced confidential documents even after notification because the rule in *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807 only applies to privileged information and there was no harm in continued review because there was a protective order in the case. Given the potential liability that can result from continued review of confidential information, these justifications illustrate the need for greater judicial clarity on this issue. We take no position on whether disqualification was the proper remedy in this case, but we nonetheless strongly urge the court to grant the petition for review to establish a broader rule of protection for confidential business information.

Respectfully submitted

The Association of Corporate Counsel

By:

Amar Sarwal
Association of Corporate Counsel
Vice President and Chief Legal Strategist

Proof of Service

I am employed in the District of Columbia. I am over the age of 18 and not a party to the within action; my business address is 1025 Connecticut Avenue, NW, Suite 200, Washington, District of Columbia 20036.

On January 10, 2017, I served, in the manner indicated below, the foregoing document described as Statement in Support of Petition for Review on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Washington, DC, addressed as follows:

Please see attached Service List

☒ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Washington, District of Columbia, with postage thereon fully prepaid. I am familiar with the company's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the services herein attested to (C.C.P. § 1013(a)), as indicated on the service list.

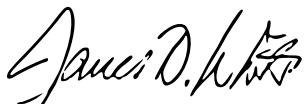
☐ BY ELECTRONIC SERVICE: C.R.C., rule 8.212(C)(2)(A) as indicated on the service list.

☐ BY OVERNIGHT DELIVERY: I caused such envelopes to be delivered by courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)), as indicated on the service list.

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

Executed on January 10, 2017, at Washington, District of Columbia.



James D. White
Associate Director of Advocacy and Public Policy
Association of Corporate Counsel

Service List

James S. Azadian Cory Lynn Webster Enterprise Counsel Group Three Park Plaza, Suite 1400 Irvine, CA 92614	*Attorneys for Defendant and Petitioner* Andrew Sun
Jeffrey Glen Huron Phu C. Nguyen Dykema Gossett LLP 333 South Grand Avenue, Suite 2100 Los Angeles, CA 90071	*Attorneys for Defendant and Petitioner* Andrew Sun
Andra Barmash Greene Cathy Moses Irell & Manella LLP 840 Newport Center Drive, Suite 400 Newport Beach, CA 92660	*Attorneys for Defendant and Petitioner* Andrew Sun
Superior Court of Orange County Attn: Hon. Kim Dunning Dept. CX104 700 Civic Center Drive West Santa Ana, CA 92701	*Respondent*
Mary-Christine Sungaila Haynes and Boone, LLP 600 Anton Boulevard, Suite 700 Costa Mesa, CA 92626	*Attorneys for Real Parties in Interest* John Young and United American Properties, Inc.
Jennifer L. Keller Yen-Shyang Tseng Keller/Anderle LLP 18300 Von Karman Avenue, Suite 930 Irvine, CA 92612	*Attorneys for Real Parties in Interest* John Young and United American Properties, Inc.
Clerk of Court Orange County Superior Court Civil Complex Center 751 West Santa Ana Boulevard Department CX104 Santa Ana, California 92701	

Clerk of Court
4th District Court of Appeal, Division Three
601 W. Santa Ana Blvd.
Santa Ana, California 92701