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July 18, 2018

Acting Presiding Justice Benke and Associate Justices
California Court of Appeal
Fourth Appellate District, Division One
Symphony Towers
750 B Street, Suite 300
San Diego, California 92101

Subject: *Dispatch & Tracking Solutions, LLC v. Orion
Communications, Inc.*
Civil No. D069188
Request for Publication; Opinion filed June 29, 2018

Dear Acting Presiding Justice Benke and Associate Justices:

Pursuant to rule 8.1120 of the California Rules of Court, the California Academy of Appellate Lawyers asks the court to partially publish its opinion filed on June 29, 2018 in the above matter. The Academy believes that, in addition to the Factual and Procedural Background (typed opn. 3-17), sections II.A., II.C. and II.D. of the Discussion (typed opn. 18-41) warrant publication. Those portions of the opinion provide significant guidance to the trial and appellate bench and bar concerning the circumstances under which a trial court may correct an order after the time for appeal has lapsed.

The Academy's Interest

The members of the California Academy of Appellate Lawyers are experienced appellate practitioners. Our common goals include promoting and encouraging sound appellate procedures designed to ensure proper and effective representation of appellate litigants, efficient administration of justice at the appellate level, and improvements in the law affecting appellate litigation.

Academy members regularly confront questions of appealability and finality, including the extent to which the failure to appeal a particular order may have preclusive ramifications. The Academy believes it is important to educate the bar about these matters. The opinion serves that goal.

Reasons for Publication

The question addressed in section II of the opinion’s Discussion seems relatively simple: Did the trial court have power to reconsider its orders denying a motion to add a judgment debtor and granting a motion to tax costs when the losing party did not file a timely appeal?

But, as the opinion reveals, the question isn’t simple. It prompted the court to request supplemental briefing (typed opn. 18) and the answer itself required detailed analysis.

The opinion sets the stage by noting the “tension between two public policies”—the need to avoid miscarriages of justice and the need for finality. (Typed opn. 22.) “Courts have long grappled with the question of a trial court’s authority to correct or modify its prior orders.” (*Ibid.*) The court identifies the analytical “difficulty [that] comes from the various senses in which the word ‘final’ is used with respect to an order or judgment.” (Typed opn. 23.) It then proceeds to discuss seven cases that address different finality scenarios. (Typed opn. 24-32.)

That analysis did not result in an unequivocal answer. After distinguishing many cases, the court relied on the two cases it found to be “closest on point.” (Typed opn. 33-34.) Even then, the decision came down to a policy call. The court ruled that the need for finality outweighed claimed miscarriages of justice: “If a trial court has authority to reconsider such orders after the time to appeal has lapsed, new appealable orders could result each time new facts were offered. There would seemingly be no end to litigation over alter ego issues under [Code of Civil Procedure] section 187.” (Typed opn. 35.)

The court’s ruling following its careful and thorough review of relevant law qualifies the opinion for publication under two criteria of rule 8.1105(c) of the California Rules of Court:

- The opinion “[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions” (Cal. Rules of Court, rule 8.1105(c)(2)), in that it derives its holding by applying the rationale of two class certification cases to the significantly different context of postjudgment motions.
- The opinion’s careful dissection of multiple potentially relevant decisions “[m]akes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.” (Cal. Rules of Court, rule 8.1105(c)(7).)

If published, the court’s analysis will provide comprehensive guidance for future cases involving the kind of uncertainty that the court confronted here. We therefore urge the court to partially publish the opinion as requested above.

Thank you for considering this request.

Respectfully submitted,

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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 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On July 18, 2018, I served true copies of the following document(s) described as **REQUEST FOR PUBLICATION** on the interested parties in this action as follows:

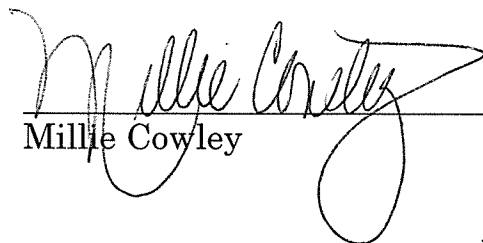
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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that 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.

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 18, 2018, at Burbank, California.



Millie Cowley

SERVICE LIST

Dispatch & Tracking Solutions, LLC et al. v. Orion Communications, Inc. et al.

Case No. D069188

Mark Bailey Clinton Bailey, APC 8865 Research Drive, Suite 200 Irvine, CA 92618	Attorneys for Cross-Complainant and Appellant DISPATCH & TRACKING SOLUTIONS, LLC
Sean T. McGee Stephens Friedland 2603 Main St., Ste. 350 Irvine, CA 92614-5216 sean@sf-lawyers.com	Attorneys for Cross-Complainant and Appellant DISPATCH & TRACKING SOLUTIONS, LLC
Peter R. Afrasiabi Kathryn M. Davis One, LLP East Tower 4000 MacArthur Blvd., Suite 500 Newport Beach, CA 92660 pafrasiabi@onellp.com	Attorneys for Cross-Complainant and Appellant DISPATCH & TRACKING SOLUTIONS, LLC Attorneys for Objector and Appellant SAMEIS HOLDINGS, LLC
Kathryn M. Davis 530 S. Lake Ave., #425 Pasadena, CA 91101 kathryn.davis@kmdavislaw.com	Attorneys for Cross-Complainant and Appellant DISPATCH & TRACKING SOLUTIONS, LLC Attorneys for Objector and Appellant SAMEIS HOLDINGS, LLC
George S. Emblidge Moscone Emblidge & Otis LLP 220 Montgomery St., #2100 San Francisco, CA 94104 emblidge@mosconelaw.com	Attorneys for Cross-Defendant and Respondent TEGSCO, LLC

Kenneth M. Fitzgerald
Fitzgerald Knaier LLP
402 W. Broadway, Ste. 1400
San Diego, CA 92101
kfitzgerald@fitzgeraldknaier.com

Attorneys for Cross-Defendant and
Respondent
ORION COMMUNICATIONS, INC.

Office of the District Attorney
Appellate Division
P.O. Box X-1011
San Diego, CA 92112

Served Via U.S. Mail

Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

Served Via U.S. Mail

Hon. Timothy Taylor
San Diego Superior Court
Hall of Justice
330 W. Broadway, Sixth Floor
Dept. SD-72
San Diego, CA 92101

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