S234269

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

LATRICE RUBENSTEIN,
Plaintiff and Appellant,

vs.

DOE #1,
Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION 1, CASE NO. D066722
HON. JUAN ULLOA, JUDGE, SUPERIOR COURT NO. ECU08107

JOINT ANSWER TO AMICI CURIAE BRIEFS

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INTRODUCTION

In their respective briefs, Amici Curiae California State Association of Counties and League of California Cities (collectively "CSAC") and Northern California Regional Liability Excess Fund, Southern California Regional Liability Excess Fund, Statewide Association of Community Colleges, and School Association for Excess Risk (collectively "ReLiEF") make an argument which is based on a flawed premise—that the discovery rule does not apply to claims arising for childhood sexual abuse, and that they accrue at the time of molestation. It is only under this flawed premise that Amici Curiae can justify both their accusation that *Rubenstein* abolished Government Code, section 905, subdivision (m), and the parade of horribles they portend will ensue. However, when the arguments are peeled back and the cases Amici Curiae rely on are read in their factual contexts, it is clear that *Rubenstein* simply applied the law as enacted by the Legislature, and achieved the appropriate result. This result, in fact, is not just the legally correct outcome, but is also the outcome which fairness to the victims of childhood sexual abuse requires.

While CSAC does not clearly identify what, specifically, it is arguing, it appears from the introduction to its brief that CSAC believes the Court of Appeal's holding allows victims of childhood sexual abuse occurring before January 1, 2009 to bring claims against government entities without complying with the Government Claims Act's six month claim presentation requirement. (CSAC, at pp. 1-2.) ReLiEF more forcefully and clearly articulates the same erroneous contention:

> *Rubenstein* unequivocally nullifies Government Code section 905, subdivision (m), treating pre-2009 abuse claims the same as post-2009 abuse claims, eliminating the well-settled six month claims presentation requirement, and holding that pre-

> 2009 abuse claims may be brought any time within three years of the victim's realization that adult-onset psychological injury was caused by childhood sexual abuse.

(ReLiEF, at p. 10.) This characterization of the Court of Appeal's holding, however, is completely wrong. Indeed, neither the Court of Appeal nor Plaintiff have asserted that Plaintiff was not required to comply with the Government Claims Act's six-month claim presentation requirement, let alone the wholesale "nullification" of Government Code, section 905, subdivision (m). Indeed, as explicitly recognized by the Court of Appeal, Plaintiff actually complied with the Government Claims Act's six month claim presentation requirement. (*Rubenstein v. Doe No. 1* (2016) 245 Cal.App.4th 1037.)

While, CSAC's brief offers little insight into how it reached its conclusion that the Court of Appeal's decision abridges the applicability of the Government Claims Act to claims arising from childhood sexual abuse occurring before January 1, 2009, ReLiEF offers a more full-throated argument.[1] Wasting little time, ReLiEF begins by ringing the well-worn alarm bells, asserting that "the Fourth District Court of Appeal's decision in *Rubenstein v. Doe No. 1* (2016) 245 Cal.App.4th 1037, if it is allowed to stand, will have a catastrophic impact on the continued viability of risksharing pools in California." (ReLiEF, at p. 8.) Making sure that effect of the phrase "catastrophic impact" is not lost on this court, ReLiEF musters a sober assurance that "[t]his is not hyperbole." (Ibid.) As an insurance entity which, by its own account, could be on the hook for some school districts' liability for the harm suffered by their students arising

[1] CAOC's arguments, to the extent there are discernable, are subsumed in the arguments advanced by ReLIEF. As such, Plaintiff will respond to ReLIEF's arguments.

from the sexual abuse and exploitation they are in part responsible for causing, ReLiEF's concerns are explicitly monetarily motivated. (ReLiEF, at pp. 5-11, 36-41.) However, irrespective of whether ReLiEF's hue and cry is hyperbolic, the reasoning underlying its concerns is completely mistaken.

Misportraying as controlling law a number of decisions which, while they involve childhood sexual abuse claims against public entities, do not address the issue present in this case, ReLiEF sets the stage for its argument by appearing to take the indefensible position that childhood sexual abuse accrues at the moment the sexual abuse occurs, irrespective of when the victim "discovers" the abuse. (ReLiEF, at pp. 11-14, 22-27.) With this legal fallacy in hand, ReLiEF reasons that because childhood sexual abuse claims accrue at the time of abuse, the provisions of Code of Civil Procedure,[2] section 340.1, which explicitly provides for delayed discovery of such claims, does not, in fact, affect the date of accrual, but, rather, creates a "tolling mechanism" which delays only the applicability of the statute of limitations. (ReLiEF, at pp. 16, 31.) ReLIEF then reasons that because it only tolls the statute of limitation, section 340.1 does not delay accrual and thus cannot affect the operation of the six-month claim presentation requirement under the Government Claims Act, which begins running upon accrual. (Ibid.) As such, according to ReLiEF's "logic," the six-month period in which victims of childhood sexual abuse must present their claim to the responsible government entity begins to run the instant the victim's abuser finishes sexually molesting the victim.

[2] All undesignated section references are to the Code of Civil Procedure.

Having developed its "instantaneous accrual" theory of childhood sexual abuse, ReLEIF turns to Government Code section 905, subdivision (m), and effectively asserts that all claims against public entities arising from childhood sexual abuse occurring prior to January 1, 2009, accrued at the time of abuse, and are now barred by operation of the Government Claims Act. In a leap of logic that is hard to follow, ReLiEF asserts that to hold otherwise, would effectively abrogate Government Code section 905, subdivision (m), and would expose school districts to a catastrophic amount of potential liability. (ReLiEF, at pp. 9-11, 32-35.)

As now explained, there is no support for ReLiEF's argument.

I.

CLAIMS FOR CHILDHOOD SEXUAL ABUSE DO NOT ACCRUE AT THE MOMENT THE ABUSE ENDS AND AMICI CURIAE FAIL TO CITE ANY AUTHORITY PROVIDING OTHERWISE

ReLiEF's entire argument is premised on the flawed assertion that claims for childhood sexual abuse accrue at the time of molestation *without exception*, but no authority supports such a position. Indeed, as this Court explained in *Quarry v. Doe I* (2012) 53 Cal.4th 945, 963, through the numerous amendments to section 340.1, the legislature "*created its own statutory delayed discovery rule,* evidencing intent to provide a new rule that would ***extend delayed discovery principles*** beyond what had been recognized in the case law. [Citation.]" (Ibid., [emphasis added].) In its discussion, *Quarry* specifically noted that delayed discovery principles are relevant to the accrual of a claim. (*Id.*, at p. 960.) In other words, this

Court has already recognized that the discovery rule may delay the accrual of a claim for childhood sexual abuse.

ReLiEF, however, appears to base its argument on what it identifies as the "language" of the decisions it relies on.[3] (ReLiEF, at p. 23.) Specific to its contention that claims arising from childhood sexual abuse accrue at the time of abuse is the "language" of *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201. However, the legal significance of a decision does not arise from the abstract language of a decision, but from the holding of the court as it arises from the facts of the case and the issues presented. (*Bunch v. Coachella Valley Water Dist.* (1989) 214 Cal.App.3d 203 citing *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2.) Examining the factual context and the issues presented in the cases on which ReLiEF relies clearly reveals that these decisions do not support its position that accrual occurs at the time of molestation without exception.

ReLiEF first articulates its notion of instantaneous accrual by quoting this Court's decision in *Shirk, supra,* 42 Cal.4th 201. Ignoring the broader factual context of the case, ReLiEF focuses on what superficially appears to be a parallel argument raised by the plaintiff there: that her duty to present her claim arose when she discovered her psychological injury was caused by her teacher's sexual abuse. (ReLiEF, at p. 12.) Omitting the

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[3] In her Answering Brief on the Merits, Plaintiff responded to the District's reliance on *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, *V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, and *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, and explained how these decisions were not relevant to the issue of accrual. (Plaintiff's Answering Brief on the Merits, at pp. 25-31.) Without addressing Plaintiff's arguments, ReLiEF parrots the position of the District concerning the purported relevance of these authorities. (ReLiEF, at pp. 22-32.)

first word of the sentence, "Generally," ReLiEF asserts that this Court held that "'a cause of action for childhood sexual abuse accrues at the time of molestation,'...." (ReLiEF, at p. 12.) Beyond being a misquote, ReLiEF's presentation of the context of this "language" is entirely inaccurate.

As discussed in Plaintiff's Answering Brief on the Merits, the dispositive factual issue in *Shirk* that sets *Shirk* apart from the instant matter—which ReLiEF completely ignores—was noted by this Court at the very beginning of its opinion: "Plaintiff acknowledges that because of her failure to present a claim to the School District in 1980, ***her cause of action against the School District was extinguished in 1980.***" (*Shirk, supra*, 42 Cal.4th at pp. 205-207 [emphasis added].) The plaintiff therefore *conceded* that her government tort claim was untimely. As such, her primary argument on appeal was that her claim fell within the 2002 amended provision of Section 340.1 which "revived" for the calendar year 2003 those childhood sexual abuse causes of action on which the statute of limitations had already lapsed. (*Id.* at pp. 210-213.) The Court rejected this argument noting that the revival statute only applied to claims barred by the statute of limitations, and not those barred by a failure to file a government claim. (*Id.*) "Had the Legislature intended to also revive in subdivision (c) the claim presentation deadline under the government claims statute, it could have easily said so. It did not." (*Id.* at p. 213.)

The Court then addressed the plaintiff's "second contention" that "her duty to present a claim to the School District did not arise until September 12, 2003, when, at the age of 41, she first learned from a mental health practitioner that her adult-onset emotional problems resulted from teacher Jones's molestation of her as a teenager, some 25 years earlier." (*Shirk*, 42 Cal.4th at p. 214.) The Court rejected that contention, finding

that the legislature did not intend to revive claims by persons who had recently discovered "a *new injury* attributable to the same predicate facts underlying a cause of action *previously barred* by failure to comply with the government claims statute." (*Id.* at p. 214 (emphasis added).) In other words, the discovery of "adult-onset" harms does not create a second accrual of a claim which the plaintiff had conceded already accrued.

Here, the timeliness of Plaintiff's claim is not based on the discovery of a "new" or "additional" injury. Rather, as alleged, Plaintiff suppressed all memory of the sexual abuse and it was not until early 2012, when the latent memories of the sexual abuse resurfaced for Plaintiff, that she first discovered any injury. Thus, unlike *Shirk*, where the issue addressed was whether an *already accrued and barred claim* can be revived, the issue here is simply when Plaintiff's claim first accrued. Since *Shirk* only considered the issue of whether an already accrued and barred claim "re-accrued" under the 2003 revival period, it's reasoning does not apply to the issue of original accrual of Plaintiff's claim here.

Despite being fully briefed in Plaintiff's Answering Brief on the Merits, ReLiEF fails to appreciate this point. Rather than actually acknowledge the language employed by this Court in *Shirk*, ReLiEF attempts to misportray this Court's discussion in *Shirk* as a rejection of the conclusion reached by the Court of Appeal here: that Section 340.1 applies in determining the *date of initial accrual* for claim filing purposes. But this did not happen. The one paragraph discussion by this Court concerning this issue speaks for itself. In response to the plaintiff's second contention, this Court held:

> We disagree. We concluded earlier that the Legislature's amendment of section 340.1, subdivision (c), revived for the

> year 2003 certain lapsed causes of action against nonpublic entities, but that *nothing in the express language of those amendments or in the history of their adoption indicates an intent by the Legislature to apply against public entity defendants* ***the one-year revival provision*** *for certain causes of action.* (§ 340.1, subd. (c).) In light of that conclusion, it seems most unlikely that the Legislature *also intended revival applicable to persons who discovered only in 2003* ***a new injury*** *attributable to the same predicate facts* underlying a cause of action *previously barred* by failure to comply with the government claims statute.

(*Shirk*, at p. 214 (emphasis added).) Nothing in this one paragraph supports ReLiEF's position that *Shirk* rejected the notion that Section 340.1 governs the date a claim initially accrues for purposes of tort claim filing.[4]

Moreover, ReLiEF's reliance on its misquote of *Shirk*, which in its entirety reads "*[g]enerally*, a cause of action for childhood sexual molestation accrues at the time of molestation[,]" (*Shirk, supra*, 42 Cal.4th at p. 210), is entirely misplaced. This language does not reflect the holding in *Shirk*, nor was it necessary to the holding. Rather, this language was a precatory explanation this Court used to provide the legal context of its subsequent analysis. Moreover, examining the origin of this statement reveals its facile meaning.

In making this statement, *Shirk* cited to *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438. In *John R.*, a student was molested by

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[4] To the extent Amici Curiae argue that Plaintiff's position is akin to the dissenting opinion in *Shirk*, Amici Curiae is again mistaken. (AC pp. 13.) In her dissenting opinion, Justice Werdegar simply acknowledged that a claim may accrue *twice* – once, at the time of the last molestation, and again, when Section 340.1 was amended to include a revival provision. (*Shirk*, at pp. 214-215.) Such an analysis is inapplicable here, and unlike Plaintiff's position before this Court, given that Plaintiff has never conceded that her was *previously barred.*

his teacher while participating in an extracurricular program. The teacher threatened John that if he told anyone he would receive failing grades and the teacher would tell people that John had solicited sex from him. "As a result of these threats, and his embarrassment and shame at what had happened, John did not disclose the incidents to anyone for a number of months. John finally told his father about the molestation 10 months later in December 1981." (*John R.*, 48 Cal.3d at p. 442.)

Before addressing the issue of whether a school district can be vicariously liable for an employee's sexual abuse of a student, the Court addressed the timeliness of the government claim. (*Id.* at p. 443-445.) "The question arises here because plaintiffs did not present a written claim to the district within 100 days of the accrual of their causes of action—*measured from the date that John was molested*— ..." (*Id.* at p. 443 (emphasis added).) The Court explained in a footnote that "[a] cause of action accrues for purposes of the filing requirements of the Tort Claims Act *on the same date* a similar action against a nonpublic entity would be deemed to accrue for purposes of applying the relevant statute of limitations. (Gov. Code, § 901.)" (*Id.* at p. 444, n. 3.)

The Court did not offer any direct explanation for *why* the date of accrual occurred at the time of the last molestation. However, the notion that a tort claim "generally" accrues at the time of injury was recognized by this court in its seminal discussion of the discovery rule in *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 404-05. While this Court formulated a "general rule" for accrual based on the time the elements of the tort were complete in *Norgart*, this Court cautiously explained "*at least as a usual matter*, the date of accrual of a cause of action for wrongful death is the date of death. [Citation.]" (*Id.*, at 404 [emphasis added].) The Court's

caution arose from its acknowledgment that "[a]n exception to the general rule for defining the accrual of a cause of action—***indeed, the "most important" one***— is the ***discovery rule***. [Citation]" (*Id.*, at p. 397.) As this Court explained, the discovery rule "***postpones accrual*** of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]" (*Ibid.*) In *John R.*, the Court did not expressly address the issue of whether delayed discovery applied to delay the date of accrual – presumably because it found that the allegations of threats by the teacher to be sufficient to support application of equitable estoppel, and remanded the matter to the trial court for a factual determination on that issue. (*Id.* at pp. 445-446.)

As important as the discovery rule is to the accrual of tort claims generally, it is impossible to overstate how uniquely important discovery of harm in the context of childhood sexual abuse is. While it is no doubt possible for claims arising from childhood sexual abuse to accrue at the time of abuse, the reality is that the objective facts of childhood sexual abuse demonstrate that a child *most often does not know* he or she is being injured at the time of the sexual abuse. It is only from an adult perspective that the harm from such abuse can usually be recognized such that childhood sexual abuse claims "generally" *do not* accrue at the time of the molestation.

II.

WHETHER OR NOT THE STATUTORILY DEFINED DELAYED DISCOVERY RULE OF SECTION 340.1 GOVERNS THE DATE OF ACCRUAL, *IN THE VERY LEAST*, PRINCIPLES OF COMMON LAW DELAYED DISCOVERY APPLY AND RENDER PLAINTIFF'S GOVERNMENT CLAIM TIMELY

Irrespective of whether section 340.1 provides that claims arising from childhood sexual abuse can accrue following the completion of the sexual abuse, which it unequivocally does, ReLiEF refuses to address the applicability of the common law doctrine of delayed discovery to claims concerning childhood sexual abuse, arguing that the issue was not decided by the Court of Appeal and thus not properly before this Court. (ReLiEF, at p. 29, n. 8.) ReLiEF is mistaken, not only is this issue properly before this court, but it would apply to this case were section 340.1 not already applicable.

The issue of common law delayed discovery is properly before this Court because there was no basis to file a cross-petition; application of the common law delayed discovery rule to the facts here is *not* inconsistent with the Court of Appeal's opinion. (Cal. Rules of Court, rule 8.516(b)(1); *Goldstein v. Superior Court* (2008) 45 Cal.4th 218, 225 [the California Supreme Court "may decide any issues that are raised or fairly included in the petition or answer."].) Indeed, *Rubenstein* specifically noted "delayed discovery principles may apply to a cause of action arising out of childhood sexual abuse." (*Rubenstein, supra,* 200 Cal.Rptr.3d at p. 216, citing *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1239.) While the Court of Appeal correctly concluded that the statutory delayed discovery rule of section 340.1 applied to delay the accrual date for

Plaintiff's claim, the Court *rejected* the District's argument that "the common law delayed discovery doctrine no longer exists for childhood sexual abuse claims after *Quarry*." (*Ibid.*) The Court noted that *Quarry* recognized that the statutory amendment removing reference to common law delayed discovery from Section 340.1 in place of a statutorily defined delayed discovery. This recognition, however, does not foreclose application of the common law delayed discovery doctrine where the statutorily created doctrine does not apply. (*Id., at pp.* 216-217.) Notably, the Court of Appeal largely relied on the decision in *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1239, which underscored the application of delayed discovery to claims for childhood sexual abuse, both as it is set forth in Section 340.1 and arises in common law. (*Ibid.*); see also *K.J., supra*, 172 Cal.App.4th at pp. 1241-1243, see also n. 2 & 7.)

Thus, there was no need for Plaintiff to separately petition this Court on the issue of application of common law delayed discovery, and any analysis of this issue is only offered as an alternative legal basis for the Court of Appeal's holding. Given the overlap between Legislatively created and judicially recognized delayed discovery provisions, and the fact that both support the Court of Appeal's opinion in this case, the issue may properly be considered by this Court.

ReLiEF and the District therefore cannot ignore application of delayed discovery to claims for childhood sexual abuse.

The position taken by the District in its Reply to the Brief on the Merits, and echoed by ReLiEF, that *neither* section 340.1 nor principles of common law delayed discovery apply to child sexual abuse claims is gravely mistaken and indeed, antithetical to the intentions of the Legislature and the interests of the State. (See Reply Brief on the Merits, pp. 23-37.)

Under such an analysis, a student sexually abused by her teacher would be treated *more harshly* than a student injured by equipment on a playground, or by physically assaulted by another student. This makes no sense. The notion that children abused by public employees would be deprived *of any application of the delayed discovery rule* is, to borrow a word repeatedly used by Amici Curiae, "catastrophic" given the vulnerable nature of such abuse and the reality that most victims do not immediately recognize the touching as wrongful.

There is no authority that supports such a position—the very cases cited by the District elsewhere in its brief recognize the application of common law delayed discovery to an analysis of accrual for claim filing purposes. (*See S.M. v. Los Angeles Unified School District* (2010) 184 Cal.App.4th 712, 717 [the accrual date for presenting a government tort claim may be postponed under the delayed discovery doctrine]; *V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 515 ["Courts may equitably apply the delayed discovery doctrine to a cause of action for sexual abuse brought by a minor"]; see also *Curtis T. v. Cty. of Los Angeles* (2004) 123 Cal.App.4th 1405, 1411 [triable issue of fact as to whether delayed discovery rule applied to extend the date of accrual].)

Amici Curiae and the District fail to offer any explanation for its radical contention that children who are sexually abused should be singled out and precluded from relying on the delayed discovery rule. Indeed, it is in the very context of sexual abuse torts against children, where children are often manipulated by those trusted adults in a position of power over the child, that the application of the discovery rule is most appropriate.

Here, Plaintiff's alleged that she repressed all memory of her sexual abuse. Per *Marsha V. v. Gardner* (1991) 231 Cal.App.3d 265, these

allegations are more than sufficient to establish delayed discovery under the common law. (*Id.*, at pp. 271-73, [highlighting that the plaintiff was not alleging "at any time after an act of sexual molestation occurred she forgot *or suppressed* or otherwise was unaware of that act"]; ["[u]nless awareness of the acts is immediately suppressed the plaintiff would necessarily be aware of the injury, and the hidden nature of the full damage would not bring the delayed accrual rule into play."].)

III.

SECTION 340.1 CODIFIES A DISCOVERY RULE WHICH CAN DELAY ACCRUAL, AND DOES NOT ESTABLISH A TOLLING MECHANISM

Equally as unfounded as ReLiEF's childhood-sexual-abuse-accrues-at-the-time-of-abuse theory is its contention that Section 340.1 does not provide a delayed discovery rule, but, rather, creates a "tolling mechanism." As already noted, and explained in Plaintiff's Answering Brief on the Merits, this court specifically refuted this very argument in *Quarry*, supra, 53 Cal.4th 945.

This Court began *Quarry* by described the general principles of the discovery rule: while "[a] cause of action accrues, and the limitations period begins to run, when '"the cause of action is complete with all of its elements"' [citations], ... [u]nder certain circumstances, however, the accrual of the action may be postponed and the running of the limitations period tolled "until the plaintiff discovers, or has reason to discover the cause of action. ..." (*Id.*, at p. 960 .) Reviewing the numerous amendments to section 340.1, this Court explained that the amendments to Section 340.1 "created its own *statutory delayed discovery rule,* evidencing intent to

provide a new rule that would extend delayed discovery principles beyond what had been recognized in the case law." (*Id.*, at p. 965 [emphasis added].)

There is no mistaking this Court's conclusion: section 340.1 provides for delaying the accrual of a claim for childhood sexual abuse. Indeed, this Court explained in *Quarry*: "'The obvious goal of amended section 340.1 is to allow sexual abuse victims a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit against their abusers.' [Citations.]" (*Id.*, at p. 963.)

Bizzarely, even though ReLiEF quotes some of the very language from *Quarry* set forth above, recognizing section 340.1's statutory delayed discovery rule, this directly applicable and contrary authority does nothing to deter ReLiEF from advancing its theory that section 340.1 only establishes a "tolling mechanism." (ReLIEF, at 31.) To support this position, ReLiEF attempts to pull selective quotes from *V.C., supra,* 139 Cal.App.4th 499. (ReLIEF, INTRO and 25-26.) However, a meaningful inspection of *V.C.* reveals that this case does not support this proposition.

As explained in Plaintiff's Answering Brief on the Merits, *V.C.* involved a plaintiff who was sexually molested by her teacher between 2001 and 2003. *(VC.,* 139 Cal.App.4th at p. 504.) The plaintiff s mother had suspected something was going on and discussed the matter repeatedly with school administration. By August 2003, the teacher was criminally charged for his abuse of *V.C.* On September 17, 2004, V.C. presented her claim for damages against the District. After it was rejected, the plaintiff brought her civil action against the school district and the District demurred on the ground that claim was untimely.

Sustaining the demurrer, the court in *V.C.* rejected the plaintiff's argument that Section 340.1 "*sets the date of accrual of her cause of action at or beyond the age of majority,* thereby rendering her claim timely." (*Id.* at p. 509 (emphasis added).) However, the court did not reject this argument because it concluded section 340.1 did not contain a delayed discovery provision. Rather, the *V.C.* court observed that "V.C. confounds the principles of limitations periods and accrual dates." (*Ibid.*) Rather, the Court of Appeal held that while it may categorically extend the statute of limitations date beyond the age of majority, section 340.1 does not categorically extend accrual date beyond the age of majority. (*Id.*, at pp. 509-10.)

Nevertheless, in explaining its holding, the court in *V.C.* employed the following inartfull statements: "section 340.1 extends the time during which an individual may commence a cause of action alleging childhood sexual abuse, it does not extend the time for accrual of that cause of action," and "'[a] civil cause of action for child molestation generally accrues at the time of the molestation'" (*Id.*, at 510.) Despite the seeming expansiveness of this language, which ReLiEF quotes, in the remainder of the paragraph that these quotes are from *V.C.* acknowledges the application of delayed discovery to the very facts of that case. (*Id.*, at 510.) The Court of Appeal explained that "[a]pplied here, the outside date of accrual is August 15, 2003, when Castro was arrested." (*Ibid.*) If, as ReLiEF contends, *V.C.* was holding that 340.1 does not provide for delayed discovery of childhood sexual abuse claims, and that accrual happens at the time of the childhood sexual abuse, then the plaintiff's claims would have accrued at the time she was molested, and not thereafter when her child abusing teacher was arrested. By acknowledging that accrual occurred at

the teacher's arrest, *V.C.* necessarily recognized that the accrual of the plaintiff's claims was delayed beyond the date of abuse, until discovery.

ReLiEF also attempts to rely on *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, to support its position. This case, however, offers no guidance on the issue present here. Rather, as explained in Plaintiff's Answering Brief on the Merits, the issue before the Court in *County of Los Angeles* concerned the applicable *statute of limitations*. The plaintiff argued that "she commenced suit within eight years of attaining the age of majority and thus her action was timely under the statute of limitations applicable to victims of childhood sexual abuse." (*County of Los Angeles*, 127 Cal.App.4th at p. 1266.) Rejecting such a position, the Court explained that "Section 340.1 does not trump the [Government Claims] Act," and that pursuant to the Government Code, the applicable statute of limitations is Section 945.6 (providing that a claim be filed within six-months after the claim accrues). (*Id.* at p. 1269-1270 [emphasis added].) Plaintiff does not argue otherwise. The issue in this appeal concerns accrual, and as admitted by Amici Curiae, *County of Los Angeles* did not concern the issue of accrual. (See ReLiEF, at p. 25 [while Amici Curiae argue that "the court ultimately punted on the accrual issue," this is a mischaracterization as there was nothing to "punt" since accrual was not before the Court].)

As such, ReLiEF's argument that section 340.1 only provides a tolling mechanism, and does not provide for delayed discovery, has no merit.

IV.

GOVERNMENT CODE SECTION 905, SUBDIVISION (M) IS NOT UNDERMINED BY APPLYING THE DELAYED DISCOVERY PROVISION

ReLiEF concludes its statutory arguments with the assertion it raised in its Application to File Amicus Curiae Brief, reasserting that the enactment of Government Code section 905, subdivision (m), definitively establishes that delayed discovery does not apply to claims of childhood sexual abuse occurring before 2009. (ACB at 32-34.) Specifically, ReLiEF asserts that allowing delayed discovery to apply to the six month Government Claims Act claim presentation requirement Plaintiff's claims are subject to would "render[] Government Code section 905(m) superfluous." (ACB 35.) ReLiEF is mistaken.

The untenability of ReLiEF's argument is apparent on the face of the statute itself; the plain language of Government Code, section 905, subdivision (m), says nothing whatsoever about, and has nothing whatsoever to do with, delayed discovery. It stands to reason, then, that the legislative purposes for Section 905, subdivision (m), cannot be undermined by the operation of delayed discovery. Rather, Section 905, subdivision (m), provides that victims of childhood sexual abuse occurring after January 1, 2009 are not required to present a claim pursuant to the Government Claims Act, irrespective of when the claims accrued. Moreover, given that it is not disputed that the sexual abuse of Plaintiff occurred before 2009, Plaintiff is not now arguing, and the Court of Appeal did not below hold,[5] that she is exempt from complying with the six-month

[5] The Court of Appeal correctly concluded that Government Code section 905 (m) has no applicability to the instant matter.

claim presentation requirements of the Government Claims Act. Plaintiff freely acknowledges, and the Court of Appeal correctly observed, that her claims are subject to the six month claim presentation requirements of the Government Claims Act and that she in fact complied with those filing requirements.

Nevertheless, hoping to bootstrap a cosmetic measure of legitimacy into an otherwise fatuous argument, ReLiEF again resurrects its misportrayal of this court's decision in *Shirk*. Based exclusively on this flawed reading of *Shirk*, ReLiEF then attempts to read legislative materials for an unenacted bill—SB 1339—with legislative materials for the bill which was enacted in response to *Shirk*—SB 640—to quixotically infer that "the California Legislature understood *Shirk* to hold that Section 340.1 did not alter the accrual date for the purpose of the claims presentation statute."

Given that, as already discussed, nothing about *Shirk*'s holding speaks to the discovery rule and accrual, ReLiEF's attempt to portray the legislative intent behind Government Code section 905, subdivision (m), fails. Beyond the fact that the holding in *Shirk*'s had nothing to do with accrual, absolutely nothing ReLiEF cites to demonstrates that the Legislature's response to *Shirk* was predicated on the very flawed interpretation of Shirk advanced by ReLiEF.

To begin with, ReLiEF misapprehends the legislative materials it cites to regarding SB 1339. Specifically, ReLiEF fails to note the significance of the word "notwithstanding" in its quote from the Senate Judiciary Committee's analysis of SB 1339: "'existing case law [referring to *Shirk*] holds that, **notwithstanding** [] section 340.1 *and its delayed discovery provisions*, a timely [public entity six-month] claim is a prerequisite to maintaining an action for childhood sexual abuse against a

public entity [school district].' [Citation.]" (ReLiEF, at pp. 32-33 [bold added, italics original].) The use of "notwithstanding" reveals that, contrary to ReLiEF's contention, and consistent with *Quarry*, the Senate Judiciary Committee recognized that decisional law which addressed section 340.1 found a statutory discovery rule within Section 340.1 which can delay accrual for the purpose of determining the operative six-month period for presenting a claim as required under the Government Claims Act.

The next sentence from the Senate Judiciary Committee quoted by ReLiEF—SB 1339 "would 'amend [Government Code] Section 905 to provide that claims against local public entities for the recovery of damages suffered as a result of childhood sexual abuse made pursuant to CCP Section 340 .1 would be exempt from the Government Tort Claims Act and its six-month public entity claim presentation requirement.' [Citation.]" (ReLiEF, at p. 33)—is entirely agnostic to accrual. Rather, building on its "notwithstanding" commentary quoted by ReLiEF, the Senate Judiciary Committee was merely providing in summary form what SB 1339 purported to accomplish: exempting all claims arising from childhood sexual abuse, no matter when the abuse occurred and *no matter when these claims accrued*, from the six-month Government Claims presentation requirement.

Turning to the legislative materials for SB 640, ReLiEF quotes from the Senate Rules Committee discussion of the bill: "Senate Bill 640 did pass and was 'identical to SB 1339 [], except that this bill applies prospectively only, to claims arising out of conduct occurring on or after January 1, 2009 ... [which] should reduce the bill's financial impact on local public entities.' [Citation.]" (ReLiEF, at p. 33.) This quote is again

entirely agnostic to accrual. Rather, building on the Senate Judiciary Committee's description of SB 1339 to include SB 640's single additional limitation reveals that SB 640 sought to exempt all claims arising from childhood sexual abuse which occurred after January 1 2009, *no matter when these claims accrued*, from the six-month Government Claims presentation requirement.

Far from demonstrating that the legislature sought in any way to modify the way childhood sexual abuse claims accrue under Section 340.1, the legislative history ReLiEF cites to only confirms what is clear from its plain statutory language: section 905, subdivision (m) exempts from the six-month government claim presentation requirement claims arising from childhood sexual abuse occurring after January 1, 2009, *notwithstanding* section 340.1 and its delayed discovery provision. Nothing about ReLiEF's argument demonstrates otherwise. Rather, it appears that the Legislature knew exactly what it was doing, and accomplished exactly what it set out to do.

V.

UPHOLDING RUBENSTEIN WILL NOT HAVE A CATASTROPHIC IMPACT ON RISK-SHARING POOLS IN CALIFORNIA BECAUSE RUBENSTEIN DOES NOT ALTER THE OPERATION OF GOVERNMENT CODE SECTION 905, SUBDIVISION (M)

In its final section, ReLiEF's advances the policy argument that upholding *Rubenstein* will wreak havoc on the ability of school districts to participate in risk-sharing pools. The exclusive support for this contention is that the legislature did not anticipate *Rubenstein*. (ReLiEF, at p. 40-41.) But, as is clear from the above discussion, the Court of Appeal's holding in *Rubenstein* does not alter the operation of Government Code section 905, subdivision (m), and is not outside the scope of what the Legislature anticipated.

In fact, *Rubenstein* does not in any way alter, let alone expand, any of the legal rights held by those who were victimized by childhood sexual abuse who may have a claim arising from that abuse against a government entity. As was the case both before and after *Rubenstein*, for those individuals whose claims arise from childhood sexual abuse occurring before January 1, 2009, once they discover or have reason to discover those claims, they must comply with the six month claim presentation requirement of the Government Claims Act. Only for those victims whose childhood sexual abuse occurred after January 1, 2009, would the claims arising from that abuse not be required to comply with the six-month claim presentation requirements.

Beyond not having underlying legal support for its policy argument, even from a policy standpoint, ReLiEF's wide-eyed argument that

upholding *Rubenstein* would cause the risk-sharking pool market to evaporate, (ReLiEF, at p. 40-41) completely misses the mark. Claims arising from Childhood Sexual Abuse represent an injury visited upon a child at a time when they are unable to understand the harm they have been caused. These harms can and do have repercussions for the victims which last a lifetime, a portion of which are undoubtedly bourn also by the community as a whole. The relief these victims are seeking merely alleviates, or attempts to alleviate, the harms they must endure by shifting some monetary portion back onto the government entity which was in part responsible for the injury in the first place. There is nothing inequitable about this.

CONCLUSION

For the foregoing reasons, nothing either Amici Curiae CSAC or ReLiEF justifies overturning the Court of Appeal opinion in this case.

Dated: January 23, 2017

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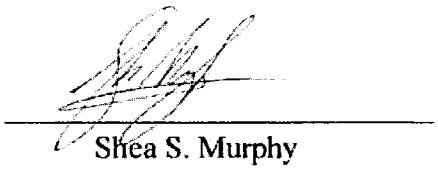
CERTIFICATE OF WORD COUNT

This Appellant's Joint Answer to Amici Curiae Briefs contains 6,443 per a computer generated word count.



Shea S. Murphy

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 234 E. Colorado Blvd., Suite 975, Pasadena, California 91101.

On the date set forth below, I served the foregoing document(s) described as follows: **JOINT ANSWER TO AMICI CURIAE BRIEFS**, on the interested parties in this action by placing ___ the original/ X a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

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☒ BY OVERNIGHT DELIVERY I placed the package for overnight delivery in a box or location regularly maintained at my office or I delivered the package to an authorized courier or driver authorized to receive DOCUMENTS. The package was placed in a sealed envelope or package designated with delivery fees paid or provided for, addressed to the person(s) on whom it is to be served at the address(es) shown above, at the office address(es) as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence.

☒ STATE I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 23, 2017, at Pasadena, California.

Marina Maynez

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