№ S258498

In the

Supreme Court

of the

State of California

JANE DOE,
Plaintiff, Cross-Defendant, Respondent, and Petitioner,

vs.

CURTIS OLSON,
Defendant, Cross-Complainant, and Appellant.

AFTER THE UNPUBLISHED OPINION AFFIRMING
AND REVERSING ANTI-SLAPP ORDERS BY THE
SECOND DISTRICT COURT OF APPEAL, DIVISION EIGHT
№ B286105
HON. MARIA E. STRATTON, ASSOCIATE JUSTICE;
HON. TRICIA A. BIGELOW, PRESIDING JUSTICE; AND
HON. ELIZABETH A. GRIMES, ASSOCIATE JUSTICE

LOS ANGELES COUNTY SUPERIOR COURT
№ SC126806
HON. CRAIG D. KARLAN, JUDGE

CONSOLIDATED ANSWER TO MULTIPLE AMICUS CURIAE BRIEFS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Defendant, Cross-Complainant, and Appellant CURTIS OLSON identifies himself and Plaintiff, Cross-Defendant, Respondent, and Petitioner JANE DOE as the interested parties to this review.

Respectfully submitted,

October 26, 2021 By: /s/ *Robert Collings Little*

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

CALIFORNIA CASES

CALIFORNIA STATUTES

INTRODUCTION

This review suffers from an overarching fiction: that Jane Doe has been forever barred from seeking any remedies against Curt Olson as a verified "survivor" of harassment, violence, or sexual assault by him. From this supposition the amici's brief, if not this review, depend.

But Doe, and so too the amici, neglect to acknowledge that Doe has not been obstructed at all in her legal crusade against Olson. The opposite is true. Soon after this case, Doe filed additional civil harassment restraining proceedings against Olson in September 2017, by duplicating her 2015 claims against Olson. (RJN 032 [Sept. 6, 2017], RJN 118:1–118:17.) After presiding over a multiple day evidentiary trial with 14 testifying witnesses, the Court denied the permanent civil restraining order that Doe requested against Olson. (RJN 210:26-28, 231:16-21, 239.)

Doe's credibility also lacks the unblemished record of verified "survivor" on which the amici's briefs rely. (FVAP 17;[1] RJN 223:14-22.) Nor can Doe be fairly cast as the vulnerable pro. per. litigant amici say she is when she has had full-throated counsel laying out her claims for supposed harassment, stalking, and surveillance in the trial court. (RJN 186:23–197:4.) It cannot be credibly said, as amici do, that Doe has at all been "silenced." (FVAB 45.)

[1] Citations to "FVAB" are to the amicus brief written by the Family Violence Appellate Project et al., and any to "MAB" are to that by Mitchell et al.

With so many concerns involving family law and domestic violence proceedings cited by amici, it is hard to tell from the amici's brief that Doe and Olson do not fit that fact pattern. (E.g., FVAB 38, 40–41, 45–46.) Neither Doe nor Olson have ever claimed they were in any intimate relationship together, so amici's several studies, commentary, and law on domestic violence and families is neither relevant nor appropriately connected to these litigants or this review. (E.g., FVAB 38, 40–41, 45–46.)

Without that leitmotif of Doe as verified "survivor" and Olson as confirmed "abuser," Doe and the amici apparently believe Olson's attempt to hold Doe accountable for disparaging him is something the Court will be more inclined to disable. The litigation privilege, they claim, should prevent Olson cross-claiming against Doe, while Doe and the amici implicitly ask this Court to blind its eyes to Olson having so far turned out to be a victim of groundless accusations by Doe that he vehemently denies. (RJN 239.)

Whatever this Court decides, however, that should be a consideration because its opinion will forever identify Olson as accused of heinous things he not only denies but has previously had to prove untrue. (RJN 035–237, 239.)

LEGAL ANALYSIS AND ARGUMENT

1. Clearly-defined, statutory provisions enacted by the Legislature obviate the need for a common law rule here

Given the expansion of statutory law identified by the amici and enacted by the Legislature, there is no need for an additional common law rule here. California broadly defines conduct that constitutes prohibited sexual harassment and extensively protects victims of sexual violence and harassment. (See, e.g., *Judd v. Weinstein* (9th Cir. 2020) 967 F.3d 952, 956–959 [discussing scope of Civ. Code. § 51.9].)

Olson has never disputed that victims of sexual or domestic violence are entitled to the law's full protection, including the right to seek legally available relief against those who commit sexual, family, or domestic violence. (FVAV 24–35.) But this is a dispute started by Doe which Olson vehemently contends is false. He denies any violence against Doe, though she is now elevated by amici to a proven sexual assault "survivor," while Olson is convicted by her accusation and amici as an "abuser" — something Doe has thus far failed to prove. (See, e.g., RJN 239.)

Just as the Legislature and courts have adopted rules protecting the rights of victims of sexual assault to access the courts and secure adequate legal process and remedies, so too must the falsely accused of sexual assault have protections as a matter of due pro-

cess and public policy. Otherwise, a person falsely accused of sexual assault is victimized by both the accusation and inadequate processes for protecting her or his rights and reputation.

After all, this is not the first time a process has been speedily expanded for a well-meaning purpose to one group of litigants at the eventual expense of fairness to another. Title IX proceedings are but one example. (*Doe v. Claremont McKenna College* (2018) 25 Cal.App.5th 1055, 1070 [reversing judgment on record of inadequate due process to person accused of sexual assault]; *Doe v. Westmont College* (2019) 34 Cal.App.5th 622, 637 [observing credibility of testifying and nontestifying witnesses cannot be determined "on a cold record"].) Even a temporary policy of bias favoring one gender over another in a dispute where the discriminatory motive is not "ingrained or permanent" is still unlawful. (*Doe v. Columbia Univ.* (2d Cir. 2016) 831 F.3d 46, 58, fn. 11.)

California's consideration for sexual and domestic violence victims cannot be providently used to strip away their rights to participate in society as free and autonomous adults. (FVAB 14.) As the amici point out, recent legislative enactments establish extensive protections for victims of sexual and domestic violence and address barriers to seeking relief. (FVAB 28–32.)

Code of Civil Procedure section 1001, for example, prohibits "a settlement agreement that prevents the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding" acts of sexual assault or

other sexual harassment. (Code Civ. Proc., § 1001 (effective Jan. 1, 2019); FVAB 29–30 [discussing STAND Act].)

Civil Code section 1670.11 likewise provides "a provision in a contract or settlement agreement entered into on or after January 1, 2019, that waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract or settlement agreement … is void and unenforceable." (Civ. Code, § 1670.11.) Additional, recently-enacted statutes extend the statutory limitations period in which victims of sexual or domestic violence may seek legal remedies. (FVAB 31–33.)

Because the California Legislature provides the statutory protections that public policy demands for victims of sexual and domestic violence, the Court should resist fashioning a common law rule that, under the guise of benevolent protection, strips victims of violence from voluntarily entering contracts or renders those entered in mediation less valid than other contracts. Doe was not in a family or relationship with Olson, so amici's citation to and reliance on multiple laws, studies, and publications focused on family and domestic violence victims are not relevant. (FVAB 26, fn. 9; 33, fn. 15, 33–34, fn. 16.)

Doe likewise does not categorically belong to the class of "survivors" whom the amici support. No administrative body or judicial tribunal has ever determined any such thing. No court has so ruled. Rather, fully adjudicated litigation between Doe and Olson has instead gone the other way. (RJN 218:10–231:21.)

2. It cannot be truthfully contended that Doe has been prevented from litigating against Olson

Amici contend that the Court of Appeal's ruling "would preclude survivors from allowing the courts to investigate and remedy their harms, further harming survivors that [sic] are meant to be protected, not injured, under these existing public policies." (FVAB 35.)

But it is not true Doe has been prevented from litigating against Olson. The superior court's records show that Doe filed yet more civil harassment restraining order proceedings against Olson in September 2017. (RJN 002–032.) The "temporary" relief was 14 months long. (RJN 032 [Sept. 6, 2017], 028 [Nov. 19, 2018], 239 [Nov. 19, 2018].) After a protracted hearing over multiple days, the Court made its findings of fact and law in November 2018, and it issued a minute order denying Doe a permanent civil restraining order against Olson. (RJN 239; see RJN 218:10–231:21 [findings of fact & conclusions of law].)

3. Doe's, and now amici's requests here, afford neither protection nor remedies for the victims of false accusations of sexual assault

Though Olson contends Doe's allegations violate her freely given contractual promise, amici ask this court to systemically bar Olson — from the very outset of litigation — from ever having any

chance to hold Doe responsible for violating her promise not to disparage him. She can sue him for disparagement. (RJN 121:16-24.) He cannot sue her, however. This one-sided approach prevents Olson from even cross-examining Doe about what the parties intended by what she testified was their "understanding." (RJN 116:9-12.)

The conditions around which Doe made this promise have not been meaningfully adjudicated as amici loosely suggest. (FVAP 21–22, 44.) Amici solemnly claim that the merits were decided against Olson in his anti-SLAPP. But the trial court resolved the second prong "as a matter of law" on the litigation privilege basis. (FVAP 23–24.)

Olson did not argue here that the civil harassment proceedings barred her right to sue, rather he argues her independent agreement not to disparage Olson on this same factual background was enforceable.

As it turns out, the result the amici demand would deprive a remedy for someone who claims they are falsely accused. It has not prevented Doe from seeking omnibus administrative and judicial remedies, so the extent of the California Court of Appeal's ruling against this factual background involving these specific litigants is misstated by amici. (FVAP 23–24.)

Doe is not a destitute or homeless victim. The amici's large swaths of family and domestic violence material obscure her luxury condominium she has rented on Airbnb (RJN 202:3-5), and the fact she is closely connected with a California-barred attorney

assisting her in the litigation between these same parties (RJN 002 [▒▒▒▒▒▒ Law Group P.C., FVAB 51 & 26, fn. 9).

Finally, the amici's quotations from, and reliance on *Oakland Raiders v. Oakland-Alameda County Coliseum, Inc.* (2006) 144 Cal.App.4th 1175, 1187, is misleading. (FVAB 50.) Their first citation is not to a holding of the court, but a description of a position taken by plaintiffs and adopted by a trial judge when instructing a jury on implied waiver, then later found to be error on appeal. Their second citation is to a dissenting opinion without notation. (FVAB 50.)

CONCLUSION

The amici ignore Olson's position here: just as Doe has been free to pursue her accusations against Olson in further litigation, so too should Olson have a chance to freely plead and prove damages for breach of their non-disparagement agreement. An equal opportunity for both litigants is all the Court of Appeal's decision permits, which is why the judgment of the Court of Appeal affirming and reversing the trial court's orders specially striking Olson's cross-complaint should be affirmed.

Respectfully submitted,

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October 27, 2021 By: */s/ Robert Collings Little*

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(CAL. RULES OF COURT, rule 8.520(c))

I, the undersigned appellate counsel, certify this brief consists of 1,792 words, exclusive of the portions specified in California Rules of Court, rule 8.520(c)(1), relying on the word count of the Microsoft Word program used to prepare it.

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Supreme Court of California

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