

In the Supreme Court of the State of California

DON L. MATHEWS, M.F.T., et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of California;
et al.,**

Respondents.

Case No. S240156
SUPREME COURT
FILED

SEP 20 2019

Jorge Navarrete Clerk

Deputy

Court of Appeal, Second District, Division Two, Case No. B265990
Los Angeles County Superior Court, Case No. BC573135
Hon. Michael L. Stern, Judge

SUPPLEMENTAL BRIEF OF THE ATTORNEY GENERAL

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
THOMAS PATTERSON
Senior Assistant Attorney General
*AIMEE FEINBERG (SBN 223309)
Deputy Solicitor General
PAUL STEIN
Supervising Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 210-6003
Aimee.Feinberg@doj.ca.gov
Attorneys for the Attorney General

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The Attorney General respectfully informs the Court of the following authorities issued after the Attorney General's answer brief was filed. (See Rules of Court, rule 8.520, subd. (d)(1).)

1. In *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, this Court addressed whether universities owe a legal duty to protect students from foreseeable harm. Among other arguments, the Court considered whether recognition of such a duty could “deter students from seeking mental health treatment, or being candid with treatment providers, for fear that their confidences would be disclosed.” (*Id.* at 632.) The Court rejected this concern, explaining that psychotherapists’ “duty to warn about patient threats is well established in California.” (*Ibid.*) “Indeed, despite fears that this duty [to warn] would deter people from seeking treatment and irreparably damage the psychotherapist-patient relationship, empirical studies have produced no evidence thus far that patients have been discouraged from coming to therapy, or discouraged from speaking freely once there, for fear that their confidentiality will be breached.” (*Ibid.*, citations and internal quotation marks omitted.)

These conclusions are consistent with this Court's prior rejection of predictions that allowing defined disclosures of therapeutic communications will lead patients to forgo necessary treatment. (See Attorney General Answer Br. at p. 51, discussing *People v. Wharton* (1991) 53 Cal.3d 522, 558.)

2. *People v. Buza* (2018) 4 Cal.5th 658 reaffirmed that, in cases involving government access to personal information, safeguards against wrongful use or disclosure may minimize privacy concerns. (*Id.* at p. 690, discussing *Lewis v. Superior Court* (2017) 3 Cal.5th 561, 576-577.) As explained in the Attorney General's principal brief, mandated reports under the Child Abuse and Neglect Reporting Act are non-public and may be shared only under specified circumstances. (Attorney General Answer Br.

at pp. 20, 45-46; see also *id.* at p. 20 [misdemeanor penalties for violations].) Because the asserted privacy intrusion at issue in this case is “limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged.” (Attorney General Answer Br. at p. 46, quoting *Lewis, supra*, at p. 576.)

3. On October 6, 2017, amendments to Penal Code section 290 were signed into law. (Stats. 2017, ch. 541 (S.B. 384).) Starting on January 1, 2021, the law shortens the length of time that certain offenders will be required to register as sex offenders, including those convicted of misdemeanor violations of Penal Code section 311.11. (See Pen. Code, § 290, subd. (d)(1)(A) (operative Jan. 1, 2021) (10-year minimum registration requirement for certain misdemeanor offenses); *id.*, § 290, subd. (d)(3)(R) (lifetime registration for felony violations of section 311.11 and for other child pornography-related offenses); Attorney General Answer Br. at pp. 15, 49 [discussing registration requirement for offenders convicted of violating section 311.11].)

Dated: September 20, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
THOMAS PATTERSON
Senior Assistant Attorney General

Aimee Feinberg / JF

AIMEE FEINBERG
Deputy Solicitor General
PAUL STEIN
Supervising Deputy Attorney General
Attorneys for the Attorney General

CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL BRIEF OF THE ATTORNEY GENERAL** uses a 13-point Times New Roman font and contains 467 words as counted by the Microsoft Word word-processing program and excluding the caption page and the parts that may be excluded under Rule 8.520(c)(3) of the California Rules of Court.

Dated: September 20, 2019

XAVIER BECERRA
Attorney General of California

Aimee Feinberg / ylf

AIMEE FEINBERG
Deputy Solicitor General
Attorneys for the Attorney General

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Mathews, Don L., et al. v. Xavier Becerra, et al.**
Case No.: **S240156**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On September 20, 2019, I served the attached **SUPPLEMENTAL BRIEF OF THE ATTORNEY GENERAL** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, California 94102-7004, addressed as follows:

Salvatore Zimmitti
Mark Hardiman
Nelson Hardiman LLP
1100 Glendon Avenue 14th Floor
Los Angeles, CA 90024
Counsel for Plaintiffs-Appellants

Superior Court of California
County of Los Angeles
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012-3014

Thomas C. Hurrell
Roderick Sasis
Maria Markova
Hurrell Cantrall, LLP
300 South Grand Avenue, Suite 1300
Los Angeles, CA 90071
Counsel for Defendant-Respondent the LA District Attorney

Court of Appeal of the State of California
Second Appellate District
Division Two
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 20, 2019, at San Francisco, California.

M. Campos
Declarant


Signature