S234269

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOE NO. 1,
Defendant and Petitioner,
v.

LATRICE RUBENSTEIN,
Plaintiff and Respondent

OPENING BRIEF ON THE MERITS

After a Decision From the Court of Appeal of California, Fourth Appellate District, Division One,
Case No. D066722

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Issues Presented

A. Does the Government Code's strictly construed claim presentation deadlines (deadlines requiring presentation of a claim no later than six months after the cause of action's accrual and requiring presentation of an application for leave to present a late claim no later than one-year after accrual) apply regardless of the delayed discovery provisions of Code of Civil Procedure section 340.1 (section 340.1)?

B. In light of the 2008 amendment to Government Code section 905, subdivision (m), where the Legislature - in response to this Court's decision in *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201 (*Shirk*) - eliminated the claim requirement for only those childhood sexual abuse causes of action based on conduct occurring after January 1, 2009, should an adult victim of childhood sexual abuse occurring before January 1, 2009 be barred from suing a government entity if he or she failed to present a claim to the government entity within six months of the abuse?

II.

Introduction And Summary Of Argument

The answer to both issues presented is "yes."

This case is about the interplay between the Government Claims Act (Government Code section 810, et seq.) (Act) and section 340.1 and their competing public policies. The Act requires prompt notice to a government entity of claims against the entity for the purposes of timely investigation, remediation, and fiscal planning. It imposes special, short, and strictly-enforced requirements and deadlines for those wanting to sue a government entity.[1] (See *Shirk, supra*, 42 Cal.4th at p. 213 (discussing policy); *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738 (*City of Stockton*) (same).)

In contrast, section 340.1 creates special, extended limitation periods for adults bringing childhood sexual abuse causes of action against abusers and non-perpetrator third parties. Section 340.1 embodies the recognition that victims of

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[1] For example, before suing a government entity, one must present a claim to the government entity within six months of the cause of action's accrual. (*Shirk, supra*, 42 Cal.4th at pp. 208-209; Government Code §§ 905, 911.2, subd. (a).) Doe provides a detailed discussion of the Act's requirements and deadlines later in this brief.

childhood sexual abuse may not understand, appreciate, or remember the harm they have suffered or the full effects of it until adulthood, and for these reasons, causes of action of this nature warrant extended limitation periods.

The Legislature has weighed the competing policy interests behind the Act and section 340.1 and drew a bright line. In 2009, the Legislature enacted Government Code section 905, subdivision (m) to exempt section 340.1–based childhood sexual abuse causes of action from the Act's claim presentation requirements and deadlines. It did so, however, only for claims based on conduct pre-dating the January 1, 2009 effective date of Government Code section 905, subdivision (m). As demonstrated by precedent, including *Shirk*, and the legislative history of Government section 905, subdivision (m) and an unsuccessful predecessor bill, the Legislature never intended for section 340.1 to alter the *accrual* date of childhood sexual abuse causes of action or the Act's claim presentation requirements and deadlines for childhood sexual abuse causes of action based on conduct predating January 1, 2009.

The Court of Appeal in *Rubenstein v. Doe No. 1* (2016) 245 Cal.App.4th 1037 (*Rubenstein*), failed to apply or even consider

this precedent and clearly undid the Legislature's weighing of the competing policy interests behind the Act and section 340.1. *Rubenstein* held that section 340.1 applies to childhood sexual abuse causes of action against a government entity—even those based on pre-January 1, 2009 conduct—and alters or extends the accrual date for these causes of action for purposes of the Act's claim presentation deadline. (*Id.* at pp. 1045, 1047-1048.)

Not only is *Rubenstein's* holding unprecedented, it is diametrically at odds with clear and settled law to the contrary. *Shirk* and *V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499 (*V.C.*) – decisions the Court of Appeal neither discussed nor cited – both hold that: (1) section 340.1 does not govern the accrual date for childhood sexual abuse causes of action for purposes of the Act's six-month claim presentation deadline; and (2) timely compliance with the Act's six-month claim presentation deadline requires presentation of a claim within six months of the abuse notwithstanding section 340.1.[2]

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[2] The Court of Appeal's failure to acknowledge the existence of *V.C.* and *Shirk* is troubling. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 (intermediate court must follow decisions of higher court); *In re Hansen* (2014) 227 Cal.App.4th 906, 918 (intermediate court should follow decisions of other intermediate court absent a good reason).) The Court of

(*Shirk, supra*, 42 Cal. 4th at pp. 210-214 (notwithstanding section 340.1, childhood sexual abuse cause of action accrues for purposes of the Act's six-month claim presentation deadline when the abuse occurs; Legislature never intended section 340.1 to override the Act's claim filing deadlines or to revive causes of action against government entities previously barred for failing to comply with the Act's six-month claim presentation deadline); *V.C., supra*, 139 Cal.App.4th at pp. 508-512 (section 340.1 extends the time for one to commence a lawsuit for childhood sexual abuse but does not alter the accrual date, which is when the abuse occurred; Legislature never intended for section 340.1 to trump the Act's six-month claim presentation deadline)[3]; see also *County of Los Angeles, supra,* 127 Cal.App.4th at pp. 1268-1269 ("In 1998, the Legislature amended section 340.1 to permit victims of childhood sexual abuse to sue persons or entities other

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Appeal surely should have explained why it was not bound by *Shirk* and what good reason existed not to follow *V.C.*

[3] Review was granted in *Shirk* to resolve a conflict between the lower court's opinion (the same Court of Appeal involved here) and *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263 (*County of Los Angeles*). (*Shirk, supra*, 42 Cal.4th at pp. 206-207.) Since *Shirk* did not mention *V.C.*, Doe notes that a review of this Court's dockets reveals that briefing in *Shirk* was complete before *V.C.* was decided.

than the actual abuser. [Citation.] . . . [Citations.] To the extent that section 340.1 now authorizes suits against a person or entity other than the actual perpetrator, nothing in that statute or the legislative history of the 1998 amendment to that statute reflects an intent on the part of the Legislature to excuse victims of childhood sexual abuse from complying with the Act when the defendant is a public entity or public employee".)[4]

Additionally, *Rubenstein* ignored the importance of legislative action subsequent to *Shirk* and *V.C.* Recognizing that *Shirk* held that the Act mandated the presentation of a claim within six months of the last act of abuse regardless of repressed memories or delayed discovery, the Legislature addressed *Shirk's* impact by amending Government Code section 905 to add subdivision (m). Effective January 1, 2009, Government Code section 905, subdivision (m) exempts from the Act's claim presentation requirements "[c]laims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages

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[4] In *County of Los Angeles*, the Court of Appeal held that the Government Code section 945.6's six-month statute of limitations for filing suit after a government entity rejects a claim, and not section 340.1's extended limitation periods, governs the timeliness of an action for childhood sexual abuse. (*County of Los Angeles, supra,* 127 Cal.App.4th at pp. 1266, 1268-1270.)

suffered as a result of childhood sexual abuse." (Government Code § 905, subd. (m).) Critical to the issues presented in this case, the Legislature expressly limited the claim exemption "only to those claims arising out of conduct occurring on or after January 1, 2009." (*Ibid.*)

The Legislature initially proposed a bill that would completely undo *Shirk* (and *V.C.*) by exempting from the Act's claim presentation requirement and its six-month deadline all childhood sexual abuse causes of action no matter when the abuse occurred. (See Senate Bill No. 1339 (2007-2008 Reg. Sess.).) But the bill that eventually passed and established Government Code section 905, subdivision (m) drew a bright line - for fiscal policy reasons - exempting from the Act's claim presentation requirement and six-month deadline only those childhood sexual abuse causes of action based on conduct occurring after January 1, 2009. (Senate Bill No. 640 (2007-2008 Reg. Sess.), as amended July 14, 2008.) By choosing not to exempt all childhood sexual abuse causes of action from the Act's claim presentation requirement and its six-month deadline, the Legislature approved, accepted and reaffirmed the holdings in *Shirk* and *V.C.* and confirmed that the Act requires a claim for

childhood sexual abuse based on pre-January 1, 2009 conduct to be presented within six months of the last abuse.

The impact of *Rubenstein* cannot be underestimated. Under *Rubenstein*, section 340.1 indefinitely extends the Act's six-month claim presentation deadline for childhood sexual abuse causes of action against government entity defendants because section 340.1, subdivision (b)(2) has no outside age limitation. Under *Rubenstein*, a 65 year-old timely complies with the Act's six-month claim presentation deadline for abuse occurring 50 years earlier if the claim is presented to the government entity within six-months of discovering the abuse. Such a result drastically circumvents the public policy reasons behind the Act's claim presentation requirement and deadlines and the need to treat government entities different than private entities. (See *City of Stockton, supra,* 42 Cal.4th at p. 738 (discussing policy for requiring claim); *Shirk, supra,* 42 Cal.4th at p. 213 (same).)

Doe No. 1 (Doe) recognizes requiring presentation of a claim within six months of the last abuse and requiring an application for leave to present a late claim within a year of the abuse for pre-January 1, 2009 conduct will leave some victims of childhood sexual abuse without a remedy. But the Legislature is

in the best position to balance the interests of government entities, the public in general, and victims of childhood sexual abuse. Indeed, "[t]he Legislature is charged with balancing the interests of persons and third party defendants." (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 983 (*Quarry.*) Any further alteration to this balance must come from the Legislature. (See *Estate of Horman* (1971) 5 Cal.3d 62, 77 ("Court's do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature."); *Vergara v. State* (2016) 246 Cal.App.4th 614, 644 ("Policy judgments underlying a statute are left to the Legislature; the judiciary does not pass on the wisdom of legislation.").)

III.

Factual And Procedural Statement

A. Doe returned as untimely Rubenstein's 2012 claim for childhood sexual abuse and denied Rubenstein's application for permission to present a late claim

In June 2012, Rubenstein, 34 years old at the time, presented a claim to Doe alleging sexual abuse in 1993 and 1994 (when she was 15 or 16) by a volunteer track coach. (Clerk's Transcript, Volume 1, pages 136-137 (1 CT 136-137).)

Rubenstein alleged in her 2012 claim that she discovered repressed memories of the 1993 and 1994 sexual abuse within the prior six months. (1 CT 136.) In August 2012, Doe returned Rubenstein's claim as untimely. (1 CT 140.)

In September 2012, Rubenstein sought permission from Doe to present a late claim. (1 CT 142.) Rubenstein asserted that section 340.1, subdivision (a) rendered her claim timely because she presented her claim within six months of discovering the previously repressed memories of the 1993 and 1994 abuse. (1 CT 142.) Doe denied Rubenstein's application. (1 CT 145.)

B. The trial court granted Rubenstein relief from the Act's claim presentation requirements

In March 2014, Rubenstein petitioned the trial court for relief from the Act's claim presentation requirements.[5] (1 CT 080-096.) Rubenstein declared she was sexually and psychologically abused by her track coach in 1993 and 1994 when she was a minor, and that the abuse included sexual intercourse. (1 CT 090.) She further declared counseling she received in

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[5] This actually was Rubenstein's second petition for relief. Rubenstein previously filed one in December 4, 2012, along with a complaint against Doe and others (1 CT 001-019.) But Rubenstein dismissed her complaint without prejudice on March 14, 2013 before her petition for relief was heard. (1 CT 025-032, 044-051, 066.)

February 2012 caused her memories of the abuse to resurface. (1 CT 090.) Rubenstein argued section 340.1, subdivision (a) rendered her June 2012 claim to Doe timely because it was presented within six months of the February 2012 resurfacing of the repressed memories. (1 CT 087-088.)

Opposing Rubenstein's petition, Doe argued that Rubenstein's claim accrued for purposes of the Act's six-month claim presentation deadline when she was last abused in 1994, and section 340.1, subdivision (a) did not extend the Act's six-month claim presentation deadline or the Act's one-year late claim application deadline. (1 CT 099-105.) Doe further argued the trial court lacked jurisdiction to grant Rubenstein relief because more than a year passed since the 1994 accrual of Rubenstein's cause of action. (CT 099-105.)

In August 2013, the trial court granted Rubenstein's petition. (1 CT 161-163.) The trial court found Rubenstein's June 2012 claim timely presented because her cause of action accrued under section 340.1, subdivision (a) when her memories of the 1993 and 1994 abuse resurfaced in February 2012. (1 CT 161-163.)

C. Rubenstein's first amended complaint

In May 2014, Rubenstein filed her first amended complaint alleging three negligence causes of action against Doe and others. (2 CT 361-368.) Rubenstein alleged her volunteer high school track coach sexually abused her in 1993 and 1994 and she repressed the memories of the abuse until early 2012. (2 CT 361, 363.) Rubenstein alleged Doe knew or should have known the volunteer coach would have abused minors and knew or should have known he was abusing Rubenstein, yet did nothing to prevent the abuse from occurring. (2 CT 364, 365, 366.)

D. Trial court sustained Doe's demurrer without leave to amend because Rubenstein did not and could not timely comply with section 340.1's certificate of merit requirements

In August 2014, the trial court sustained without leave to amend Doe's demurrer concluding that Rubenstein failed to comply with section 340.1's certificate of merit requirements and could not timely correct this defect.[6] (2 CT 531-535.).

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[6] A plaintiff over 26, like Rubenstein, "shall file certificates of merit as specified in subdivision (h)." (Code of Civil Procedure § 340.1, subd. (g).) "[T]he purpose of the certificates of merit requirement is to impose 'pleading hurdles aimed at reducing frivolous claims.' (Sen. Com. on Judiciary, 3d reading analysis of Sen. Bill No. 108 (1989–1990 Reg. Sess.) as amended Aug. 15, 1990, p. 5.)" (*Jackson v. Doe* (2011) 192 Cal.App.4th 742, 752; *McVeigh v. Doe 1* (2006) 138 Cal.App.4th 898, 903-904

E. Court of Appeal held that section 340.1 governs the accrual date of Rubenstein's childhood sexual abuse cause of action against Doe for purposes of the Act's six-month claim presentation deadline and determined that Rubenstein timely complied by presenting her claim within six months of discovering repressed memories of the abuse

Rubenstein argued on appeal that the trial court improperly sustained Doe's demurrer without leave to amend because she complied or could still timely comply with section 340.1's certificate of merit requirements. Doe disagreed but argued, alternatively, that a judgment of dismissal was proper despite any trial court error because the trial court lacked jurisdiction to grant Rubenstein's petition for relief from the Act's claim presentation requirements. Thus, any trial court error in sustaining the demurrer without leave to amend on the certificate of merit issue was not prejudicial.

Rejecting Doe's argument "that the trial court lacked jurisdiction to grant a Government Code section 946.6 petition" the Court of Appeal held "that the statutory delayed discovery rule of [ ] section 340.1 applie[s] to delay the accrual date of plaintiff's action for childhood sexual abuse. (Code Civ. Proc.,

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(certificates of merit requirement serves "to prevent frivolous and unsubstantial claims").)

section 340.1, subd. (a))." (*Rubenstein, supra*, 245 Cal.App.4th at p. 1043.) According to the Court of Appeal:

> The accrual date for claim filing purposes is the same as the accrual date for a corresponding civil cause of action. (Gov. Code, § 901.) Code of Civil Procedure section 340.1 sets forth the limitations period for filing an action for childhood sexual abuse. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 952 (*Quarry*).) Thus, section 340.1 governs the accrual date for claim filing purposes.

(*Id.* at p. 1045.)[7] Relying on the "statutory delayed discovery rule in section 340.1" and its provisions rendering an action timely commenced against an entity like Doe within three years of discovering that psychological injuries were caused by childhood sexual abuse, the Court of Appeal found the claim Rubenstein presented to Doe in June 2012 was timely because she presented it within six months of her February 2012 discovery of her repressed memories of the 1993 and 1994 sexual abuse. (*Id.* at 1047-1048.)

Rejecting Doe's argument that the enactment of Government Code section 905, subdivision (m) supported the conclusion that section 340.1 does not alter or delay the Act's six-

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[7] The Court of Appeal also held the trial court erred on the section 340.1 certificate of merit issue. (*Rubenstein, supra*, 245 Cal.App.4th at pp. 1049-1057.) Doe did not seek review on this issue and does not discuss it.

month claim presentation deadline for claims based on pre-January 1, 2009 conduct, the Court of Appeal said:

> Although not relevant here, it is important to note that in 2008 the Legislature added subdivision (m) to Government Code section 905, to provide an exception to the claim presentation requirement for childhood sexual abuse claims arising out of conduct occurring on or after January 1, 2009. Because the conduct in this case occurred in 1994, this amendment does not apply. Nonetheless, we agree with an observation made by the *K.J.* court that the amendment appears 'declaratory of existing law to the extent that it applies the delayed discovery doctrine to the accrual of a cause of action brought by an adult plaintiff against a public entity for childhood sexual abuse.' (*K.J., supra,* 172 Cal.App.4th at p. 1234, fn. 2.)[8]

(*Rubenstein, supra,* 245 Cal.App.4th at p. 1046.)[9]

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[8] *K.J. v. Arcadia Unified Sch. Dist.* (2009) 172 Cal. App. 4th 1229.

[9] In her answer to Doe's petition for review, Rubenstein argued the Court of Appeal correctly determined her claim was timely under common law delayed discovery. As Doe explained in its reply, and as is evident from the decision, the Court of Appeal relied solely on section 340.1's delayed discovery provisions and not on common law delayed discovery. Indeed, the Court of Appeal noted that this Court in "*Quarry* eliminated the common law delayed discovery doctrine for childhood sexual abuse claims." (*Rubenstein, supra*, 245 Cal.App.4th at p. 1047; see *Quarry, supra*, 53 Cal.4th at pp. 983-984 (discussing that the Legislature's 1994 elimination of reference to common law delayed discovery in section 340.1 reflected an intention "that common law delayed discovery principals should [not] apply to cases governed by section 340.1").) Doe anticipates Rubenstein will argue in her merits brief that common law delayed discovery renders her claim timely. Because the Court of Appeal did not rely on common law delayed discovery, and Rubenstein did not present that issue in her answer as an additional issue for

Doe sought rehearing, pointing out to the Court of Appeal that its conclusion that "section 340.1 governs the accrual date for claim filing purposes" was unsupported by any precedent and, in fact, conflicted with *V.C.* and *Shirk*, neither of which were discussed nor even cited. Doe also explained that Government Code section 905, subdivision (m) was not declarative of existing law but was rather enacted to address *Shirk*. The Court of Appeal denied rehearing. This Court granted review.

IV.

Section 340.1's Delayed Discovery Provisions Do Not Govern The Accrual Date Of Childhood Sexual Abuse Causes Of Action For Purposes Of The Act's Six-Month Claim Presentation Deadline

Precedent and subsequent legislative action amending Government Code section 905 in response to *Shirk* establish that section 340.1's delayed discovery provisions do not govern the accrual date of Rubenstein's childhood sexual abuse cause of action for purposes of the Act's six-month claim presentation deadline. Thus, notwithstanding section 340.1 and Rubenstein's allegation that she presented her June 2012 claim within six months of discovering her repressed memories of the 1993 and

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review, issues regarding common law delayed discovery, to the extent they even exist, are not presently before this Court.

1994 abuse, Rubenstein's failure to present her claim and seek permission to present a late claim within, respectively, six months and one-year from the last abuse in 1994 bars her action against Doe.

An overview of the relevant statutory schemes is helpful in demonstrating this point.

A. The Act's claim presentation requirement and deadlines are policy-based and strictly construed

Government entity liability is governed by the Act. (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 989 (*DiCampli-Mintz*).) The Act's intent is "not to expand the rights of plaintiffs against government entities. Rather, the intent of the [A]ct is to confine potential governmental liability to rigidly delineated circumstances." (*Id.* at p. 991 (internal quote and cites omitted); accord *Metcalf v. County of San Joaquin* (2008) 42 Cal. 4th 1121, 1129.)

The Act contains a pre-lawsuit claim presentation requirement. Unless specifically exempted, "[b]efore suing a public entity, the plaintiff must present a timely written claim for

damages to the entity."[10] (*Shirk, supra*, 42 Cal.4th at p. 208.) "Since 1988, such claims must be presented to the government entity no later than six months after the cause of action accrues." (*Ibid.*) The six-month period is not tolled for minority. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 444 fn.3 (*John R.*); *V.C., supra*, 139 Cal.App.4th at p. 508; Code of Civil Procedure § 352, subd. (b).)[11] After six months, a claimant may seek permission from the government entity to present a late claim but must do so within a year of the cause of action's accrual. (Government Code §§ 911.4, 946.6; *County of Los*

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[10] As already noted, Government Code section 905, subdivision (m) excludes from the Act's claim presentation requirement childhood sexual abuse causes of action brought under section 340.1 for post-January 1, 2009 conduct. (Government Code section 905, subd. (m).) Because the conduct at issue here occurred prior to January 1, 2009, Rubenstein remained subject to the Act's claim presentation requirement and its six-month claim presentation deadline.

[11] Code of Civil Procedure section 352, subdivision (a) provides that the time under which a plaintiff is a minor or incapacitated is excluded from calculating the limitation period in which a plaintiff must commence an action. But subdivision (b) of section 352 provides that the tolling provisions of subdivision (a) do not apply to causes of action against government entities where the Act requires presentation of a claim. (Code of Civil Procedure § 352, subd. (b); see also Code of Civil Procedure § 352.1, subds. (a),(b) (tolling of the limitations period during the time a plaintiff is incarcerated does not apply to causes of action against government entities).)

Angeles, supra, 127 Cal.App.4th at p. 1272.) The one-year period is not tolled for minority. (Government Code § 911.4, subd. (c)(1).) If the government entity rejects an application to present a late claim, the claimant can petition the court for relief from the Act's claim presentation requirement and deadline. (Government Code § 946.6.) However, a court lacks jurisdiction to grant the petition if the application to present a late claim was made more than a year after the cause of action accrued. (*County of Los Angeles, supra*, 127 Cal.App.4th at p. 1272; *Brandon G. v. Gray* (2003) 111 Cal.App.4th 29, 34.)

"Accrual of the cause of action for purposes of the [Act] is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants." (*Shirk, supra*, 42 Cal. 4th at pp. 208-209; Government Code § 901.) "Generally, a cause of action for childhood sexual molestation accrues at the time of molestation. [Citations]." (*Shirk, supra*, 42 Cal. 4th at p. 210; see *John R., supra*, 48 Cal.3d at p. 443; *Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal. App. 4th 953, 961.) "As explained in *John R.*, the time of accrual is particularly significant in the context of the claims statutes. (*John R., supra*, 48 Cal.3d at p. 444.) This is

because contrary to the general rule that the time during which the individual who sustained injury is a minor 'is not part of the time limited for the commencement of the action' (Code Civ. Proc., § 352, subd. (a)), the time of minority is counted in determining whether a claim was timely presented following accrual of a minor's cause of action against a public entity. (Code Civ. Proc., § 352, subd. (b); Gov. Code, § 911.4, subd. (c)(1); *John R., supra*, at p. 444, fn. 3; [citation]." (*V.C., supra*, 139 Cal. App. 4th at p. 508.)

The Act's claim presentation requirement and deadlines are strictly construed. (See *Shirk, supra*, 42 Cal.4th at p. 209.) "Timely claim presentation is not merely a procedural requirement" but rather "a condition precedent to plaintiff's maintaining an action against [the public entity] defendant." (*Ibid.* (internal quotes and cites omitted); see *id.* at p. 213 ("the government claim presentation deadline is not a statute of limitations").) The "failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a lawsuit against that entity." (*DiCampli-Mintz, supra*, 55 Cal. 4th at p. 990 (internal quotes and cites omitted).)

The Act's claim presentation requirement and strict deadlines are grounded in public policy. As this Court has recognized, "[r]equiring a person allegedly harmed by a public entity to first present a claim to the entity, before seeking redress in court, affords the entity an opportunity to promptly remedy the condition giving rise to the injury, thus minimizing the risk of similar harm to others", (*Shirk, supra*, 42 Cal. 4th at p. 213), and "enable[s] . . . fiscal planning for potential liabilities." (*City of Stockton, supra*, 42 Cal.4th at p. 738; see also Recommendation: Claims, Actions and Judgments Against Public Entities and Public Employees (Dec. 1963) 4 Cal. Law Revision Com. Rep. (Jan. 1963) pp. 1008-1009 ("[p]rompt notice" ensures "prompt investigation and opportunity to repair or correct the condition which gave rise to the claim").)

Significantly, "[t]he requisite timely claim presentation before commencing a lawsuit also permits the public entity to investigate while tangible evidence is still available, memories are fresh, and witnesses can be located. [Citations.] *Fresh notice of a claim permits early assessment by the public entity, allows its governing board to settle meritorious disputes without incurring the added cost of litigation, and gives it time to engage*

in appropriate budgetary planning." (*Shirk, supra*, 42 Cal.4th at p. 213 (emphasis added).) "The notice requirement under the government claims statute thus is based on a recognition of the *special status of public entities, according them greater protections than nonpublic entity defendants*, because unlike nonpublic defendants, *public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers.*" (*Ibid.* (emphasis added).)

B. Section 340.1 and its limitation period for childhood sexual abuse causes of action is at odds with the Act's Purpose

Prior to 1986, the limitation period for an action asserting injuries from sexual abuse was one year. (*Shirk, supra*, 42 Cal.4th at p. 207.) Section 340.1 was enacted in 1986, and extended to three years the limitation period for a sexual abuse cause of action against a relative or household member to a child under 14. (*Ibid.*) In 1990, the Legislature amended section 340.1 making it applicable to any abuser and also extended the limitation period to eight years from the age of majority (age 26) or three years from the date one discovers or should have discovered that psychological injury or illness occurring after age 18 was caused by the sexual abuse. (*Ibid.*) In 1994, section 340.1

was again amended to revive causes of action that had lapsed prior to January 1, 1991. (*Ibid.*)

In 1998, the Legislature for the first time authorized actions under section 340.1 against third party defendants (non-perpetrators) requiring these actions be brought before age 26 regardless of whether the claims had been discovered. (*Quarry, supra*, 53 Cal.4th at pp. 965-966; *Shirk, supra*, 42 Cal.4th at p. 208.) By imposing an absolute age limit of 26, the Legislature struck a balance between the interests of victims and the purpose behind statutes of limitations. (*Quarry, supra*, 53 Cal.4th at pp. 966-967; see also *Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 777 (statutes of limitations reflect important policies against the prosecution of stale claims where documents have been lost or destroyed, memories have faded and witness have died).) These third party defendants were: (1) a person or entity owing a duty of care to the plaintiff and whose wrongful or negligent act caused the childhood sexual abuse; and (2) a person or entity whose intentional act caused the childhood sexual abuse. (*Quarry, supra*, 53 Cal.4th at p. 965.) In 1999, the Legislature amended section 340.1 to clarify that the 1998

amendments were prospective only. (*Id.* at p. 966; *Shirk, supra*, 42 Cal.4th at p. 208.)

In 2002, the Legislature again amended section 340.1. In doing so, the Legislature created a new "subcategory" of third party defendants that, going forward, would not receive the benefit of the absolute age 26 cut-off date. (*Quarry, supra*, 53 Cal.4th at pp. 968-969.) This new subcategory of third party defendants were those that knew or should have known of sexual abuse by an employee or agent and failed to take reasonable measures to prevent the sexual abuse. (*Ibid.*) The 2002 amendment eliminated the absolute age 26 cut off for these new defendants, allowing an action to be brought by any plaintiff regardless of age provided it was commenced within three years of discovery. (*Id.* at pp. 969-970.)

At no time since section 340.1's enactment in 1986 has the statute ever specifically referred to a government entity or referenced its impact on the Act's claim presentation requirement and deadlines. (See *Quarry, supra*, 52 Cal.4th at pp. 960-972; *Shirk, supra,* 42 Cal.4th at pp. 207-208.)

C. Section 340.1 does not govern or impact when childhood sexual abuse causes of action accrue for purposes of timely compliance with the Act's claim presentation deadlines

1. Section 340.1 does not control when childhood sexual abuse causes of action accrue because it is a statute of limitations

A statute of limitations governs the time in which one has to commence a lawsuit after the cause of action accrues. (*Shirk, supra,* 42 Cal.4th at pp. 211-212; *V.C., supra*, 139 Cal.App.4th at pp. 509-510; see Code of Civil Procedure § 350 ("An action commences upon the filing of a Complaint.").) A cause of action accrues when all its elements are complete. (*V.C., supra*, 139 Cal.App.4th at p. 510; see *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 ("cause of action accrues 'when [it] is complete with all of its elements'—those elements being wrongdoing, harm, and causation").)

Section 340.1 is a statute of limitations. (*Shirk, supra,* 42 Cal.4th at p. 207 ("Section 340.1 [ ] sets forth deadlines for bring a lawsuit for childhood sexual abuse"); *County of Los Angeles, supra*, 127 Cal. App. 4th at p. 1268 ("Section 340.1 sets forth a special statute of limitations for victims of childhood sexual abuse."); *Boy Scouts of Am. Nat'l Found. v. Superior Court* (2012) 206 Cal. App. 4th 428, 433 ("Section 340.1 provides the

limitations periods for civil actions arising from childhood sexual abuse.").) Section 340.1 thus governs the time for one to *commence* an action for childhood sexual abuse *after it accrues.* (See Section 340.1, subd. (a) ("In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for *commencement of the action* . . . . "(emphasis added)); *Quarry, supra*, 53 Cal.4th at p. 952 ("Section 340.1 governs the period within which a plaintiff must bring [or commence] a tort claim based upon childhood sexual abuse.").)

Thus, section 340.1 in no way changes the rule that childhood sexual abuse causes of action accrue at the time of the abuse. (*Shirk, supra*, 42 Cal.4th at p. 201; *John R., supra*, 48 Cal.3d at p. 443; *Doe, supra*, 247 Cal.App.4th at p. 961.) As aptly observed in *V.C.,* "*while 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.* Rather, as cases decided both before and after the enactment of section 340.1 have confirmed, '*[a] civil cause of action for child molestation generally accrues at the time of the molestation.*' [Citations]." (*V.C., supra*, 139 Cal.App.4th at p. 510 (emphasis added); see *Doe v. City of Los* Angeles (2007) 42

Cal.4th 531, 536 ("[S]ection 340.1 [ ] extends the statute of limitations..."); see also *Shirk, supra*, 42 Cal.4th at pp. 210-212.) Stated another way, section 340.1 delays, suspends or tolls the running of the limitation period (or deadline) for commencing a childhood sexual abuse cause of action but does not alter the cause of action's accrual date. Under Section 340.1, the cause of action accrues when the last abuse occurs, (*Shirk, supra*, 42 Cal.4th at p. 201), but the plaintiff's deadline (or limitation period) for commencing a civil action is suspended or tolled while the plaintiff is between 18 and 26 years old or delayed or tolled until plaintiff discovers the injury the abuse caused, and in that case, begins to run for another three years.[12]

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[12] By giving a plaintiff eight years from majority to commence an action for childhood sexual abuse, section 340.1 works just like Code of Civil Procedure section 352, subdivision (a). Code of Civil Procedure section 352, subdivision (a) suspends a plaintiff's limitations period for causes of action against non-public entity defendants from the time of accrual until the time plaintiff reaches age 18. (Code of Civil Procedure § 352, subd. (a); *Alcott Rehab. Hosp. v. Superior Court* (2001) 93 Cal.App.4th 94, 101; see Code of Civil Procedure § 352, subd. (b) (tolling provision does not apply to causes of action against public entities and employees where the Act requires presentation of a claim).) Section 340.1 thus picks up where Code of Civil Procedure § 352, subdivision (a) leaves off, further suspending the limitations period for childhood sexual abuse causes of action after age 18.

2. ***V.C.* and *Shirk* establish that the Legislature never intended for section 340.1 to impact when childhood sexual abuse causes of action accrue for purposes of the Act's claim presentation deadlines**

a. ***V.C.***

In *V.C.*, the plaintiff was molested by a teacher between 2001 and 2003 when she was between the ages of 11 and 13. (*V.C., supra*, 139 Cal.App.4th at p. 504.) The perpetrator was arrested on August 15, 2003. (*Ibid.*) The plaintiff presented her claim to the school district on September 17, 2004, which was rejected as untimely. (*Id.* at p. 505.) On October 4, 2004, the plaintiff submitted an application to present a late claim, which was denied as untimely. (*Ibid.*) In December 2004, the plaintiff filed a complaint and a petition for relief from the Act's claim presentation requirement and deadlines. The trial court denied the petition and sustained without leave to amend the defendant's demurrer to the plaintiff's complaint, concluding she failed to timely present the claim to the district. (*Ibid.*)

As she did in the trial court, on appeal, the plaintiff argued that section 340.1 solely governed the limitations period for filing her complaint and that she was entitled to rely on that provision without regard to the Act's claims filing requirement. (*V.C.,*

supra, 139 Cal.App.4th at p. 506.) The plaintiff asserted that her claim was timely under section 340.1 because "her cause of action had not yet accrued, and would accrue, at the earliest, when she reached the age of majority." (*Id.* at p. 509.) The Court of Appeal disagreed.

The Court of Appeal first observed that the plaintiff was "confound[ing] the principals of limitation periods with accrual dates" when arguing section 340.1 controls the accrual date of her childhood sexual abuse cause of action. (*V.C., supra,* 139 Cal.App.4th at p. 509.) This is because section 340.1 does not establish an accrual date, but only a limitation period to bring a lawsuit after accrual. (*Id.* at pp. 509-510.)

Turning to the specific facts before it, the Court of Appeal found that the plaintiff's cause of action accrued *at the latest* on August 15, 2003 – the date the perpetrator was arrested – and that her September 2004 presentation of her claim and her October 2004 application to present a late claim were well beyond the Act's six-month and one-year deadlines notwithstanding section 340.1. (*V.C., supra,* 139 Cal.App.4th at p. 510.)

The Court of Appeal was "not persuaded by [the plaintiff's] argument that the Legislature's expansion of section 340.1 over

time, coupled with the statute's current application to 'any person or entity who owed a duty of care to the plaintiff,' demands that [it] construe [section 340.1] to apply to the District notwithstanding the requirements of the Tort Claims Act. [Citation]." (*V.C., supra,* 139 Cal.App.4th at 510.) "[P]resum[ing] that the Legislature was aware of both Government Code claims provisions and judicial decisions concerning the accrual date for civil actions involving the sexual abuse of a minor at the time it amended section 340.1 to apply to any entity owing a duty of care", the Court of Appeal rightly concluded that section 340.1 and its delayed discovery provisions do not trump the Act's claim presentation requirement and six-month and one-year deadlines (measured from the date of the last abuse) because there was no express indication in section 340.1 of that intent. (*Id.* at p. 511.) As the Court of Appeal aptly stated "if the Legislature had intended for section 340.1 either to override the claims requirement or to alter the accrual date for actions by minors alleging sexual abuse, it would have said so. [Citation]." (*Ibid.*)

In sum, the Court of Appeal concluded, correctly, that "nothing in the language or legislative history of section 340.1 that establishes the Legislature intended to modify either the

date of accrual or the claim requirements of Government Code sections 911.2 and 911.4 when there is an allegation of sexual abuse against a public entity." (*V.C., supra,* 139 Cal.App.4th at 514.)

b. ***Shirk***

In *Shirk*, the 41 year old plaintiff was last molested by a teacher in 1979 when she was 17, and she never presented a claim to the school district. (*Shirk, supra*, 42 Cal.4th at p. 205.) In September 2003, the plaintiff learned the abuse caused her psychological problems, and she presented a claim to the school district the same day of her "discovery". (*Ibid.*) The plaintiff filed suit about 10 days after presenting her claim. (*Id.* at pp. 205-206.)

Concluding the plaintiff's cause of action accrued in 1979 and that she failed to timely present a claim to the school district, the trial court sustained without leave to amend the school district's demurrer to the plaintiff's complaint. (*Shirk, supra,* 42 Cal.4th at p. 206.) On appeal, the plaintiff argued her September 2003 claim was timely under section 340.1 because her cause of action accrued in September 2003 when she first discovered the childhood sexual abuse was the cause of her adult psychological

injuries. (*Ibid.*) The Court of Appeal agreed, concluding section 340.1's delayed discovery provisions overrule the Act's claim presentation deadlines, reasoning that the Legislature's "'failure to make special rules regarding application of [the Act's] claims requirements' indicated legislative intent not to differentiate between public entity defendants and private entity defendants." (*Ibid.*)

This Court soundly rejected the Court of Appeal's conclusion and reasoning. First, this Court confirmed the general rule that a cause of action for childhood sexual abuse accrues when the abuse occurs and noted that the plaintiff did not present a claim to the school district within 100 days of the last abuse in 1979 (the deadline applicable at the time). (*Shirk, supra,* 42 Cal.4th at 210.) This Court also concluded, like *V.C.* did, that section 340.1 governs the commencement of actions rather than accrual. (*Id.* at pp. 211-212.) Accordingly, this Court rejected the Court of Appeal's conclusion that the plaintiff's duty to present a claim under the Act did not arise until discovering in September 2003 that the 1979 abuse caused her adulthood psychological problems. (*Id.* at pp. 210-211.) Notwithstanding section 340.1's delayed discovery provisions, this Court concluded

that the plaintiff's childhood sexual abuse cause of action accrued in 1979 when the abuse last occurred even though the plaintiff did not discover until 2003 that this abuse caused her adulthood psychological problems. (*Id.* at pp. 210-212.) This Court likewise rejected the Court of Appeal's conclusion that the plaintiff's childhood sexual abuse cause of action accrued twice—once in 1979, and again in 2003 when she discovered the abuse caused her adulthood injuries. (*Id.* at pp. 210-213; see *id.* at p. 214 (dis. opn. of Werdegar, J., (acknowledging plaintiff's cause of action for childhood sexual abuse accrued in 1979 when plaintiff was last molested but arguing it accrued a second time upon her 2003 discovery of adult psychological problems).)

Significantly, this Court held that the legislative silence on section 340.1's impact on the Act's claim presentation deadlines evidenced not an intent to treat government and private entities the same, as the Court of Appeal concluded, but rather an intent to treat them differently. (*Shirk,* 42 Cal.4th at pp. 211-214.) Stated simply, this Court concluded that the Legislature never intended for 340.1 to delay or extend the Act's six-month claim presentation deadline for childhood sexual abuse causes of action or have any other impact on when a childhood sexual abuse cause

of action *accrues* for purposes of the Act's six-month claim presentation deadline. (*Ibid.*)

3. The reasoning of *County of Los Angeles* supports the conclusion that section 340.1 does not govern when childhood sexual abuse causes of action accrue for purposes of the Act's six-month claim presentation deadline or one-year late claim application deadline

The Court of Appeal in *County of Los Angeles* held that Government Code section 945.6's six-month limitations period and not section 340.1's extended limitations period governs when a plaintiff must commence an action against a government entity for childhood sexual abuse. (*County of Los Angeles, supra*, 127 Cal.App.4th at pp. 1266, 1268-1270.)

Although the issue *County of Los Angeles* resolved is slightly different than the one presented here, its reasoning is persuasive and consistent with that used in *Shirk* and *V.C.* (See *Shirk, supra,* 42 Cal.4th at pp. 206-207 (agreeing with *County of Los Angeles,* held that the Legislature's 2002 amendment of section 340.1 "did not reflect the Legislature's intent to 'excuse victims of childhood sexual abuse' from complying with the [Act] when suing a public entity defendant."); see also *V.C., supra,* 139 Cal.App.4th at p. 510 (finding *County of Los Angeles* persuasive, held that section 340.1 does not trump the Act's six-month

deadline for presenting a claim and one-year deadline for seeking permission to present a late claim.)

In *County of Los Angeles*, the plaintiff was sexually abused while housed in a juvenile facility when she was 17, with the last abuse occurring on August 4, 2001. (*County of Los Angeles, supra*, 127 Cal.App.4th at pp. 1266.) In March 2002, the County rejected plaintiff's January 2002 claim as untimely. (*Ibid.*) Plaintiff filed her lawsuit in December 2003, more than a year and a half after being notified of the claim rejection. (*Id.* at 1266-1267.) After the trial court denied summary judgment, the County sought writ relief. The County argued that the plaintiff's action was barred by her failure to commence her action within six months of the claim rejection as Government Code section 945.6 mandates. (*Id.* at p. 1266.) The plaintiff argued section 340.1 governed the timeliness of her action, not Government Code section 945.6, and she timely commenced her action under section 340.1 because she had not yet turned 26. (*Ibid.*)

The Court of Appeal disagreed, holding Government Code section 945.6's six-month limitations period applied, not section 340.1's extended limitations period. (*County of Los Angeles, supra,* 127 Cal.App.4th at pp. 1266, 1268-1270.) After noting

that actions against government entities are "governed by the specific statute of limitations set forth in the [Act], not the statute of limitations applicable to private defendants", the Court of Appeal held that "[s]ection 340.1 [d]oes [n]ot [t]rump the Act" and its six-month statute of limitations. (*Id.* at p. 1268.)

Although recognizing that section 340.1 has authorized actions against "entities" since 1998, given the absence of express legislative intent, the Court of Appeal refused to accept the proposition that this meant section 340.1 and its extended statute of limitations takes precedence over the Act's six-month statute of limitations. As the Court of Appeal explained, "to the extent that section 340.1 now authorizes suits against a person or entity other than the actual perpetrator, nothing in that statute or the legislative history of the 1998 amendment to that statute reflects an intent on the part of the Legislature to excuse victims of childhood sexual abuse from complying with the Act when the defendant is a public entity or public employee." (*County of Los Angeles, supra,* 127 Cal.App.4th at pp. 1268-1269.)

The Court of Appeal further noted that Code of Civil Procedure section 342, enacted in 1963, specifically provides that causes of actions against government entities must be

commenced within the time period proscribed by Government Code section 945.6, and that Code of Civil Procedure section 352, enacted in 1970, provides that minority does not toll the six-month limitation period of Government Code section 945.6. (*County of Los Angeles, supra,* 127 Cal.App.4th at pp. 1269, 1270.) Given "[t]he Legislature is deemed to be aware of statutes and judicial decisions already in existence . . . [and] enact[s] or amend[s] a statute in light thereof", the Court of Appeal "presume[d] that the Legislature was aware of section 342 [and section 352], as well as the six-month limitations period for filing complaints against a public entity set forth in section 945.6, and that it enacted section 340.1 in light thereof." (*Id.* at p. 1269 (internal quotes and cites omitted).) "When [Code of Civil Procedure sections 340.1, 342 and 352 and Government Code section 945.6] are viewed in context and in light of one another, they evince a clear intent on the part of the Legislature that statutes of limitations applicable to suits against private defendants are inapplicable to actions against public entities and employees." (*Id.* at p. 1270.)

This reasoning applies equally to the issue presented here. Indeed, it would be absurd to conclude, on the one hand, that

section 340.1 does not "trump" the Act's six-month statute of limitations for commencing an action after claim rejection but to conclude, on the other hand, that section 340.1 does "trump" the Act's six-month claim presentation deadline and one-year late claim application deadline. (See *Cent. Pathology Serv. Med. Clinic, Inc. v. Superior Court* (1992) 3 Cal. 4th 181, 191 (statutes should not be interpreted in a manner that would lead to absurd results).)

4. **Government Code section 905, subdivision (m) and its legislative history confirm the Act requires presentation of a claim within six months of the abuse for childhood sexual abuse causes of action based on pre-January 1, 2009 conduct[13]**

Prior to the enactment of Government Code section 905, subdivision (m), all claims for childhood sexual abuse against a public entity or were subject to the Act's claim presentation

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[13] Doe cites in this discussion to legislative reports and analyses on Senate Bill 1339 (2007-2008 Reg. Sess.) and Senate Bill 640 (2007-2008 Reg. Sess.). In the next section, Doe cites to legislative reports and analyses on Senate Bill 131 (2013-2014 Reg. Sess.) and Senate Bill 924 (2013-2014 Reg. Sess.). These reports and analyses are indicative of legislative intent. (*Hassan v. Mercy Am. River Hosp.* (2003) 31 Cal.4th 709, 717; *Altaville Drug Store, Inc. v. Emp't Dev. Dep't* (1988) 44 Cal.3d 231, 238; see *Doe, supra,* 42 Cal.4th at pp. 544-545; *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 613 fn. 7.) The reports and analyses cited are published and publically available at www.sen.ca.gov and www.leginfo.ca.gov. As such, no motion for judicial notice is required; citation to them is sufficient. (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440 fn. 18; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46 fn. 9; *Wittenburg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 665 fn. 4.) Doe has, however, included these legislative reports and analysis as an exhibit to its motion for judicial notice. And Doe does move for judicial notice of a "background information request" regarding Senate Bill 1339 that does not seem to be publically available. (See *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 338 fn. 12 ("Background information requests are a proper source of legislative intent.").) Doe also moves for judicial notice of enrolled bill reports regarding Senate Bill 640 that Doe relies on in the next discussion section. Although some appellate courts conclude otherwise, this Court considers enrolled bill reports relevant in analyzing legislative history. (*Conservatorship of Whitely* (2010) 5 Cal.4th 1206, 1218, fn. 3.)

requirements. (*Shirk, supra,* 42 Cal.4th at pp. 210-214; *V.C., supra*, 139 Cal.App.4th at pp. 510-512, 514; see also *County of Los Angeles, supra*, 127 Cal.App.4th at pp. 1268-1269.) After the enactment of Government Code section 905, subdivision (m), however, only those causes of action based on conduct occurring before January 1, 2009 are subject to the Act's claim presentation requirements.

As the legislative history for Government Code section 905, subdivision (m) establishes, the Legislature recognized that the Act required presentation of a claim for childhood sexual abuse within six months of the abuse. Seeking to alter the law, the Legislature amended Government Code section 905 exempting from the Act's claim presentation requirements only those causes of action based on post-January 1, 2009 conduct. For fiscal policy reasons, causes of action for childhood sexual abuse based on pre-January 1, 2009 conduct still require a claim and remain barred if a claim was not presented to the government entity within six months of the abuse, as case law prior to the enactment of Government Code section 905, subdivision (m) established.

In 2008, the Legislature proposed Senate Bill 1339. (Sen Bill No. 1339 (2007-2008 Reg. Sess.).)[14] A Senate Judiciary Committee analysis succinctly stated the need for the bill: "SB 1339 is legislative response to California Supreme Court decision in *Shirk*, and would treat childhood sexual abuse actions against a public entity the same as one against a private entity." (Sen. Judiciary Com., Analysis of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as introduced, p. 3.) The analysis further noted that the author of SB 1339, Senator Simitain, said the "bill is essential to ensure that victims severely damaged by childhood sexual abuse are able to seek compensation from those responsible, whether

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[14] "[A court] may properly rely on the legislative history of subsequent enactments to clarify the Legislature's intent regarding an earlier enacted statute. 'Although a legislative expression of the intent of an earlier act is not binding upon the courts in their construction of the prior act, that expression may properly be considered together with other factors in arriving at the true legislative intent existing when the prior act was passed.' [Citations.]" (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470.) "While the concept of 'subsequent legislative history' may seem oxymoronic, it is well established that 'the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them.' (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.)" (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 589 fn.13; see *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1235 (considering subsequent legislative history); *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1408 (same).)

those responsible are private or public entities. For many victims, the emotional and psychological trauma from childhood sexual abuse does not manifest itself until well into adulthood, when some event in their current life triggers remembrance of the past abuse and brings on the trauma (CCP Section 340.1's delayed discovery provisions recognize this)." (*Id.* at pp. 3-4.)

As the Senate Judiciary Committee analysis stated, Senate Bill 1339 was necessary because "the California Supreme Court held [in *Shirk*], in determining the interaction between Section 340.1 and the requirement for government tort claims that a claim be presented to the public entity within six months of when the injury occurred, that the six-month claim requirement superseded the delayed discovery provisions of Section 340.1." (Sen. Judiciary Com., Analysis of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as introduced, p. 4; see Sen. Com. on Judiciary, Background Information Request, Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as introduced, p. 1 ("[T]he Tort Claims Act requires that a claim against a public entity be filed not later than 6 months after the accrual of the cause of action. This 6 month limit has barred claims that would have been filed by a minor who did not report the abuse until years later.").)

Thus "[SB 1339] would provide that childhood sexual abuse claims against local public entities would not be subject to the Government Tort Claims Act, which generally requires claims for damages to be presented to the public entity within six months of when an injury occurred." (Sen. Judiciary Com., Analysis of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as introduced, p. 1.) Accordingly, Senate Bill 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 [Code of Civil Procedure] section 340.1 would be exempt from the Government Tort Claims Act and its six-month public entity claim presentation requirement." (Sen. Judiciary Com., Analysis of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as introduced, p. 4.)

A Senate Appropriations Committee report summarized Senate Bill 1339 as follows: "SB 1339 would exempt childhood sexual abuse claims against local public entities from the Government Tort Claims Act, which generally requires claims for damages to be reported to the local entity within six months of when the injury occurred." (Sen. Appropriations Com., Analysis

of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as amended Feb. 20, 2008, p.1.) As the report explained in detail:

> Current law generally allows an action for recovery of damages suffered as a result of childhood sexual abuse to be commenced within three years or on or after the plaintiff's 26th birthday, whichever is later . . . . *The Government Tort Claims Act, which generally regulates claims for damages brought against public entities, requires claims relating to injury or death be brought within six months of the cause of the injury, baring certain exceptions.*
>
> *Last year in Shirk [], the state Supreme Court held that the delayed discovery provisions for recovery of damages in childhood sexual abuse matters did not apply to childhood sexual abuse claims against local agencies and held the Tort Claims Act's six-month presentation requirement was the standard for those claims.*
>
> SB 1339 is intended to address *Shirk* by expressly providing that childhood sexual abuse actions against local public entities are exempted from Tort Claims Act's requirements.
>
> *SB 1339's lifting of the six-month presentation requirements in the Tort Claims Act* would extend the time a plaintiff's claim against school districts could be brought to either a plaintiff's 26th birthday or within three years of the date a plaintiff discovered the injury or illness caused by the sexual abuse (the SB 1779 standard), whichever is later.

(*Id.* at pp. 1-2 (emphasis added).)

Due to its potentially dramatic fiscal impact on local government entities, Senate Bill 1339 was relegated to the "suspense file" and never passed. (Sen. Appropriations Com.,

Analysis of Sen. Bill No. 1339 (2007-2008 Reg. Sess.), as amended Feb. 20, 2008).)

However, Senate Bill 640 did pass. (Sen. Bill No. 640 (2007-2008 Res. Sess.), as amended July 14, 2008).) Senate Bill 640 was "identical to SB 1339 [ ], except that [it] 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." (Sen. Rules Com., Analysis of Sen. Bill No. 640 (2007-2008 Reg. Sess.), as amended July 14, 2008, p. 1; see Assem. Com. On Judiciary, Analysis of Sen. Bill No. 640 (2007-2008 Reg. Sess.), as amended June 9, 2008, p. 1.)

An Assembly Committee on Judiciary analysis of Senate Bill 640 noted the "key issue" as follows:

> Since victims of child sex abuse may not recognize or report their abuse until years later, should these claims brought against local public entities, such as cities and school districts, be exempted from the requirement that they first be presented to the public entity within six months of occurrence?

(Ass. Com. On Judiciary, Analysis of Sen. Bill No. 640 (2007-2008 Reg. Sess.), as amended June 9, 2008, p. 1 (all capitals omitted).) And the "synopsis" from the same analysis stated:

> The statute of limitations for claims of childhood sexual abuse is eight years after the abuse victim reaches the age of majority or within three years of the date the victim discovers or reasonably could have discovered that the psychological injury or illness occurring after the age of majority was caused by the abuse, whichever occurs later. *The statute of limitations for these claims is so long because victims of child sexual abuse may not recognize or report the abuse until years later. The Government Tort Claims Act generally requires claims for damages against a public entity to be presented to that entity within six months of when an injury occurred. This bill provides that childhood sexual abuse claims against local public entities are not subject to the Tort Claims Act. This bill is nearly identical to SB 1339 (Simitian), which was held on suspense in Senate Appropriations, except that this bill is prospective only, applying only to claims arising out of conduct occurring on or after January 1, 2009.* [¶] Supporters . . . write that the six-month claim requirement of the Tort Claims Act unfairly penalizes child sexual abuse victims who are abused by public employees and that they should be given the same legal protections as all other victims. . . .

(*Id.* at p. 1 (all italics omitted).)

As an enrolled bill memorandum to the Governor explained, Senate Bill 640 "*eliminates the requirement for a plaintiff to file his/her claim within six months of the injury* in order to be allowed to purse the claim against a local public entity for the recovery of damages suffered as a result of childhood sexual abuse, [for] any claim arising from conduct that occurred after January 1, 2009." (Enrolled Bill Mem. to Governor on Sen.

Bill No. 640 (2007-2008 Reg. Sess.), Sept. 10, 2008) (emphasis added).) As explained in another enrolled bill report:

> Existing law requires that tort claims against a public entity be submitted to the public entity pursuant to a specified process before filing suit against the public entity for money or damages and specifies certain exemptions to this requirement. *Furthermore, existing law requires a claim for personal injury against a public entity, or against an employee of a public entity, to be submitted no later than 6 months after the date of the incident resulting in the allowed injury.* Existing law also establishes specified time limits and guidelines for seeking recovery of damages suffered as a result of childhood sexual abuse, as defined.
>
> *This bill will exempt claims made against a public entity as a result of a childhood sexual abuse from government tort claims requirements, including the 6 month time limit for presenting personal injury claims.* This bill limits this exemption to claims arising out of conduct occurring on or after January 1, 2009.

(Enrolled Bill Report On Sen. Bill 640 (2007-2008) Reg. Sess), Aug. 13, 2008) (emphasis added).)

An enrolled bill report prepared by the Governor's Office Of Planning And Research contained an extensive analysis of Senate Bill 640:

> **SUMMARY**
>
> For any claim arising from conduct that occurred after January 1, 2009, *this bill would eliminate the requirement for a plaintiff to file his/her claim within six months of the injury in order to be allowed to pursue the claim against a local public entity for the recovery of damages suffered as a result of childhood sexual abuse.*

PURPOSE OF THE BILL

The author is the sponsor of this bill.

According to the author, existing law requires most claims against a public entity to be filed not later than six months after accrual of the cause of action. *The author contends that this six month limitation prevents many victims from being able to file a claim against a public entity for the recovery of damages suffered as a result of childhood sexual abuse. Therefore, the author has introduced SB 640, which would exempt from that six month limitation*, any cause of action against a public entity for childhood sexual abuse. . .

ANALYSIS

The Government Tort Claims Act bars a plaintiff from seeking money or damages from a public entity, with specified exceptions, unless the plaintiff has presented a written claim to the public entity . . . The plaintiff must present a claim for personal injury against a public entity . . . no later than six months after accrual of the cause of action. [Section 340.1] provided that the time for commencing an action for recovery of damages suffered as a result of childhood sexual abuse against the direct perpetrator of the abuse is eight years after the plaintiff reaches majority (i.e., 26 years of age) or within three years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by the abuse, whichever occurs later.

The California Supreme Court held [in Shirk] that, notwithstanding [section 340.1's] statute of limitations time frames, a timely six-month claim is a prerequisite to maintaining a claim for childhood sexual abuse against a public entity school district. [Citation]. The Court concluded that nothing in the express language of [section 340.1] (or [its] legislative history) indicated the intent of the Legislature to exempt childhood sexual abuse claims from the Government Tort Claims Act.

This bill would expressly exempt claims against local public entities for childhood sexual abuse from the Government Tort Claim's Act's six-month written claim requirement for any claim arising out of conduct that occurs on or after January 1, 2009.

* * *

DISCUSSION

Shirking Expectations

Part of the intent behind [section 340.1] was to provide victims of childhood sexual abuse with more time to file their claims to recover damages. Specifically [section 340.1] was intended to allow plaintiffs to file a claim up until the age of 26 (which is 8 years after becoming an adult). *However, the California Supreme Court ruled in the Shirk case that [section 340.1] failed to exempt childhood sexual abuse claims from the generally applicable Government Tort Claims Act. As a result, the Supreme Court held that plaintiffs seeking to file claims against public entity school districts must still present a written claim within six moths [sic] of the injury (accrual of the cause of action).*

Six Months is Impractical

The six month reporting requirement imposed by the Government Tort Claims Act is an impractical requirement for childhood sexual abuse cases. *For a variety of reasons, childhood sexual abuse can go undiscovered for decades. Yet current law requires a victim of such abuse to submit a written claim to a government entity within six months of the abuse, if that victim ever hopes to file a claim against the entity for damages.* This essentially penalizes child victims for not having the courage to disclose the abuse within six months because, if they do not submit a report, then the victim cannot pursue a claim against a local government entity for the abuse.

> By exempting childhood sexual abuse from the Government Tort Claims Act, this bill would exempt victims from having to submit a report within six months of their abuse. As a result, they would be able to pursue their claims according to the provisions of [section 340.1]. . . . .

(Governor's Off. of Planning & Research, Enrolled Bill Rep. on Sen. Bill No. 640 (2007-2008 Reg. Sess.) Aug. 14, 2008, pp. 2-4 (emphasis added).)

The legislative history clearly demonstrates that when enacting Government Code section 905, subdivision (m), the Legislature understood that, notwithstanding section 340.1, *Shirk* mandated compliance with the Act's six-month claim presentation deadline, which requires presenting a claim within six months of the abuse. Although originally intending to completely gut the holding of *Shirk* (and *V.C.*) by exempting all childhood sexual abuse causes of action brought under section 340.1 from the Act's claim presentation requirements, for fiscal policy reasons the Legislature chose to exempt only those causes of action based on post-January 1, 2009 conduct.

By doing so, the Legislature left intact the holding of *Shirk* (and *V.C.*) for childhood sexual abuse causes of action based on pre-January 1, 2009 conduct. Childhood sexual abuse causes of action based on pre-January 1, 2009 conduct remain, as *Shirk*

and *V.C.* established, subject to the Act's claim presentation requirement and six-month deadline, the latter running from the date of the last abuse. "[W]hen the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734; see *Estate of Heath* (2008) 166 Cal.App.4th 396, 402 ("[w]hen a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it"); accord *Goldstone v. County of Santa Cruz* (2012) 207 Cal.App.4th 1038, 1047.)

5. **Attempted amendments to section 340.1 subsequent to the enactment of Government Code subdivision (m) further evidence the Legislature's intent when enacting Government Code section 905, subdivision (m) to keep in place existing case law requiring presentation of a claim within six months of the abuse for childhood sexual abuse of causes of action based on pre-January 1, 2009 conduct**

During the 2013-2014 regular Legislative session, the Legislature sought to amend section 340.1 with Senate Bill 131, (Sen. Bill No. 131 (2013-2014 Reg. Sess.)), and Senate Bill 924, (Sen. Bill No. 924 (2013-2014 Reg. Sess.)), to further extend the limitations period for childhood sexual abuse causes of action and to revive previously lapsed claims. (See Sen. Judiciary Com., Analysis of Sen. Bill No. 131 (2013-2014 Reg. Sess.), as amended May 2, 2013; Sen. Judiciary Com., Analysis of Sen. Bill No. 924 (2013-2014 Reg. Sess), as introduced.) Although both were vetoed by Governor Brown, an analysis of the legislative history is appropriate as it further supports the conclusion that when enacting Government Code section 905, subdivision (m) and limiting its impact to post-January 1, 2009 conduct, the Legislature approved, notwithstanding section 340.1, *Shirk* and *V.C.'s* holdings that the failure to present a claim to a government entity for childhood sexual abuse within six months

of the abuse bars a lawsuit against the government entity. (*See Freedom Newspapers, Inc. v. Orange County Retirement Board of Directors* (1993) 6 Cal.4th 821, 832-833 ("The Legislature's adoption of subsequent, amending legislation that is ultimately vetoed may be considered as evidence of the Legislature's understanding of the unamended, existing statute.").)

Although both Senate Bill 131 and Senate Bill 924 sought to further extend the limitation period and revive previously lapsed causes of action for childhood sexual abuse, neither sought to alter the "status quo" regarding childhood sexual abuse causes of action against a government entity established by *Shirk*, which the Legislature understood as requiring the presentation of a claim within six months of the last abuse. Indeed, the Legislature specifically noted that adults not previously complying with the Act's six-month claim presentation deadline would remain barred from suing a government entity, unless the cause of action involved post-January 1, 2009 conduct, as provided in Government Code section 905, subdivision (m). (See Sen. Judiciary Com., Analysis of Sen. Bill No. 131 (2013-2014 Reg. Sess.), as amended May 2, 2013, p.p. 7; Sen. Appropriations Com., Analysis of Sen. Bill No. 131 (2013-2014 Reg. Sess.), as

amended May 9, 2013, p. 4; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 131 (2013-2014 Reg. Sess.), as amended May 28, 2013, p. 9; Assem. Comm. on Appropriations, Analysis of Sen. Bill 131 (2013-2014 Reg. Sess.), as amended June 19, 2013, p. 4; Sen. Appropriations Com., Analysis of Sen. Bill No. 924 (2013-2014 Reg. Sess.), as amended May 13, 2014, p. 3; Assem. Com. on Judiciary, Analysis of Sen. Bill No. 924 (2013-2014 Reg. Sess.), as amended June 11, 2014, p.s 6-7; Assem. Com. on Appropriations, Analysis of Sen. Bill No. 924 (2013-2014 Reg. Sess.), as amended June 11, 2014, p. 2.)

V.

Conclusion

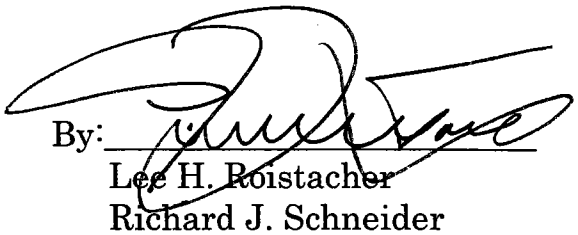
Section 340.1 and its delayed discovery provisions do not govern the accrual date for purposes of determining whether Rubenstein timely complied with the Act's claim presentation deadlines. Notwithstanding section 340.1, Rubenstein had to present a claim to Doe within six months of the last abuse in 1994 and seek permission to present a late claim within one-year of the last abuse in 1994. Because Rubenstein did not, the trial court lacked jurisdiction to relieve Rubenstein of her obligations under the Act. Indeed, Rubenstein's claims against Doe are

affirmatively barred. This Court must reverse the Court of Appeal's decision and clarify that *Shirk, V.C.* and *County of Los Angeles,* remain good law regarding causes of action for childhood sexual abuse based on pre-January 1, 2009 conduct.

Respectfully submitted,

DATED: August 14, 2016

Daley & Heft, LLP



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CERTIFICATE OF WORD COUNT

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DATED: August 14, 2016

Daley & Heft, LLP

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA Street Address: 350 McAllister Street City and Zip Code: San Francisco, CA 94102	
PLAINTIFF(S)/PETITIONER(S) Doe No. 1	Case Number: S234269
Defendant(S)/RESPONDENT(S) Latrice Rubenstein	Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107
PROOF OF SERVICE—CIVIL Check method of service: ☐ By Personal Service ☐ By Mail ☐ By Messenger Service ☐ By Facsimile ☒ By Overnight Delivery ☐ By E-Mail/Electronic Transmission	JUDGE: Hon. Juan Ulloa DEPT: 9

(Do not use this Proof of Service to show service of a Summons and Complaint)

1. At the time of service I was over 18 years of age and **not a party to this action.**

2. My address is (specify one):
   a. ☒ Business: b. ☐ Residence:

   462 Stevens Avenue, Suite 201, Solana Beach, CA 92075

3. The fax number or electronic address from which I served the documents is (*complete if service was by fax or electronic service*):

4. On (date): August 15, 2016, I served the following **documents** (specify):

   ☒ The documents are listed in the Attachment to Proof of Service–Civil (Documents Served).

5. I served the documents on the **person or persons** below, as follows:

   a. Name of person served:

   b. ☒ (*Complete if service was by personal service, mail, overnight, or messenger service.*)
   Business or residential address where person was served:

   c. ☐ (*Complete if service was by fax or electronic service.*)
   (1) Fax number or electronic notification address where person was served:

   (2) Time of Service:

   ☒ The names, addresses, and other applicable information about the persons served is on the Attachment to Proof of Service—Civil (Persons Served).

6. The documents were served by the following means (specify):

a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME: *Doe No. 1 v. Latrice Rubenstein*	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

6.b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business'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.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state): Solana Beach, California

c. ☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 5.

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

Date: August 15, 2016

Maria E. Kilcrease
(TYPE OR PRINT NAME OF DECLARANT)

Maria E. Kilcrease
(SIGNATURE OF DECLARANT)

(If item 5d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

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

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

CASE NAME:	CASE NUMBER:
Doe No. 1 v. Latrice Rubenstein	S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

ATTACHMENT TO PROOF OF SERVICE - CIVIL (DOCUMENTS SERVED)

The documents that were served are as follows (describe each document specifically):

OPENING BRIEF ON THE MERITS

CASE NAME: *Doe No. 1 v. Latrice Rubenstein*	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

ATTACHMENT TO PROOF OF SERVICE - CIVIL (PERSONS SERVED)

Name, Address, and Other Applicable Information About Persons Served:

Name of Person Served:	***Where Served***: *(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)*	***Time of Service***: *(Complete for service by fax transmission or electronic service.)*
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CASE NAME: *Doe No. 1 v. Latrice Rubenstein*	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

Name of Person Served:	***Where Served***: *(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)*	***Time of Service***: *(Complete for service by fax transmission or electronic service.)*
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