No. S230568

Public Entity
~ No Fee Required ~
Gov. Code, § 6103

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a public entity; ALFRED BACHER; CARY PORTER; ROBERT NAPLES; and NICOLE GREEN, public employees,

Defendants and Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

KATHERINE ROSEN, an individual,

Plaintiff and Real Party in Interest.

2d Civil No. B259424

(Court of Appeal, Second District, Division 7)

(Los Angeles Superior Court, West District, Case No. SC108504, Hon. Gerald Rosenberg, Judge)

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

The positions of professor, administrator, or even graduate student at California's institutions of higher learning are demanding. They require expertise and dedication to educate the State's young adults and professionals. Yet, according to plaintiff Katherine Rosen, that isn't enough. According to Rosen and the dissenting Court of Appeal justice, the faculty and staff of colleges and universities, at peril of liability, must also assume a broad-ranging duty, with responsibilities that law enforcement and medical personnel assume only after years of training, to protect students from criminal conduct in a city-sized environment; they must predict potentially violent behavior in students, some of whom may be confronting the challenges of mental illness, where even trained professionals are granted wide latitude and stringent legal protections in assessing such behavior.

This Court should reject Rosen's attempt to fundamentally and adversely change the college/university experience in California. The proposed broad duty of care would unravel decades of jurisprudence establishing that (a) persons owe no general duty to protect against criminal attacks by third parties, (b) the K-12 special relationship and duty of supervision do not extend to the college context outside the setting of discrete instruction hazards or programs such as athletics, (c) untrained lay people do not share mental health professionals' duty to warn concerning dangers posed by mentally ill persons, a duty imposed even on such professionals only in the face of articulated threats of violence against readily identifiable persons, and (d) the state constitutional provision establishing a right to safe campuses does not create any right of action.

Such a transformation of California law and the college environment is unwarranted. Rosen acknowledges that the UCLA defendants had security and safety measures in place to protect students, but complains that they failed to protect her personally. Yet no measure will always succeed in preventing criminal conduct.

UCLA already takes classroom and campus safety extremely seriously, as confirmed by Rosen's own depiction of campus security programs and measures. UCLA has a Consultation and Response Team [CRT] and an active Peer Review Committee of UCLA's Counseling and Psychological Services [CAPS] facility, both of which went to great lengths to treat and to manage Damon Thompson, the schizophrenic student who attacked Rosen. Apart from alleging that they fell short in this single instance, Rosen has never demonstrated or even intimated that these programs are anything but successful. The perverse effect of adopting the theory of liability she proposes would be to deter colleges and universities from providing such programs for fear that by doing so they would be voluntarily undertaking a duty they would not otherwise have. Perhaps worse, in an era in which society as a whole, and colleges and universities in particular, have begun to make strides to combat the stigma of mental illness and properly bring individuals facing such challenges into the mainstream, the proposed duty, by weakening confidentiality and singling out students perceived as being "odd," will deter students from seeking mental health treatment or other assistance from the university and alienate them from the campus community. That is a recipe for increased violence and suicide.

Nor would the steep price of imposing such a broad duty of care be offset by any increased likelihood of preventing the type of attack that occurred here. Tellingly, the only way Rosen can even broach such a wholesale transformation of California law is by presenting a sensationalized account of what transpired, which bears little relationship to what is actually in the record, and indeed relies on statements made by Thompson long after the fact. As the Court of Appeal recognized, the record established that Thompson never articulated any threat of physical violence against Rosen or anyone else.

This was a tragic incident. But the responsibility falls upon Rosen's assailant, and there is no justification for discarding long-accepted principles limiting liability for failure to protect against third-party criminal conduct and fundamentally transforming the college and university environment to the detriment of all students, particularly those who require special assistance in seeking to better their lives through higher education. As this court has recognized, under circumstances such as these, a departure from existing law requires a careful balancing of policy, best left to the legislature. (*Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 339, 341.) The judgment of the Court of Appeal should be affirmed.

STATEMENT OF FACTS

On October 8, 2009, Katherine Rosen was a UCLA Junior taking a chemistry lab. That day in the lab, suddenly and without provocation, fellow student Damon Thompson pulled a kitchen knife and stabbed Rosen repeatedly. Rosen was injured grievously but survived. (1 Exh. 142-143, 4 Exh. 962-963.)[1]

Until that day, Rosen and Thompson were only superficially acquainted as classmates. They had exchanged email addresses but had never emailed one another. (5 Exh. 1195.) They had conversed casually. (5 Exh. 1195.) Rosen had seen Thompson harangue the teaching assistant ["TA"] about classroom conditions, finding his tone on that occasion "super scary." (5 Exh. 1409-1410, 6 Exh. 1578-1580.)[2] But although she found Thompson strange, she never felt threatened and wasn't afraid of him. (5 Exh. 1209-1210.) She understood how to get help at UCLA if she ever felt threatened. (5 Exh. 1211-1213.)

UCLA personnel, meanwhile, were well aware of Thompson. A 2008 transfer student from Belize, he was an honor student and a diagnosed

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[1] Citations are to the Court of Appeal majority slip opinion (Slip opn.), to Presiding Justice Perluss's dissenting opinion (Dis. opn.), to the writ Exhibits filed in the Court of Appeal (Exh.), and to Rosen's opening brief on the merits (OBOM).

[2] Rosen asserts that "Thompson had named her as one of the women 'ridiculing and insulting him, and calling him "stupid" at every lab session.'" (OBOM 21.) The citation given (8EX2238-2239) [should be Volume 9] does not support the claim; while the evidence referenced there (see 6 Exh. 1547-1548) reflects that Thompson complained more than once that other students were calling him "stupid," it does not establish that Thompson complained at every lab session.

schizophrenic under voluntary treatment at CAPS. (1 Exh. 66-67, 2 Exh. 458, 479-480, 5 Exh. 1279.)

Thompson heard voices and frequently complained to UCLA administrators, faculty, and personnel that he believed students in his classes and in the dorms were whispering about him and putting him down. (1 Exh. 16-22, 66-80, 5 Exh. 1298, 1314.)[3]

On one occasion, UCLA campus police were summoned to the dorm when Thompson complained to the Duty Resident Director that he heard someone clicking a gun. (1 Exh. 20, 82, 2 Exh. 578, 5 Exh. 1299, 1301.) When no gun was found, Thompson voluntarily agreed to be escorted to Ronald Reagan UCLA Medical Center [RRMC] for psychiatric evaluation. (1 Exh. 20, 83, 2 Exh. 578, 5 Exh. 1301.)

Multiple medical professionals at RRMC evaluated Thompson. (1 Exh. 20, 84, 2 Exh. 580-595, 5 Exh. 1301.) None found him to fit the criteria for an involuntary psychiatric hold. (1 Exh. 20, 2 Exh. 580-595, 5 Exh. 1301.)

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[3] In this Court (though not previously), presumably to enhance the impression that the attack on her could have been predicted, Rosen depicts Thompson as having had a problem specifically with women. (E.g., OBOM 10, 14, 36.) The evidence does not support this characterization; rather, it shows that Thompson had disputes with both men and women. (E.g., 6 Exh. 1471-1472 [conflict with male roommate], 6 Exh. 1525-1526 [pushing incident with male dorm resident], 5 Exh. 1339-1340 [same], 6 Exh. 1548 [Although chemistry lab TA Goetz testified that when pressed, Thompson identified Rosen and another woman as having insulted him, he generally complained broadly that the other students—indicating a group including both men and women—were bothering him], 4 Exh. 1028 [once confined at Patton State Hospital, describing his UCLA experience in retrospect, Thompson said he heard voices of both men and women tormenting him].)

Thompson was involved in a pushing incident related to an alleged noise violation by another male student in Thompson's UCLA dorm. UC police's investigation did not result in charges but Thompson was excluded from university housing by Residential Life administrators. (1 Exh. 28, 119-120, 3 Exh. 842-844, 867, 5 Exh. 1339-1341.) Apart from that single incident, Thompson had neither physically assaulted nor threatened to harm anyone. On repeated questioning, he consistently denied having suicidal or homicidal thoughts. (1 Exh. 21, 26, 86, 111, 115, 2 Exh. 580-595, 3 Exh. 757, 780.)

UCLA personnel, including the individual UCLA defendants, pushed Thompson to undergo voluntary treatment for schizophrenia, including therapy and medication when involuntary treatment could not be compelled. (1 Exh. 23-31, 115-118, 124-130.) By Spring 2009, some 19 medical/mental health providers at UCLA had seen Thompson or been consulted about Thompson's mental health since February 2009. (1 Exh. 27, 117, 200, 252.)

UCLA's CRT repeatedly discussed Thompson and made recommendations for his treatment and management. (1 Exh. 21-22, 25, 26, 27, 89-90, 91-92, 104, 109.) So had a CAPS Peer Review Committee composed of seven members of the CAPS professional mental health staff. (1 Exh. 25, 27, 106, 107, 116-117, 3 Exh. 739, 768-770, 786-791, 827.)

On September 30, 2009, eight days before the attack, a CAPS psychotherapist and Thompson's psychologist evaluated Thompson. He still complained of hearing occasional voices but denied intent to harm those who might be talking about him or to act impulsively in response. (5 Exh. 1345-1348.) On October 7, he told a TA that if other students

continued to malign him, he would report it to the Dean of Students. (5 Exh. 1360.)

In the final days preceding the attack, there was heavy communication among UCLA personnel, including the individual UCLA defendants, concerning Thompson—not because of any evidence that he was a danger to others, but rather to encourage him to continue with voluntary treatment and to guide faculty and teaching assistants in managing his erratic classroom behavior and utilizing campus resources in case of emergency. (1 Exh. 31-34, 129-142, 3 Exh. 911- 4 Exh. 960.)

An October 19, 2009, post-attack LAPD report noted that the chemistry lab TA reported that Thompson, when pressed, identified Rosen as among the students who had called Thompson stupid; the TA, who had never observed Thompson act violently or express violent tendencies, believed the charge was false and didn't mention it to Rosen, but he reported it to the professor. (1 Exh. 34, 143, 5 Exh. 1193, 1199.) When that occurred, the professor reported it to the Dean of Students, who in turn notified the CRT, which, as noted, began gathering updated data on Thompson. (5 Exh. 1352-1357.) A classmate who heard Thompson tell the TA that if he didn't do something to address the problem, Thompson would do something, conceded that he did not hear Thompson say anything about what he proposed to do. (6 Exh. 1562.)

Rosen brought this lawsuit against the UCLA defendants, asserting a single cause of action against them for general negligence. (5 Exh. 1217-1227.)

STATEMENT OF THE CASE

Rosen filed her general negligence action[4] in Los Angeles Superior Court against the Regents of the University of California and several UCLA employees—Associate Vice Chancellor and Dean of Students Robert Naples; then-Senior Associate Dean of Students Cary Porter;[5] CAPS clinical psychologist Nicole Green;[6] chemistry professor Alfred Bacher; and chemistry lab teaching assistant Adam Goetz[7] (collectively, "the UCLA defendants"). Rosen alleged that the UCLA defendants owed her a duty of care which they had breached by failing to adopt reasonable measures that would have protected her from Thompson's supposedly foreseeable violent criminal conduct.[8] (Slip opn. 2.)

The UCLA defendants moved for summary judgment, arguing that public colleges and universities and their employees owe no legal duty to protect their adult students from third-party criminal misconduct. (Slip opn. 2.) The trial court denied the motion, ruling that the UCLA defendants owed Rosen a duty of care based on her status as a student or, alternatively, as a business invitee onto campus property. (Slip opn. 2.) The court

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[4] Rosen has repeatedly disavowed any traditional *Tarasoff* claim of professional negligence against any of Thompson's UCLA mental health providers. (See, e.g., 5 Exh. 1215-1227 [operative Second Amended Complaint]; cf. Petition for Writ of Mandate 44 & fn. 7.)

[5] Deans Naples and Porter were substituted by amendment for Does 1 and 2. (See 10 Exh. 2679.)

[6] Dr. Green was substituted for Doe 3. (See 10 Exh. 2678.)

[7] Goetz is no longer a party, having been dismissed with prejudice on May 22, 2012. (10 Exh. 2678.)

[8] Thompson is also a defendant. He is not a party to these proceedings.

further found there to be triable issues of material fact as to whether UCLA had voluntarily assumed a duty to protect Rosen by providing mental health treatment to Thompson. (*Ibid.*)

The UCLA defendants petitioned the Second District Court of Appeal for a writ of mandate; Division Seven issued an order to show cause. (*Ibid.*)

In a published split decision, the Court of Appeal granted the UCLA defendants' petition, the majority "concluding that a public university has no general duty to protect its students from the criminal acts of other students." (*Ibid.*) Presiding Justice Perluss, dissenting, declared that he would find that "a special relationship exists between a college and its enrolled students, at least when the student is in a classroom under the direct supervision of an instructor, and the school has a duty to take reasonable steps to keep its classrooms safe from foreseeable threats of violence." (*Ibid.*)[9]

Rosen filed a petition for rehearing, which was denied. This Court granted review.

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[9] The Perluss opinion actually is a partial dissent, as Justice Perluss agreed with the majority that one defendant, Dr. Nicole Green—Thompson's treating psychologist—was properly awarded summary judgment. (Dis. opn. 15, 21.)

ARGUMENT

I. CALIFORNIA PUBLIC INSTITUTIONS OF HIGHER EDUCATION AND THEIR EMPLOYEES DO NOT OWE A DUTY OF CARE TO PROTECT THEIR STUDENTS FROM ACTS OF VIOLENCE BY FELLOW STUDENTS, WHETHER IN THE CLASSROOM OR ELSEWHERE ON CAMPUS, EXCEPT IN NARROW EXCEPTIONAL CIRCUMSTANCES NOT PRESENT IN THIS CASE.

The Court of Appeal majority found that nothing in this case sparks a basis "to depart from the settled 'rule that institutions of higher education have no duty to their adult students to protect them against the criminal acts of third persons.'" (Slip opn. 18, quoting *Ochoa v. California State University* (1999) 72 Cal.App.4th 1300, 1306, disapproved on other grounds in *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 160, fn. 5.) "As with the assault that occurred in *Tanja H. v. Regents of University of California* (1991) 228 Cal.App.3d 434," the Court noted,

> the conduct at issue here—a violent crime perpetrated by an individual suffering from mental illness—is a societal problem not limited to the college setting. While colleges and universities may properly adopt policies and provide student services that reduce the likelihood such incidents will occur on their campuses, they are not liable for the criminal wrongdoing of mentally-ill third parties, regardless of whether such conduct might be in some sense foreseeable.

(Slip opn. 18.)

The Court of Appeal was correct. This Court should not impose a duty on UCLA and its fellow public colleges to warn of and protect against virtually any foreseeable acts of violence, whether committed by students or others. Neither the facts of this case, nor the well-developed framework of California law, nor public policy justifies the creation of the broad duty

that Rosen advocates. In fact, there are substantial policy reasons to reject it.

A. Duty Is A Question Of Law Properly Resolved On Summary Judgment.

Duty is a question of law. (*Avila v. Citrus Community College Dist.*, *supra*, 38 Cal.4th at p. 161.) "As such, it is generally amenable to resolution by summary judgment." (*Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 838; *Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1004.)

Rosen acknowledges this principle but contends the facts are insufficiently developed to permit its application. (OBOM 24-26.) That isn't so. Rosen and the UCLA defendants rely on the same well-developed factual record, and there are no material disputes about what happened. The dispute is over the legal consequences of the facts, a question properly amenable to resolution as a matter of law.

B. There Is Neither Sound Basis Nor Impetus For This Court To Overhaul California Jurisprudence To Create A Broad College/University Exception To The Well-Established Rule That One Owes No General Duty To Protect Others From Third-Party Tort Or Criminal Conduct.

Rosen intimates that there is something unusual or untoward in holding that institutions of higher learning owe no duty to protect students against third-party criminal conduct. In fact, however, as Rosen acknowledges (OBOM 30), there is no general duty to protect others even from foreseeable criminal conduct. The circumstances in which the law has recognized exceptions to that rule are narrow and dissimilar to anything

presented here. Moreover, imposing such a duty on colleges and universities would have a profound adverse impact on higher education by alienating or excluding the very students who require special assistance, without measurably increasing university community safety overall.

1. There is no general duty to protect others even from foreseeable tortious or criminal third-party conduct.

Courts have repeatedly recognized there is generally no legal duty to protect another from tortious or criminal injury by a third party:

> The general rule is that, "one has *no* duty to come to the aid of another. A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act."

(*Camp v. State* (2010) 184 Cal.App.4th 967, 975, italics added, quoting *Williams v. State of California* (1983) 34 Cal.3d 18, 23 [Highway Patrol officer responding to traffic emergency owed no duty to plaintiff who sustained spinal injury because officer failed to inquire about injury or summon medical personnel, and ordered passengers to leave the scene without ascertaining whether doing so might aggravate plaintiff's injuries]; see, e.g., *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 235 ["as a general matter, there is no duty to act to protect others from the conduct of third parties"]; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1118-1119 [County not liable for husband's murder of wife in courthouse when both were present for dissolution proceedings, notwithstanding that wife had previously sought redress in family court due to husband's verbal abuse, and had informed bailiff on at least three occasions "that she feared Harry and believed he might attack or kill her in the courthouse"].)

Numerous decisions apply this principle. (E.g., *J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 392-394, 396-399 [child care referral service owed no duty to a child sexually assaulted by daycare provider's teenage grandson at daycare to which the service had referred the child's family, even if service failed to inquire about the grandson's presence]; *Margaret W. v. Kelley R.* (2006) 139 Cal.App.4th 141, 150 ["If there is no duty, there can be no liability, no matter how easily one may have been able to prevent injury to another"].)

As with most general rules, the courts have recognized a few exceptions. But they are infrequent and narrow, and there is no compelling reason to expand their number or scope to encompass the situation here.

2. Colleges/universities have no special relationship with their students based upon their enrollment, and consequently owe no generalized duty to protect students from harm.

When California courts have carved exceptions to the no-duty rule and imposed a duty to protect others from third-party peril, it typically has been in limited circumstances where there is a "special relationship" between the injured party and the one sought to be held liable. (*Williams v. State of California, supra*, 34 Cal.3d at p. 23.) For example, courts have sometimes imposed this type of protective responsibility in the K-12 setting because of the mandatory nature of school attendance and the comprehensive control over students exercised by school personnel "analogous in many ways to the relationship between parents and their children." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 869-870; *M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 517 [duty based in part on "compulsory nature

of education," citing Ed. Code, §48200]; *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1459 [duty of care arises from requirement of mandatory attendance, and public school officials "'are directly in charge of children and their environs, including where they study, eat and play'"].)

No such special relationship exists in the collegiate context. California courts have uniformly rejected imposing negligence liability on colleges and universities for injuries to students arising from the criminal acts of third persons precisely because they have no special relationship with their students, and accordingly owe no duty to protect them from such assaults.

- Holding that "institutions of higher education have no duty to their adult students to protect them against the criminal acts of third persons," the Court of Appeal rejected a college student's negligent supervision claim for injuries he sustained when an opposing player punched him during an intramural soccer game. (*Ochoa v. California State University, supra,* 72 Cal.App.4th at p. 1306.)

- In *Tanja H. v. Regents of University of California, supra,* 228 Cal.App.3d 434, the Court of Appeal affirmed summary judgment for the university in this personal injury action brought by a UC Berkeley student who was assaulted by fellow students following a party in a university dormitory they shared. The Court declared, "[a] university is not liable as an insurer for the crimes of its students." (*Id.* at p. 435.) The Court explained,"[a]s campuses have, thus, moved away from their former role as semi-monastic environments subject to intensive regulation of student lives by college authorities, they have become microcosms of society; and

unfortunately, sexually degrading conduct or violence in general—and violence against women in particular—are all too common within society at large. College administrators have a moral duty to help educate students in this respect, but they do not have a legal duty to respond in damages for student crimes." (*Id.* at p. 438.)

- Similarly in *Crow v. State of California* (1990) 222 Cal.App.3d 192, the Court of Appeal affirmed summary judgment for a state university in an action brought by a student who suffered injuries as a result of an assault by another student in a Cal State dormitory. The Court expressly rejected the contention that Crow's affiliation with the university as a student created a special relationship imposing a duty to protect him against criminal assaults. (*Id.* at p. 208.) Distinguishing its own decision in *Leger v. Stockton Unified School Dist.*, *supra*, 202 Cal.App.3d 1448, the Court explained that in *Leger*, "[w]e noted that attendance at high school is mandatory and that school officials are directly in charge of the children and their environs. . . . Here in contrast, plaintiff was an adult college student voluntarily participating in drinking beer at the dormitory." (*Crow*, *supra*, at p. 208; see *id.* at p. 209.)

- As the Court noted in *Baldwin v. Zoradi* (1981) 123 Cal.App.3d 275, "the authoritarian role of college administrators is gone. Students have demanded rights which have given them a new status and abrogated the role of *in loco parentis* of college administrators." (*Id.* at p. 287 [no special relationship between Cal Poly trustees and university students imposing duty of due care to prevent injuries sustained by plaintiff in "speed contest" with fellow students].)

When this and other California courts have imposed a duty of care in the college/university setting, it has not been based on general recognition of a special relationship, but rather on existing duty principles applied to activities directed by the school. In *Patterson v. Sacramento City Unified School Dist.* (2007) 155 Cal.App.4th 821, 828-833, the Court applied existing duty principles codified in the California Tort Claims Act to conclude that a K-12 school district owed a duty to supervise and protect an adult student who was injured in an adult truck driver training course, because "the instructors expressly and properly undertook supervision of the off-campus community service project."

In *Avila v. Citrus Community College Dist.*, *supra*, 38 Cal.4th at pp. 162-163, this Court also applied existing tort principles in concluding that a college owed a duty of care to athletes engaging in intercollegiate competitions where the activity was undertaken on behalf of the college and under its formal supervision. But in so holding, the Court imposed a very limited duty—a duty not to increase the specific risks inherent in the athletic competition. This Court did not impose any sort of generalized duty to protect students from risks external to the competitions. Moreover, this Court made clear that it was not departing from the established principle as articulated in *Crow* and *Baldwin* "that colleges and universities owe no general duty to their students to ensure their welfare." (*Ibid.*)

Thus, both *Patterson* and *Avila* applied existing tort law principles, and did not apply the special relationship doctrine to find a duty. The mandatory nature and the supervision of those activities justified a conclusion of a duty to protect against the risks of those particular activities. But even then, the ultimate duties differed—e.g., one case

imposed a duty not to increase the risks while the other imposed a duty to protect against the risks. There are no similar allegations or evidence here. Rosen does not assert that she was injured as a result of a failure to supervise an on-campus classroom activity, such as a botched experiment; rather she asserts a failure to protect her from criminal conduct completely unrelated to the work performed in the chemistry lab.

While Justice Perluss relies on *Avila*, his analysis jumps without explanation from this Court's recognition of a duty not to increase the risks inherent in sport, to the conclusion that there is a general duty to protect college students in the classroom—without addressing this Court's clear statement in *Avila* rejecting a generalized duty of care. (Dis. opn. 7-10.) Just as this Court was unwilling to make that leap in *Avila*, Rosen fails to justify making the leap in this case. It remains undisputed that the risk of third-party criminal conduct was not an inherent risk in the laboratory activities on that day, nor was it connected to the physical condition of the property. In sum, there was no connection, let alone a close connection, between defendant's actions and the injury. (*Rowland v. Christian* (1968) 69 Cal.2d 108, 113.)

Rosen invokes two cases involving a special relationship premised on the defendant having placed plaintiff in a custodial relationship. In *Lopez v. Southern California Rapid Transit Dist.* (1985) 40 Cal.3d 780, this Court held that as a common carrier with a heightened duty of care under Civil Code section 2100, a transit authority had a special relationship with its passengers because it effectively placed them in "'a sealed . . . cocoon'" in often highly volatile situations with limited means to protect themselves. (40 Cal.3d at p. 789.) Similarly in *Giraldo v. California Dept. of*

Corrections & Rehabilitation (2008) 168 Cal.App.4th 231, the Court of Appeal, relying on out-of-state authority, held that a jailer owed a duty of care to protect prisoners from foreseeable assaults by fellow inmates. (168 Cal.App.4th at pp. 250-253.) According to Rosen, university students "are captive, vulnerable, and wholly dependent on faculty and staff for safety, just as are bus patrons and prison inmates." (OBOM 31.)

The contention does not withstand scrutiny. College students are not a captive audience. They come and go from class and campus at will, even forgoing attendance altogether. Moreover, like other California colleges and universities, UCLA far more resembles a city—in UCLA's case a city of 40,000 (such as, say, Rancho Palos Verdes, or San Bruno, or Palm Springs)—than it does the prison described in *Giraldo* or the confined atmosphere of the bus in *Lopez*. UCLA's students freely roam the campus and engage in learning activities in a broad range of environments—libraries, sculpture gardens, student centers.

Further, the campus environment is largely populated by adults, whom the law presumes to be capable of assuming basic responsibilities. Although Justice Perluss postulates that recent developments in neuroscience indicating that the brain is not fully mature until the age of 26 should trigger re-examination of tort duties in the college campus context (Dis. opn. 10-11, fn. 6) that is precisely the sort of inquiry that is the province of the Legislature, which has long assumed the duty of determining the age at which individuals become an "adult" for numerous purposes, including living on their own, having the capacity to enter into contracts, or purchasing tobacco, alcohol or firearms. (E.g., Fam. Code, §6500 [age of majority is 18]; Bus. & Prof. Code, §25658 [drinking age

is 21].) If the average university student is to be deemed an adult everywhere *but* the college campus, that is a determination to be made by the Legislature. (See, e.g,, *Verdugo v. Target Corp., supra*, 59 Cal.4th at pp. 330, 341.)

While a special relationship may arise where one is injured while in a condition of captivity, vulnerability, and total reliance on the person against whom he or she seeks to impose liability, college students do not remotely meet that description, even when they are supposed to be in class.

Neither law, logic, nor the realities of modern campus life supports recognition of any duty of care based on a special relationship derived from Rosen's status as an enrolled student.

3. The "communicated threat of violence" exception does not apply here.

Rosen invokes the "communicated threat of violence" exception, which recognizes a duty where "the citizen bears some special protective relationship to the victim *and* has *actual* knowledge of the assaultive propensities of the criminal actor . . . ." (*de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 249.) However, as Justice Perluss acknowledged in his dissent, the facts emphatically do not support such a duty here. (Dis. opn. 15.)

Although Rosen refers to the "specific" threat that Thompson posed (OBOM 47, 48; cf. OBOM 10 [asserting that the UCLA defendants knew about Thompson's "threats against (Rosen)"—conspicuously without saying what those supposed threats were]), there is no evidence that Thompson threatened violence against Rosen, or anyone. As Rosen acknowledges, her sensational account of Thompson's "clear-cut and

escalating symptoms of serious paranoid and auditory hallucinations that led him to attempt to kill Katherine Rosen" (OBOM 47), including an account of what purportedly was going through Thompson's mind when he attacked her (OBOM 48), is drawn from an account Thompson gave while confined at Patton State Hospital—*long after the event.* There is no evidence that Thompson disclosed to any UCLA defendant, or anyone at UCLA, before the attack occurred, an intent to harm Rosen (or anyone) physically.

The most the evidence remotely establishes is that Thompson was a mentally ill student who once engaged in a dormitory noise-related pushing match with another student (not Rosen), who frequently complained about other students (sometimes including Rosen) without ever threatening serious physical harm, indeed, specifically disavowing such an intent to both his treating psychologist and psychotherapist eight days before the attack, and whose only communicated threat was a statement to a TA that he might complain to the Dean of Students. So even if Rosen could get past the general rule that colleges and universities have no special relationship with their students by identifying a specific relationship between Thompson and any of the individual UCLA defendants (for example, Dr. Green as his treating psychologist), there still is no evidence that Thompson ever actually communicated an intent to commit physical violence against Rosen or anyone in particular—and there is substantial materially undisputed evidence to the contrary. (See 5 Exh. 1364-1370.)

And even if there were a communicated threat, it would create no liability because the exception applies only in narrow circumstances not present here. The paradigm case is *Tarasoff v. Regents of University of*

California (1976) 17 Cal.3d 425, where this Court found that a psychiatrist owed a duty to warn a readily identifiable victim that his patient had announced an intent to kill the victim at a particular time. But "a citizen 'cannot be liable under a negligent supervision theory . . . based solely on constructive knowledge or information they should have known.'" (*de Villers v. County of San Diego, supra,* 156 Cal.App.4th at p. 249, quoting *Margaret W. v. Kelley R., supra,* 139 Cal.App.4th at p. 153, fn. omitted.)

Moreover, developments in statutory and decisional law since *Tarasoff* have established and clarified that the psychotherapist exception to the "no duty to warn" rule is very narrow.

On the statutory front, two enactments are significant. Civil Code section 43.92 was enacted in direct response to this Court's decisions in *Tarasoff* and another "duty to warn" case, *Hedlund v. Superior Court* (1983) 34 Cal.3d 695, expressly to tighten the scope of the duty. (See *Ewing v. Goldstein* (2004) 120 Cal.App.4th 807, 814-817 [reviewing historical context].) While *Tarasoff* had countenanced "duty to warn" liability based on threats that a psychotherapist either knew or should have known about, the Legislature scaled back the boundaries to cases of actual knowledge of serious threats of physical violence. As the Assembly Committee on Judiciary noted in its bill analysis, Civil Code section 43.92's purpose is "'to limit the psychotherapists' liability for failure to warn to those circumstances where the patient has communicated an "actual threat of violence against an identified victim", and to "abolish the expansive rulings of *Tarasoff* and *Hedlund* . . . that a therapist can be held liable for the mere failure to predict and warn of potential violence by his

patient."'" (*Ewing v. Goldstein, supra*, 120 Cal.App.4th at p. 816, quoting Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1133 (1985-1986 Reg. Sess.), May 14, 1985.) Consistent with its purpose, Civil Code section 43.92, provides, in subdivision (a):

> There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is a psychotherapist as defined in Section 1010 of the Evidence Code in failing to protect from a patient's threatened violent behavior or failing to predict and protect from a patient's violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims.

Also significant is the Confidentiality of Medical Information Act ("CMIA"), which governs not only psychotherapists but all healthcare providers, and generally prohibits disclosure of medical information without written authorization. (Civ. Code, §56.10, subd. (a).) While CMIA contains a disclosure exception for situations where a patient threatens violence, that exception closely tracks the language of Section 43.92 and expressly requires that disclosure be "consistent with applicable law and standards of ethical conduct." (See Civ. Code, §56.10, subd. (b)(19).) Unjustified disclosure of patient information is subject to a number of potential consequences, including compensatory damages liability, civil fines, and misdemeanor criminal punishment. (Civ. Code, §§56.35, 56.36.)

Our appellate courts have confirmed the tight strictures placed on "duty to warn" liability and rejected expansion of such liability beyond the mental health professional context. In *Calderon v. Glick* (2005) 131 Cal.App.4th 224, the Court of Appeal affirmed summary judgment in favor of psychotherapists who were sued on a duty to warn theory by victims and surviving relatives of a deranged gunman who had shot and killed three

members of his former girlfriend's family, and whom the psychotherapists had treated. In affirming the "no duty" finding, the Court noted that the gunman had repeatedly denied any intention to harm his former girlfriend and the psychotherapists believed him. (*Id.* at pp. 227-228, 230-232.) As the Court noted, "We empathize with the remaining members of the family but the Legislature has expressly precluded monetary recovery from psychotherapists in this situation." (*Id.* at p. 227.)

Similarly in *Smith v. Freund* (2011) 192 Cal.App.4th 466 and *Greenberg v. Superior Court* (2009) 172 Cal.App.4th 1339, which arise from a single shooting incident involving an autistic teenage gunman, the Court of Appeal found that neither the gunman's parents (*Smith v. Freund*) nor his psychotherapist (*Greenberg v. Superior Court*) owed a duty to warn absent specific threats of violence against identified or identifiable third parties. The Court found the claim against the psychotherapist materially indistinguishable from the scenario in *Calderon v. Glick*, *supra*, 131 Cal.App.4th 224. (*Greenberg* at pp. 1348-1349.) As to the gunman's parents, the Court noted that even assuming some responsibility to control their son, and even though there was evidence of his aggressive conduct toward his parents, the record revealed only one instance in which he had acted in anger toward another third party—an incident in which, as the gunman had related it to his psychologist, "he (William) slapped another student at school in the face because the other student 'karate-chopped him' on the shoulder and William felt he had a right to defend himself." (*Smith* at p. 475.) "Based on this lone instance of William's behavior against a student who had struck William first," the Court concluded, "defendant

could not reasonably foresee that William would, several years later, harm a third party." (*Ibid.*)

The narrow confines of the "communicated threat of violence" exception provide ample protection to the public at large, and in the university context, the student population, by vesting the duty in those most capable of making such evaluations—licensed therapists. Even if Thompson named Rosen among the students he claimed had called him "stupid," this is still a far cry from the circumstances set forth in *Tarasoff* or Civil Code section 43.92 which imposes limited duties on psychotherapists alone, or CMIA, which places tight strictures on medical information disclosures by any healthcare provider. There was nothing foreseeable, let alone highly foreseeable about Thompson's attack. (*Rowland, supra*, 69 Cal.2d at p. 113.) Rosen has not come close to raising any material factual dispute that might remove her case from application of the general rule against imposing any duty on citizens to prevent criminal attacks.[10]

4. The "Safe Schools Act" does not create a special relationship, either alone or in combination with other public policy statements.

The California Constitution includes a "safe schools" provision. (Cal. Const., art. I, §28, subds. (a)(7), (f)(1).) As originally enacted in 1982 as part of Proposition 8, the "Victim's Bill of Rights" initiative, it declared

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[10] As discussed, the Legislature has signaled clearly that only the narrowest circumstances justify an exception to the basic rule that there is no duty to protect another against criminal attack. Rosen's thesis that laypersons who interacted with Thompson owed a greater "should have known" duty than did his psychotherapists is insupportable.

that students and staff in K-12 schools have a right to attend safe campuses. (See generally *Brosnahan v. Brown* (1982) 32 Cal.3d 236 [upholding constitutionality of original enactment].) A 2009 initiative amended the provision to encompass institutions of higher learning, so that it now reads: "All students and staff of public primary, elementary, junior high, and senior high schools, *and community colleges, colleges, and universities* have the inalienable right to attend campuses which are safe, secure and peaceful." (Cal. Const., art. I, §28, subd. (f)(1), emphasis added.)

According to Rosen, "[t]his Court has recognized this policy supports a finding of duty in the K-12 context even though the provision has been held to be non-self executing." (OBOM 27, citing *C.A. v. William S. Hart Union High School Dist.*, *supra*, 53 Cal.4th at p. 870, fn. 3 [citing the safe schools provision].) Despite the concession that the provision does not by itself create a right of action, Rosen contends that read together with one or more other public policy statements, it has that effect, both in the K-12 setting and here. (OBOM 26-29.) The argument is meritless.

In *C.A.*, this Court observed in a footnote that the provision expresses a "fundamental public policy favoring measures to ensure the safety of California's public school students" (*C.A. v. William S. Hart Union High School Dist.*, *supra*, 53 Cal.4th at p. 870, fn. 3), but it did not cite the provision as a source of the special relationship necessary to support a tort liability claim; rather, it cited the usual K-12 cases that turn on the custodial relationship between the students and the districts. (*Id.* at p. 871.)

Moreover, our appellate courts—employing an analysis endorsed by this Court—have long held that the safe schools provision imposes no

express duty on anyone to make schools safe, and does *not* provide a basis for a damages action in tort or otherwise. (See *Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1236-1238 ["we conclude that (the safe schools provision) is not self-executing, in the sense that *it does not provide an independent basis for a private right of action for damages*. Neither does it impose an express affirmative duty on any government agency to guarantee the safety of schools" (quote at 1237-1238, emphasis added)]; *Leger v. Stockton Unified School Dist., supra,* 202 Cal.App.3d at p. 1455, quoting *Older v. Superior Court* (1910) 157 Cal. 770, 780 ["We recognize that a constitutional provision is presumed to be self-executing unless a contrary intent is shown. (Citations.) Here, however, (the safe schools provision) declares a general right without specifying *any* rules for its enforcement. *It imposes no express duty on anyone to make schools safe. It is wholly devoid of guidelines, mechanisms, or procedures from which a damages remedy could be inferred.* Rather, 'it merely indicates principles, without laying down rules by means of which those principles may be given the force of law'" (emphasis added)]; see also *Bautista v. State of California* (2011) 201 Cal.App.4th 716, 729 ["*Clausing* reached the same conclusion we do, namely that the right to safe schools, just like the right to securing safety in employment, *required legislative action to make the constitutional provision operative as a judicially enforceable right*" (emphasis added)]; see *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 306-317 [approvingly citing/discussing *Leger*'s and *Clausing*'s analysis of whether a constitutional provision supports a damages cause of action].)

Unable to wring an actionable duty from the Safe Schools Act statement of public policy, Rosen invokes California Constitution, Article I, section 8, which embraces the "'right to be free from sexual assault and harassment.'" (OBOM 27, quoting *Rojo v. Kliger* (1991) 52 Cal.3d 65, 91.) According to Rosen, "Thompson's attack was not merely on a fellow student who happened to be a woman. Rather, his pre-attack history reflects his psychosis was gender-based and that he viewed women as his tormentors." (OBOM 27.) As discussed, the evidence does not support Rosen's current attempt to recast Thompson's attack as stemming from a specific problem with women. (See fn. 3, *ante*.)

5. The duty to provide a safe workplace is inapplicable.

Rosen argues that "[t]he UCLA campus and classrooms are a workplace" and that because UCLA is committed to providing a safe work environment, UCLA students should be entitled to the same protection as employees. (OBOM 41, 43.) This argument is meritless.

Certainly, UCLA was not Rosen's "workplace" in the sense addressed in California law, including the cases on which Rosen relies—i.e., the place of an employee's employment. (See, e.g., *Franklin v. The Monadnock Co.* (2007) 151 Cal.App.4th 252 [addressing duty of "employers" to provide "employees" with safe workplace]; *City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 330 [addressing soundness of an arbitration award in favor of a "former city employee"].) Nor does UCLA's publication of a brochure declaring its commitment "to providing a safe work environment for all faculty, staff and students—one that is free from violence and threats of harm" transform

any UCLA student into an employee or make UCLA their workplace in any legal sense. (See Lab. Code, §2750 [defining an employee as one engaged "to do something for the benefit of the employer or a third person"].)

To the extent Rosen is essentially arguing that as a matter of public policy, campus workers should not be afforded greater protection than students, she ignores substantial and critical distinctions between a workplace and a college classroom.

Employers *do* control the workplace in material respects; they control an employee—e.g., dictating an employee's work schedule, co-workers, remuneration, and working conditions—in a way that a university fundamentally does not control students who may attend class largely on their own terms and engage in learning activities virtually any time or any place on campus. That accounts for the differing levels of protection. In particular, for that reason, "Labor Code section 6400 et seq. and Code of Civil Procedure section 527.8, when read together, establish an explicit public policy requiring employers to provide a safe and secure workplace, including a requirement that an employer take reasonable steps to address credible threats of violence in the workplace." (*Franklin v. The Monadnock Co.*, *supra*, 151 Cal.App.4th at p. 259.) And, of course, the employer's duty to its employees is broader at its foundation than the university's duty to its students because of the worker's compensation obligation—liability is imposed without regard to fault but with the offsetting benefit to the employer of a limited recovery. (See Lab. Code, §3600, et seq.; *Privette v. Superior Court* (1993) 5 Cal.4th 689, 697 ["The Act's exclusivity clause applies to work-related injuries regardless of fault, including those

attributable to the employer's negligence or misconduct (citation), as well as the employer's failure to provide a safe workplace (citation)"].)

In any event, differing levels of protection notwithstanding, Rosen still cannot overcome the absence of any articulated or foreseeable threat against her as to which the UCLA defendants owed a duty to protect or warn her. That distinguishes her case from the ones on which she relies. *City of Palo Alto v. Service Employees Internat. Union*, *supra*, 77 Cal.App.4th 327 involved an express threat made by one city employee, Camm, against a co-worker, Bingham. After Bingham informed Camm that he had complained to a supervisor about him, "Camm threatened to shoot Bingham, his wife and their new baby if he lost his job." (*Id.* at p. 331.) Likewise in *Franklin v. The Monadnock Co.*, *supra*, 151 Cal.App.4th at p. 255, "[p]laintiff alleged that a coworker in the workplace had threatened to have plaintiff and three other employees killed, that defendants did nothing in response to his complaint to them about the threats, that the coworker thereafter assaulted him with a screwdriver, that plaintiff reported the assault to the police, and that plaintiff was terminated from his employment as a result of his complaints to defendants and the police." These express threats are a far cry from the facts here—which entail, at most, Thompson having named Rosen among the students he thought had called him "stupid."

6. The student/university enrollment contract does not create a special relationship supporting the tort duty that Rosen posits.

Rosen contends that her enrollment at UCLA created an implied-in-fact contract that created a special relationship giving rise to a tort duty in

the UCLA defendants to protect or warn her against Thompson's attack. (OBOM 37-41.) She is wrong.

Certainly, there is a contractual relationship between a university student and the university. (E.g., *Andersen v. Regents of University of California* (1972) 22 Cal.App.3d 763, 769-770 [disciplinary due process case]; *Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 815 [university fees case] [*Kashmiri*].) It contains implied conditions entitling the student not to be arbitrarily expelled, and requiring the student to submit to reasonable rules and regulations that, in a proper case, may lead to expulsion. (See OBOM 39, citing *Andersen.*) But Rosen identifies no contractual provision, express or otherwise, creating a free-ranging tort duty of care to protect against third-party criminal assault.

Rosen points to UCLA's orientation materials and campus safety brochure as constituting implied contractual terms guaranteeing student safety. (OBOM 39-41.) However, courts have required specificity of language in order to impose an implied obligation based on statements contained in a university's brochures, websites, and the like. Not only is there "'widely accepted rule of judicial nonintervention into the academic affairs of schools,'" (*Kashmiri, supra,* 156 Cal.App.4th at p. 825, quoting *Paulsen v. Golden Gate University* (1979) 25 Cal.3d 803, 808), but "[c]ourts also have been reluctant to apply contract law to general promises or expectations" (*Kashmiri, supra,* 156 Cal.App.4th at p. 826).

Rosen invokes *Kashmiri,* where the Court found that the university formed an implied contract with its students based on its website/catalog promise not to raise certain professional educational fees for continuing students for the duration of the students' enrollment in a professional

program. (*Id.* at p. 815.) However, the Court established a highly restrictive test for transforming a university's representations to its students into an implied contract term, noting that "[t]he reasonableness of the student's expectation is measured by the definiteness, specificity, or explicit nature of the representation at issue." (*Kashmiri*, *supra*, 156 Cal.App.4th at p. 832; see *id.* at p. 826 [courts have applied contract law "when the educational institution makes a specific promise to provide an educational service, such as a failure to offer any classes or a failure to deliver a promised number of hours of instruction"].) The specific "promise" not to raise fees in *Kashmiri* stands in stark contrast to UCLA's general statements in brochures and orientation materials concerning safety and related policies and objectives. Indeed, what would it require to provide a "safe" campus in compliance with such purported generalized terms—is there a breach of contract every time backpack, phone or even a pencil is stolen?[11]

Finding an implied-in-fact contractual duty here would put the courts in the business of enforcing the many principled but vague aspirations that universities express about their educational objectives, going far beyond the physical safety of students. Under Rosen's theory, virtually any contract in

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[11]The other cases Rosen cites similarly fail to support her contract theory. *Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, notes that a contract can create a special relationship, but emphasizes that no such duty can be found absent clear contractual intent. (*Id.* at p. 439.) Accordingly, the Court rejected any special relationship there because the written contractor/subcontractor contract did not clearly create a tort duty in the subcontractor to protect the contractor's employees from injury. Nor does *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799 help Rosen. *Peterson* is a dangerous condition case—a theory that, as noted, Rosen has expressly eschewed pursuing.

any context could give rise to a tort duty of care, regardless of the intention of the parties or limitless liability such a theory would impose. That is not and should not be the law.

7. This Court has expressly rejected imposing "business invitee" liability on public entities absent a dangerous physical condition of property.

Although Rosen never pleaded any dangerous condition of public property and has conceded none is involved (see Slip opn. 23), she has repeatedly argued that the UCLA defendants owed her a duty of care on grounds that "the law recognizes a special relationship based on plaintiff's status as defendant's business invitee." (10 Exh. 2669.) Rosen soft-pedals the argument here (see OBOM 21, fn. 13), but has not dropped it, so it bears noting that California law is to the contrary.

This Court has held unequivocally that there is no general business invitee relationship with a public entity. (*Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at pp. 1119, 1129-1131.) Business invitee liability may be imposed upon a public entity "only when there is some defect in the property itself and a causal connection is established between the defect and the injury." (27 Cal.4th at p. 1135.) Again, Rosen has never pleaded any dangerous condition claim, has eschewed reliance on such a theory, and has never identified a dangerous physical condition of public property on which she might base her cause of action. *Zelig* squarely undermines Rosen's reliance on *Peterson v. San Francisco Community College Dist.*, *supra*, 36 Cal.3d 799, which, as this Court noted in *Zelig*, *supra*, 27 Cal.4th at p. 1134, was a dangerous condition case.

As this Court pointed out both in *Peterson* and in *Zelig*, there simply is no public entity liability under the type of circumstance presented here, because "'third party conduct by itself, unrelated to the condition of the property, does not constitute a "dangerous condition" for which a public entity may be held liable.'" (*Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at p. 1134, quoting *Peterson v. San Francisco Community College Dist.*, *supra*, 36 Cal.3d at p. 810.)

C. The UCLA Defendants Did Not Assume A Duty Of Care By Undertaking Measures To Enhance Campus Security Or Treat Thompson.

Rosen contends that even if the law does not impose a tort duty of care here based upon a special relationship, the UCLA defendants nevertheless assumed one under the negligent undertaking doctrine. (OBOM 44-53.) Under that doctrine, "a volunteer who, having no initial duty to do so, undertakes to provide protective services to another, will be found to have a duty to exercise due care in the performance of that undertaking if one of two conditions is met: either (a) the volunteer's failure to exercise such care increases the risk of harm to the other person, or (b) the other person reasonably relies upon the volunteer's undertaking and suffers injury as a result." (*Delgado v. Trax Bar & Grill, supra,* 36 Cal.4th at p. 249; see, e.g., *Zelig v. County of Los Angeles*, *supra*, 27 Cal.4th at pp. 1128-1129; *Paz v. State of California* (2000) 22 Cal.4th 550, 558-559 [no duty arises unless defendant, by its actions, has increased the risk of harm to the injured party or specifically caused her to rely upon its protections]; *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 613-616 [noting the limited boundaries of the doctrine].) Rosen's argument fails because neither requisite is met.

Rosen asserts the UCLA defendants voluntarily undertook a heightened duty by adopting special threat assessment and prevention measures, by undertaking in general to address threats of violence in UCLA's classrooms, and by attempting to treat and control Thompson. (OBOM 44-53.) But even if Rosen were correct that UCLA did all these things and then failed to perform at the voluntarily-assumed heightened level (a point not remotely conceded), Rosen has not shown and cannot show that UCLA caused Thompson's condition to worsen, or, as the Court of Appeal noted, that UCLA's failure increased any risk of harm to Rosen or that she relied on (or even was aware of) UCLA's adoption of standards heightened above what was otherwise required. (Slip opn. 26 ["Rosen has also failed to provide any evidence that she was harmed because she detrimentally relied on UCLA's student safety measures"].) Rosen's weak assertion that she manifested reliance by agreeing to attend classes (OBOM 51) underscores the absence of evidence concerning active reliance on anything the UCLA defendants did, let alone how it increased any risk to her. There is simply no close connection between defendants' activities in this regard, and Rosen's injury. (*Rowland, supra*, 69 Cal.2d at p. 113.)

In addition, as discussed below, creating a duty based upon undertaking general campus security measures, or the provision of mental health and crisis services to students in need will have particularly pernicious consequences by deterring colleges and universities from undertaking such beneficial programs at risk of creating potential liability. Neither law, nor public policy justifies creation of any special relationship based upon the sort of "undertakings" posited by plaintiff here.

D. The Expansion Of Duty That Rosen Proposes Would So Interfere With The Administration Of Colleges And Universities As To Contravene Public Policy.

Absent a duty of care, there can be no negligence liability. """"Duty' is not an immutable fact of nature but only an expression of the sum total of those *considerations of policy* which lead the law to say that the particular plaintiff is entitled to protection."'" (*Campbell v. Ford Motor Co.* (2012) 206 Cal.App.4th 15, 26, quoting *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 364, (in turn quoting earlier decisions) original italics.) Here, policy considerations militate strongly against creating the expansion of duty that Rosen advocates.

1. The cost and impracticality of imposing the proposed duty would be overwhelmingly prohibitive.

If California's jurisprudence left open a door permitting the conclusion that the UCLA defendants owed a duty to protect Rosen from criminal attack, the breathtaking scope of the responsibility that Rosen seeks to impose on the UCLA defendants—and by extension, all university and college personnel—would be reason to shut it.

The Regents enrolls some 238,000 students and has more than 198,000 employees. (See The UC System <http:www.university of california.edu/uc-system> [as of May 24, 2016].) Applied broadly, Rosen's theory of liability would make professors, instructors, administrative personnel and even graduate students at every institution of higher learning in California insurers of the personal safety of students enrolled in their classes, crippling, among others, the University of California's ten campuses, the California State University's 23 campuses, and California's

113 community college campuses. Merely supplying the training for personnel to attain some semblance of the expertise necessary to spot and address the subject dangers on campus would be prohibitive, and that's without taking into account the expense of defending against and resolving the anticipated multiplicity of claims.

The cost to the public of imposing such a responsibility, assuming it could be implemented, would be overwhelming. The proposition is as unwise as it is unworkable. (See *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 678; *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, both cases disapproved on another point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5 [burden of imposing duty of care to protect against criminal assaults is relevant consideration in determining whether such duty exists]; *Rowland, supra*, 69 Cal.2d at p. 113.)

2. The new duty, perversely, would discourage colleges from providing anything but the most minimal mental health services to students, or taking any action other than removing rather than treating mentally ill students.

Imposing the proposed new duty on colleges and universities would exact substantial undesirable social costs. As noted, creating a special relationship based upon the University having undertaken a duty to protect the student body as a whole through providing mental health services and crisis management to students such as Damon Thompson, will necessarily discourage colleges from enacting such programs, no matter how beneficial they may be to the campus community. To be sure, college and universities have basic duties under the Americans With Disabilities Act to accommodate individual students, but the creation of a specialized learning

program or accommodation for a particular student is not the same as maintaining the broad crisis intervention and mental health programs that the University offers to its students here. The rule of liability Rosen proposes spells doom for these highly beneficial outreach programs, which aid all students by assisting them in navigating the stress of college life.

Moreover, even as to individual students, the ADA contains exceptions for those instances in which the student's disability poses a danger to others. As one journalist observed, the net result has been that fears of potential tort liability have prompted universities to take a hard stance in dealing with mentally ill students who engaged in conduct that could in anyways remotely be indicative of posing a threat to others, by expelling such students, rather than treating them, even where treatment remains a viable option. (See Baker, *How Colleges Flunk Mental Health*, Newsweek (Feb. 11, 2014); *New Title II Regulations Regarding Direct Threat: Do They Change How Colleges and Universities Should Treat Students Who Are Threats To Themselves?*, NACUA Notes (Nov. 1, 2011); e.g., 42 U.S.C. §12133; 28 C.F.R. §36.208.)

At the very least, imposing a broad duty of care will necessarily exacerbate litigation on all fronts, as institutions find themselves between a rock and a hard place—vulnerable to liability when a student who has received campus mental health services is involved in a physical incident, but facing potentially harsh consequences from any attempt to bar such students from campus or disclose their disabilities because of protections the law has put in place to guard against this kind of conduct. (See, e.g., Rehabilitation Act of 1973, §504, 29 U.S.C. §794; Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq. [both statutes

prohibiting colleges/universities from discriminating against students on the basis of disability, actual or perceived, and requiring provision of reasonable accommodations for disabled students]; Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. §1232g [safeguarding students' right of privacy in their "education records"].)

Rosen's proposed duty would create a perverse incentive *not* to provide the very sort of broad mental health services that prevent violent acts and suicides in the university community, and to afford special-needs students only the most basic services. Recovery for this single, anomalous, albeit tragic incident, cannot justify the devastating consequences such a rule of liability will have on the provision of mental health services in the university setting. (*Rowland, supra*, 69 Cal.2d at p. 113.)

3. The proposed broad duty would deter students with special needs from obtaining beneficial services, even those to which they are legally entitled, and alienate such students from the campus community.

As noted, creating a duty premised upon having undertaken to provide mental health services to the student community will necessarily deter colleges and university from affording such services. Among those who will feel the absence of such programs most keenly are those who are most in need of them—students with mental health issues. While the ADA and other statutes will require universities to provide the minimal services to such students, they will no longer be able to take advantage of a broader range of support services that make transition and success in the university community more attainable.

Worse yet, however, is that such students might even be deterred from seeking help that they are legally entitled to receive. Imposition of the

duty of care proffered by Rosen will necessarily create an incentive for university employees to disclose information concerning those individuals who seek treatment for mental illness and who may, in the view of even untrained university personnel, pose a potential risk to other students. The prospect of having such confidential information disclosed could very likely deter students from seeking services. This is because confidentiality is the "absolute bedrock upon which the therapeutic relationship must rest." (Bower & Schwartz, *Legal and Ethical Issues in College Mental Health in Mental Health Care* in Mental Health Care in the College Community (2010) at p. 113.)

Moreover, even where students seek such treatment, fear that they will be subject to such draconian measures as ejection from campus, or the ostracism of being the subject of a warning to fellow students, may lead them to be less than candid. "If students believe that discussing troubling thoughts, feelings, fantasies or impulses will result in unwanted parental or administrative involvement, they will be significantly less likely to seek assistance from college counseling services." (See American Psychiatric Association, College Mental Health and Confidentiality (June 2009), at pp. 1, 2.) A failure to seek help is likely to result in the persistence and worsening of mental health problems and an increase in both violence against others and suicide. (See Amicus Curiae Brief of Jed Foundation, et al., filed in the Court of Appeal, 2d Civil No. B259424, at pp. 15-20.)

Further, the broad nature of the duty to warn that Rosen proposes here guarantees the ongoing isolation and ostracism of students with special needs. While Rosen never precisely articulates what sort of warning should have been given here, when stripped of Rosen's florid rhetoric, the fact

remains there is little that UCLA personnel, particularly lay personnel, could have told Rosen or any other student about any specific threat Thompson posed to them or anyone else, because he quite simply articulated no such threat. If the proposed tort duty required some generalized warning to the effect that Thompson was acting oddly and it was *conceivable* he might act out in some unspecified fashion, the result will be ongoing warnings as to virtually any special needs student who acts in a manner that could be described as outside the mainstream. In an era in which society has finally recognized the need to be more inclusive of those laboring under challenges of special needs, it is difficult to conceive of a policy more likely to defeat that end, than the "warn first, ask questions later," rule that Rosen effectively proposes here.

4. The proposed duty would not make campuses safer.

As Justice Perluss noted, "[a]ll parties agree the University of California has already developed sophisticated, interdisciplinary, threat assessment and violence prevention protocols." (Dis. opn. 11-12.) Although its safety measures did not prevent the attack here, there is no evidence that, overall, UCLA's programs are anything but effective. If the upshot of establishing and implementing safety protocols is an expansion of liability, as noted, the natural and inescapable effect would be for campuses to rethink providing such measures and programs. Moreover, even where such services are provided, students, including those most in need, will reconsider taking advantage of them. The result will be a lessening, not an increase, in safety on campuses.

5. If any solution is needed, it should come from the Legislature.

Rosen has not shown any good reason to expand the K-12 duty of supervision to the college/university context. If change is warranted (and the UCLA defendants maintain that none is), it should come from the Legislature. (See *Verdugo v. Target Corp., supra*, 59 Cal.4th at pp. 342-344 [no common law duty to assist patrons who become ill on a business's premises by making available an automated external defibrillator; any change must come from the Legislature].)

This court should reject Rosen's call to impose a broad new duty on university personnel to protect students from criminal attack, just as it declined in *Ann M.* and *Sharon P.*, in the premises liability context, to impose a duty on a premises owner to prevent a third party from committing a violent criminal assault against a person on the premises, even though violent criminal activity is predictable as a general phenomenon. (*Ann M. v. Pacific Plaza Shopping Center*, *supra*, 6 Cal.4th at p. 670 [shopping center owed no duty to provide security guards in common areas]; *Sharon P. v. Arman, Ltd.*, *supra*, 21 Cal.4th at p. 1199 [commercial landlord owed no duty to provide security in garage]; *id.* at pp. 1186, 1191 [noting the commission of "prior robberies . . . on the premises" and the commission of "363 crimes" in the surrounding 50-block area the previous year].)

Rosen's recourse is against her assailant. This Court should affirm the judgment of the Court of Appeal.

II. IF THIS COURT REACHES THE IMMUNITY ISSUES, IT SHOULD HOLD THAT THE UCLA DEFENDANTS ARE IMMUNE FROM LIABILITY UNDER THE CIRCUMSTANCES PRESENTED.

Although Rosen sought review only on duty of care, her opening brief also addresses the UCLA defendants' immunity arguments. (OBOM 53-60.) The Court of Appeal did not reach those arguments, except to conclude unanimously that Civil Code section 43.92 shields Dr. Green from liability. (See Slip opn. 27-29 [43.92], 34, fn. 13 ["we need not consider UCLA's alternative arguments"], Dis. opn. 14-15 [43.92].)

In the event the Court's treatment of duty necessitates that the remaining immunity arguments be resolved, the Court should follow its customary practice and remand to the Court of Appeal to address immunities in the first instance. But if the Court opts to reach the immunity arguments on the merits, it should find all of the UCLA defendants immune from liability. In any event, the Court should affirm summarily as to Dr. Green.

A. Should This Court Rule In Rosen's Favor On Duty, The Case Should Be Remanded To The Court Of Appeal To Address The Remaining Immunity Arguments In The First Instance.

Apart from its finding on Civil Code section 43.92 as to Dr. Green, the Court of Appeal did not reach the UCLA defendants' immunity arguments. (Slip opn. 34, fn. 13.) Thus, there has been no appellate determination on immunities for this Court to review, and consistent with that, Rosen sought review only on duty.

In the event this Court finds for Rosen on duty, the immunity arguments will require resolution. But as this Court has noted, "we commonly decline to decide issues not addressed by the Court of Appeal." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 326, 348 [remanding to the Court of Appeal to confront an issue not previously resolved]; Cal. Rules of Court, rule 8.528(c) [remand to address additional issues].) If the Court's conclusion on duty necessitates that immunity issues be addressed, the Court should follow its customary practice and, apart from affirming as to Dr. Green, remand to the Court of Appeal.

B. If This Court Addresses Immunity Issues, It Should Hold That The UCLA Defendants Are Entitled To Summary Judgment.

If the Court elects to address the immunity arguments, it should hold the UCLA defendants immune on several grounds.

1. Government Code section 856 shields public entities/employees from liability for injuries resulting from their determinations whether to confine a person for mental illness.

Government Code section 856, subdivision (a), provides that "[n]either a public entity nor a public employee acting within the scope of his or her employment is liable for any injury resulting from determining in accordance with any applicable enactment: (1) Whether to confine a person for mental illness or addiction." Subdivision (b) adds that "[a] public employee is not liable for carrying out with due care a determination described in subdivision (a)." These provisions shield the UCLA defendants from liability here.

Rosen postulates that the attack would not have occurred had the UCLA defendants acted to confine or remove Damon Thompson or to warn the UCLA public about him based on indications made known to each of them that his condition was escalating in the days preceding it. As discussed, the claim cannot be substantiated. In any event, any contention that defendants are liable for having failed to confine Thompson is barred by the immunity established by Government Code section 856.

In *Tarasoff v. Regents of University of California, supra*, 17 Cal.3d 425, although this Court held that liability could be imposed on psychotherapists for failing to warn an identifiable victim of an attack threatened by a patient, it held that Government Code section 856 barred any liability based on the failure to confine Ms. Tarasoff's attacker. (17 Cal.3d at pp. 447-449.) In so holding, the Court underscored that the section 856 immunity applies not only to the ultimate decision to confine, but also to "all determinations involved in the process of commitment" (17 Cal.3d at p. 448).

Under Section 856, to the extent the attack is attributable to a failure to confine, the UCLA defendants are immune from liability.

2. Government Code section 820.2 immunity bars liability here.

Government Code section 820.2 immunizes public employees from liability for injuries resulting from their discretionary acts:

> Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

While the immunity does not shield against liability for injuries resulting from operational acts or decisions, the cases consistently hold that it insulates public employees from liability for injuries resulting from their basic policy decisions. (E.g., *Barner v. Leeds* (2000) 24 Cal.4th 676, 684-687 [citing earlier decisions]; *Johnson v. State of California* (1968) 69 Cal.2d 782, 793-795 [rejecting mechanical analysis of term "discretionary"; drawing distinction between basic policy decisions and operational acts].) While Rosen takes a narrow view of what constitutes a policymaking decision (OBOM 56-60), decisions addressing the immunity show that it operates more broadly than Rosen depicts.

In evaluating an 820.2 immunity claim, a court must make a "'judicial determination of the category into which the particular act falls: i.e., whether it was ministerial because it amounted "only to an obedience to orders, or the performance of a duty in which the officer is left no choice of his own," or discretionary because it required "personal deliberation, decision and judgment."'" (*Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 748, quoting *McCorkle v. City of Los Angeles* (1969) 70 Cal.2d 252, 260-261 and *Morgan v. County of Yuba* (1964) 230 Cal.App.2d 938, 942-943.) Thus, actual decision-making—personal deliberation, decision and judgment—is key to determining whether the immunity applies in a given context.

Application of the "personal deliberation, decision and judgment" standard compels application of the immunity to each of the UCLA defendants. The evidence shows at every stage, from Thompson's enrollment at UCLA forward, a process of considered, detailed, painstaking

deliberation, decision and judgment by the UCLA defendants concerning both Thompson's treatment and UCLA community safety.

Courts have repeatedly applied discretionary immunity under section 820.2 to precisely the sort of conduct at issue here—i.e., where decisions regarding the assessment or treatment of a mentally ill person have resulted in injury:

- In *Thompson v. County of Alameda, supra*, 27 Cal.3d 741, the Court held the County immune where plaintiffs' five-year-old son was killed by a juvenile offender within 24 hours of his release on temporary leave irrespective of whether the county's employees were negligent in authorizing the release. (*Id.* at pp. 748-749 ["The discretionary nature of the selection of custodians for potentially dangerous minors and the determination of the requisite level of governmental supervision for such custodians becomes apparent when the underlying policy considerations are analyzed. . . . The decision, requiring as it does, comparisons, choices, judgments, and evaluations, comprises the very essence of the exercise of 'discretion' and we conclude that such decisions are immunized under section 820.2"].)

- In *Ronald S. v County of San Diego* (1993) 16 Cal.App.4th 887, the county was immune from liability for injuries suffered by a minor who was abused by his adopted father, who had been selected by the county following the deaths of the minor's natural parents. (*Id.* at pp. 896-897, quote at 897 ["the pre-adoption work of the social service employees of the County constituted discretionary activity protected by the immunity provision of section 820.2. The nature of the investigation to be conducted

and the ultimate determination of suitability of adoptive parents bear the hallmarks of uniquely discretionary activity"].)

- In *Ortega v. Sacramento County Dept. of Health and Human Services* (2008) 161 Cal.App.4th 713, the immunity applied where an 11-year-old girl sustained savage injuries days after the county department released her to her father's custody notwithstanding his bizarre and disturbing behavior while under the influence of PCP coupled with evidence that the county inadequately investigated his background and suitability as a custodian. (*Id.* at pp. 729-732 [section 820.2 applies to protective custody investigations], p. 733 ["the record in this case does reflect that (the social worker) made a considered decision balancing risks and advantages. It is clear she did so on woefully inadequate information, but she did so do." "[T]he exercise of discretion invariably entails the collection and evaluation of information. Thus, the collection and evaluation of information is an integral part of 'the exercise of discretion' immunized by section 820.2"].)

- In *Christina C. v. County of Orange* (2014) 220 Cal.App.4th 1371, 1374, 1376, the immunity applied to a social worker's decision to remove minor child from his mentally ill mother and place him with his father, notwithstanding evidence that the mother was able to provide care, that the child fared poorly with the father, and that the child ultimately returned to the mother after the father pleaded guilty to charges that he poisoned his live-in maid with benzodiazepine and was a felon in possession of a firearm. The court noted, "The immunity applies even to 'lousy' decisions in which the worker abuses his or her discretion, including decisions based on 'woefully inadequate information.'" (*Id.* at

p. 1381, quoting *Ortega v. Sacramento County Dept. of Health and Human Services*, *supra*, 161 Cal.App.4th at pp. 725, 728.)

According to Rosen, the above cases turn on specific facts in contexts that, for unexplained reasons, she asserts are dissimilar to those present here (OBOM 56, 58-60), and both Rosen and Justice Perluss stress that Section 820.2 immunity should only be broad enough to "'give legislative and executive policymakers sufficient breathing space in which to perform their vital policymaking functions'" with Justice Perluss quoting *Barner v. Leeds*, *supra*, 24 Cal.4th at p. 685. (Dis. opn. 16.) Yet *Barner* cites *Thompson* with approval (24 Cal.4th at p. 104, fn. 3), and as noted, *Thompson* involves the very sort of evaluative decision-making at issue here. Rosen cites this Court's rejection of Section 820.2 immunity in *Peterson* (which, in turn, cites *Tarasoff*) generally asserting that "'the failure to warn does not involve those basic policy decisions which this immunity provision was meant to protect.'" (OBOM 57-58.) Yet, Rosen ignores the facts in each case. *Peterson* was a dangerous condition case, where evaluation of the danger posed and the need to warn did not turn upon any fine evaluation of a particular individual's potential for violent behavior, or assessment of whether existing policies and programs were sufficient to guard against any potential threat. *Tarasoff* involved a therapist's exercise of professional judgment in making an assessment squarely within the scope of the therapist's expertise. In contrast, here, the actions of the non-therapist defendants—who lack the training and expertise to assess the "dangerousness" of any individual and must perforce rely upon the judgment of professional therapists in that regard—are squarely the sort immunized as discretionary decisions under *Thompson*.

University officials necessarily exercise substantial discretion and judgment in determining what general policies and programs the University should provide in terms of mental health services, or creating protocols for dealing with students with mental health issues, i.e., "balancing of such factors as the protection of the public, the physical and psychological needs of the" student, "the relative suitability of" the University "environment, the availability of other resources," and "the need to reintegrate the" student "into the community." (*Thompson, supra*, 27 Cal.3d at pp. 748-749.)

To the extent Rosen charges the UCLA defendants with making poor choices in their decisions concerning treatment and handling of Thompson, section 820.2 immunity applies.

3. Because Thompson never communicated any serious threat of physical violence, Civil Code section 43.92 shields the Regents from liability founded on any UCLA psychotherapist's failure to protect or warn Rosen.

a. This court should affirm the Court of Appeal's unanimous conclusion that Dr. Green is entitled to summary judgment.

Both the Court of Appeal majority and Justice Perluss found defendant Dr. Green entitled to summary judgment under Civil Code section 43.92. (Slip opn. 27-29, Dis. opn. 14-15, 21.) Rosen did not petition for review of that unanimous conclusion, but she nevertheless challenges it now. This Court should reject her challenge, both summarily for her failure to seek review on the point, and on the merits.

As discussed in connection with duty, Civil Code section 43.92 precludes pursuing a cause of action or imposing monetary liability against

any psychotherapist for failing to predict, warn or protect against a patient's violent behavior except where "the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims." (Civ. Code, §43.92, subd. (a).)

Rosen concedes that Dr. Green was Thompson's treating psychotherapist at least up to a point. (OBOM 55 ["So far as this case goes, only Nicole Green could consider Thompson her patient and then only until June 2009 when he stopped coming to treatment"]; see Slip opn. 28.) She theorizes, however, that in order to warrant summary judgment, it was up to the defense to conclusively establish that Thompson never communicated a threat against Rosen that would have prompted Dr. Green to sound an alarm. (OBOM 55-56.) As the Court of Appeal explained, however, Rosen's understanding of summary judgment procedure has things backwards. (Slip opn. 13, 27-29.)

The UCLA defendants produced evidence that Dr. Green was Thompson's treating psychotherapist and that Thompson never communicated to her any threat about which she would have been legally obliged permitted to warn Rosen. (See Slip opn. 28-29.) Rosen complains that the defense's evidence was not comprehensive or conclusive enough (OBOM 55-56), but in fact, the UCLA defendants' production of evidence shifted the burden to Rosen to identify a triable issue of fact if she could.

As the Court of Appeal explained, "'"A defendant moving for summary judgment has the burden of producing evidence showing that one or more elements of the plaintiff's cause of action cannot be established, or that there is a complete defense to that cause of action. [Citation.]"' (*Hypertouch, Inc. v. ValueClick, Inc.* (2011) 192 Cal.App.4th 805, 817-

818.) "'Once the [movant] has met that burden, the burden shifts to the [other party] to show that a triable issue of one or more material facts exists as to that cause of action. . . . .' [Citations.]" . . . (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 643 (*Jade Fashion*)."'" (Slip opn. 13.)

Thus, the Court of Appeal correctly noted that it was up to Rosen to produce evidence that would "'allow a reasonable trier of fact to find that [Thompson] had "communicated" to [Green] "a serious threat of physical violence" against [Rosen]'"—and she failed to do so. (Slip opn. 28-29, quoting *Calderon v. Glick, supra,* 131 Cal.App.4th at p. 232; see Slip opn. 29-30, fn. 10.) Accordingly, as the Court unanimously concluded, Civil Code section 43.92 entitles Dr. Green to summary judgment.

b. Civil Code section 43.92 likewise entitles any other UCLA psychotherapist who treated Thompson to summary judgment.

Civil Code section 43.92 applies more broadly than just to Dr. Green—it also shields from liability any other UCLA psychotherapist who treated Damon Thompson, and immunizes The Regents as their employer sued under respondeat superior. It does so because, "[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." (Gov. Code, §815.2, subd. (b); see *Zelig v. County of Los Angeles, supra,* 27 Cal.4th at p. 1128; *Amylou R. v. County of Riverside* (1994) 28 Cal.App.4th 1205, 1213 [governmental immunity is the rule; liability is the exception].)

The UCLA defendants produced evidence showing that Thompson never communicated a threat against Rosen (or anyone else) that met the statutory description; and to the extent that UCLA's personnel were concerned that Thompson might be a danger to himself or unidentified others (his repeated denials notwithstanding), they brought those concerns to law enforcement, which found no cause to confine Thompson involuntarily. Rosen has not identified any counter evidence. The most the record supports is that Thompson threatened to complain to the Dean of Students (5 Exh. 1360) and that a classmate heard Thompson tell a TA that he would "do something" if the torment he perceived did not stop (6 Exh. 1562). While Rosen notes that "The Regents could still be liable even if all the named individuals were exonerated[,]" based on the actions of unnamed "UCLA employees whose negligence was a substantial factor in causing her harm" (OBOM 19, fn. 12), that is untrue as to every UCLA psychotherapist who treated Thompson. Under Civil Code section 43.92, every such individual is shielded from liability; and under Government Code section 815.2, The Regents is equally protected from liability and entitled to summary judgment.

CONCLUSION

The decision of the Court of Appeal should be affirmed.

Dated: May 25, 2016

Respectfully submitted,

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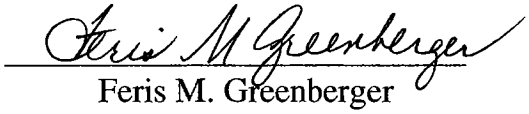
By: 
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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rules 8.520(c)((1) & (3), I certify that this **ANSWER BRIEF ON THE MERITS** contains **13,988** words, not including the cover, the tables of contents and authorities, the caption page, the signature blocks, or this Certification page.

DATED: May 25, 2016

Feris M. Greenberger

Feris M . Greenberger

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On May 25, 2016, I served the foregoing document described as: **ANSWER BRIEF ON THE MERITS** on the parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

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(X) **BY MAIL:** As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on October __, 2011, at Los Angeles, California.

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

Anita F. Cole