S234269

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOE NO. 1,
Defendant and Petitioner,
v.

LATRICE RUBENSTEIN,
Plaintiff and Respondent

REPLY BRIEF ON THE MERITS

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

*Lee H. Roistacher, Esq. (SBN 179619)
Richard J. Schneider, Esq. (SBN 118580)
Daley & Heft, Attorneys at Law
462 Stevens Avenue, Suite 201, Solana Beach, CA 92075
Tel: (858) 755-5666 / Fax: (858) 755-7870
Attorneys for Defendant and Petitioner: Doe No. 1

Leila Nourani (SBN 163336)
Sherry L. Swieca (SBN 198700)
Douglas M. Egbert (SBN 265062)
Jackson Lewis P.C.
725 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Tel: (213) 689-0404 / Fax (213) 689-0430
Attorneys for Defendant and Petitioner: Doe No. 1

S234269

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOE NO. 1,
Defendant and Petitioner,
v.

LATRICE RUBENSTEIN,
Plaintiff and Respondent

REPLY BRIEF ON THE MERITS

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

---

*Lee H. Roistacher, Esq. (SBN 179619)
Richard J. Schneider, Esq. (SBN 118580)
Daley & Heft, Attorneys at Law
462 Stevens Avenue, Suite 201, Solana Beach, CA 92075
Tel: (858) 755-5666 / Fax: (858) 755-7870
Attorneys for Defendant and Petitioner: Doe No. 1

Leila Nourani (SBN 163336)
Sherry L. Swieca (SBN 198700)
Douglas M. Egbert (SBN 265062)
Jackson Lewis P.C.
725 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Tel: (213) 689-0404 / Fax (213) 689-0430
Attorneys for Defendant and Petitioner: Doe No. 1

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I.

Introduction

Sexual abuse of children is undeniably tragic. And contrary to Latrice Rubenstein's assertion, Doe 1 certainly recognizes that young children may not disclose the abuse, may not recognize the abuse as wrongful, and acknowledges that some suggest young children may repress memories of the abuse.[1]

---

[1] "[T]here is substantial controversy in the mental health field regarding whether, and under what circumstances, a victim of child abuse might forget or suppress the memory of abuse over a long period of time and later recover that memory in response to questioning or other actions by a therapist. [Citation]." (*Taus v. Loftus* (2007) 40 Cal.4th 683, 712-713; see *Trear v. Sills* (1999) 69 Cal.App.4th 1341, 1344 (*Trear*) ("The idea that childhood sexual abuse may result in suppression of memory such that the victim may not remember it until years later under the guidance of a psychotherapist is, to say the least, a controversial one within the psychotherapeutic community.").) "Courts should be very skeptical of [memory repression] in light of the scientific literature." (*Powell v. Chaminade Coll. Preparatory, Inc.* (Mo. 2006) 197 S.W.2d 576, 591 fn. 8 (Wolff, C.J., concurring); see *Leone v. Towanda Borough* (M.D. Pa. Oct. 11, 2016, 3:12-cv-0429) 2016 U.S. Dist. Lexis 140409, *9 fns. 4, 5 (citing sources and noting "little empirical support for memory repression" and "[i]n fact, there is no evidence to support [its] authenticity or veracity"); see also *Doe v. Archdiocese of St. Paul & Minneapolis* (Minn. 2012) 817 N.W.2d 150, 170-171 (affirming trial court's exclusion of expert testimony on repressed memory for lack of foundational reliability); *Trear, supra,* 69 Cal.App.4th at p. 1345 ("we doubt ... that recovered memory will pass muster under the *Kelly* test for admissibility").)

The Legislature likewise appreciates and recognizes these issues. The Legislature has for decades grappled with childhood sexual abuse causes of action brought by adults, trying to balance the public policies of ensuring those abused as children can hold accountable those responsible while at the same time protecting defendants from having to defend decade-old claims where through the passage of time evidence no longer exists.

The Legislature has also wrestled with how to handle childhood sexual abuse claims brought against government entities. Government entities occupy a unique position because taxpayers ultimately foot the bill for litigation costs and judgments incurred by government entities. (See *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 213 (*Shirk*).) The Legislature accordingly treats government entities differently and provides government entities greater liability protections than those afforded to private defendants. (*Ibid.*) Indeed, the Government Claims Act (Act)[2] imposes pre-lawsuit claim presentation requirements and deadlines on those intending to sue government entities. These strictly construed claim

[2] Government Code section 810, et seq.

presentation requirements and short deadlines ensure government entities receive "fresh notice" of potential liabilities. (*Ibid.*) Not only does fresh notice allow government entities to engage in necessary fiscal planning, it furthers the extremely important public policy of allowing government entities to investigate claims and to take necessary remedial action to prevent future harm. (*Ibid.*) Fresh notice is especially important when childhood sexual abuse is alleged. (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1217, 1225 (*J.J.*).)

The end result of the Legislature's balancing of interests – allowing these abused as children to hold accountable those responsible, preventing defendants from having to defend against stale claims, and the need to treat government entities differently than private defendants – is that an adult attempting to bring a childhood sexual abuse cause of action against a government entity based on conduct predating January 1, 2009 must have first complied with the Act's claim presentation requirements and deadlines. That is, such an adult must have presented a claim within six months of the last abuse or applied for permission to present a late claim within a year of the last abuse,

notwithstanding repressing memories of the abuse during those time periods.

Rubenstein alleges presenting her 2012 claim within six months of discovering repressed memories of 1993-1994 sexual abuse by her high school track coach. Despite the "repressed memory" allegation, Rubenstein's claim nevertheless was untimely because it accrued on the last day of abuse in 1994, Rubenstein failed to present her claim within six months, and she failed to apply for permission to present a late claim within one-year. (See Government Code §§ 911.2, 911.4.) Although this conclusion leaves Rubenstein without a remedy against Doe 1, and may leave without a remedy a limited class of potential plaintiffs alleging pre-January 1, 2009 abuse by government employees, it is a conclusion compelled by the following three established legal principles:

1. Childhood sexual abuse causes of action generally accrue on the date of the last abuse. (*Shirk, supra,* 42 Cal.4th at pp. 210; *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 443 (*John R.*); *Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953,

961 (*Doe*); *V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 510 (*V.C.*).)

2. Code of Civil Procedure section 340.1 (section 340.1) does not postpone the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines. (*Shirk, supra*, 42 Cal.4th at pp. 211-214; *A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257-1258 (*A.M.*); *S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 721 (*S.M.*); *V.C., supra,* 139 Cal.App.4th at pp. 509-512, 514.)

3. The common law delayed discovery doctrine does not postpone the accrual date of an adult's childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines because section 340.1 eliminated application of common law delayed discovery to such causes of action. (*Quarry v. Doe 1* (2012) 53 Cal.4th 945, 983-984; *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405, 1419-1420 (*Curtis T.*).)[3]

---

[3] As predicted, Rubenstein argues that the common law delayed discovery doctrine renders her claim timely presented. (Opening Brief, pp. 15-16 fn. 9.) As explained in the opening brief, whether common law delayed discovery could render Rubenstein's claim

II.

Section 340.1 Does Not Establish The Accrual Date Of A Childhood Sexual Abuse Cause Of Action For Purposes Of The Act's Strictly Construed Claim Presentation Requirements and Short Deadlines

Rubenstein argues that "the statutorily defined delayed discovery rule found in [ ] section 340.1 applies to determine the date of accrual for government tort claim filing purposes." (Answering Brief (AB), p. 15 (capitalization altered); see also *id.* at p. 19.) But Rubenstein never actually says why she believes this is the rule. She merely argues, incorrectly, that neither *Shirk* nor *V.C.* addressed the issue. Both certainly did, and both held that section 340.1 does not control when a childhood sexual abuse cause of action accrues for purposes of the Act's claim presentation deadlines.[4]

---

timely is an issue not before this Court. (*Ibid.*) Doe 1 nevertheless explains later in this brief why common law delayed discovery does not, and cannot, render Rubenstein's claim timely.

[4] Even without *Shirk* and *V.C.*, the plain language of section 340.1 establishes it does not apply to Rubenstein's "repressed memory" claim. Section 340.1, subdivision (a) provides that an adult plaintiff can commence an action for childhood sexual abuse within three years of date the plaintiff discovered or should have discovered "psychological injury or illness occurring after the age of majority was caused by the sexual abuse." Rubenstein does not allege discovering in 2012 that her existing adult on-set psychological problems were caused by the 1994 abuse.

Rubenstein also incorrectly relies on the common law delayed discovery doctrine to support her argument that section 340.1 determines the accrual date of a childhood sexual abuse cause of action for purpose of the Act's claim presentation deadlines.[5] Making this argument, Rubenstein ignores that common law delayed discovery is a concept entirely distinct from section 340.1's special limitation period. And Rubenstein's

---

Rubenstein alleges repressing memories of the abuse altogether, which is something very different. (See *Quarry, supra*, 53 Cal.4th at p. 961 fn. 5 (distinguishing between claims based on repressed memories and claims based on a failure to recognize adult-onset psychological injury was caused by childhood sexual abuse).) Indeed, "[m]any jurisdictions have, for a variety of reasons, ruled that evidence of repressed memories is insufficient to toll the statutes of limitations. [Citations.]" *Doe v. Archdiocese of St. Paul and Minneapolis* (Minn. 2012) 817, N.W.2d 150, 171; see *Hyde v. Roman Catholic Bishop of Providence* (R.I. 2016) 139 A.3d 452, 465 (repressed memories do not toll statute of limitations for a childhood sexual abuse claim).)

[5] This Court explained the common law delayed discovery doctrine in *Quarry:* "A cause of action accrues, and the limitations period begins to run, when the cause of action is complete with all of its elements. Under certain circumstances, however, the accrual of the action may be postponed and the running of the limitations period tolled until the plaintiff discovers, or has reason to discover, the cause of action. A plaintiff has reason to discover a cause of action when he or she has reason at least to suspect a factual basis for its elements. Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period." (*Quarry, supra,* 53 Cal. 4th at p. 960 (internal quotes, cites and edits omitted).)

attempt to analogize accrual of childhood sexual abuse causes of action with accrual of medical malpractice or equitable indemnity causes of action is unpersuasive.

A. *Shirk* and *V.C.* both held that section 340.1 does not postpone the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines

A cause of action accrues when all of its elements are complete. (*Aryeh v. Canon Bus. Sols., Inc.* (2013) 55 Cal.4th 1185, 1191 (*Aryeh*).) A statute of limitation governs the time to commence an action after it accrues. (*Quarry, supra*, 53 Cal.4th at p. 960; *Shirk, supra*, 42 Cal.4th at pp. 211-212; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806-807; *Doe, supra,* 247 Cal.App.4th at p. 961; *V.C., supra*, 139 Cal.App.4th at pp. 509-510.) Section 340.1 is a special statute of limitation governing childhood sexual abuse causes of action. (*Shirk, supra*, 42 Cal.4th at p. 207; *A.M., supra*, 3 Cal.App.5th at p. 1257; *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, 1266 (*County of Los Angeles*).) Section 340.1 thus provides the time for one to commence an action for childhood sexual abuse after the cause of action accrues. (*Quarry, supra*, 53 Cal.4th at p. 952; see *S.M., supra*, 184 Cal.App.4th at p. 721

("[section 340.1] extends the time during which a victim of childhood sexual abuse may sue, *but it does not alter the cause of action's applicable accrual date . . .* ")(emphasis added).) Childhood sexual abuse causes of action generally accrue when the last abuse occurs.[6] (*Shirk, supra*, 42 Cal.4th at 210; *John R., supra,* 48 Cal.3d at 443; *A.M., supra*, 3 Cal.App.5th at p. 1259; *Doe, supra,* 247 Cal.App.4th at p. 961.)

Despite Rubenstein's protest otherwise, this Court held in *Shirk* that section 340.1 does not postpone the accrual date of a childhood sexual abuse cause of action for purposes of the Act's six-month claim presentation deadline to some date other than the date of the last abuse. (*Shirk, supra,* 42 Cal.4th at pp. 211-214.) Indeed, *A.M.* very recently summarized this Court's holding stating: "In *Shirk*, our Supreme Court concluded that the delayed discovery provisions in section 340.1 did not toll the period in which to present a claim under the Government Tort Claims Act. The court held specifically that a timely six-month

---

[6] Rubenstein asserts that "[t]hrough Section 340.1, a claim does not accrue until 'the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse.'" (AB, p. 23.) "In making this argument, [Rubenstein] confounds the principles of limitations periods and accrual dates." (*V.C., supra*, 139 Cal.App.4th at p. 509.)

claim is a prerequisite to maintaining an action for childhood sexual abuse against a public entity school district. [Citation]." (*A.M., supra*, 3 Cal.App.5th at p. 1258.)

Rubenstein's assertion that "*V.C.*'s refusal to disregard the [G]overnment [C]ode's six-month statute of limitations does not shed light on the issue here concerning when the claim actually accrued" is based on a significantly flawed reading of *V.C.* (AB, pp. 25-26.) Rubenstein mistakenly believes the issue in *V.C.* was whether section 340.1 impacted Government Code section 945.6's requirement that a lawsuit be brought within six months of the government entity's claim rejection. Although section 340.1 certainly does not alter this limitation period, (*County of Los Angeles, supra,* 127 Cal.App.4th at 1266, 1268-1270), that was not the issue in *V.C.* *V.C.* dealt with the issue of whether section 340.1 impacts the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines. *V.C.* concluded, in no uncertain terms, that section 340.1 does not postpone the accrual date to some date other than the date of the last abuse. (*V.C., supra*, 139 Cal.App.4th at 509-510; see *S.M., supra,* 184 Cal.App.4th at p. 721 (noting *V.C.* held "[section 340.1] extends the time during which a victim of childhood sexual

abuse may sue, *but it does not alter the cause of action's applicable accrual date . . .* ")(emphasis added).)

B. ***K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229 (*K.J.*), does not support Rubenstein's argument that section 340.1 postpones the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines**

Rubenstein relies on *K.J.* for the proposition "that the statutorily defined discovery rule outlined in section 340.1 is applicable to determine the date of accrual" of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines. (AB, p. 18; see *id.* at 20 (citing *K.J.* for proposition that "the Legislature's definition of *accrual* for purposes of determining when the statute of limitations is triggered *does apply* to determine the date of accrual for government tort claim purposes").) *K.J.* does not assist Rubenstein. *K.J.*, at bottom, is a common law delayed discovery case. Although *K.J.* did seemingly rely on section 340.1 in its common law delayed discovery analysis, *K.J.*'s conclusion was ultimately based on the common law delayed discovery doctrine.[7] (See *K.J.*, *supra*, 172 Cal.App.4th at pp. 1234, 1239, 1241-1243.) And to the extent

[7] As discussed later in this brief, section 340.1 precludes applying common law delayed discovery to postpone the accrual date of a childhood sexual abuse cause of action brought by an adult.

K.J. endorses the proposition that section 340.1 postpones the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines, *K.J.* contradicts *Shirk,* and conflicts with *V.C.*

In *K.J.*, the plaintiff had a sexual relationship with her high school teacher. (*K.J., supra,* 172 Cal.App.4th at p. 1235.) It began in 2003 when the plaintiff was 15 and continued until 2006 (she turned 18 in December 2005 during her senior year). (*Ibid.*) During the three-year period, the plaintiff believed she was in love with the teacher and did not think there was anything wrong with the relationship. (*Ibid.*) The plaintiff eventually disclosed the relationship to her mother in July 2006, after she graduated from high school. (*Ibid.*) Plaintiff's mother reported the teacher in October 2006, and he was arrested. (*Ibid.*) Not until undergoing therapy in July 2007 did the plaintiff realize the wrongfulness of the sexual relationship with her teacher. (*Id.* at p. 1236.) The plaintiff presented a tort claim to the school district two months later. (*Ibid.*) The trial court sustained the school district's demur without leave to amend finding the plaintiff failed to present a timely claim. (*Id.* at pp. 1236-1237.)

After recognizing that a childhood sexual abuse cause of action generally accrues on the date of the last abuse, (*K.J., supra*, 172 Cal.App.4th at p. 1239), *K.J.* went on to analyze whether the plaintiff sufficiently alleged "delayed discovery of the cause of action which postponed the accrual date until she learned in therapy that she had been victimized by [the teacher]." (*Ibid.*) After analyzing the common law delayed discovery doctrine's application to childhood sexual abuse causes of action and examining plaintiff's allegations, (*id.* at 1241-1243), *K.J.* found the plaintiff sufficiently alleged timely claim presentation because she alleged presenting her claim within six months of discovering the wrongfulness of the teacher's conduct. (*Id.* at 1243; see *id.* at page 1234.)

In the course of its analysis of whether common law delayed discovery could render the plaintiff's claim timely even though it was presented more than six months after the last abuse, *K.J.* found, without explanation, that the language in section 340.1 "characterizing accrual as 'the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse,' *guides our understanding* of the accrual date

applicable to [plaintiff's] presentation of a tort claim to the District."[8] (*Id.* at p. 1243 (emphasis added).) And in a footnote responding to the school district's argument (made at oral argument) that section 340.1 does not govern the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines, *K.J.* seemingly concluded that section 340.1 did more than "guide its analysis." Without explanation, *K.J.* said "the conclusion is ineluctable that the date of accrual in Code of Civil Procedure section 340.1, pertaining to private defendants, is applicable to the presentation of a claim to a public entity for damages arising out of childhood sexual abuse." (*Id.* at p. 1243 fn. 7.)

K.J.'s use of section 340.1 to guide its accrual analysis is troubling. Section 340.1 is not an accrual statute but a statute of limitation governing when a childhood sexual abuse cause of action may be brought after accrual. Given accrual dates and limitation periods are completely different concepts, *K.J.*, "confound[ed] the principles of limitation periods and accrual

---

[8] *K.J.* did recognize that section 340.1 has no impact on Government Code section 945.6's six months from claim rejection statute of limitation. (*K.J., supra*, 172 Cal.App.4th at pp. 1242-1243.)

dates." (*V.C., supra*, 139 Cal.App.4th at p. 509.) But even more troubling, however, is *K.J.'s* statement that section 340.1 indisputably governs the accrual date of a childhood sexual abuse cause of action for the purposes of the Act's claim presentation deadlines. The statement, although dicta, is obviously wrong.[9] The "ineluctable conclusion" when *K.J.* was decided in 2009 was that section 340.1 did not govern the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines. That is what this Court established in 2007 in *Shirk* and what *V.C.* recognized in 2006.[10]

Although Rubenstein does not rely on it, there is additional language in *K.J.* that Doe 1 discusses to further demonstrate *K.J.'s* analytical weakness. In a footnote, *K.J.* posited that

---

[9] This statement is dicta because *K.J.* relied on common law delayed discovery and not section 340.1 to find the plaintiff had sufficiently alleged timely compliance with the Act's claim presentation deadlines. (See *K.J., supra,* 172 Cal.App.4th at pp. 1239-1241, 1243.)

[10] Notably, both *K.J.* and *V.C.* are decisions from the Second Appellate District, although they are from different divisions. And *K.J.'s* view of section 340.1's impact on the Act's claim presentation deadlines conflicts with a more recent decision from the Second Appellate District. (See *S.M., supra*, 184 Cal.App.4th at p. 721 (holding section 340.1 does not alter the cause of action's accrual date for claim presentation purposes).) So *K.J.* is clearly the outlier within its own appellate district.

section 340.1, subdivision (m) was "declarative of existing law to the extent that it applies the delayed discovery doctrine to the accrual of a cause of action brought by an adult plaintiff against a public entity for childhood sexual abuse." (*K.J., supra*, 172 Cal.App.4th at p. 1324 fn. 2.) It is difficult to understand how *K.J.* reached this conclusion. Section 905, subdivision (m) clearly changed the law by exempting from the Act's claim presentation requirements and deadlines childhood sexual abuse causes of action arising out of post-January 1, 2009 conduct. (See Opening Brief, pp. 39-51.) And neither the statute nor the legislative history say anything about delayed discovery applying to those childhood sexual abuse causes of action still requiring the presentation of a claim (those based on pre-January 1, 2009 conduct).

C. The medical malpractice and equitable indemnity cases Rubenstein cites do not support her argument that section 340.1 alters or postpones the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines

Rubenstein argues that "[c]onsideration of cases concerning the date of accrual for claim filing purposes against public entities in areas outside of sexual abuse claims" is useful here, particularly relying on medical malpractice and equitable

indemnity cases. (AB, pp. 20-23 (citing to *Whitfield v. Roth* (1974) 10 Cal.3d 874 (*Whitfield*), *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, and *People ex rel. Department of Transportation v. Superior Court* (1980) 2 Cal.App.3d 744. (*Department of Transportation*).) To the extent Rubenstein relies on these cases for the general proposition that accrual of a cause of action for purposes of the Act's claim presentation deadlines is the same as the accrual date under the statute of limitations applicable to claims between private litigants, Doe 1 does not dispute this proposition. It does not mean, however, that the Legislature cannot and has not established different tolling mechanisms or rules postponing accrual with respect to claims between private litigants and government claims. Indeed, Code of Civil Procedure section 352, subdivision (b) expressly does just that by eliminating minority tolling for causes of action against government entities. The medical malpractice and equitable indemnity cases Rubenstein cites do not address this fact and really have no application here.

First, any attempted analogy between the accrual date of an equitable indemnity cause of action and sexual abuse cause of action can be dismissed out of hand. That is because the

Legislature expressly established the date of accrual for equitable indemnity causes of action. (Government Code § 901 ("[T]he date upon which a cause of action for equitable indemnity or partial equitable indemnity accrues shall be the date upon which a defendant is served with the complaint giving rise to the defendant's claim for equitable indemnity or partial equitable indemnity against the public entity."].)[11] There is no such express statutory definition of "accrual" with respect to sexual abuse claims for purposes of the Act's claim presentation deadlines.

Medical malpractice claims also are not analogous to sexual abuse claims because the claims are fundamentally different, and the Legislature has treated them as such. Justice Eagleson's concurring and dissenting opinion in *John R., supra*, 48 Cal.3d at

---

[11] This was a legislative response to *Department of Transportation, supra,* 26 Cal.3d at p. 748, which held that an indemnity claim accrues at the time the indemnitee pays a judgment or settlement. (See *Centex Homes v. Superior Court* (2013) 214 Cal.App.4th 1090, 1100.) Notably, this change is consistent with the purpose of the Act's short claim presentation deadlines. Making an equitable indemnity cause of action accrue when the indemnitee is served with a complaint giving rise to the indemnity claim, as opposed to a date years later when the case is over, ensures the government entity receives fresh notice of potential liabilities.

pp. 459-462, explained in depth why the reasons for applying common law delayed discovery to postpone the accrual of medical malpractice causes of action do not apply to childhood sexual abuse causes of action, and particularly those brought against government entities.[12] Most significantly, "[a] key purpose of the [Act's] prompt claim-filing requirement is to allow a public entity the opportunity to investigate and to respond. A delayed-discovery rule in molestation cases is fundamentally inconsistent with that purpose." (*Id.* at p. 460.) It is much more difficult to investigate, prevent continuing harm, or remedy alleged abuse reported years or even decades later (as is the case here). (*Ibid.*; see *J.J., supra,* 233 Cal.App.4th at p. 1225 (observing that the Act's prompt claim presentation requirement is particularly important when abuse of children is alleged).)

Moreover, "[u]nlike in medical malpractice cases, the evidence of injury and damages in a molestation case is often not objectively verifiable. For example, if a surgeon leaves a sponge

---

[12] The *John R.* majority expressed serious doubts about common law delayed discovery applying to postpone the accrual date of the plaintiff's sexual abuse cause of action, but ultimately did not address the issue. (*John R., supra,* 47 Cal.3d at p. 444.) The majority relied on equitable estoppel principles, which are not at issue here. (*Ibid.*)

in a patient's abdomen and the sponge is not discovered for 15 years, the defendant is not much prejudiced by the passage of time because the injury (leaving the sponge) and the damages (the current illness) are objectively verifiable. . . . There will also be medical records and often witnesses, e.g., nurses and other physicians. In almost all molestation cases, however, there will be no physical evidence of molestation, especially after considerable time has passed; there will be no documentary evidence; and there will be only two witnesses -- the child and the defendant. It will be very difficult for a public entity to investigate the allegations against it, much more so than in the typical medical malpractice case. Thus, the delayed-discovery rule in molestation cases is inconsistent with the purpose of the prompt claim-filing requirement." (*Id.* at pp. 460-461.)

Thus, it is not surprising that the Legislature has treated causes of action for medical malpractice and childhood abuse differently. Code of Civil Procedure section 340.5 codifies for medical malpractice claims special delayed discovery principles, as well as special tolling mechanisms including those for cases involving minors, which differ from those set forth in section

340.1.[13] And as discussed at length in the opening brief, in response to this Court's holding in *Shirk* that section 340.1 does not postpone the accrual date of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines (*Shirk*, *supra*, 42 Cal.4th at pp. 211-214; *A.M.*, *supra*, 3 Cal.App.5th at pp. 1257-1258), the Legislature enacted Government Code section 905, subdivision (m), exempting from the Act's claim presentation requirement and deadlines causes of action under section 340.1, but only for those causes of action based on conduct occurring on or after January 1, 2009. As such,

---

[13] Section 340.5 provides in pertinent part: "In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person. Actions by a minor shall be commenced within three years from the date of the alleged wrongful act except that actions by a minor under the full age of six years shall be commenced within three years or prior to his eighth birthday whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which parent or guardian and defendant's insurer or health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor for professional negligence."

Shirk's holding applies to claims, such as Rubenstein's, based on conduct occurring prior to that date, and section 340.1's delayed discovery rule, which postpones (not establishes) accrual, does not apply to that limited class of stale claims against government entities. Thus, the discussions in *Whitfield* and *Jefferson* under section 340.5's delayed discovery rule simply do not apply here. (See *Curtis T., supra,* 123 Cal.App.4th at p. 1418 ("*Whitfield*, the case on which plaintiff relies heavily, does not offer much, if any, guidance on when courts should apply the delayed discovery rule in contexts outside medical malpractice.").)

As Justice Eagleson noted in his dissent, all statutes of limitation are arguably unfair when they operate to preclude recovery for wrongfully caused injuries, but it is the Legislature's role, not the courts', to determine how to balance this unfairness with the unfairness that results from the assertion of stale claims. (*Id.* at pp. 461-462.)[14] That is exactly what the

---

[14] Justice Eagleson emphasized that taking note of these factors does not demonstrate "sympathy or tolerance for child molesters." (*John R., supra,* 48 Cal.3d at p. 461.) He stated that "[s]ociety's justifiable repugnance toward such misbehavior, however, is the reason why a falsely accused defendant can be gravely harmed. The potential for prejudice is exacerbated where the defendant is not the molester himself and knew nothing about the molestation until after it occurred, for example, a school district. [It is

Legislature has done in enacting Government Code section 905, subdivision (m).

III.

For Purposes Of Compliance With The Act's Claim Presentation Deadlines, Common Law Delayed Discovery Does Not Postpone The Accrual Date Of An Adult's Childhood Sexual Abuse Cause Of Action To Some Date Other Than The Date Of The Last Abuse[15]

Rubenstein argues that the common law delayed discovery doctrine "operates to extend the date of accrual for claim filing purposes." (AB, p. 38.) The fatal flaw in Rubenstein's argument is that section 340.1 supplants common law delayed discovery. (*Quarry, supra,* 53 Cal.4th at pp. 983-984.) Because common law delayed discovery no longer postpones the accrual date of a childhood sexual abuse cause of action brought by an adult against a private defendant to a date other than the date of the last abuse, common law delayed discovery accordingly cannot postpone the accrual date of an adult's childhood sexual abuse cause of action for purposes of the Act's claim presentation

---

doubtful] that a school district can adequately investigate and defend a claim 5, 10, or 15 years after an alleged molestation." (*Ibid.*)

[15] See footnote 3, *ante.*

deadlines. And while Rubenstein articulates cognizable policy reasons for applying the delayed discovery doctrine to an adult's childhood sexual abuse cause of action, Rubenstein ignores the competing public policy interests underlying the Act's claim presentation requirements and deadlines and further ignores that the Legislature has already balanced these competing policy interests.

A. Common law delayed discovery cannot postpone the accrual date of an adult's childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines because common law delayed discovery no longer applies to postpone the accrual date of an adult's childhood sexual abuse cause of action against a private defendant

The Act requires presenting a claim within six months of a cause of action's accrual and requires applying for leave to present a late claim within one-year of the cause of action's accrual. (Government Code § § 911.2, 911.4.) The accrual date is the date the cause of action would accrue against a private defendant. (Government Code § 901.) As stated earlier, childhood sexual abuse causes of action generally accrue when the last abuse occurs. (*Shirk, supra*, 42 Cal.4th at p. 210; *John R., supra*, 48 Cal.3d at p. 443; *A.M., supra*, 3 Cal.App.5th at 1259; *Doe, supra,* 247 Cal.App.4th at p. 961.)

In general, common law delayed discovery postpones a cause of action's accrual and tolls the limitation period until a plaintiff discovers or should have discovered the cause of action. (*Quarry, supra,* 53 Cal.4th at p. 960.)

Courts have analyzed and sometimes applied common law delayed discovery to postpone the accrual date of a sexual abuse cause of action for purposes of the Act's claim presentation deadlines to a date other than the date of the last abuse. (See e.g., *J.J., supra,* 223 Cal.App.4th at pp. 1222-1225 (analyzing but not applying common law delayed discovery); *S.M., supra,* 184 Cal.App.4th at pp. 718-721 (analyzing but not applying common law delayed discovery); *K.J., supra,* 172 Cal.App.4th at pp. 1241-1242 (analyzing and applying common law delayed discovery); *V.C., supra,* 139 Cal.App.4th at pp. 515-516 (analyzing but not applying common law delayed discovery); *Curtis T., supra,* 123 Cal.App.4th at pp. 1416-1423 (analyzing and applying common law delayed discovery).)

Of the cases just cited, only *K.J.* involved an adult plaintiff. Whether the plaintiff is an adult or a minor is critical because a childhood sexual abuse cause of action brought by an adult is governed by section 340.1 and one brought by a minor is not.

Curtis T. and *Quarry* establish that section 340.1 precludes applying common law delayed discovery to postpone the accrual date of an adult's childhood sexual abuse cause of action. [16]

In *Curtis T.,* the guardian ad litem filed a claim on behalf of the plaintiff for abuse occurring in a foster home when the plaintiff was between five and eight years old. (*Curtis T., supra,* 123 Cal.App.4th at pp. 1411-1413.) *Curtis T.* held that common law delayed discovery can alter the accrual date of a sexual abuse cause of action brought by *a minor plaintiff.* (*Id.* at 1418.) In reaching this conclusion, *Curtis T.* observed that section 340.1 supplanted common law delayed discovery as a means to postpone the accrual date of an adult's childhood sexual abuse cause of action, but section 340.1 did not govern the minor plaintiff's sexual abuse cause of action and there was no similar statutory delayed discovery rule governing the minor's cause of action. (*Id.* at 1419-1420.) *Curtis T.* thus concluded that the *minor plaintiff* could rely on common law delayed discovery to postpone the accrual date. (*Ibid.*; see *V.C., supra,* 139 Cal.App.4th at p. 515 (citing *Curtis T.* for proposition that

---

[16] *Curtis T, V.C., K.J.* and *S.M.* were all decided before *Quarry.* While *J.J.* was decided after *Quarry, J.J.* did not address *Quarry.*

"[c]ourts may equitably apply the delayed discovery doctrine to a cause of action for sexual abuse brought *by a minor* (*emphasis added*)"); *S.M., supra*, 184 Cal.App.4th at p. 719-720 (observing that *Curtis T.* "adopted a circumstance-heavy approach, pegged to the unique facts of each case, and held that, given the right circumstances, a *minor suing for sexual abuse* is entitled to show that the cause of action did not accrue until a parent learned what happened or some other date after the abuse occurred (*emphasis added*)"); but see *K.J., supra*, 172 Cal.App.4th at pp. 1241-1242 (rejecting proposition that common law delayed discovery is limited to sexual abuse claims brought by minors).)

Quarry establishes that *Curtis T.* was correct in distinguishing between sexual abuse causes of action brought by minors and those childhood sexual abuse causes of action by adults.

In *Quarry*, this Court rejected a common law delayed discovery argument in a childhood sexual abuse case brought by adults stating it was "not persuaded" that common law delayed discovery survived after "the very specific and increasingly expansive discovery rules enacted as part of section 340.1." (*Quarry, supra*, 53 Cal.4th at p. 983.) Indeed, this Court

concluded that the "Legislature intended to supplant common law delayed discovery principals when" the Legislature "deleted [from section 340.1] references to these principals" with the 1994 amendment to section 340.1. (*Ibid.*) Thus, the "Legislature [never] intended that common law delayed discovery principals should apply to cases governed by section 340.1."[17] (*Id.* at p. 984.)

Quarry and *Curtis T.* make it clear that common law delayed discovery can no longer postpone the accrual date of a childhood sexual abuse cause of action brought by an adult against a private defendant. Although the adult's childhood sexual abuse cause of action is timely against a private defendant if brought within section 340.1's expanded limitations period – which accounts for delayed discovery – the accrual date for the causes of action necessarily remains what it has generally always been: the date of the last abuse. Because the date of accrual of a childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines is the same date the cause of action

---

[17] In *Aryeh, supra,* 55 Cal.4th at p. 1193, this Court noted its holding in *Quarry* that section 340.1 "legislatively supplants common law delayed discovery principals." (See also *Doe v. San Diego-Imperial Council* (2015) 239 Cal.App.4th 81, 86 (noting *Quarry* held that section 340.1 "created its own statutory delayed discovery rule").)

would accrue against a private defendant, it is thus the date of last abuse that marks the accrual of an adult's childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines.

B. Concluding that common law delayed discovery does not postpone the accrual date of an adult's childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines is consistent with the purpose of the Act's claim presentation requirements and deadlines

The Act's claim presentation requirements and deadlines exist because government entities are treated differently than private defendants. "The notice requirement under the government claims statute [ ] is based on a recognition of the special status of public entities, according them greater protections than nonpublic entity defendants, because unlike nonpublic defendants, public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers." (*Shirk, supra*, 42 Cal.4th at p. 213.)

A major goal of the Act's claim presentation requirements and short deadlines is to "afford[] the entity an opportunity to promptly remedy the condition given rise to injury, thus minimizing the risk of similar harm to others." (*Shirk, supra*, 42 Cal.4th at p. 213.) Postponing the accrual date of a childhood

sexual abuse cause of action and allowing the presentation of a claim years or decades after the last abuse does nothing to serve or further this strong public policy as the entity will have lost any chance to prevent further or future sexual abuse. (See *J.J., supra,* 223 Cal.App.4th p. 1225 (declining to apply common law delayed discovery and stating that "[i]n reaching our decision, we note the important policy implications of requiring a claimant to give a public entity 'prompt notice' of a claim [citation], particularly in a case such as the one before us involving allegations of sexual abuse . . . . Requiring a claimant in such circumstances to give prompt notice will permit 'early investigation and evaluation of the claim' [citation] by the public entity or entities, which could potentially prevent or limit any additional sexual abuse to the claimant and/or others similarly situated. [Citation]."); *John R., supra,* 48 Cal.3d at p. 460 (Eagleson, J., Concurring and Dissenting ("A key purpose of the prompt claim-filing requirement is to allow a public entity the opportunity to investigate and respond. A delayed-discovery rule in molestation cases is fundamentally inconsistent with that purpose.").)

Allowing presentation of a claim years or decades after the abuse occurs also means the government entity will be hindered in its ability to adequately defend itself, something the Act's short claim presentation deadlines seek to prevent. (See *Shirk, supra*, 42 Cal.4th at p. 213 ("The requisite timely claim presentation before commencing a lawsuit also permits the public entity to investigate while tangible evidence is still available, memories are fresh, and witnesses can be located.").)

C. Concluding common law delayed discovery does not postpone the accrual date of an adult's childhood sexual abuse cause of action for purposes of the Act's claim presentation deadlines is consistent with the Legislature's intent and the very specific compromises made when enacting Government Code section 905, subdivision (m)

An examination of what the Legislature intended when enacting Government Code section 905, subdivision (m), and why it was enacted, shows the Legislature intended to maintain the six-month from the last abuse claim presentation deadline (as *Shirk* and *V.C.* require) for all childhood sexual abuse causes of action based on pre-January 1, 2009 conduct, notwithstanding

memories of the abuse being repressed during that six-month period.[18]

As the legislative history discussed in the opening brief establishes, the Legislature enacted Government Code section 905, subdivision (m) in response to *Shirk*, a decision the Legislature interpreted to mandate, without exception, the presentation of a claim within six months of the last abuse. (See Opening Brief, pp. 41-50; *A.M., supra,* 3 Cal.App.5th at p. 1258 (observing Government Code section 905, subdivision (m) was enacted in direct response to *Shirk*).)

As enacted, Government Code section 905, subdivision (m) exempts from the Act's claim presentation requirements and deadlines only those childhood sexual abuse causes of action based on pre-January 1, 2009 conduct. However, the

---

[18] In addition to documents evidencing Legislative intent, courts properly exam the history of and reasons behind legislative action. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387; *Quarry, supra,* 53 Cal.4th at 952.) And it is presumed that when enacting Government Code section 905, subdivision (m), the Legislature was aware of the existence of and purpose behind the Act's claim presentation requirements and deadlines, and the Legislature intended to maintain consistency with prior opinions interpreting the Act's claim presentation requirements and deadlines. (*In re Greg F.* (2012) 55 Cal.4th 393, 407; *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 675; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2016) 248 Cal.App.4th 349, 370-371.)

Legislature's first response to *Shirk* was to propose a bill, (Senate Bill No. 1339 (2007-2008 Reg. Sess.)), that if enacted would have exempted from the Act's claim presentation requirements and deadlines all childhood sexual abuse causes of action regardless of when the abuse occurred. (Opening Brief, pp. 41-50.) Proponents of the bill believed those not reporting the abuse or those repressing memories of the abuse should not be penalized for failing to present a claim within six months of the abuse. (*Ibid.*) However, the Legislature eventually recognized that exempting all childhood sexual abuse causes of action from the Act's claim presentation requirements and deadlines would impose dramatic fiscal ramifications on government entities. (*Id.* at pp. 44-45.)

Reaching an acceptable balance in interests, the Legislature ultimately passed a bill, (Senate Bill No. 640 (2007-2008 Reg. Sess.)), exempting from the Act's claim presentation requirements and deadlines only those childhood sexual abuse causes of action based on pre-January 1, 2009 conduct.

Comparing what the Legislature first tried to do with what it ultimately did shows the Legislature intended for childhood sexual abuse causes of action based on pre-January 1, 2009

conduct to remain subject to the Act's claim presentation requirements and deadlines, deadlines that the Legislature understood (pursuant to *Shirk*) to run from the date of the last abuse notwithstanding the failure to report the abuse or the repression of memories of the abuse.

Examining what the Legislature did not do further supports this conclusion. If the Legislature intended to exempt from the Act's claim presentation requirements and deadlines "unreported" or "repressed memory" childhood sexual abuse causes of action arising out of pre-January 1, 2009 conduct or intended for these causes of action to accrue at some date other than the date of the last abuse, the Legislature would have said so and Government Code section 905, subdivision (m) would have said something like this:

> There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities except any of the following: . . . (m) Claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. This subdivision shall apply only to claims arising out of conduct occurring on or after January 1, 2009. *For claims arising out of conduct occurring before January 1, 2009, a claim must be presented within six months of date the plaintiff discovers or reasonably should have discovered that psychological*

injury or illness occurring after the age of majority was caused by the sexual abuse.

S.M. is instructive on this point. In *S.M.*, the minor plaintiff was fondled by her elementary school teacher during the 2002-2003 school year. (*S.M., supra*, 184 Cal.App.4th at p. 715.) Although the plaintiff recognized the wrongful conduct, she did not disclose the abuse because she was embarrassed and thought she might bear the blame. (*Ibid.*) After the 2002-2003 school year ended on June 30, 2003, the plaintiff had no contact with the teacher. (*Ibid.*) In October 2004, plaintiff's mother learned of the teacher's arrest after another victim came forward. (*Ibid.*) On October 14, 2004, the plaintiff disclosed the abuse to her mother. (*Ibid.*) The plaintiff presented a claim to the school district on April 12, 2005. (*Id.* at pp. 715-716.) The school district moved for summary judgment arguing that the plaintiff's April 12, 2005 claim was untimely because her childhood sexual abuse cause of action accrued no later than June 30, 2003. (*Ibid.*) The plaintiff argued her April 12, 2005 claim was timely presented within six months of the cause of action's accrual, which the plaintiff argued was when her mother learned of the abuse on October 14, 2004. (*Id.* at p. 716.)

Finding the plaintiff knew the abuse was wrongful when it was occurring, *S.M.* reluctantly concluded that the plaintiff's claim was untimely even though she did not report the abuse until after the six-month claim presentation deadline passed. (*Id.* at pp. 717-720.) *S.M.* then observed, "[i]n apparent recognition of the dilemma faced by families of children abused by public school officials, the law has changed. For claims described in Code of Civil Procedure section 340.1 for the recovery of damages suffered due to childhood sexual abuse occurring after January 1, 2009, the tort claim presentation requirement no longer applies. [Citation]. *However, the Legislature did not see fit to include an earlier cut-off date that would have preserved S.M.'s claims, and we have no power to rewrite the statute.*" (*Id.* at p. 721 fn. 6 (emphasis added).)

Thus, *S.M.* is consistent with Doe 1's argument that the Legislature did not provide a means for timely compliance with the Act's claim presentation deadlines for childhood sexual abuse causes of action arising out of pre-January 1, 2009 conduct where the victim fails to report the conduct or fails to recognize the wrongfulness of the conduct or, like here, alleges repressing memories of the abuse. A court can neither cast judgment on the

Legislature's decision nor provide a means for relief not provided by the Legislature.

IV.

Conclusion

For the reasons articulated in the opening brief and those here, this Court should reverse the Court of Appeal.

Respectfully submitted,

DATED: November 7, 2016

Daley & Heft, LLP

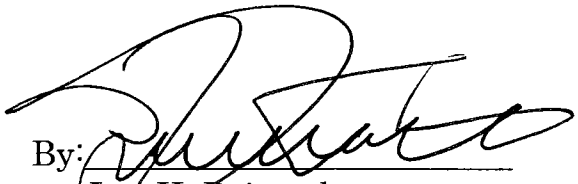
By: _____
Lee H. Roistacher
Richard J. Schneider
Attorneys for
Defendant and Petitioner
Doe No. 1

CERTIFICATE OF WORD COUNT

The text of this brief consists of 7,782 words as counted by the Microsoft Office 2010 word-processing program used to generate this document.

DATED: November 7, 2016

Daley & Heft, LLP



By: _____
Lee H. Roistacher
Richard J. Schneider
Attorneys for
Defendant and Petitioner
Doe No. 1

ATTORNEY or party without attorney (Name, state bar number, and address):	FOR COURT USE ONLY
Daley & Heft, LLP, Attorneys at Law Lee H. Roistacher, Esq. (SBN 179619) Richard J. Schneider, Esq. (SBN 118580) 462 Stevens Avenue #201, Solana Beach, CA 92075 Telephone No. (858) 755-5666 Facsimile No. (858) 755-7870 ATTORNEY FOR (Name): Doe No. 1	
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA Street Address: 350 McAllister Street City and Zip Code: San Francisco, CA 94102	
PLAINTIFF(S)/PETITIONER(S) Doe No. 1	Case Number: S234269
Defendant(S)/RESPONDENT(S) Latrice Rubenstein	Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107
PROOF OF SERVICE—CIVIL Check method of service: ☐ By Personal Service ☐ By Mail ☐ By Messenger Service ☐ By Facsimile ☒ By Overnight Delivery ☐ By E-Mail/Electronic Transmission	JUDGE: Hon. Juan Ulloa DEPT: 9

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

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

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

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

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

4. On (date): November 7, 2016, I served the following **documents** (specify):

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

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

   a. Name of person served:

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

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

   (2) Time of Service:

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

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

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

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

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

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

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

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

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

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

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

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

Date: November 7, 2016

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

Maria E. Kilcrease
(SIGNATURE OF DECLARANT)

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

DECLARATION OF MESSENGER

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

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

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

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

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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

ATTACHMENT TO PROOF OF SERVICE - CIVIL (DOCUMENTS SERVED)

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

REPLY BRIEF ON THE MERITS

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

ATTACHMENT TO PROOF OF SERVICE - CIVIL (PERSONS SERVED)

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

Name of Person Served:	***Where Served:*** *(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)*	***Time of Service:*** *(Complete for service by fax transmission or electronic service.)*
Elliott N. Kanter, Esq. Justin O. Walker, Esq.	Elliott N. Kanter, Esq. Justin O. Walker, Esq. Law Offices of Elliott N. Kanter 2445 Fifth Avenue, Suite 350 San Diego, CA 92101 Tel: (619) 231-1883 Fax: (619) 234-4553 Email: ekanter@enkanter.com jwalker@enkanter.com Attorney for Plaintiff and Respondent Latrice Rubenstein	Time:
Holly Noelle Boyer, Esq.	Holly Noelle Boyer, Esq. Esner Chang & Boyer 234 East Colorado Boulevard Suite 975 Pasadena, CA 91101-2262 Tel: (626) 535-9860 Fax: (626) 535-9859 Email: hboyer@ecbappeal.com Attorneys for Plaintiff and Respondent Latrice Rubenstein	
Leila Nourani, Esq. Sherry L. Swieca, Esq. Douglas M. Egbert, Esq.	Leila Nourani, Esq. Sherry L. Swieca, Esq. Douglas M. Egbert, Esq. Jackson Lewis P.C. 725 S. Figueroa Street, Suite 2500 Los Angeles, CA 90017 Tel: (213) 689-0404 Fax (213) 689-0430 Attorneys for Defendant and Petitioner Doe No.1	Time:

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

Name of Person Served:	***Where Served***: *(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)*	***Time of Service***: *(Complete for service by fax transmission or electronic service.)*
Hon. Juan Ulloa Superior Court of California County of Imperial	Hon. Juan Ulloa Superior Court of California County of Imperial 939 West Main Street El Centro, CA 92243 (760) 482-2200	
Court of Appeal Division One 750 B Street San Diego, CA 92101	Court of Appeal Fourth District Division One 750 B Street San Diego, CA 92101 (619) 744-0760	