S230568

IN THE

Supreme Court

OF THE STATE OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,
Defendants and Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

KATHERINE ROSEN,
Plaintiff and Real Party in Interest.

After a Decision by the Second Appellate District, Division 7
2nd Civ. No. B259424
Los Angeles County Superior Court Case No. SC108504
Hon. Gerald Rosenberg

AMICI CURIAE BRIEF OF CALIFORNIA MEDICAL ASSOCIATION, CALIFORNIA DENTAL ASSOCIATION, AND CALIFORNIA HOSPITAL ASSOCIATION IN SUPPORT OF DEFENDANTS AND PETITIONERS

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AMICI CURIAE BRIEF OF CALIFORNIA MEDICAL ASSOCIATION, CALIFORNIA DENTAL ASSOCIATION, AND CALIFORNIA HOSPITAL ASSOCIATION

Amici Curiae California Medical Association ("CMA"), California Dental Association ("CDA"), and California Hospital Association ("CHA") support defendants and petitioners' request that this Court affirm the decision of the Second Appellate District in *Regents of the University of California v. Superior Court* (Oct. 7, 2015, B259424). Specifically, *Amici* CMA, CDA, and CHA caution this Court that if it adopts plaintiff's proposed "duty of protection" (Reply Brief on the Merits, p. 12), which is based largely on a single public policy consideration and which contradicts other public policy considerations, the result would be undue expansion of vicarious liability for third party criminal or insane conduct. *Amici* are concerned that other plaintiffs will argue that broad duty should apply to health care provided in California.

This Court should decline to expand California law beyond all prior precedent and in contrast to the Legislature's intent. As the Court of Appeal Majority correctly noted, "[i]f liability is to be expanded in such a manner, it is a matter for the Legislature." (*Regents of the University of California v. Superior Court* (Oct. 7, 2015, B259424) 240 Cal.App.4th 1296, 1318, fn. 7 [Slip Opinion ("Slip Opn."), p. 24, fn. 7].)

Even assuming this Court is inclined not to defer to the legislative branch and, instead, to decide the issue on its own, this Court should reject plaintiff's one-dimensional analysis which is focused exclusively on the "foreseeability" factor and which

completely disregards the other factors this Court identified in *Rowland v. Christian* (1968) 69 Cal.2d 108, 112-113.

INTERESTS OF *AMICI*

The California Medical Association is a non-profit, incorporated, professional association of more than 41,000 member physicians practicing in the State of California, in all specialties. The California Dental Association represents over 25,000 California dentists, more than 70% percent of the dentists practicing in the State. CMA's and CDA's membership includes most of the physicians and dentists engaged in the private practices of medicine and dentistry in California. The California Hospital Association is the statewide leader representing the interests of nearly 450 hospitals and health systems in California.

CMA, CDA, and CHA are active in California's courts in cases involving issues of concern to the health care industry, including aspects of litigation affecting California health care providers. Such cases have included *American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, *Barme v. Wood* (1984) 37 Cal.3d 174, *Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, *Western Steamship Lines, Inc. v. San Pedro Peninsula Hospital* (1994) 8 Cal.4th 100, *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, *Bird v. Saenz* (2002) 28 Cal.4th 910, *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, *Reigelsperger v. Siller* (2007) 40 Cal.4th 574, and *Ruiz v. Podolsky* (2010) 50 Cal.4th 838.

More recently, CMA, CDA, and CHA filed briefs in *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, and *Rashidi v. Moser* (2014) 60 Cal.4th 718. Most recently, CMA, CDA, and CHA filed briefs in *Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, and *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148.

In addition, CMA filed a brief in *Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, a case upon which plaintiff relies to support her argument for expanding the "special relationship" doctrine. (See Opening Brief on the Merits, pp. 25, 49.)

Some of the funding for this brief was provided by organizations and entities that share *Amici*'s interests, including physician-owned and other medical and dental professional liability organizations and non-profit entities engaging physicians, dentists, and other health care providers for the provision of medical services, specifically the Cooperative of American Physicians, Inc., The Dentists Insurance Company, The Doctors Company, Kaiser Foundation Health Plan, Inc., The Mutual Risk Retention Group, Inc., Medical Insurance Exchange of California, and NORCAL Mutual Insurance Company.

This brief was not authored, either in whole or in part, by any party to this litigation or by any counsel for a party to this litigation. No party to this litigation or counsel for a party to this litigation made a monetary contribution intended to fund the preparation or submission of this brief.

STATEMENT OF THE CASE

Plaintiff Katherine Rosen was a student at the University of California, Los Angeles ("UCLA"), when she was attacked during a chemistry laboratory by another student, Damon Thompson. (Slip Opn., p. 2.) Prior to the attack, Thompson had received treatment from UCLA for mental health concerns, including suspected schizophrenia. (*Ibid.*)

Plaintiff filed a negligence action against The Regents of the University of California and individual employees of the school. The Regents unsuccessfully moved for summary judgment on the ground, *inter alia*, that it owed no duty to protect plaintiff from third party criminal conduct. (Slip Opn., pp. 9-10.)

The Regents petitioned for extraordinary relief, and the petition was granted. The Second District Court of Appeal, Division 7, issued writ relief, finding that The Regents did *not* owe a legal duty to protect plaintiff, either under the theory that a special relationship existed between The Regents and plaintiff, or under any other theory. (Slip Opn., pp. 15-34.) The Majority concluded, "[w]e find no 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.'" (*Id.* at p. 18, quoting *Ochoa v. California State University* (1999) 72 Cal.App.4th 1300, 1306.) The Majority then noted, "[w]hile 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." (*Ibid.*, fn. omitted.)

Justice Perluss authored a dissent, invoking the special relationship doctrine and relying primarily on public policy to propose an expansion of universities' "protective duty in the classroom setting[.]" (Slip Opn., Dis. opn. of Perluss, P.J. ("Dissent"), pp. 2-14.) "I would recognize an affirmative duty on the part of UCLA and its instructional and administrative personnel to take reasonable steps to keep their classrooms safe from foreseeable threats of violence." (*Id.* at p. 11, fn. omitted.)

The Majority addressed the Dissent's proposed expansion of the special relationship doctrine by comparing it to the duty that private landowners owe to business invitees. (Slip Opn., pp. 23-24, fn. 7.) The Majority cautioned against expansion of the doctrine in light of the Legislature's enactment of Government Code section 835, in which the Legislature "limited the circumstances under which a public entity landowner may be held liable for physical injuries a third party inflicts on its business invitees." (*Ibid.*) The Majority concluded, "[i]f liability is to be expanded in such a manner, it is a matter for the Legislature." (*Ibid.*)

SUMMARY OF *AMICI'S* ARGUMENTS

As The Regents correctly observe, "trained professionals are granted wide latitude and stringent legal protections in assessing such behavior" (Answer Brief on the Merits, p. 1), referring to the criminal and/or insane behavior that was the cause of plaintiff's harm. And, as The Regents correctly warn, plaintiff proposes "a transformation of California law," creating "a broad duty of care." (*Id.* at pp. 2-3.) *Amici* agree with The Regents that "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." (*Id.* at p. 3.) *Amici* submit that the same is true, if not more so, in the context of health care, particularly health care for "those who require special assistance in seeking to better their lives." (*Ibid.*)

Amici agree with The Regents that, if California law is to be expanded as plaintiff and the Court of Appeal dissenting justice have proposed, that decision should be made by the Legislature. (Answer Brief on the Merits, p. 41 ["If any solution is needed, it should come from the Legislature"], emphasis in heading omitted.) *Amici* submit that, even assuming the primary issue raised by plaintiff is for the judicial rather than legislative branch to decide, this Court should reject the new "duty" that plaintiff and the Dissent propose. Their analysis is one-dimensional, in that it focuses on the "foreseeability"

factor for the analysis of "duty" and completely disregards the many other factors which this Court identified in *Rowland v. Christian, supra,* 69 Cal.2d at 112-113.

Amici submit the new duty that plaintiff and the Court of Appeal Dissent propose is for a dramatic *expansion* of the duty announced in *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425 (hereafter, *Tarasoff*), and then an equally dramatic *extension* of that expanded new duty based on *Tarasoff* beyond psychotherapy to public higher education. But plaintiff argues other theories of duty, as well:

- duty to provide a "safe workplace,"
- duty to a "business invitee," and
- duty based upon an "undertaking."

Amici suspect that the reason why plaintiff argues these other duties is because even plaintiff recognizes her broad theory of duty based on a "special relationship" is likely to be rejected. That is, plaintiff recognizes that her theory of "duty" requires such an expansion of California law that this Court is likely to agree with the Court of Appeal Majority's analysis.

That last theory of duty, which plaintiff characterizes as the "negligent undertaking" of "her safety" (Opening Brief on the Merits, pp. 51-53; see Reply Brief on the Merits, pp. 16-19), essentially is a theory that UCLA was acting as a "Good Samaritan" in dealing with Thompson, UCLA had an opportunity to prevent Thompson from harming himself or another, but UCLA failed. That is, plaintiff

argues, UCLA was a negligent "Good Samaritan" either in treating or handling Thompson or in failing to warn or protect plaintiff.

Here too, *Amici* agree with The Regents. (Answer Brief on the Merits, pp. 33-34 ["The UCLA Defendants Did Not Assume A Duty Of Care By Undertaking Measures To Enhance Campus Security Or Treat Thompson"], emphasis in heading omitted.) As this Court explained in *Artiglio v. Corning Inc.*, "'[t]he duty of a "[G]ood Samaritan" is limited.'" (18 Cal.4th 604, 615, quoting *Baker v. City of Los Angeles* (1986) 188 Cal.App.3d 902, 907.) That is particularly true where, as here, the "Good Samaritan" did not create the risk and, indeed, the risk was harm as a result of criminal conduct of a third party.

In summary, all of plaintiff's theories of duty are contrived. If this Court applies any of those theories – whether by broadly expanding the duty based on a "special relationship" or by broadly expanding the duty based on the allegedly negligent undertaking by a "Good Samaritan" – the result will be disastrous not only for California's public colleges and universities, but also for California health care providers. Victims of criminal conduct will routinely pursue claims of vicarious liability for failure to prevent third party criminal conduct against many institutions, not only institutions of higher education but also institutions providing health care.

LEGAL ANALYSIS

I. THE COURT OF APPEAL MAJORITY CORRECTLY APPLIED CALIFORNIA LAW

The Court of Appeal Majority followed existing California law, including *Tarasoff*. The Dissent proposed to expand California law beyond anything that any California appellate court has held, including *Tarasoff*. The Majority was correct to decline to recognize a special relationship that would have required UCLA to protect plaintiff from the third party criminal conduct: "We find no 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., p. 18, quoting *Ochoa v. California State University*, *supra,* 72 Cal.App.4th at 1306.)

As to public policy, the Majority observed,

> 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., p. 18, fn. omitted.)

The Court of Appeal likewise properly rejected plaintiff's argument based on her status as an invitee onto campus property. (Slip Opn., pp. 21-23.) It explained that Government Code section

835 – which provides that a public entity may only be held liable for injuries that arise from a dangerous condition – precludes plaintiff's claim. (*Id.* at pp. 22-23.)

Finally, the Court of Appeal appropriately rejected the expansion or application of the other duties raised by plaintiff, including the duty based on a negligent undertaking (Slip Opn., pp. 24-27), the duty to warn under Civil Code section 43.92 (*id.* at pp. 27-29), and plaintiff's other "newly-raised theories of liability" (*id.* at pp. 30-34, emphasis in heading omitted).

Amici concur with The Regents' observation that the Court of Appeal Majority was correct.

II. THE COURT OF APPEAL DISSENT ACKNOWLEDGED THAT THERE IS NO DUTY BASED ON A "SPECIAL RELATIONSHIP" UNDER EXISTING CALIFORNIA LAW, BUT PROPOSED THAT CALIFORNIA LAW BE EXPANDED

Dissenting Justice Perluss acknowledged the general rule that "there is no duty to come to the aid of another [citation], to protect others from criminal conduct of third parties [citation], or to warn those endangered by such conduct [citation]." (Slip Opn., Dissent, p. 4.) However, the Dissent emphasized an exception to that rule based on the existence of a "'special relationship'" between the defendant and "the person in need of aid or the third party actor[.]" (*Ibid.*, emphasis in heading omitted.) Justice Perluss characterized this exception as "[t]he affirmative duty to act with respect to risks not created by the defendant." (*Ibid.*)

Implicit in the Dissent is an acknowledgment that there is no authority recognizing such an affirmative duty in the context of a

university student engaging in regular coursework. (See Slip Opn., Dissent, pp. 5-11.) Justice Perluss cited *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, but recognized that the decision related to a high school student, not a college student. (*Id.* at p. 5 ["'[T]he duty of care owed by school personnel includes the duty to use reasonable measures to protect students from foreseeable injury at the hands of third parties acting negligently or intentionally'"], quoting *C.A. v. William S. Hart Union High School Dist., supra*, 53 Cal.4th at 870.) The Dissent suggested that the analysis applicable to California children in elementary and high schools should be extended to young adults in college. (*Id.* at pp. 5-11.) Specifically, the Dissent proposed an expansion of California law to create "a protective duty in the classroom setting[.]" (*Id.* at p. 9.)

The Dissent proposed to create "an affirmative duty on the part of UCLA and its instructional and administrative personnel to take reasonable steps to keep their classrooms safe from foreseeable threats of violence." (Slip Opn., Dissent, p. 11, fn. omitted.) It cited the Restatement Third of Torts, Liability for Physical and Emotional Harm, section 40, comment h, page 42, for the proposition that its proposed affirmative duty is "based on reasons of principle or policy." (*Id.* at pp. 9-10.) In other words, the Dissent's analysis for expanding California law beyond the general rule, existing appellate authority, and applicable statutory limitations on that authority, is purely one of public policy.

The Court of Appeal Majority correctly responded that, "[i]f liability is to be expanded in such a manner, it is a matter for the Legislature." (Slip Opn., p. 24, fn. 7.) The Dissent simply declared

that the Majority's deference to the Legislature was not sufficient to "justify rejecting" what it had proposed: judicial activism. (Slip Opn., Dissent, p. 19 ["But that hypothetical legislative response does not justify rejecting the discrete special-relationship basis for liability presented by Rosen, nor does it relieve the judicial branch of its responsibility to engage in the reasoned development of the common law"], citations omitted.) It then cited to the 1975 and 1976 decisions in *Tarasoff, supra*, and *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804. (*Ibid.*)

The Dissent would have the duty become entirely a matter of foreseeability. (See Slip Opn., Dissent, p. 11 ["the legal duty of a college or university to adopt a reasonable program to protect students in the classroom by identifying and responding to foreseeable threats of campus violence"], fn. omitted.) Technically stated, the Dissent (and plaintiff Rosen, whose argument emphasizes the dissenting opinion) would have the courts sidestep the basic duty analysis required by Civil Code section 1714, which this Court explained was limited by the factors enumerated in *Rowland v. Christian.* That is, not only did the Dissent (and plaintiff) sidestep the requisite analysis (based on Section 1714 and *Rowland v. Christian*) in the name of public policy analysis, but the Dissent also ignored the public policy pronouncements of the Legislature itself in the form of the statutory limitations and immunities set forth in Government Code sections 856, 820.2, and 835, and Civil Code section 43.92.

At best, the Dissent would apply just one of the *Rowland* factors, foreseeability, and ignore all the others.

III. PLAINTIFF AND HER SUPPORTING *AMICUS*, CONSUMER ATTORNEYS OF CALIFORNIA, ARGUED FOR A DRAMATIC EXPANSION OF CALIFORNIA LAW, FAR BEYOND ANY PREVIOUS PRECEDENT AND SHARPLY IN CONFLICT WITH LEGISLATIVE INTENT

The rule proposed by plaintiff (essentially following the dissenting opinion of Justice Perluss) is stated generally as the "duty to warn and protect [plaintiff] from the foreseeable harm that Damon Thompson posed." (Opening Brief on the Merits, p. 24.) Whether based upon a purported "special relationship" between universities and their students or UCLA's alleged "undertaking" to protect its students, plaintiff's proposed duty would broadly expand vicarious liability for third party criminal conduct. Plaintiff's duty purports to be based on public policy, but she diminishes or disregards the countervailing public policies. *Amici* propose that, if such a public policy decision is to be made, it should be made by the Legislature; it should not be made by the courts.

When the case was pending in the Court of Appeal, Consumer Attorneys of California filed an *amicus* brief supporting plaintiff. Both plaintiff and Consumer Attorneys sought an expansion of California law based on an extension of the duty to warn that was announced in *Tarasoff*. Specifically, they sought to extend the duty from the context of psychotherapy to the context of education.

As The Regents correctly summarized in the Introduction to The Regents' Petitioners' Brief in Response to Amicus Curiae Brief of Consumer Attorneys of California and Others, at page 1,

> Consumer Attorneys' brief contends that the UCLA defendants may be held responsible

> for Rosen's injury because the law is moving in the direction of imposing a duty on colleges and universities to assure student safety. It says that because UCLA promotes campus safety, has voluntarily established threat assessment protocols and supposedly charges a general security fee, the UCLA defendants can be liable for having fallen short of meeting UCLA's own voluntarily-adopted standards.

Amici agree with The Regents that plaintiff and her *amici* read *Tarasoff* too broadly. The focus in that case was the responsibility of psychotherapists who are informed about specific threats of violence. Yet, defendants in this case were not told of a threat to plaintiff. Even though both cases were against The Regents, *Tarasoff* did not involve students, while this case does. Simply stated, the duty proposed by plaintiff and her *amici* extends far beyond *Tarasoff*'s purview.

This proposed expansion of California law should be rejected. Contrary to Consumer Attorneys' suggestion that the law is moving toward a trend of expanding the scope of vicarious liability for third party criminal conduct, the courts and the Legislature have expressly tightened the scope of such liability. For example, the Legislature enacted Civil Code section 43.92, which limits liability based on the duty announced in *Tarasoff* to actual knowledge of serious threats of violence. The Regents points to the Confidentiality of Medical Information Act (Civ. Code, § 56.10) as yet another example. (See Answer Brief on the Merits, p. 22.) That statute permits disclosure of medical information without written consent where a patient threatens violence (Civ. Code, § 56.10, subd. (c)(19)), but that exception to the

general rule prohibiting such disclosure closely tracks the language of Section 43.92.

California courts have likewise restricted the scope of the duty based on third party criminal conduct. For example, in *Calderon v. Glick* (2005) 131 Cal.App.4th 224, the Court of Appeal held the defendant psychotherapists owed no duty of care to the plaintiffs who were shot by the defendants' mentally ill patient in the absence of a communication by the patient to the defendants of a serious threat of physical violence. (*Id.* at 231-232.) For another example, in *Smith v. Freund* (2011) 192 Cal.App.4th 466 and *Greenberg v. Superior Court* (2009) 172 Cal.App.4th 1339, the Court of Appeal held that neither the mentally disturbed gunman's parents or psychotherapist owed a duty to warn absent threats of violence against identifiable third parties. (See Answer Brief on the Merits, pp. 23-24.)

Simply stated, California courts and the Legislature have rejected prior attempts to expand liability for third party criminal conduct in the manner proposed by plaintiff, her *amici*, and the Court of Appeal Dissent. So too should this Court.

IV. IF CALIFORNIA LAW IS EXPANDED AS PLAINTIFF AND THE COURT OF APPEAL DISSENT PROPOSED, THE RESULT FOR CALIFORNIA HEALTH CARE PROVIDERS WILL BE DISASTROUS

The analysis proposed by plaintiff and the Court of Appeal Dissent can be extended easily to the health care industry, which causes *Amici* to be concerned. Indeed, plaintiff argues that this broad duty analysis not only should extend to higher public education, but to virtually all public activities. As plaintiff said in her Opening Brief on

the Merits: "UCLA failed Rosen. UCLA failed Thompson too. Their relationship with UCLA was as 'special' as any bus patron or prison inmate." (Opening Brief on the Merits, p. 12, fn. omitted.) The same could be said of any private college, private transportation company, or privately operated prison. More importantly for *Amici,* the same also could be said of any public or private hospital, medical center, or medical clinic, where patients and visitors are known to occasionally act irrationally.

Plaintiff relies upon *Tarasoff,* where the "special relationship" was in the context of mental health care. *Amici* are concerned that plaintiff's analysis, if accepted by this Court, will be argued by other plaintiffs to apply to virtually all health care.

Worse, plaintiff emphasizes that The Regents had a plan and personnel for addressing precisely such problems. Plaintiff asks, rhetorically, "Who must bear the burden when the public college's threat-assessment team makes a mistake?" (Opening Brief on the Merits, p. 63.) The same could be said of a hospital or medical clinic that has prepared for similar contingencies, such as the so-called "Code Silver" in some hospitals.

Worst of all, plaintiff essentially urges this Court to ignore the Legislature's own public policy analysis, even though plaintiff acknowledges that the Legislature has clearly spoken. (Opening Brief on the Merits, pp. 54-56 ["The Legislature enacted a psychotherapist-specific statute to combat an over-broad interpretation of *Tarasoff* which had stated in dicta that a duty arose when the psychotherapist, 'should determine, that his patient presents a serious danger of violence to another'"], quoting *Tarasoff, supra,* 17 Cal.3d at 431.)

Speaking for the health care industry, *Amici* are concerned that plaintiff's ambiguous argument (Opening Brief on the Merits, p. 56 ["If section 43.92 applies at all, it is only to Dr. Green and UCLA had the burden to show she was protected by its provisions"]) is little more than an argument that Dr. Green *should have* warned plaintiff of the threat, even though the threat was never expressly made, because Dr. Green *should have* diagnosed the problem from all of the information available to her and the other, non-clinical academic and administrative personnel at UCLA. That is nothing less than a return to the ambiguity that Justice Mosk identified in his dissenting remarks about the *Tarasoff* decision and which the Legislature resolved with Civil Code section 43.92.

Plaintiff argues for vicarious liability of The Regents for the criminal behavior of Thompson that was directed at plaintiff and was the cause of her harm. There are many reasons for not creating such vicarious liability, the most compelling of which are identified by The Regents (Answer Brief on the Merits, pp. 35-41) in the context of public colleges and universities. Those also are reasons for not expanding the duty of health care providers:

- It will interfere with the administration of health care.
- It will increase costs substantially.
- It will require impractical effort.
- It will discourage health care providers from providing anything but the most minimal services, rather than treating the mentally ill.
- It will deter the mentally ill from obtaining beneficial services.

And, perhaps most importantly,

- It will not make health care facilities any safer.

Amici are concerned because virtually every one of the arguments plaintiff makes to expand liability could be argued to apply in the context of health care. That is, plaintiffs will argue that health care providers owe the following duties:

- Duty arising from a "special relationship."
- Duty to prevent "foreseeable" criminal third-party conduct.
- Duty to provide a "safe workplace."
- Duty to a "business invitee."
- Duty based upon an "undertaking."

If this Court adopts plaintiff's analysis to expand the law as plaintiff, her *amici*, and the Court of Appeal Dissent proposed, it will have a profound negative impact on all health care providers practicing in California and their patients. *Amici* CMA, CDA, and CHA urge this Court not to depart from existing law. The Court of Appeal's decision should be affirmed.

CONCLUSION

For the reasons stated above, *Amici Curiae* California Medical Association, California Dental Association, and California Hospital Association respectively request that this Court affirm the decision of the Court of Appeal.

Dated: July 14, 2016

COLE PEDROZA LLP

By: _____

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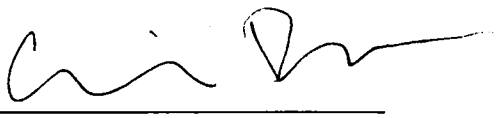
CERTIFICATION

Appellate counsel certifies that this document contains 4,364 words. Counsel relies on the word count of the computer program used to prepare the document.

Dated: July 14, 2016

COLE PEDROZA LLP

By: 

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PROOF OF SERVICE

I am a resident of or employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 2670 Mission Street, Suite 200, San Marino, California 91108.

On this date, I served the *AMICI CURIAE* BRIEF OF CALIFORNIA MEDICAL ASSOCIATION, CALIFORNIA DENTAL ASSOCIATION, AND CALIFORNIA HOSPITAL ASSOCIATION IN SUPPORT OF DEFENDANTS AND PETITIONERS on all persons interested in said action in the manner described below and as indicated on the service list:

SEE ATTACHED SERVICE LIST

By United States Postal Service – I am readily familiar with the business's practice for collecting and processing of correspondence for mailing with the United States Postal Service. In that practice correspondence would be placed in a sealed envelope, would be clearly labeled, and would be deposited with the United States Postal Service that same day in the ordinary course of business, with the postage thereon fully prepaid, in San Marino, California. The envelope was placed for collection and mailing on this date following ordinary business practice.

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

Executed this 14th day of July, 2016 at San Marino, California.

Sara Mazzeo

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