SUPREME COURT COPY

Case No. S234269

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

SUPREME COURT
FILED

DEC 23 2016

Jorge Navarrete Clerk

Deputy

LATRICE RUBENSTEIN,
Plaintiff and Appellant,

v.

DOE #1
Defendant and Respondent.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF DEFENDANT AND RESPONDENT DOE #1

Fourth Appellate District, Division One, Case No. D066722
Imperial County Superior Court, Case No. ECU08107
The Honorable Juan Ulloa

Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
jhenning@counties.org

Attorney for Amici Curiae California State Association of Counties and League of California Cities

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jhenning@counties.org

Attorney for Amici Curiae California State Association of Counties and League of California Cities

I. APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND INTEREST OF AMICI CURIAE

Pursuant to Rule 8.520(f) of the California Rules of Court, the California State Association of Counties ("CSAC") and League of California Cities ("League") [1] respectfully request leave to file an amicus curiae brief in support of Defendant and Respondent Doe #1.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is

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[1] No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CSAC and the League have a significant interest in the outcome of this case. Amici's member cities and counties are responsible for providing countless services for the public benefit. In providing such services, local agencies are inevitably subject to litigation. In order to provide services in an atmosphere of relative certainty concerning potential liability, CSAC and the League firmly believe that courts must strictly construe the requirements of the Government Claims Act, and limit public entity liability only to those cases when the various requirements of the Act are satisfied.

II. ISSUES ON WHICH AMICI CURIAE WISH TO MAKE A FURTHER PRESENTATION

One of the issues currently before this Court is how to apply an exemption from the claiming requirements for childhood sexual abuse claims that arise from conduct occurring after January 1, 2009. (Gov. Code, § 905, subd. (m).) Applicant's counsel is familiar with the issues in

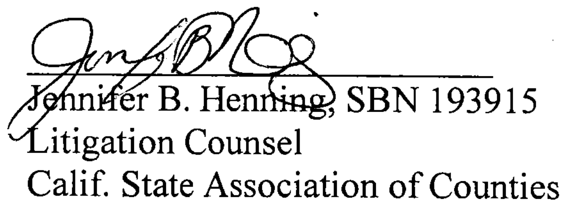
this case and the scope of their presentation, and believes further argument would be helpful to the Court.

Specifically, CSAC and the League believe that in answering the question before this Court, it is critical to understand the history and purposes of the Government Claims Act. The proposed Brief of Amici Curiae puts the issue before the Court in the larger view of the careful balancing of policy considerations that was undertaken by the Legislature in creating the Government Claims Act more than 50 years ago, which is the bedrock of our system of public entity liability. In so doing, the proposed amicus brief provides a perspective for the Court's consideration that is not presented in the other briefs submitted in this case.

III. CONCLUSION

For the foregoing reasons, CSAC and the League respectfully request that the Court accept the Brief of Amici Curiae that is being filed concurrently with this application.

Dated: December 7, 2016



Jennifer B. Henning, SBN 193915
Litigation Counsel
Calif. State Association of Counties

Attorney for Amici Curiae

Case No. S234269

IN THE SUPREME COURT
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LATRICE RUBENSTEIN,
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Jennifer B. Henning (SBN 193915)
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941
Telephone: (916) 327-7534
Facsimile: (916) 443-8867
jhenning@counties.org

Attorney for Amici Curiae California State Association of Counties and League of California Cities

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I. INTRODUCTION

In general, under the California Government Claims Act (Gov. Code, §§ 810-996.6), a claimant may not file a lawsuit against a public entity for money or damages without first presenting a written claim to the public entity. (Gov. Code, §§ 905, 910.) The Legislature has exempted fifteen types of claims from the claims presentation requirement, including claims for childhood sexual abuse made under Code of Civil Procedure section 340.1, but only "to claims arising out of conduct occurring on or after January 1, 2009." (Gov. Code, § 905, subd. (m).) The question before this Court is whether that limitation bars plaintiff's claims given that they involve conduct that occurred before January 1, 2009. As the Court considers this very important question, the California State Association of Counties (CSAC)[2] and the League of California Cities (League)[3] urge this

[2] The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Court to keep in mind the history and purposes of the Government Claims Act.

The claims presentment process in the Government Claims Act is more than a procedural requirement. It serves an important function in the scheme of public entity liability, and is part of the careful balancing of competing policies undertaken by the Legislature when the Government Claims Act was enacted. As such, courts should require that any limitations to the claims presentment process be found only when the Legislature uses specific, unmistakably clear language of its intent to make such changes.

As Defendant makes clear in its briefing, the Legislature used clear and unmistakable language to eliminate the claim requirement only where the alleged conduct occurs after January 1, 2009. This Court should therefore adhere to the clear language of the statute and the policies underlying public agency liability and immunity, and reverse the lower court's opinion.

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[3] The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

II. ARGUMENT

A. Historical Background of the Government Claims Act

In attempting to understand how to implement Government Code[4] section 905, subdivision m, it is important to understand how the Government Claims Act was developed and its intended purposes.

1. The concept of absolute sovereign immunity is part of California's historic common law.

Since the founding of our State, government agencies have provided necessary services to the people they govern, a unique and vulnerable position that the Legislature determined warrants a higher level of protection against legal claims than that accorded to private entities. (Calif. Law Rev. Comm., 4 Reports Recommendations and Studies 807 (1963).) The unique nature of the government's relationship with the public is evident in the types of services it provides, including its power to issue and revoke licenses, quarantine sick persons, prosecute and incarcerate violators of the law, administer prison systems, and build and maintain thousands of miles of streets, sidewalks, and highways. In historic times, the practical necessity of exercising these government functions led to creation of the doctrine of sovereign immunity, which generates from the legal fiction that the king can do no wrong. (*See People v. Superior Court of San Francisco*

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[4] Future statutory references are to the California Government Code unless otherwise stated.

(1947) 29 Cal.2d 754, 756.) This doctrine had general acceptance in California's common law. (*Ibid.*) The general rule was that neither the State nor its political subdivisions could be sued without their consent. (*Whittaker v. County of Tuolumne* (1892) 96 Cal. 100, 101.) As such, government entities in California were generally immune from liability for acts undertaken in a governmental capacity. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 582.)

By the 1960s, the common law doctrine of sovereign immunity in California had been "riddled with exceptions and inconsistencies." (*Elson, supra,* 51 Cal.App.3d at p. 583.) In 1961, the California Supreme Court essentially abolished common law sovereign immunity in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211, and *Lipman v. Brisbane Elementary School District* (1961) 55 Cal.2d 224. The basic rule established by the Court in *Muskopf* and *Lipman* was that government officials could be held liable for their negligent performance of ministerial duties, but were entitled to immunity for discretionary decisions. (*Muskopf, supra,* 55 Cal.2d at p. 220; *Lipman, supra,* 55 Cal.2d at p. 229.)

In response, the State Legislature enacted a moratorium suspending the effects of the *Muskopf* and *Lipman* decisions (Stats 1961 ch 1404 § 1), and appointed a Law Revision Commission to thoroughly study the issue of governmental immunity and make policy recommendations. The work of the Law Revision Commission became, in essence, the first version of the

Government Claims Act, which was enacted in 1963. (Stats 1963 ch 1681 § 1.)

2. The Government Claims Act strikes a careful balance between competing policy considerations.

The Law Review Commission's sovereign immunity study undertook a detailed analysis of the policy considerations both in support of and against the concept of sovereign immunity. (*See generally* Calif. Law Rev. Comm., 4 Reports Recommendations and Studies (1963).) Supporting sovereign immunity is the separation of powers doctrine – the notion that the judiciary should not second-guess the decisions and judgments of governmental agencies. (*See, e.g., Johnson v. State of Calif.* (1968) 69 Cal.2d 782, 794; *Nunn v. State of Calif.* (1984) 35 Cal.3d 616, 622.) Similarly, it is well established that in discharging their duties, public employees should be permitted to exercise their judgment without fear of liability or the burden of a trial. (*Johnson, supra,* 69 Cal.2d at p. 790.)

In his 569-page report to the Legislature in 1963, Professor Van Alstyne summarized the importance of a comprehensive scheme for determining liability as follows:

> The need for order and predictability is great for efficient and foresighted planning of governmental activities and their fiscal ramifications becomes extremely difficult if not impossible when the threat of possibly immense but unascertainable tort obligations hangs like a dark cloud on the horizon. Moreover, it would seem entirely likely that the danger of tort liability may, in certain areas of public responsibility, so seriously burden the public entity as to

> actually interfere with the prosecution of programs deemed essential to the public welfare. A comprehensive legislative solution, formulated on a sound theoretical foundation and modified to meet the exigencies of practical public administration of the powers vested in government, appears to be the only acceptable alternative.

(Calif. Law Rev. Comm., *A Study Relating to Sovereign Immunity*, p. 268 (1963).)[5]

In support of eliminating sovereign immunity is the idea of fairness. As the California Supreme Court noted in *Lipman*, it is "unjust in some circumstances to require an individual injured by official wrongdoing to bear the burden of his loss, rather than distribute it throughout the community." (*Lipman, supra*, 55 Cal.2d at p. 230.)

The Government Claims Act is the Legislature's attempt at reconciling these two competing policy considerations. In striking the balance between these objectives, the Act has both substantive and procedural elements.[6] Substantively, the statute abolished all common law based on the doctrine of absolute sovereign immunity. (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450.) Instead, all government liability must be based on statute. (*Elson v. Public Utilities Commission*

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[5] This publication is available on the California Law Revision Commission's website at: http://www.clrc.ca.gov/pub/Printed-Reports/Pub050.pdf.

[6] As is explained fully below, the elements that are generally procedural in nature within the Governments Claims Act are actually essential elements in proving a cause of action in court.

(1975) 51 Cal.App.3d 577.) The general rule in California since 1963 is sovereign immunity, with government liability limited to exceptions specifically set forth by statute. (*Wright v. State of Calif.* (2004) 122 Cal.App.4th 659.) Those exceptions include direct liability for a breach of mandatory duties and derivative liability for certain employee negligence. (Gov. Code, §§ 815.2, 815.6.)

But in addition to these more substantive provisions, the Government Claims Act adopted certain procedural requirements as part of striking the balance between the competing policy concerns. In other words, the Legislature determined that it would allow government liability only under specified conditions, including compliance with certain procedural safeguards.

B. The claims presentment requirement is an important element in the overall statutory scheme of the Government Claims Act and should not be disregarded without specific direction from the Legislature.

The Law Revision Commission and the Legislature undertook a comprehensive review of government sovereign immunity before settling on the basic principles now set forth in the Government Claims Act. The claim presentment requirement is an essential component of the statutory scheme. Under the relevant provisions, a public entity can be found liable, but unlike private defendants, liability can only be established if the plaintiff shows it has complied with the claim presentment requirement.

The claim presentment requirement serves several very important functions. It provides the public entity with prompt notice of the events leading up to the claim so that an investigation can take place while evidence and witnesses are fresh. It allows ample opportunity for the possibility of settlement, thereby avoiding expenditure of public funds in needless litigation. Further, it allows the public entity to be informed in advance as to possible liability and indebtedness to facilitate budgeting for upcoming fiscal years. Finally, it allows some injured parties to be compensated quickly and promotes deterrence of injury-causing activity. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738; *Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist.* (2001) 90 Cal.App.4th 64; *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767; *Life v. County of Los Angeles* (1991) 227 Cal.App.3d 894; *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037.) Thus, the balancing undertaken by the Legislature in developing the claim process protects the interest of both the public agency and individual claims.

Our courts have consistently found that the claim presentment requirement is more than a procedural element of a claim, but is an essential element to a cause of action. (*State of Calif. v. Superior Court* (2004) 32 Cal.4th 1234; *Wood v. Riverside General Hosp.* (1994) 25 Cal.App.4th 1113.) A failure to allege compliance with the claim presentment statute constitutes a failure to state a cause of action, and is

subject to a general demurrer. (*State of Calif. v. Superior Court* (2004) 32 Cal.4th 1234.) In enacting the Government Claims Act "[t]he Legislature did not intend 'to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied.'" (*Id.* at p. 1243 (*citing Williams v. Horvath* (1976) 16 Cal.3d 834, 838).) Thus, presenting a timely claim to a public entity is more than mere procedure, and it serves a different purpose than an ordinary statute of limitations.

In the present case, Code of Civil Procedure section 340.1, subdivision (c) authorizes claims that would have been barred "because the applicable statute of limitations has or had expired. . . ." (Code Civ. Proc., §340.1, subd. (c).) Compliance with the claim presentment requirement, however, is more than a statute of limitations or claim ripening issue. It is an essential component of a comprehensive and carefully balanced sovereign immunity structure established by the Legislature. And the Legislature has made quite clear its intent to allow such claims only for conduct occurring after January 1, 2009.

This is not an irrational limitation. An important policy supporting the claims requirement is financial certainty and notice to public agencies. It is perfectly reasonable for the Legislature to conclude, as a matter of fiscal balancing, that it will permit actions on a prospective basis, but not

open the door to exposure for past conduct. Given the careful policy balancing that took place in creating the Government Claims Act and the general rule of government immunity with limited waiver only where the elements of the statute are satisfied, the language of the statute must be applied on its face. Where the Legislature's intent is so clearly to permit claims only for conduct occurring after January 1, 2009, courts should adhere to the limitation as part of the balance of the Act.

C. Changes in the Code of Civil Procedure do not relieve a plaintiff from the more stringent requirements of the Government Claims Act.

While a revival or delayed discovery statute such as the one at issue in the present case may give new life to cases against private defendants, an entirely different set of policy considerations are at stake when the defendant is a public entity. This Court should not assume a change in the ability to bring a case against a private defendant applies in the same way to public defendants, unless the Legislature so specifies.

Defendant has fully briefed the impact on this case of *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 499, and *V.C. v. Los Angeles Unified School District* (2006) 139 Cal.App.4th 499, but the general principle applies in a variety of contexts. Indeed, courts have frequently found that instances where the Legislature has changed statutes of limitations or other procedural rules as to private defendants do not change the timelines established in the Government Claims Act. For example,

Martell v. Antelope Valley Hospital Medical Center (1998) 67 Cal.App.4th 978, involved the time limits for filing claims for medical malpractice injuries sustained during minority. In the case, both sides agreed that if a private hospital engaged in the alleged malpractice, the complaint at issue would have been timely because the Legislature had extended the time to file such claims.

But the court found the action against a public defendant was time-barred. It determined that because the Government Claims Act existed when the Legislature enacted the longer statute of limitations for minors, the Legislature is presumed to know about the shorter Claims Act period. In failing to make an exception for claims against public entities, the court inferred that the Legislature intended even minors to be bound by the shorter timeframes of the Government Claims Act, despite the important policy considerations served by allowing minors an extended time to file medical malpractice claims. (*Martell, supra*, 67 Cal.App.4th at p. 983.)

Similarly, under the Code of Civil Procedure, a defendant who is sued under a fictitious name and later brought into the case by an amendment substituting his true name is considered a party to the action from its commencement for purposes of the statute of limitations. (*Austin v. Massachusetts Bonding & Ins. Co.* (1961) 56 Cal.2d 596, 602.) Not so, however, when the defendant is a public entity. (*Chase v. State of Calif.* (1977) 67 Cal.App.3d 808.) Instead, compliance with the Government

Claims Act is required even where the exact public entity defendant is not yet known when the complaint is filed. (*Id.* at p. 812.)

A final example involves cross-complaints for equitable indemnity. Among private parties, a defendant may file a cross-complaint for medical malpractice under specified guidelines. (Code Civ. Proc., § 364.) However, where a defendant claims that a public entity is partly responsible for the damages alleged by a plaintiff, it still must file a claim with a public entity within six months of receiving the complaint,[7] even if the identity of the public entity defendant is not yet know. (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480.)

III. CONCLUSION

Claim presentment requirements in the Government Claims Act serve very important purposes in California's scheme of sovereign immunity. Courts have consistently found that compliance with the claim presentment requirement is an element of a claim, and not a mere procedural requirement. There is good reason for this conclusion — the statutory regime currently in place for holding public entities liable came at

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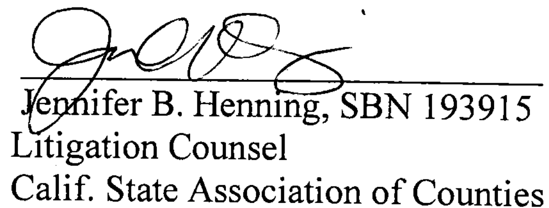
[7] The court in *Greyhound* actually held the claim must be filed within 100 days of receiving the complaint, but in 1987, the Government Claims Act was amended to change the 100-day filing deadline to the six-month filing deadline that remains in place today. (Stats 1987 ch 1208; Gov. Code, § 911.2.)

the end of a thorough study and debate of the principles of sovereign immunity.

This Court must be mindful of the history and purposes of the Government Claims Act in considering the issues presented by this case. Any changes to the Government Claims Act should be found only where the Legislature has unmistakably indicated such an intent in clear statutory language. To do otherwise would upset the balance between competing policy interests that was carefully crafted in the Government Claims Act.

For these reasons, CSAC and the League respectfully request that this Court reverse the opinion below.

Dated: December 7, 2016



Jennifer B. Henning, SBN 193915
Litigation Counsel
Calif. State Association of Counties

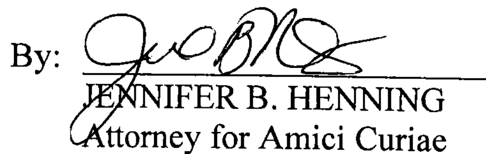
Attorney for Amici Curiae

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 2,881 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of December, 2016 in Sacramento, California.

Respectfully submitted,

By: 

JENNIFER B. HENNING
Attorney for Amici Curiae

Proof of Service by Mail

Rubenstein v. Doe No. 1
Case No. S234269

I, ASHLEY RAFFORD, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **APPLICATION FOR LEAVE TO FILE AND PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT DOE #1** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

A. Proof of Service List

Party	Attorney
Latrice Rubenstein : Plaintiff and Appellant	Elliott N. Kanter Law Offices of Elliott N. Kanter, PC 2445 Fifth Avenue, Suite 350 San Diego, CA 92101 Justin O. Walker Law Offices of Elliott N. Kanter 2445 Fifth Avenue, Suite 350 San Diego, CA 92101 Holly Noelle Boyer Esner Chang & Boyer 234 East Colorado Blvd., Suite 975 Pasadena, CA 91101

Doe No. 1, et al. : Defendant and Respondent	Richard J. Schneider Reece Allen Roman Lee Harris Roistacher Daley & Heft 462 Stevens Avenue, Suite 201 Solana Beach, CA 92075 Leila Nourani Sherry L. Swieca Douglas M. Egbert Jackson Lewis P.C. 725 South Figueroa Street, Suite 2500 Los Angeles, CA 90017
Court of Appeal	Clerk of the Court Fourth District Court of Appeal, Div. 1 750 B Street, #300 San Diego, CA 92101-8189
Trial Court	Imperial County Superior Court Attn: Hon. Juan Ulloa 939 West Main Street El Centro, CA 92243
Northern California Regional Liability Excess Fund, Southern California Regional Liability Excess Fund, Southern California Regional Liability Excess Fund, Statewide Association of Community Colleges, School Association for Excess Risk: Amici Curiae	Seth L. Gordon Leone & Alberts 2175 N. California Blvd, Suite 900 Walnut Creek, CA 94596 Louis A. Leone Stubbs & Leone 2175 N. California Blvd., Suite 900 Walnut Creek, CA 94596

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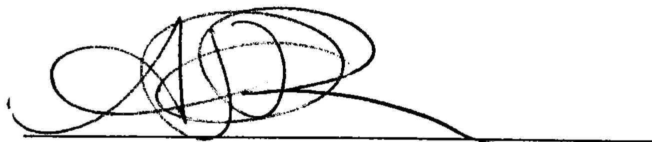

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