

S234269

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LATRICE RUBENSTEIN,
Plaintiff and Appellant,

vs.

DOE #1,
Defendant and Respondent.

SUPREME COURT
FILED

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Deputy

AFTER A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION 1, CASE NO. D066722
HON. JUAN ULLOA, JUDGE, IMPERIAL COUNTY SUPERIOR COURT, CASE NO. ECU08107

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF
AMICUS CURIAE FAMILY VIOLENCE & SEXUAL ASSAULT
INSTITUTE AND INSTITUTE ON VIOLENCE, ABUSE & TRAUMA IN
SUPPORT OF LATRICE RUBENSTEIN

Family Violence & Sexual Assault Institute and Institute on Violence, Abuse & Trauma

Brittany Crowell, Psy.D.

Licensed Psychologist (Psy 28712)

Clinical and Forensic Case Manager

Professional Clinical & Forensic Services

10065 Old Grove Road, Suite 101

San Diego, California 92131

Phone: (858) 527-1860 x4560 | Fax: (858) 527-1743

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***FAMILY VIOLENCE & SEXUAL ASSAULT INSTITUTE AND INSTITUTE ON
VIOLENCE, ABUSE & TRAUMA***

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CURIAE FAMILY VIOLENCE & SEXUAL ASSAULT INSTITUTE AND
INSTITUTE ON VIOLENCE, ABUSE & TRAUMA IN SUPPORT OF
LATRICE RUBENSTEIN

The Family Violence & Sexual Assault Institute (“FVSAI”), DBA Institute on Violence, Abuse & Trauma (“IVAT”), a community based nonprofit corporation that provides training, education, research, and direct services regarding all aspects of violence, abuse, and trauma, respectfully applies for leave to file the accompanying amicus curiae brief in support of Plaintiff and Appellant Latrice Rubenstein pursuant to rule 8.520(f) of the California Rules of Court. IVAT is familiar with the content of the parties’ briefs.


IVAT is a non-profit organization devoted to improve the quality of life for individuals by sharing and disseminating research, practice, advocacy and policy to end violence, abuse and trauma. IVAT has a long-standing interest in protecting victims of child sexual abuse, and in accord with such interest, seeks to educate the public and the courts as to the long-term psychological and neuropsychological harm incurred as a result of childhood sexual abuse, and specifically about the coping mechanisms, including dissociative amnesia, often experienced among adult survivors of childhood sexual abuse. IVAT seeks to file this brief to advocate an application of the discovery rule that incorporates current scientific advances in the understanding of the psychological and neuropsychological harm that is often experienced by adult survivors of childhood sexual abuse.

IVAT has no interest in or connection with any of the parties in this case. To fray the costs incurred by IVAT in the research and preparation of this brief, IVAT received a very nominal amount from Taylor & Ring, a firm specializing in the representation of victims of sexual abuse. This monetary contribution helped to make it possible for IVAT to contribute its research to the Court. IVAT believes its research on this issue will assist the Court in resolving this case by addressing the psychological condition affecting adult survivors of childhood sexual abuse and how that condition can affect the victim's realization that he or she has been harmed.

Dated: December 8, 2016

Respectfully submitted,

**FAMILY VIOLENCE & SEXUAL ASSAULT
INSTITUTE AND INSTITUTE ON
VIOLENCE, ABUSE & TRAUMA**



Brittany Crowell, Psy.D.

Amicus Curiae

Family Violence & Sexual Assault Institute
And Institute On Violence, Abuse & Trauma

**BRIEF OF AMICUS CURIAE FAMILY VIOLENCE & SEXUAL ASSAULT
INSTITUTE AND INSTITUTE ON VIOLENCE, ABUSE & TRAUMA IN
SUPPORT OF LATRICE RUBENSTEIN**

Introduction

This matter presents the Court with an opportunity to address when a victim of childhood sexual abuse should recognize that the abuse he or she suffered as a child was wrongful so as to trigger the six-month time limit for filing a government claim. According to the defendant School District, a victim’s claim arising out of childhood sexual abuse accrues for Tort Claim Filing purposes *at the time of the molestation*, without regard to principles of delayed discovery. But, and as detailed below, the notion that a victim of sexual abuse as a child will always appreciate the wrongfulness of the harm at the time of the last molestation contravenes numerous studies, clinical experiences, and scientific research establishing that the victims of childhood molestation do not always consciously recognize they have been wronged until years later due to the effects of well-documented coping mechanisms to deal with severe and complex psychological trauma. While the School District makes a passing reference that it “certainly recognizes that young children may not disclose the abuse, may not recognize the abuse as wrongful, and acknowledges that some young children may repress memories of the abuse,” (Reply Brief p. 1), the School District represents that a claim nonetheless accrues at the time of the last molestation and notes even ““Courts should be very skeptical of [memory repression] in light of the scientific literature.”” (Reply Brief p. 1., fn.1.) This Amicus Brief is intended to dispel such a deeply flawed contention. As explained below, when a child is sexually abused, such abuse can lead to dissociation, suppression of memories, and other mental issues that can indeed prevent the victim from appreciating the wrongfulness of the abuse at the time it occurs.

I.

The Long-Term Neuropsychological Harm Often Incurred by Adult Survivors of Childhood Sexual Abuse Defies Any Contention that Victims Generally Appreciate the Wrongfulness of the Abuse at the Time of the Molestation

Prior to the 1980s, researchers identified repression as thought inhibition and avoidance conditioning for avoiding pain. Dissociative amnesia was initially identified among individuals that have experienced severe, chronic traumatic events, such as combat veterans and survivors of the Holocaust. “The science of memory has always supported the existence of impaired memory and recovery of memory for aversive or traumatic events” (Dalenberg, 2006, p. 277), and research has continued to demonstrate reliably the correlations between traumatic stress in adults and children experiencing traumatic amnesia. “Recovered memory studies have explored diverse scientific methodologies and have established the statistically accepted error rates, norms, and cutoffs for diagnostic tests and diagnosis of dissociative amnesia” (Dalenberg, 2006, p. 279).

In the 1980s to 1990s, psychological research on amnesia began to review memory and dissociation among children who experienced sexual abuse. In 1993, the American Psychiatric Society published, *The Statement on Memories of Sexual Abuse*, stating that “children and adolescents who have been abused cope with the trauma by using a variety of psychological mechanisms that result in a lack of conscious or emotional awareness” (cited in Dalenberg, 2006, p. 282), The American Psychological Association’s Working Group on Investigation of Memories of Childhood Abuse (1996) agreed that it is possible for memories of abuse that have been forgotten for a long time to be remembered. By 1999, more than 60 studies had been published that reported findings on dissociative amnesia and childhood sexual abuse; some of the major findings identified episodes of amnesia for extended periods of time correlated with the severity of

abuse and duration (e.g., Feldman-Summers & Pope, 1994), and the victim-offender relationship, especially when the perpetrator is known to the victim (e.g., Williams, 1995; Dalenberg, 2006). Notably, both Williams (1995) and Dalenberg (1996) found that recovered memory for trauma was almost identical in accuracy as continuous memory (Dalenberg, 2006).

A. Victims of Childhood Sexual Abuse Develop Coping Mechanisms that Can Prevent Them From Consciously Appreciating They Have Been Wronged Until Years Later After the Molestation.

Once a child or adolescent has experienced trauma, irrespective of relationship of the offender to the victim, children experience long-term developmental trauma and psychological distress, which can impact the quality of their lives and overall function (Amado, Arce & Herraiz, 2015; Steel et. al, 2004). In addition to consideration for the age of onset for the sexual abuse and victimology, there is “growing evidence for ‘critical windows’ of vulnerability to traumatic stress in brain development” (Gerson & Rappaport, 2013, p. 138). Deficits in memory, particularly short-term memory have been identified among adults with histories of child/adolescent sexual abuse (Brown et. al, 2007).

Deficits in verbal declarative memory, and visual memory have been reported among adults that have been abused in childhood (Bremner, 2006). Neuropsychology and neurobiology studies have identified that when an individual is being victimized, there is short-term benefit in the brain’s response to trauma to filter stimuli and inhibit responses for self-preservation. However, when the traumatic stress is chronic and severe, the response of the limbic system, prefrontal cortex, amygdala, thalamus and hippocampus become conditioned to a state of hyperarousal and dissociation (Painter & Scannapieco, 2013; Weiss, 2007), regardless of external situation or environmental context. The hypothalamic-pituitary-adrenal (HPA)-axis circulates cortisol in a negative

feedback loop to the pituitary gland, hypothalamus, and hippocampus to decrease activity in order to maintain hyperreactivity while reducing allostatic load. Concurrently, glutamate in the hippocampus and prefrontal cortex during traumatic events also cause oxidative stress, resulting in excitotoxicity (i.e., cell destruction due to excessive neural excitation or activity) (Weiss, 2007). These structural and neurochemical events in the brain result in either, “[...] complete dissociation or the inability to recall important aspects of the trauma” (Weiss, 2007, p. 117) or dissociative amnesia.

B. Disassociation

Dissociation as the main coping mechanism to manage distress; Rubenstein’s report of these behaviors aligns with scientific research, which has identified that sexually abused children can disengage from their painful reality through dissociation which then can lead to traumatic amnesia. Furthermore, dissociation allows victims to maintain the behaviors that provide temporary relief via numbing by freeing them from normal cognitive constraints, which may inhibit those behaviors. Dissociation, similar to the seminal research on repression (*see* Ziegarnik’s repressed tasks, cited in Dalenberg, 2006), is utilized for escaping intense negative emotions.

The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders 4th and 5th editions define dissociative amnesia as the “inability to recall important autobiographical information, usually of a traumatic or stressful nature, that is inconsistent with ordinary forgetting” (APA, 2013, p. 298), and can be either *localized* (failure to recall for extended blocks of time) or *selective* (can recall some, but not all, facts within a circumscribed period of time) (APA, 1994, p. 520; APA, 2013, p. 291). Frequently, individuals whom have experienced trauma have been found to have memory dysregulation, a deficit in explicit recall, and fragmented memories due to the neurochemical systems (i.e., cortisol, epinephrine, norepinephrine, serotonin, and dopamine) response to the traumatic incidents (Bremner, 2006; Weiss, 2007). This can

be compounded by the deficits in verbal declarative memory and access to language use for autobiographical disclosure (Bremner, 2006; Brown et. al, 2007; Gerson & Rappaport, 2013), and children who have experienced sexual abuse may not recall their victimization for an extended period of time.

The disorder is associated with “a reversible memory impairment in which memories of personal experience cannot be retrieved in a verbal form (or, if temporarily retrieved, cannot be wholly retained in consciousness).” Ibid. The diagnostic criteria for the disorder require a finding that those “symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.” Id. at 481. A disturbance in autobiographical memory (Howe & Courage, 1993; Nelson & Fivush, 2004) related to childhood, or childhood autobiographical memory disturbance (CAMD), is a memory disruption characterized by the inability to remember events from childhood concerning victimology and repressed memory, and the short- and long-term psychological implications of childhood trauma (Amado, Arce & Herraiz, 2015; Brown et. al, 2007; Collin-Vezina et. al, 2015; Finkelhor & Browne, 1985).

Among the research on disclosure, **studies conducted in the United States have consistently found that the majority of children do not disclose sexual abuse in childhood (Collin et. al, 2015; Steel et. al, 2004) due to a variety of factors, including fear, self-blame, social stigma, or because they are unable to identify the harm caused given their cognitive development or emotional maturation at the time of the abuse.** Moreover, the victim-offender relationship, type of abuse, and duration of abuse also influences the ability to recall the dynamics of the sexual abuse. “Soon after the abuse incident, avoidant and cognitive coping strategies have been found to mediate the effects of childhood sexual abuse and psychological distress in adolescent females between the ages of 14 and 16 years of age” (Shapiro & Levendosky, 1999 in Steel et. al, 2004, p.786).

C. Traumatic Stress and the Brain, and Memory.

Neurobiology studies have also identified disruption in cognitive function, neural circuitry, and altered chemical balances that coincide with hypervigilance, numbing, aggression, and dissociation (Bremner, 2006; Weiss, 2007; *see also* trauma symptoms for PTSD and dissociative amnesia in Malmo & Laidlaw, 2010). These structural changes also influence how and where memories are stored in the brain. Bremner (2006) and Weiss (2007) identify the structural changes in the brain that occur after traumatic stress: the limbic system is comprised of the hypothalamus, hippocampus, amygdala and locus coeruleus, which are responsible for regulating emotion and formation of memories, affect regulation, and the development of attachment. The cognitive aspects of memory and learning are located in the hippocampus, and also engage the autonomic nervous system, which regulates arousal responses, and the neuroendocrine system. The amygdala is involved in interpreting and integrating emotion, and processing emotional memories. Research indicates that the effects of trauma alter regions of the limbic system, including the hypothalamic-pituitary-adrenal (HPA) axis, neurotransmitters and the central nervous system. When a traumatic event occurs, the HPA-axis, the prefrontal cortex, which regulates cognitive and emotional responses, the thalamus, which encodes sensory processing, and the hippocampus, where conscious memories of facts and experiences are encoded, are associated with numbing, avoidance, and dissociation (*see also* Painter & Scannapieco, 2013).

i. Integrating research and clinical findings.

In cases of delayed disclosure and recall of child sexual abuse, adults are often triggered by some internal or external event, which may occur within or outside a therapeutic relationship, and may identify their victimization in therapy. Malmo and Laidlaw (2010) conducted a study examining posttraumatic stress symptoms and memory retrieval between two groups of adults with histories of child sexual abuse, one group could recall their molestation and the second group reported no recall of sexual abuse. The authors found that the group that disclosed no conscious recall of sexual abuse prior to entering therapy, were experiencing situational triggers in their lives that activated fragmented memories, otherwise known as flashbacks, which is consistent with traumatic memories being organized differently from conscious memories. Malmo and Laidlaw (2010) reported that the perceived safety and trust established within therapy facilitated decreasing dissociative amnesia as the client became more empowered, and created a verbally accessible narrative for integrating the fragmented recall of abuse.

Once the participants had conscious memory of their abuse, there was an increase in somatic complaints with the realization of their victimization, and they began re-experiencing the original intensity of their betrayal of abuse. When adults who identify consistently recalling their sexual abuse from the last incident in childhood were compared to individuals with no recall, the first group were reported to have had more social, intrapersonal, psychiatric and somatic difficulties in different stages of their development. However, in contrast to the participants with no recall, the individuals who recalled their abuse experienced less kinesthetic triggers from sensory memory during and outside of therapy, even though both groups reported recalling perpetrator's facial expressions, body parts, voice, behaviors and identity. Thus, both groups were affected and experienced their trauma differently over time, but once the memories were recalled, sometime within therapy, both groups expressed similar experiences and behaviors that

were consistent in triggers, a rise in somatic complaints, and recall of the sexual abuse details.

“Dissociation is the current mechanism most commonly used to explain traumatic amnesia followed by recovered memory. Theoretically, dissociation occurs at the time of the trauma, may include conscious or unconscious motivated avoidance, and can lead to a fragmentation of the memory. The memory fragmentation then leads to the individual’s difficulties in retrieval at later dates” (Dalenberg, 2006, p. 290), and are often state dependent. These findings are further supported in neurobiological research exploring suppression of memories. Specifically, the hippocampus and prefrontal cortex, and sensory-perceptual memories are affected as noted above (Anderson et. al, 2004; Dalenberg, 2006).

Conclusion

Thus, scientific research establishes that a victim of childhood sexual abuse may not appreciate the wrongfulness of the abuse at the time the abuse is occurring. Indeed, it is the case that, due to coping mechanisms designed to deal with the trauma associated with molestation, such victims do not recognize they have been wronged until years later. To nevertheless designate the date of the abuse as the point of the six month statute of limitations for filing a Government Tort Claim that would be triggered in all cases, will result in abuse victims being deprived of any opportunity to recover even though their failure to earlier discover that they were subjected to wrongful conduct was due to a well-documented psychological condition, which was the result of the very molestation they seek to assert in their claim. Nothing in logic or the law justifies victimizing abused minors in this manner by signaling them out for treatment that is harsher than the victims of other torts when it comes to the delayed discovery doctrine.


Children’s and adolescents’ brains continue to develop and restructure into adulthood. However, when children experience traumatic stress there can be a disruption

in the neurobiology and neural circuitry that influences cognition, memory, emotion, attachment, and mood (Bremner, 2006; Weiss, 2007), including psychiatric/psychological disorders (Amado, Arce & Herraiz, 2015). The facts presented in Rubenstein are consistent with adults who have experienced dissociative amnesia from severe and complex childhood sexual abuse. Traumatic memories are implicit, perceptual and situationally accessible with triggers that activate fragmented memories (Bremner, 2006; Malmo & Laidlaw, 2010; Weiss, 2007). Adults with childhood sexual abuse can have significant issues with accessing the language required to identify trauma (Brown et. al, 2007; Collin et. al, 2015; Steel et. al, 2004). The dynamics of child sexual abuse alter children's cognitive and emotional orientation, their worldview, and self-concept (Finkelhor, 1985), in addition to developmental trauma to the brain (Bremner, 2006; van der Kolk, 2005; Weiss, 2007) that can cause dissociation and then traumatic amnesia.

Dated: December 8, 2016

Respectfully submitted,

**FAMILY VIOLENCE & SEXUAL ASSAULT
INSTITUTE AND INSTITUTE ON
VIOLENCE, ABUSE & TRAUMA**



Brittany Crowell, Psy.D.

Amicus Curiae
Family Violence & Sexual Assault Institute
And Institute On Violence, Abuse & Trauma

Robert Geffner, PhD

Robert Geffner, Ph.D., ABN, ABPP
Licensed Psychologist (Psy 16109 in CA; 2-
2019 in TX)

Licensed Marriage & Family Therapist (CA)
Diplomate in Clinical Neuropsychology and
Board Certified in Couple & Family
Psychology Founding President, Family
Violence & Sexual Assault Institute

Founding President, Institute on Violence,
Abuse and Trauma

Distinguished Research Professor, Alliant
International University, San Diego, CA
Immediate Past President, American Academy
of Couple & Family Psychology
Past President/Founding Member, Trauma
Psychology Division, American Psychological
Assoc.

Morgan Shaw

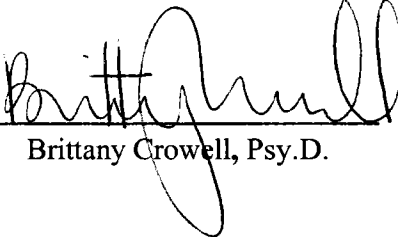
Morgan Shaw, Psy.D.
Licensed Psychologist (Psy 27516)
Clinical and Forensic Training Coordinator
Family Violence and Sexual Assault
Institute/Institute on Violence, Abuse &
Trauma,
San Diego, CA

Alicia Brav

Alicia Brav, MAS
Clinical and Forensic Intern, Forensic Research
Assistant
Family Violence and Sexual Assault
Institute/Institute on Violence, Abuse &
Trauma, San Diego, CA

CERTIFICATE OF WORD COUNT

The text of this brief contains 2,809 words per a computer generated word-processing program used to generate the brief.



Brittany Crowell, Psy.D.

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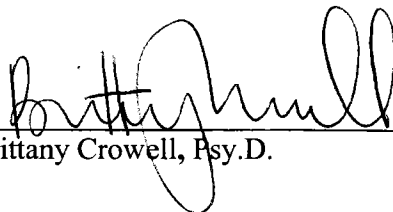
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Brittany Crowell, Psy.D.

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Latrice Rubenstein v. Doe No. 1

(Supreme Court of California, Case No. S234269)

(Court of Appeal, Fourth Appellate District, Div. 1, Case No. D066722)

(Imperial County Superior Court, Case No. ECU08107)

Richard J. Schneider, Esq.
Lee Harris Roistacher, Esq.
Daley & Heft, LLP
462 Stevens Avenue, Suite 201
Solana Beach, CA 92075
Telephone: (858) 755-5666
Facsimile: (858) 755-7870
Email: RSchneider@daleyheft.com

Attorneys for Defendant and Respondent
Doe No. 1

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
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Email: leila.nourani@jacksonlewis.com
swiecas@jacksonlewis.com
egbertd@jacksonlewis.com

Attorneys for Defendant and Respondent
Doe No. 1

Louis A. Leone, Esq.
Seth L. Gordon, Esq.
Leone & Alberts
2175 N. California Blvd., Ste. 900
Walnut Creek, CA 94596
Telephone: (925) 974-8600
Facsimile: (925) 974-8601
Email: lroistacher@daleyheft.com
sgordon@leonealberts.com

Attorneys for Amici Curiae
Northern California Regional Liability
Excess Fund, Southern California
Regional Liability Excess Fund,
Statewide Association of Community
Colleges, and School Association for
Excess Risk

Elliott N. Kanter, Esq.
Law Offices of Elliot N. Kanter
2445 Fifth Avenue, Suite 350
San Diego, CA 92101
Telephone: (619) 231-1883
Facsimile: (610) 234-4553
Email: ekanter@enkanter.com

Attorneys for Plaintiff and Appellant
Latrice Rubenstein

Court of Appeal
Fourth Appellate District, Division 1
750 B Street, Suite 300
San Diego, California 92101

(Appellate Court)

Imperial County Superior Court
Hon. Juan Ulloa
El Centro Courthouse, Dept. 9
939 W. Main Street
El Centro, CA 92243

(Trial Court)

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10065 Old Grove Road, Suite 101

San Diego, California 92131

Phone: (858) 527-1860 x4560 | Fax: (858) 527-1743

IVATpcfs@alliant.edu | www.ivatcenters.org

Amicus Curiae

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VIOLENCE, ABUSE & TRAUMA***

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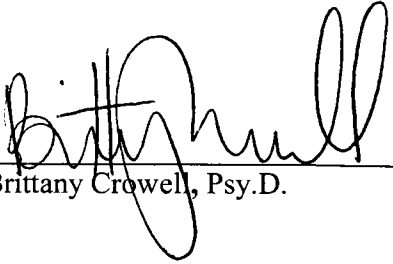
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10065 Old Grove Road, Suite 101, San Diego, California 92131.

On the date set forth below, I served the foregoing document(s) described as follows: **APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE FAMILY VIOLENCE & SEXUAL ASSAULT INSTITUTE AND INSTITUTE ON VIOLENCE, ABUSE & TRAUMA IN SUPPORT OF LATRICE RUBENSTEIN**, on the interested parties in this action by placing ___ the original/ X a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

- BY OVERNIGHT MAIL I deposited such envelopes in the mail at San Diego, California. I am readily familiar with the firm's practice of collection and processing of correspondence for overnight mailing, service or overnight courier service, and that it is to be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.
- STATE I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 8, 2016, at San Diego, California.



Brittany Crowell, Psy.D.

SERVICE LIST

Latrice Rubenstein v. Doe No. 1

(Supreme Court of California, Case No. S234269)

(Court of Appeal, Fourth Appellate District, Div. 1, Case No. D066722)

(Imperial County Superior Court, Case No. ECU08107)

Richard J. Schneider, Esq.
Lee Harris Roistacher, Esq.
Daley & Heft, LLP
462 Stevens Avenue, Suite 201
Solana Beach, CA 92075
Telephone: (858) 755-5666
Facsimile: (858) 755-7870
Email: RSchneider@daleyheft.com

Attorneys for Defendant and Respondent
Doe No. 1

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
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Email: leila.nourani@jacksonlewis.com
swiecas@jacksonlewis.com
egbertd@jacksonlewis.com

Attorneys for Defendant and Respondent
Doe No. 1

Louis A. Leone, Esq.
Seth L. Gordon, Esq.
Leone & Alberts
2175 N. California Blvd., Ste. 900
Walnut Creek, CA 94596
Telephone: (925) 974-8600
Facsimile: (925) 974-8601
Email: lroistacher@daleyheft.com
sgordon@leonealberts.com

Attorneys for Amici Curiae
Northern California Regional Liability
Excess Fund, Southern California
Regional Liability Excess Fund,
Statewide Association of Community
Colleges, and School Association for
Excess Risk

Elliott N. Kanter, Esq.
Law Offices of Elliot N. Kanter
2445 Fifth Avenue, Suite 350
San Diego, CA 92101
Telephone: (619) 231-1883
Facsimile: (610) 234-4553
Email: ekanter@enkanter.com

Attorneys for Plaintiff and Appellant
Latrice Rubenstein

Holly N. Boyer, SBN 221788
Esner, Chang & Boyer
234 East Colorado Boulevard, Suite 975
Pasadena, California 91101
Telephone: (626) 535-9860
Email: hboyer@ecbappeal.com

Attorneys for Plaintiff and Appellant
Latrice Rubenstein

Court of Appeal
Fourth Appellate District, Division 1
750 B Street, Suite 300
San Diego, California 92101

(Appellate Court)

Imperial County Superior Court
Hon. Juan Ulloa
El Centro Courthouse, Dept. 9
939 W. Main Street
El Centro, CA 92243

(Trial Court)