

S250734

SUPREME COURT
FILED

MAY 10 2019

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Jorge Navarrete Clerk

Deputy

B.B., a Minor, etc., et al.,
Plaintiffs, Respondents, and Petitioners,

v.

COUNTY OF LOS ANGELES et al.,
Defendants and Appellants.

T.E., a Minor, etc., et al.,
Plaintiffs and Respondents,

v.

COUNTY OF LOS ANGELES et al.,
Defendants and Appellants.

D.B., a Minor, etc., et al.,
Plaintiffs and Respondents,

v.

COUNTY OF LOS ANGELES et al.,
Defendants and Appellants.

After a Decision by the Court of Appeal
Second Appellate District, Division Three, Case No. B264946

**APPLICATION OF CONSUMER ATTORNEYS OF
CALIFORNIA FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF PLAINTIFFS; AND BRIEF**

SHARON J. ARKIN
SBN 154858
THE ARKIN LAW FIRM
1720 Winchuck River Road
Brookings, OR 97415
T: 541-469-2892
F: 866-571-5676

E: sarkin@arkinlawfirm.com

Attorneys for Amicus Curiae Consumer Attorneys of California

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Cal. Rules of Ct., rule 8.208, the Consumer Attorneys of California certifies that it is a non-profit organization with no shareholders. CAOC and its counsel certify that they know of no other entity or person that has a financial or other interest in the outcome of the proceeding that CAOC and its counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under Canon 3E of the Code of Judicial Ethics.

Dated: May 2, 2019

Sharon J. Arkin

Sharon J. Arkin

*Attorneys for Amicus Curiae
Consumer Attorneys of California*

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I. APPLICATION FOR PERMISSION TO FILE

Amicus curiae Consumer Attorneys of California (CAOC) seeks permission to file the accompanying brief as a friend of the Court. (Cal. Rules of Court, rule 8.520 subd. (f)(1).)

Founded in 1962, CAOC is a voluntary non-profit membership organization representing over 6,000 consumer attorneys practicing in California. CAOC's members represent individuals and small businesses in various types of cases including class actions and individual matters affecting such individuals and entities such as claims for personal injuries and property damage. CAOC has taken a leading role in advancing and protecting the rights of consumers, employees, and injured victims in both the courts and the Legislature.

CAOC has participated as amicus curiae in precedent-setting decisions shaping California law. (See, e.g., *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260; *Kesner v. Superior Court* (2016) 1 Cal.5th 1132; *Ramos v. Brenntag Specialties, Inc.* (2016) 63 Cal.4th 500; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348; *Duran v. U.S. Bank Nat'l Assoc.* (2014) 59 Cal.4th 1; *Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004; and *In re Tobacco II Cases* (2009) 46 Cal.4th 298.)

CAOC is familiar with the issues before this Court and the scope of their presentation in the parties' briefing. CAOC seeks to assist the Court by "broadening its perspective" on the context of the issues presented. (See *Connerly v. State Personnel Bd.* (2006)

37 Cal.4th 1169, 1177. While the briefs submitted by Plaintiffs, Respondents, and Petitioners, B.B., a Minor, and B.B., a Minor, by and through their Guardian ad Litem, Shanell Scott; and Petitioners T. E. by and through her Guardian Ad Litem Akira Earl, D. B. and D. B., by and through their Guardian Ad Litem Terri Thomas and Rhandi Thomas, individually and as successor in interest to the Estate of Darren Burley (hereafter, collectively, Petitioners, fully and adequately address the issue presented, CAOC submits its brief to support the importance of correctly interpreting and resolving the ambiguity in Proposition 51 and its codification under Civil Code § 1431.2.¹

¹ No party or its counsel authored any part of this brief. Except for CAOC and its counsel here, no one made a monetary contribution, or other contribution of any kind, to fund its preparation or submission. (Cal. Rules of Ct., rule 8.520 subd. (f)(4).)

II. INTRODUCTION AND ARGUMENT

This case presents the following question: May a defendant who commits an intentional tort invoke Civil Code section 1431.2, which limits a defendant's liability for non-economic damages “in direct proportion to that defendant's percentage of fault,” to have his liability for damages reduced based on principles of comparative fault?

The briefs submitted by Plaintiffs on the merits thoroughly and completely address all of the issues and authorities important to CAOC and its members, namely, the importance of a careful interpretation of the statute so as not lead to unintended consequences or do violence to its stated purpose: “to avoid catastrophic economic consequences for state and local governmental bodies as well as private individuals and businesses” as a result of “ultimately pay[ing] for ... lawsuits in the form of higher taxes, higher prices *and higher insurance premiums.*” (Civ. Code § 1431.1.) (Italics added.)

III. CONCLUSION

For all of the reasons discussed in the Plaintiff's briefs, CAOC strongly urges this Court to reverse the Court of Appeal's errant holding requiring apportionment of non-economic damages

for Deputy Aviles' intentional battery which lead to the
unfortunate death of Darren Burley.

Dated: May 2, 2019

Respectfully submitted,

Sharon J. Arkin

SHARON J. ARKIN

Attorneys for Amicus Curiae

Consumer Attorneys of California

CERTIFICATE OF COMPLIANCE

Pursuant to Cal. Rules of Ct., rule 8.204, subd. (c)(1), counsel of record certifies that this Application to File and Amicus Brief of Consumer Attorneys of California is produced using 13-point Times New Roman type, including footnotes, and contains less than 1743 words. Counsel relies on the word count provided by Microsoft Word word processing software.

DATED: May 2, 2019

Sharon J. Arkin
SHARON J. ARKIN

*Attorneys for Amicus Curiae
Consumer Attorneys of California*

DECLARATION OF SERVICE

I, the undersigned, declare:

1. That declarant is, and was at the time of service, a citizen of the United States and over the age of 18 years, and not a party to, or interested in, this legal action; and that declarant's business address is 1720 Winchuck River Road, Brookings, Oregon 97415.

2. That on May 2, 2019, declarant served this **APPLICATION OF CONSUMER ATTORNEYS OF CALIFORNIA FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS; AND BRIEF** via Truefiling electronic service or, as noted below, by depositing a true copy as shown below by placing with the U.S. Post Office as to those so designated. The copies were placed in sealed envelopes with postage fully prepaid, addressed to the following interested parties and courts:

SEE ATTACHED SERVICE LIST

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

Executed on this 2nd day of May, 2019, at San Diego, California.

SHARON J. ARKIN

SERVICE LIST

B.B, a Minor, etc., et al., v. County of Los Angeles, et al.
 T.E., a Minor, etc., et al., v. v. County of Los Angeles, et al.
 D.B., a Minor, etc., et al., v. v. County of Los Angeles, et al.
Supreme Court Case No. S250734

<p>Supreme Court of California Clerks Office 350 McAllister Street San Francisco, CA 94102-4797</p>	<p><i>(Via Truefiling + 1 unbound copy via overnight mail)</i></p>
<p>John E. Sweeney The Sweeney Firm 315 South Beverly Drive, Suite 305 Beverly Hills, CA 90212-4308 jes@thesweeneyfirm.com</p> <p>Norman Pine Scott L. Tillett Chaya Mushka Citrin Pine Tillett Pine LLP 14156 Magnolia Boulevard, Suite 200 Sherman Oaks, CA 91423 npine@pineappeals.com stillet@pineappeals.com ccitrin@pineappeals.com</p> <p>Michael D. Seplow Paul Hoffman Schonbrun Seplow Harris & Hoffman LLP 11543 West Olympic Boluvar Los Angeles, CA 90064 MSeplow@sshhlaw.com</p>	<p>Attorneys for Plaintiffs and Appellants, B.B, a Minor, T.E., a Minor, and D.B., a Minor, etc., et al., and S.S, Shanell Scott</p> <p><i>(Via Truefiling)</i></p>
<p>Drew Antablin Antablin & Bruce ALP 6300 Wilshire Boluvar, Suite 840 Los Angeles, CA 90048 antablin@sbcglobal.net</p>	<p>Attorneys for Plaintiff and Appellant, Terri Thomas and Rhandi Thomas</p> <p><i>(Via Truefiling)</i></p>

<p>Carl E. Douglas Law Offices of Carl E. Douglas 5120 West Goldleaf Circle, Suite 140 Los Angeles, CA 90056 <u>Carl@douglashicksllaw.com</u></p>	<p>Attorneys for Plaintiff and Appellant, Rhandi Thomas</p> <p><i>(Via Truefiling)</i></p>
<p>Olufela Kumasi Orange Orange Law Offices 3435 Wilshire Boulevard, Suite 2900 Los Angeles, CA 90010 <u>o.orange@orangelawoffices.com</u></p>	<p>Attorneys for Plaintiff and Appellant, Akira Earl</p> <p><i>(Via Truefiling)</i></p>
<p>Julie Fleming Eugene Philip Ramirez Manning & Kass, Ellrod, Ramirez, Trester, LLP 801 South Figueroa Street, 15th Floor Los Angeles, CA 90017 <u>jmf@manningllp.com</u> <u>epr@manningllp.com</u></p> <p>Sabrina Heron Strong Dimitri Daniel Portnoi O'Melveny & Myers LLP 400 South Hope Street Los Angeles, CA 90071-2899 <u>ssstrong@omm.com</u> <u>dportnoi@omm.com</u></p>	<p>Attorneys for Defendants and Appellants, County of Los Angeles, David Aviles, Los Angeles County Sheriff's Department, and/or Paul Beserra</p> <p><i>(Via Truefiling)</i></p>
<p>Ted W. Pelletier Kazan, McClain, Satterly & Greenwood PLC Jack London Market 55 Harrison Street, Suite 400 Oakland, CA 94607 <u>tpelletier@kazanlaw.com</u></p>	<p>Attorneys for Cindy Burch and Michael Burch, Pub/Depublication Requestors</p> <p><i>(Via Truefiling)</i></p>

<p>California Court of Appeal Second Appellate District, Division Three Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013</p>	<p>(By U.S. Mail)</p>
<p>Superior Court of Los Angeles Honorable Ross M. Klien Department S27 c/o Clerk of the Court Governor George Deukmejian Courthouse 275 Magnolia Avenue Long Beach, CA 90802</p>	<p>(By U.S. Mail)</p>
<p>Attorney General Office of the Attorney General 300 South Spring Street Los Angeles, CA 90013-1230</p>	<p>(Via preferred method: https://oag.ca.gov/services- info/17209-brief/add)</p>