

**S269608**

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

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LOS ANGELES UNIFIED SCHOOL DISTRICT,  
*Defendant and Petitioner,*

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS  
ANGELES,  
*Respondent,*

JANE DOE,  
*Plaintiff and Real Party in Interest.*

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AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL  
SECOND APPELLATE DISTRICT, DIVISION 3, CASE NO. B307389  
HON. SHIRLEY K. WATKINS, TRIAL JUDGE  
LOS ANGELES COUNTY SUPERIOR COURT, CASE No. BC659059

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**REAL PARTY IN INTEREST'S  
SUPPLEMENTAL BRIEF**

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**TAYLOR & RING, LLP**  
David M. Ring, SBN 151124  
Natalie L. Weatherford, SBN 278522  
1230 Rosecrans Avenue, Suite 360  
Manhattan Beach, California 90266  
Telephone: (310) 209-4100  
Email: ring@tayloring.com  
weatherford@tayloring.com

**ESNER, CHANG & BOYER**  
Holly N. Boyer, SBN 221788  
Kevin K. Nguyen, SBN 322665  
234 East Colorado Boulevard, Suite 975  
Pasadena, California 91101  
Telephone: (626) 535-9860  
Email: hboyer@ecbappeal.com  
knguyen@ecbappeal.com

**ATTORNEYS FOR PLAINTIFF AND REAL PARTY IN INTEREST**

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## INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(d), Plaintiff hereby submits this supplemental brief to the Court concerning new authority and new legislation.

As detailed below, the Legislature recently passed AB 2777 which significantly amended Code of Civil Procedure section 340.16, the statute of limitations and revival period for victims of sexual abuse over the age of 18. Specifically, the Legislature revived certain claims where an entity, through its employees or agents, engaged in a “*cover-up*” of a previous sexual assault. The new law, which was passed and approved by the Governor after briefing on the merits was completed in this case, highlights the extraordinary measures the Legislature is taking to address the systemic problem of institutional cover-ups of sexual abuse. Rather than a means to *punish* an entity that has engaged in such conduct, the Legislature’s efforts are designed to *incentivize and motivate* victims to come forward with the hope of dismantling an era of complicity and closeting of sexual abuse.

Plaintiffs also highlight that the recent decision *K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717, addressed by Petitioner Los Angeles Unified School District’s (“the District”) in its supplemental brief, simply parrots the same flawed reasoning as the Court of Appeal below and is therefore unpersuasive.

## ARGUMENT

### I.

#### THE LEGISLATURE'S PASSING OF AB 2777

After this matter was fully briefed, the Legislature passed AB 2777, also known as the “Sexual Abuse and Cover Up Accountability Act.” (See Stats.2022, c. 442 (A.B.2777).) The bill amended Code of Civil Procedure 340.16 to revive, for one year, the statute of limitations for claims seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday when one or more entities are legally responsible for damages and the entity or their agents engaged in *a cover up* of a prior sexual assault. (*Id.*) Notably, AB 2777 defines cover-up in a near identical way as the treble damages provision in Section 340.1(b). (See Code Civ. Proc. § 340.1(b)(2) [defines cover up as “a concerted effort to hide evidence relating to childhood sexual assault”]; § 340.16(e)(4)(A) [defines cover up as “a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.”].)

While AB 2777 addresses claims for sexual abuse brought by a victim over the age of 18, and at issue here is a claim brought by a child victim of sexual abuse under Section 340.1, the enactment of AB 2777 is further proof that the Legislature is engaged in an on-going and concerted effort to forge *a path for victims* whose abuse was caused, in part, by the suppression and deception of an entity that owed a duty to the victim and is not about punishing a defendant that has engaged in such conduct.

According to the Author of AB 2777, and as noted in several of the legislative analyses, “With this bill, **California takes another step to protect survivors of sexual abuse when there is evidence of cover up by**

a defendant entity.” (Request for Judicial Notice, Exh. A at 15; Exh. B at 30; Exh. C at 42; Exh. F at 56; Exh. G at 63.)<sup>1</sup> Thus, and as detailed in the briefing on the merits before this Court, the Legislature’s focus on addressing institutional cover-ups of sexual abuse is not about punishing the defendant but protecting the victims. In other words, the treble damages provision in Section 340.1 is not about defendants – it is about *the victims*.

## II.

### THE FOURTH DISTRICT COURT OF APPEAL’S DECISION IN *K.M.* DOES NOT ADD ANYTHING TO THE ANALYSIS AS IT MERELY ADOPTED THE SAME FLAWED REASONING OF THE COURT OF APPEAL HERE

In *K.M.*, the Court agreed with the Court of Appeal here that Government Code section 818 precludes application of Code of Civil Procedure section 340.1’s treble damages provision to public entities. (*K.M.*, 84 Cal.App.5th at p. 742.) The Court centered its analysis around whether the treble damages provision served a “primarily punitive purpose.” (*Id.* at pp. 742-743.) According to the Court, it does “[t]reble damages under subdivision (b), like punitive damages, are ‘by definition in addition to actual damages and beyond the equivalent of harm done.’” (*Id.*

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<sup>1</sup> Along with this Supplemental Brief, Plaintiff submits a request for judicial notice of the legislative history of AB 2777. Although the documents are available online and thus no formal judicial notice is necessary, Plaintiff has collected these documents and is submitting them in one formal request for ease of reference for the Court. (See, e.g., *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440, fn. 18; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 9 Cal.4th 26, 46 fn. 9 [“A request for judicial notice of published material is unnecessary. Citation to the material is sufficient. [Citation.]”].)

at p. 743, quoting *State Dept. of Corrections v. Workmen's Comp. App. Bd.* (1971) 5 Cal.3d 885, 891.) The analysis is mistaken.

As detailed in the briefing on the merits, a category of damages that is beyond compensatory, but not entirely punitive, does not fall within the narrow immunity afforded by Section 818. (Gov. Code § 818; *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 35-36 [although penalty at issue was admittedly punitive, it was “not simply and solely punitive in nature” and thus did not fall within the immunity under Section 818].) Contrary to *K.M.* and the Court of Appeal below, compensation is *not* the essential condition in determining whether damages are punitive and thus barred by Government Code section 818. Section 818 does not state that a public entity shall be liable *only* for compensatory damages. (See Gov. Code, § 818.) The analysis therefore is *not* whether the damages at issue serve some compensatory function, but whether the damages are indeed punitive damages – those designed solely to deter and punish.

Further flawed is *K.M.*'s interpretation of Section 818 as applying to any damages whose *primary purpose* is punitive. (*K.M.*, at pp. 743-750.) As explained in the briefing before this Court, if the analysis turned on whether the “primary purpose” of the statute was punitive, then presumably all statutory penalties would be barred by Section 818 as the punitive nature of the penalty would likewise always outweigh other non-punitive objectives. Again, there is no support for such a sweeping proposition. “Government Code section 818 was *not intended* to proscribe all punitive sanctions.” (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 142, 146.) As emphasized by this Court in *People ex rel. Younger* that even where a liability is “undoubtedly punitive in nature and indeed is conceded to be so by plaintiff ... the critical question is whether it is simply, that is solely, punitive.” (*People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 35-36 [although penalty at issue was admittedly punitive, it was “*not*

*simply and solely punitive in nature*” and thus did not fall within the immunity under Section 818].)

### CONCLUSION

In enacting the treble damages provision, the Legislature sought to address the troubling reality that institutions charged with the care of children have all too often covered-up instances of sexual abuse to protect their own reputation and survival. To permit local public entities such as school districts to escape the purview of the very tool enacted by the Legislature to address the pervasive problem of institutional cover-ups makes no sense and is unsupported by the plain language of the statutes at issue and the Legislature’s intent. The treble damages provision is *not* designed simply to punish defendants, but rather serves to encourage and incentivize victims to come forward. This same intention is at the heart of the recently passed AB 2777, reviving claims for adults upon allegations of an entity cover-up.

Dated: February 24, 2023

**TAYLOR & RING, LLP**

**ESNER, CHANG & BOYER**

By: *s/ Holly N. Boyer*

---

Holly N. Boyer  
*Attorneys for Plaintiff and Real Party  
in Interest*



**CERTIFICATE OF WORD COUNT**  
(Cal. Rules of Court, rule 8.204(c)(1).)

The text of this brief consists of 1,321 words as counted by the word processing program used to generate the brief.

*s/ Holly N. Boyer*

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Holly N. Boyer

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*s/ Kelsey Wong*  
\_\_\_\_\_  
Kelsey Wong

**SERVICE LIST**

Los Angeles Unified School District v. The Superior Court  
of Los Angeles County

(S269608 | B307389 | BC659059)

Calvin R. House, Esq.  
Arthur C. Preciado, Esq.  
GUTIERREZ PRECIADO & HOUSE  
3020 E. Colorado Blvd.  
Pasadena, CA 91107  
Telephone: (626) 449-2300  
Email: calvin.house@gphlawyers.com  
apreciado@gphlawyers.com

*Attorneys for Defendant  
and Petitioner*  
Los Angeles Unified  
School District

Frederick R. Bennett, Esq.  
SUPERIOR COURT OF LOS ANGELES COUNTY  
111 North Hill Street, Room 546  
Los Angeles, CA 90012  
Telephone: (213) 633-8598  
Email: fbennett@lacourt.org

*Attorneys for Respondent*  
Superior Court of Los  
Angeles County

David M. Ring, Esq.  
Natalie L. Weatherford, Esq.  
TAYLOR & RING LLP  
1230 Rosecrans Avenue, Suite 360  
Manhattan Beach, CA 90266  
Telephone: (310) 209-4100  
Email: ring@tayloring.com  
weatherford@tayloring.com

*Attorneys for Plaintiff  
and Real Party in  
Interest*  
Jane Doe

Ryan D. Miller, Esq.  
CUMMINGS, McCLOREY, DAVIS, ACHO &  
ASSOCIATES, P.C.  
3801 University Avenue, Suite 560  
Riverside, CA 92501  
Telephone: (951) 276-4420  
Email: rmiller@cmda-law.com

*Attorneys for Amicus  
Curiae*  
Hesperia Unified School  
District

Jennifer B. Henning, Esq.  
CALIFORNIA STATE ASSOCIATION OF COUNTIES  
1100 K Street, Suite 101  
Sacramento, CA 95814  
Telephone: (916) 327-7535  
Email: [jhenning@counties.org](mailto:jhenning@counties.org)

*Attorneys for Amicus  
Curiae*  
California State  
Association of Counties

Louis A. Leone, Esq.  
Seth L. Gordon, Esq.  
LEONE ALBERTS & DUUS  
1390 Willow Pass Road, Suite 700  
Concord, CA 94520  
Telephone: (925) 974-8600  
Email: [lleone@leonealberts.com](mailto:lleone@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 of  
Excess Risk

Golnar J. Fozi, Esq.  
Daniel S. Modafferi, Esq.  
MEYERS FOZI & DWORK, LLP  
5942 Priestly Drive, Suite 100  
Carlsbad, CA 92008  
Telephone: (760) 444-0039  
Email: [gfozi@meyersfozi.com](mailto:gfozi@meyersfozi.com)  
[dmodafferi@meyersfozi.com](mailto:dmodafferi@meyersfozi.com)

*Attorneys for Amici  
Curiae*  
Association of Schools  
for Cooperative Insurance  
Programs, Public Risk  
Innovation, and  
Management, and  
California Association of  
Joint Powers Authorities

Alan Charles Dell'Ario, Esq.  
ATTORNEY AT LAW  
P.O. Box 359  
Napa, CA 94559  
Telephone: (707) 666-5351  
Email: [charles@dellario.org](mailto:charles@dellario.org)

*Attorneys for Amicus  
Curiae*  
Consumer Attorneys of  
California

CALIFORNIA COURT OF APPEAL  
SECOND APPELLATE DISTRICT, DIVISION 3  
Ronald Reagan State Building  
300 S. Spring Street  
2<sup>nd</sup> Floor, North Tower  
Los Angeles, CA 90013

*Appellate Court  
(Unbound Brief Only Via  
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Hon. Shirley K. Watkins  
LOS ANGELES COUNTY SUPERIOR COURT  
Van Nuys Courthouse East, Dept. T  
6230 Sylmar Avenue  
Van Nuys, CA 91401

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**PROOF OF SERVICE**

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Jennifer Henning California State Association of Counties 193915	jhenning@counties.org	e- Serve	2/24/2023 3:41:04 PM
Marina Maynez Esner, Chang & Boyer	mmaynez@ecbappeal.com	e- Serve	2/24/2023 3:41:04 PM
Natalie Weatherford Taylor & Ring 278522	weatherford@tayloring.com	e- Serve	2/24/2023 3:41:04 PM
Ryan Miller Cummings McClorey Davis Acho & Associates, P.C. 256799	rmiller@cmda-law.com	e- Serve	2/24/2023 3:41:04 PM
Sheeny Bang Esner, Chang & Boyer	sbang@ecbappeal.com	e- Serve	2/24/2023 3:41:04 PM
Kelsey Wong Esner, Chang & Boyer	kwong@ecbappeal.com	e- Serve	2/24/2023 3:41:04 PM
Claudia Ramirez Gutierrez, Preciado & House, LLP	claudia.ramirez@gphlawyers.com	e- Serve	2/24/2023 3:41:04 PM
Jennifer Henning California State Association of Counties	jhenning@coconet.org	e- Serve	2/24/2023 3:41:04 PM
Kathleen Becket Esner, Chang & Boyer 334091	kbecket@ecbappeal.com	e- Serve	2/24/2023 3:41:04 PM
Daniel Modafferi	dmodafferi@meyersfozi.com	e-	2/24/2023

Meyers Fozi & Dwork, LLP 035238		Serve	3:41:04 PM
Holly Boyer Esner Chang & Boyer 221788	hboyer@ecbappeal.com	e-Serve	2/24/2023 3:41:04 PM
Frederick Bennett Superior Court of Los Angeles County 47455	fbennett@lacourt.org	e-Serve	2/24/2023 3:41:04 PM
Seth Gordon LEONE ALBERS & DUUS 099874	lleone@leonealberts.com	e-Serve	2/24/2023 3:41:04 PM
David Ring Taylor & Ring, LLP	ring@tayloring.com	e-Serve	2/24/2023 3:41:04 PM
Seth Gordon Leone & Albers 262653	sgordon@leonealberts.com	e-Serve	2/24/2023 3:41:04 PM
Kevin Nguyen Esner, Chang & Boyer 322665	knguyen@ecbappeal.com	e-Serve	2/24/2023 3:41:04 PM
Alan Dell'ario Attorney at Law 60955	charles@dellario.org	e-Serve	2/24/2023 3:41:04 PM
Arthur Preciado	apreciado@gphlawyers.com	e-Serve	2/24/2023 3:41:04 PM
Devin Storey 234271	dms@zalkin.com	e-Serve	2/24/2023 3:41:04 PM
Golnar Fozi 167674	gfozi@meyersfozi.com	e-Serve	2/24/2023 3:41:04 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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Date

/s/Kelsey Wong

Signature

Boyer, Holly N. (221788)

Last Name, First Name (PNum)

Esner, Chang & Boyer

Law Firm