IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S234269

LATRICE RUBENSTEIN,
Plaintiff and Appellant,

v.

DOE #1,
Defendant and Respondent.

Court of Appeal of California
Fourth District, Division One
D066722

Superior Court of California
Imperial County
ECU08107
Hon. Juan Ulloa

Answer to Petition for Review

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ANSWER TO PETITION FOR REVIEW

I. No Grounds Exist for Granting Review in This Case

Defendant/petitioner, Doe No. 1, has petitioned this court review of a published opinion where the Court of Appeal, Fourth Appellate District, Division One, held that the trial court had jurisdiction to grant a Government Code section 946.6 Petition finding that the statutory delayed discovery rule of Government Code section 340.1 applied to delay the accrual of plaintiff's action.

Defendant/petitioner presented two issues that they believe are unsettled issues of law: 1. Do the government codes strictly construed claim presentation deadlines (deadlines requiring presentation of a claim no later than six months after the cause of action rule and requiring presentation of an application for leave to present a late claim no later than one year after accrual) apply regardless of the delayed discovery provisions of Government Code section 340.1?

2. Does the 2008 amendment to the Government Code section 905, subdivision (m) apply?

As will be analyzed in the following arguments, there is not any conflict of law that is presented by the Rubenstein case. There is not any lack of uniformity of decisions on a vitally important issue that impacts every governmental entity in the state. Review is also not needed to clarify any case law including *Shirk v. Vista Unified Sch. Dist.* (2007) 42 Cal.4th 201, 208 or *V. C.v. Los Angeles Unified Sch. Dist.* (2006) 139 Cal.App.4th 499,

508–512 *(V.C)*. Rubenstein does not create any confusion, and any increase in sexual abuse lawsuits is speculative at best. Most importantly, Rubenstein confirms the long-standing law concerning the accrual of a cause of action. Most importantly Rubenstein analyzed that the common-law delayed discovery rule applies to the accrual of a childhood sexual abuse cause of action for purposes of compliance with the Government Codes presentation claims deadlines.

II. Review Should be Denied Because the Court of Appeal Correctly Stated and Applied the Principles of Delay Discovery and Accrual of Child Sexual Abuse Causes of Action Pursuant to the Appropriate Government Codes.

Rubenstein v. Doe no. 1 (2016) 245 Cal.App.4th 1037 *(Rubenstein)* does not conflict with *V. C., Shirk, or the Cnty. of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263. It is not contested that Ms. Rubenstein's filed her claimed within six months of realizing she had repressed memory of the molestation by a coach hired and employed by defendant/ petitioner. It is not contested that she filed her lawsuit in a timely manner. Defendant/ petitioner site *V.C.* initially in support of their petition and theory. However, *V. C.* is clearly distinguishable. In that case the trial court ruled that the cause of action accrued on August 15, 2003. *V. C.* presented her claim for damages and applied for permission to file a late claim on September 17 and October 4, 2004, respectively, dates well beyond the six-month and one year time limits afforded by Government Code sections

911.2 and 911.4. Even though the child molestation acts occurred in the Rubenstein case many years before, they did not accrue until she had a resurfacing of repressed memories of the molestation within the prior six months of filing her initial claim. It is conceded by defendant and petitioner that she sought permission from Doe NO. 1 for leave to present a late claim. That application was denied. She timely filed in the Superior Court of petition for relief from the government Codes claim presentation and filed her lawsuit. That petition was opposed. On August 9, 2013, the trial court granted Rubenstein's petition, finding her June 2012 claim timely under Government Code section 340.1 et al.

The *V. C.* Court also acknowledged that there can be a delayed discovery, and therefore delayed accrual of the cause of action. It is well accepted that a cause of action accrues for the purposes of the filing requirements of the Government Tort Claims Act on the same date a similar action against a nonpublic entity would be deemed to accrue for purposes of applying the relevant statute limitations. (*John R. v. Unified sch. Dist.* (1989) 48 Cal.3d 438, 444.) *V. C.* argued simply that her cause of action would not accrue until she reached the age of majority. The court ruled that the mother knew of the molestation, the perpetrator was arrested over year before the claim was filed, and the facts supported a reasonable likelihood that the petitioner suspected the wrongdoing a year before the claim was filed. Again, that court simply stated that *V.C.* did not comply with the Government Code Tort claims Act. She did not allege any delayed discovery or delayed accrual of any causes of action. The *V.C.* court confirmed that the effect of delayed discovery, is to delay the accrual of the

cause of action and cited *Curtis T.* (2004) 123 Cal.App.4th 1405, 1416. It also stated thus, where the cause of action for sexual abuse has not yet accrued because the delayed discovery, the date of accrual and, in turn, the time for both presenting a claim and commencing the cause of action is extended.

Shirk v. Vista Unified Sch. Dist. (2006) 139 Cal.App. 4, th at 499 is also distinguishable. The *Shirk* case simply dealt with whether or not Government Code section 340.1 as amended allowed for the revival of a tort claim during the revival year of 2003. The case essentially said that the tort claim act was not part of that revival statute. The case stated that although the revival year for sexual abuse cases allowed for the filing of new cases because of the lapse of the statute limitations, it did not allow for the revival of the presentation of the government tort claim act. That case did not again show that there was a delayed or suppressed memory of the wrongful act or molestation.

In the *Cnty. of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1232, 1263, that case simply dealt with an issue where the plaintiff filed a tort claim within a timely fashion. That claim was rejected by a letter. The lawsuit was not filed within six months after the rejection of the letter. There were other issues concerning whether or not the attorney represented the plaintiff or not. However, this case did not decide nor talk about delayed discovery, delayed accrual, or any other issue decided by the Rubenstein case.

K. J. v. Arcadia Unified Sch. Dist. (2009) 172 Cal.App.4th 1229, case that is cited by petitioners and defendant, supports Rubenstein's position that there is not any controversy or inconsistency between the District Courts of California. The

Government Claims statutes (Gov. Code, § 900 et seq.) require that before suing a public entity, a plaintiff must present a claim to the public entity no later than six months after the cause of action accrues. (*Id.*, § 911.2.) The essential issue presented is whether *K.J.* properly pled and filed a timely claim with the District prior to filing suit. K.J. stated:

(1) When a plaintiff sues a public entity following the denial of a tort claim for childhood sexual abuse, the statute of limitations is the standard six-month period set forth in Government Code section 945.6, not the extended statute of limitations found in Code of Civil Procedure section 340.1. However, the issue in this case is not the statute of limitations, but rather the date the cause of action *accrued.* The accrual date for presenting a government tort claim is identical to the accrual date that would apply in an ordinary action when no public entity is involved. (Gov. Code, § 901; *Shirk v. Vista Unified Sch. Dist.*, *supra*, 42 Cal.4th at pp. 208–209.)

(2) Under the delayed discovery doctrine, accrual of a cause of action is postponed until the plaintiff discovers, or has reason to discover, the cause of action. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 [87 Cal.Rptr.2d 453, 981 P.2d 79] (*Norgart*); *Curtis T.*, *supra*, 123 Cal.App.4th at p. 1418; *V.C*, *supra*, 139 Cal.App.4th at p. 515.)

There, as in Rubenstein, the court ruled that the allegations were sufficient to invoke the delay discovery rule of accrual. Therefore, for pleading purposes, Rubenstein as did *K.J.* adequately alleged they presented a timely claim, i.e. delayed discovery, to the respective districts that they had been the victim of childhood sexual abuse.

Quarry v. Doe 1 (2012) 53 Cal.4th 945 does not apply because Rubenstein was not 26 years old at the time of the 1998 or 2002 amendments to Code of Civil Procedure section 340.1.

III. The Appellate Court Properly Ruled Government Code section 905, subdivision (m) was Irrelevant.

Government Code section 905, subdivision (m) is irrelevant in that it states that claims must be filed against local public entities except in the following circumstances: (m) claims made pursuant to Code of Civil Procedure section 340.1 for the recovery of damages suffered as a result of childhood sexual abuse. The subdivision shall apply only to claims arising out of conduct occurring on or after January 1, 2009. Obviously this conduct occurred prior to January 1, 2009. However, what petitioner's and defendant seem to miss that a claim was timely filed. Government Code section 905 is irrelevant to this cause of action. Simply stated, Government Code section 905, subdivision (m) simply eliminate the need to file a government tort claim. It did not do anything to change the law for abuse occurring before Jan. 1, 2009.

IV. Conclusion

This court should not grant Doe No. 1's petition for review. As stated above and argued appropriately, there is not any need to secure uniformity of decision and that there is not any conflict created by Rubenstein. Clearly, Rubenstein filed her claim in a timely fashion after the cause of action accrued. Her actions are

consistent with *K. J. v. Arcadia Unified Sch. Dist.*, *supra*, 172 Cal.App.4th 1229 and *Curtis T.*, *supra*, 123 Cal.App.4th 1405. Rubenstein does not change the law. Rubenstein does not have a far-reaching issue affecting every governmental entity in the state. There is not a need to transfer this case back to the Court of Appeal in light of *V.C.* and *Shirk* in that Rubenstein is not inconsistent with those opinions. Those cases were decided on different facts.

Law Offices of Elliott N. Kanter

Respectfully submitted,

Dated: May 23, 2016

By: _____

Elliott N. Kanter

Attorney for Plaintiff and Appellant

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **1,677** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.504(d) or by Order of this Court.

Dated: May 23, 2016

By: _____

Law Offices of Elliott N. Kanter

Elliott N. Kanter

Attorney for Plaintiff and Appellant

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S234269

PROOF OF SERVICE

I declare:

At the time of service I was at least 18 years of age and not a party to this legal action. My business address is 2445 Fifth Avenue, Suite 350, San Diego, CA 92101. I served document(s) described as Answer to Petition for Review as follows:

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On May 23, 2016, I enclosed a copy of the document(s) identified above in an envelope and deposited the sealed envelope in a box or other facility regularly maintained by usps, with overnight delivery fees paid or provided for, addressed as follows:

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San Francisco, CA 94102-4797

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I am a resident of or employed in the county where the mailing occurred (San Diego, CA).

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On May 23, 2016, I served via the Court's e-submit system, and no error was reported, a copy of the document(s) identified above on:

Supreme Court of California

Fourth District, Division One

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

Dated: May 23, 2016

By: _____
Elliott N. Kanter