Case No. S282866

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

DANIEL ESCAMILLA,

Plaintiff and Appellant

vs.

JOHN FITZPATRICK VANNUCCI,

Defendant and Respondent

After a Published Decision by the Court of Appeal, First Appellate District, Division One, Case No. A166176

After an Appeal from Judgment of the Superior Court of California,
County of Alameda
Case No. RG21111193

RESPONDENT'S ANSWER TO *AMICUS CURIAE* BRIEF OF THE ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

JAMES K. HOLDER (State Bar No. 267843)
GORDON REES SCULLY MANSUKHANI, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054
jholder@grsm.com

Attorneys for Defendant/Respondent
JOHN FITZPATRICK VANNUCCI

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Respondent John Fitzpatrick Vannucci ("Respondent") submits this Answer to the *Amicus Curiae* Brief of the Association of Southern California Defense Counsel ("ASCDC") and Appellant Daniel Escamilla's ("Escamilla") answer thereto.

I. INTRODUCTION

ASCDC in its *amicus curiae* brief in support of Respondent correctly and succinctly analyzes the plain language and legislative history of Code of Civil Procedure, section 340.6 and joins the overwhelming consensus in correctly determining that section 340.6 applies to malicious prosecution lawsuits, such as this one, brought against an attorney for allegedly wrongful act undertaken in the course of providing professional services. ASCDC's useful guidance confirms Respondent's position and further demonstrates that the Court of Appeal opinion should be affirmed.

II. ARGUMENT

A. ASCDC Correctly Analyzes the Statutory Language and Legislative History of Section 340.6.

ASCDC's *amicus curiae* brief in support of Respondent properly analyzes Code of Civil Procedure section 340.6 to conclude – as virtually every appellate court to address the issue has also concluded – that the plain statutory language of section 340.6 taken in the context in which it was enacted confirms that the Legislature intended section 340.6 to be interpreted broadly to achieve its purposes, which includes providing the applicable statute of limitations for malicious prosecution claims against attorneys for alleged wrongful acts arising in the course of providing professional services.

The ASCDC's analysis is amply supported by the legislative context in which section 340.6 arose. As explained in *Lee v. Hanley* (2015) 61 Cal.4th 1225, the

Legislature enacted section 340.6 as a solution to an insurance crisis which had erupted in the 1970s, during which the cost of lawyers' professional liability insurance skyrocketed 100% to 400% within a single year and which coincided with a simultaneous dramatic decline in the number of insurance companies that were even willing to insure attorneys. (*Id.* at p. 1233, *citing* Mallen, Panacea or Pandora's Box? A Statute of Limitations for Lawyers (1977) 52 Cal. State Bar J. 2.) So significant was the lawyers' professional liability insurance crisis that it had even reached the front pages of national newspapers. (*Id.*) Under these circumstances, it is completely unsurprising that the Legislature sought to create a separate statute of limitations for attorneys as opposed to non-attorneys—in fact it was necessary.

In enacting section 340.6, the Legislature sought to address the lawyers' professional liability insurance crisis by creating a specially tailored statute of limitations for claims against attorneys that would provide certainty and thereby reduce insurance premiums by lowering the costs to insurers of providing lawyers' professional liability policies. (*Id.* at p. 1234.) And to achieve this goal, the Legislature deliberately incorporated broad statutory language and rejected narrow statutory language. For example, the Legislature specifically declined to use the term "professional negligence" in section 340.6 because the Legislature did not want to limit the statute to any particular cause of action. Rather, "[t]he Legislature enacted the statute so that the applicable limitations period for such claims would turn on the conduct alleged and ultimately proven, not on the way the complaint was styled." (*Id.* at p. 1236.) The same logic applies here. The Legislature did not narrow section 340.6 by the type of plaintiff, which

would have been contrary to its legislative intent.

As the ASCDC's brief explains, malicious prosecution claims arising in the course of an attorney's provision of professional services is conduct that is clearly encompassed by section 340.6's intentionally broad language covering "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services." (Code Civ. Proc. § 340.6(a).) The Legislature never demonstrated any intention to have section 340.6 apply more narrowly than its plain language implies, which it certainly would have if it intended to limit the scope of section 340.6 to claims by "clients" as opposed to "plaintiffs." *Lee v. Hanley* recognized the Legislature's intent to broaden the statute of limitations and even identified the malicious prosecution decisions in *Yee v. Cheung* (2013) 220 Cal.App.4th 184, 195–196 and *Vafi v. McCloskey* (2011) 193 Cal.App.4th 874, 881–883 as examples of the Legislature's intent to cover a "broader sweep" of conduct beyond mere professional negligence. (*Lee,* 61 Cal. 4th at p. 1236.)

ASCDC's *amicus curiae* brief also correctly points out—as *Lee v. Hanley* also concluded, that the fundamental error in the reasoning of the *Roger Cleveland Golf Co., Inc. v. Krane & Smith, APC* (2014) 225 Cal.App.4th 660 opinion upon which Escamilla relies, is its narrow interpretation of section 340.6 as merely "a professional negligence statute" despite clear legislative intent to the contrary. (*Amicus Curiae* Brief at 11-12.) Escamilla nevertheless argues that referring to *Roger Cleveland*'s reasoning as having been "disapproved" by *Lee v. Hanley* is a "pervasive mischaracterization." (Appellants' Answer to *Amicus Brief of the Association of Southern California Defense Counsel*

("AAB"), at 5.) This is incorrect. *Lee v. Hanley* specifically used the term "disapprove" to highlight its disagreement with *Roger Cleveland*'s faulty analysis of the legislative intent behind section 340.6. (*Lee*, 61 Cal.4th at p. 1239.) Likewise, Escamilla's suggestion that *Roger Cleveland*'s error is simply an "imprecise phrase" (See Appellant's Reply Brief on the Merits at 5) is unavailing. *Roger Cleveland*'s error is not simply semantics, but rather, is *the* flawed premise regarding the Legislature's intent in enacting section 340.6 from which *Roger Cleveland*'s faulty reasoning and its erroneous ultimate conclusion emanates, and which no other appellate court has subsequently followed.

Recognizing the foundational nature of *Roger Cleveland*'s error, all subsequent appellate courts to address the issue have correctly recognized, as this Court should also affirm, that the Legislature enacted section 340.6 not as a narrowly-drawn professional negligence statute, but as having been more broadly-worded in order to aggressively respond to a crisis; and that accordingly, it is clear that the plain language and intent of section 340.6 encompasses any "wrongful act or omission" by an attorney "arising in the performance of professional services", including malicious prosecution claims against an attorney such as this case.

B. Malicious Prosecution Claims Against Attorneys In Their Professional Capacity Affect Malpractice Insurance Costs – The Primary Legislative Intent Behind Section 340.6.

ASCDC's *amicus curiae* brief also correctly points out that lawyers' professional liability policies typically include a duty to defend attorneys against malicious prosecution claims in the course of providing professional services, and that such claims increase the cost of malpractice insurance for attorneys, which is the precise legislative purpose for which section 340.6 was enacted. (*Amicus Curiae* Brief, at 17-18.)

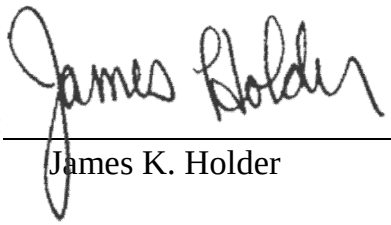
Escamilla makes little effort to argue otherwise, and even admits that "malicious prosecution claims may affect insurance defense costs." (AAB at 8.) However, Escamilla confusingly suggests that the availability of such coverage is nevertheless "dubious." Not so. ASCDC and Respondent have amply demonstrated the availability of such defense coverage in California. (*Amicus Curiae* Brief at 18; Respondent's Answer Brief, at 34-35.) In fact, the State Bar of California's own sponsored professional liability insurance policy provides a duty to defend against for malicious prosecution claims. (See CalBar Connect, Professional Liability Insurance For Lawyers, Policy Specimen, *available at* https://www.mybarbenefits.com/content/dam/amba-sites/pdfs/arch/Policy_Specimen.pdf [last accessed, June 14, 2024].) Given the clear legislative intent and broad statutory language of section 340.6, Escamilla cannot plausibly argue that the Legislature intended to limit the applicable of section 340.6 solely to claims for legal malpractice brought by a client as such an interpretation is contrary to both the statutory language and legislative intent behind section 340.6

III. CONCLUSION

This Court should affirm the Court of Appeal's common-sense opinion and enforce section 340.6 as written and in accordance with its clear legislative intent, as the overwhelming majority of Courts of Appeal to consider the issue have done, and confirm that section 340.6 covers malicious prosecution claims against attorneys acting in their professional capacity.

DATED: June 14, 2024

Respectfully submitted,



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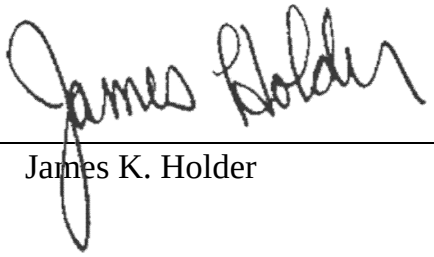

By:_____
James K. Holder

SERVICE LIST

Daniel Escamilla 1679 E. Orangethorpe Ave #117 Atwood, CA 92811-0117 E-mail: dan@escamilla.com	*Plaintiff/ Appellant in pro se* DANIEL ESCAMILLA
Clerk of the Court of Appeal First Appellate District Division One 350 McAllister St. San Franciso, CA 94102	No. A166177
Clerk Superior Court of California County of Alameda, Dept. 1 1225 Fallon St. Oakland, CA 94612 (For: Hon. Tara M. Desautels)	Super. Ct. Case No. RG21111193
Harry W.R. Chamberlain II (SBN 95780)Robert M. Dato (SBN 110408)1000 Wilshire Boulevard, Suite 1500Los Angeles, California 90017Telephone: (213) 891-0700Facsimile: (213) 896-0400Email: hchamberlain@buchalter.com	*Attorneys for Amicus Curiae* ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

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