S.Ct. Case No.: S259216

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

YAZMIN BROWN, *et al.*
Appellants/Petitioners,

vs.

UNITED STATES OLYMPIC COMMITTEE
Defendant/Respondent.

After Decision by the Court of Appeal
Second Appellate District, Div. Seven (B280550)
(Superior Court of Los Angeles County, Hon. Michael P. Vicencia
BC599321)

PETITIONERS' REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

Cases (continued)

Statutes, Codes & Rules

Petitioners and Appellants, KENDRA GATT, BRIANNA BORDON, and YAZMIN BROWN (collectively "Petitioners"), hereby submit this Reply Brief on the Merits in proceedings before this Court reviewing the published decision of the Court of Appeal, Second Appellate District, Division Seven (per Justices Feuer, Perluss, Zelon), affirming the trial court's Judgment in the underlying sexual abuse dispute in favor of Defendant/Respondent, UNITED STATES OLYMPIC COMMITTEE ("USOC"), and reversing that same Judgment against USA TAEKWONDO ("USAT").[1]

I.

INTRODUCTION

In their Opening Brief, Petitioners asked this Court to clarify the appropriate test minor plaintiffs must satisfy to establish a duty by defendants to protect them from the sexual abuse of third parties. In doing so, Petitioners explained how the decisional law is inconsistent and conflicting on the two predominate tests which have

[1] All factual citations in this Opening Brief are to the official citation of the Court of Appeal's Opinion, following modification (*Brown v. USA Taekwondo* (2019) 40 Cal.App.5th 1077); and to the Appellant's Appendix, abbreviated as: ([volume] AA [page]).

evolved to define that duty of care, the Restatement's "Special Relationship" test, and the "*Rowland* factors" test, derived from this Court's seminal decision in *Rowland v. Christian* (1968) 69 Cal.2d 108. As Petitioners further detailed, some courts have employed *either* test to determine the existence and scope of such a duty of care, viewing them as *independent, alternative bases* on which such a duty could be established. Other courts (like the Court of Appeal in this case) have viewed the *Rowland* factors test merely as a subsidiary mechanism to limit or qualify a duty if it is first established under the Special Relationship test, thereby requiring plaintiffs to satisfy *both* tests before they can establish a duty of care.

Petitioners assert that they should be permitted to establish a duty of care to protect them under *either* of those two established test. Indeed, the path to recovery for sexually abused minors should not be impeded by unnecessary hurdles meant to assist youth organizations in avoiding accountability. Instead, those organizations should be held accountable commensurate with the control they retain over both the dependent victims and the perpetrators of that abuse, consistent with the rationale recently adopted by this Court in *Regents of University of California v.*

Superior Court (2018) 4 Cal.5th 607. Both the Special Relationship test and the *Rowland* factors test play significant roles in that undertaking. Satisfying *either* of those two approaches should be enough to establish a legal duty on which tort recovery can be premised.

In response, both USOC and USAT seek to create an unnecessary *polemic* between those two tests. But Petitioners have not suggested that one of those tests should predominate over the other. Quite to the contrary, Petitioners have demonstrated how different courts can (and should) take different approaches when analyzing duty, and that no inherent conflict arises when they consider *either* of those independent tests (or *both*) in order to do so. Where conflict has arisen, however, is when courts (like the Court of Appeal in this case) refuse to consider both tests independently, viewing the *Rowland* factors tests as merely a subsidiary test applicable only where the Special Relationship test is first satisfied.

Moreover, while both USOC and USAT predictably argue that cases which have only applied the *Rowland* factors test to establish a duty of care to protect against harm caused by others are "outliers" and should be disapproved by this Court, Petitioners counter that those decisions

instead exemplify the more flexible and holistic approach to duty the majority of other courts have followed, and which this Court should confirm now. Both the Special Relationship test and *Rowland* factors test are complementary, alternative analytical paths for reaching the same conclusion. They are equally valid tools which courts should be entitled to employ as the facts and circumstances before them dictate. Minor victims of sexual abuse should be entitled to proceed with their tort-based claims where they can satisfy either one of those two tests.

Accordingly, Petitioners reprise their request for this Court to reverse the Court of Appeal's Judgment in favor of USOC, and to otherwise affirm that same Judgment entered by the Court of Appeal against USAT.

II.

DISCUSSION

A. The Court of Appeal's Refusal to Apply the *Rowland* Factors Test, After Incorrectly Concluding That No Special Relationship Exists Between USOC and Petitioners, Should Be Reversed by This Court.

1. The Special Relationship Test, Properly Applied to USOC, Supports the Finding of a Duty of Care Owed to Petitioners.

USOC has spent the majority of its briefing boxing at shadows, defending the efficacy of the Special Relationship test from some imaginary attack. Petitioners do not disagree that the Special Relationship test may be useful to establishing duty in the appropriate circumstances, and have previously cited to this Court cases where that test was properly employed. Petitioners have further maintained that using the Special Relationship test in this particular case, as one potential mechanism to determine whether USOC owed a duty of care to Petitioners, is appropriate. Petitioners disagree, however, that the Court of Appeal applied that Special Relationship test as to USOC properly, and has explained why its conclusion that no special relationship existed

between USOC and Petitioners under that particular test should be reversed by this Court.

To be sure, Petitioners have already detailed how the Court of Appeal's analysis of USOC's special relationship duty improperly focused almost exclusively on the relationship between USOC and Petitioners' coach, Mark Gitelman ("Gitelman") (See *Brown, supra,* 40 Cal.App.5th at 1101-1103.) In so doing, the Court of Appeal critically failed to analyze the special relationship between *USOC and Petitioners* as a further basis for imposing a special relationship duty on USOC.

This is especially so where many of the same elements of *dependency* and *control* which animated this Court's analysis in *Regents* are also present in this case. (*Regents, supra,* 4 Cal.5th at 620-621.) Like the college students in *Regents,* Petitioners are dependent on USOC to exercise the power and control Congress gave it under the Ted Stevens Amateur Sports Act (36 U.S.C. § 220501, *et seq*.) to "provide structure, guidance, and a safe learning environment." (*Regents, supra,* 4 Cal.5th at 625.) Moreover, like the university in *Regents* that exercised sufficient control over that environment by imposing "a variety of rules and restrictions" and which can discipline students when necessary (*ibid.*),

USOC promulgated its own Safe Sport guidelines, which it further required all of its NGBs (including USAT) to adopt and enforce upon penalty of suspension. (1 AA 42.) Those Safe Sport guidelines specifically prohibit or limit: (1) one-on-one interactions between coaches and minor athletes; (2) close physical contact between coaches and minor athletes (athletic training, messages, rubdowns); (3) locker room and changing privacy protocols; (4) social media and electronic communications between coaches and minor athletes; (5) one-on-one local travel between coaches and minor athletes; and (6) one-on-one overnight travel and hotel or other lodging accommodations between coaches and minor athletes. (1 AA 40-42.)

Again, those guidelines intimately regulate interactions between coaches and minor athletes, and are mandated by USOC with "top-down" authority by which USOC suspends any NGB (like USAT) that does not adopt its own rules consistent with USOC's "model" rules. (1 AA 40-42.) Consequently, like the university in *Regents,* USOC retains the ultimate authority to regulate and control all aspects of the coach-athlete relationship, and to mandate that its subsidiary NGBs adopt rules which conform to those specific mandates. This is the type of control upon which

vulnerable minor athletes (and their parents) reasonably rely in order to keep them safe from sexual abuse and related predatory behavior by their coaches while participating in USOC sanctioned activities.

In fact, through the plenary power it derives from the Ted Stevens Act, USOC is the only entity expressly authorized by law to take such actions to protect minor athletes within the Olympic movement. This is precisely why (as Petitioners detailed in their Opening Brief) the acting CEO of USOC, Susanne Lyons, was forced to admit during a Congressional hearing held in May of 2018 that USOC had the power and authority to take affirmative action to protect Olympic athletes from sexual abuse but simply failed to do so. Lyons further admitted that USOC "regrettably" failed to exercise that authority to protect Olympic athletes from ongoing sexual abuse and that it "should have done better" in numerous instances to prevent or to stop that abuse.[2] With that almost unlimited *control* comes the commensurate duty to take reasonable actions to protect *dependent* minor athletes with whom USOC

[2] As Petitioners previously pointed out in their Opening Brief, Lyons' testimony can be viewed at:

https://energycommerce.house.gov/committee-activity/hearings/hearing-on-examining-the-olympic-community-s-ability-to-protect-athletes.

undoubtedly enjoys a special relationship. (*Regents, supra,* 4 Cal.5th at 620-621.)

As the First District observed in *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, when considering application of the alternative Special Relationship test, "[t]he mission of youth organizations to educate children, the naivete children, and the insidious tactics employed by child molesters dictate that the law recognize a special relationship between youth organizations and the members such that the youth organizations are required to exercise reasonable care to protect their members from the foreseeable conduct of third persons." (*Juarez, supra,* 81 Cal.App.4th at 411.) As it was with the Boy Scouts of America, so too should it be with USOC. The Court of Appeal's conclusion to the contrary on the Special Relationship test should be reversed by this Court.

2. Proper Application of the Alternative *Rowland* Factors Test Also Supports a Duty of Care Owed by USOC.

Having clarified above that Petitioners do not object to the proper application of the Special Relationship test against USOC to find a duty of care, Petitioners do maintain that it is not the only test that should be

applied in order to do so. Again, Petitioners advocate for the application of the Special Relationship test and the *Rowland* factors test as *independent tools* for evaluating the same duty of care question. On the other hand, both USOC and USAT take the position that the *Rowland* factors test is never properly invoked unless and until the Special Relationship test is satisfied first, making it a subsidiary test only. They offer several arguments to defend that rather dogmatic position, none of which withstand further scrutiny.

First, USOC and USAT maintain that this Court in *Regents* required the Special Relationship test to be satisfied before the *Rowland* factors test could be properly employed. But this Court in *Regents* did no such thing. (See *Regents, supra,* 4 Cal.5th at 620-634.) Indeed, *Regents* did not undertake any analysis of whether *either* or *both* of those tests should properly be employed to establish a duty of care. Instead, the Court simply found after applying the Special Relationship test that a special relationship existed between the university and its students, and then further concluded that the policy considerations embodied in the *Rowland* factors test did not require eliminating or otherwise limiting that special relationship duty. (*Ibid.*)

While *Regents* did not demonstrate favor for one test over the other (*id.* at 627-629), at least two subsequent Court of Appeal decisions have since misconstrued *Regents* to find a preference that does not exist in that decision. (See *Barenborg v. Sigma Alpha Epsilon Fraternity* (2019) 33 Cal.App.5th 70, 77 [misquoting *Regents* for the proposition that a plaintiff must satisfy both the Special Relationship test *and* the *Rowland* factors test to establish a duty of care]; *Brown, supra,* 40 Cal.App.5th at 1092 [citing *Barenborg* for that same incorrect proposition].) If, as both USOC and USAT argue, *Regents* addressed and resolved that issue already, it is hard to fathom why this Court decided to grant review to examine it now. Simply put, *Regents* neither analyzed nor expressed a preference for either test.

Second, USOC and USAT argue for the false dichotomy that the Special Relationship test applies only in *nonfeasance* cases and the *Rowland* factors test applies only in *misfeasance* cases. That argument has a certain degree of facial appeal in that it provides a doctrinally convenient bright line. In practice, however, courts in a variety of nonfeasance cases have found the *Rowland* factors test to be a useful tool for discerning the existence of a tort duty of care to act for the protection

of others. (See *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 267-276 [using what it referred to as the "traditional" duty analysis provided by *Rowland* to conclude that police offers do not owe a duty of care to prevent a threatened suicide from being carried out]; *Juarez, supra,* 81 Cal.App.4th 377, 400-411 [using the *Rowland* factors test to conclude that the Boy Scouts had a duty to take reasonable protective measures to protect the plaintiff from the risk of sexual abuse by adult volunteers involved in scouting programs]; *Doe 1 v. City of Murrieta* (2002) 102 Cal.App.4th 899, 913-918 [using the *Rowland* factors test to hold that a police department had a duty to protect minors participating in its youth "explorers" program from becoming victims of sexual exploitation by that department's own officers]; *Conti v. Watchtower Bible & Tract Society of New York* (2015) 235 Cal.App.4th 1214, 1235 [using the *Rowland* factors test to confirm that defendants had a duty to use reasonable care to restrict and supervise the field service activities of one congregant to prevent him from harming children in the community and in the congregation]; *Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1131-1139 [separately analyzing the *Rowland* factors to find that a national youth soccer program had a duty to require and

conduct criminal background checks of volunteers who had contact with children in their programs].)

Still other courts in nonfeasance cases have separately applied the *Rowland* factors test as an additional analytical mechanism, even where they have previously found that the Special Relationship test was not satisfied. (See, *e.g., Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 293 [where this Court utilized the *Rowland* factors test as an independent analysis even after finding that the Special Relationship test did not impose a duty on the defendants to prevent a foreseeable suicide]; *Conti, supra,* 235 Cal.App.4th at 1214 [also independently applying both the Special Relationship test and the *Rowland* factors test to find that church elders had no duty to warn their congregation about one member's past child sexual abuse]; *University of Southern California v. Superior Court* (2018) 30 Cal.App.5th 429, 447-448, 451-455 [similarly considering both the Special Relationship test and the *Rowland* factors tests to conclude that a university owed no duty of care to protect an attendee at an off-campus fraternity party from a dangerous condition at that party].) Ostensibly, in those latter decisions – after finding no special relationship existed under the Special Relationship test – the

courts would not have even bothered to analyze the *Rowland* factors unless they remained legally relevant to the finding of a duty, even in the absence of a special relationship.

All of which drives home the central fallacy of USOC's and USAT's position with respect to the application of those two tests. While USOC and USAT insist that the decisions which apply the *Rowland* factors test to nonfeasance cases are "outliers" which should be disapproved by this Court, in reality it is those cases which only consider the Special Relationship test – and eschew any further analysis of the *Rowland* factors test where a special relationship is *not* first found – which are the *true outlier decisions*.

Again, this Court's recent decision in *Regents* did not espouse jettisoning the *Rowland* factors analysis where a special relationship is not first established. Yet the Second District's two recent decisions in *Barenborg,* 33 Cal.App.5th at 77, and *Brown, supra,* 40 Cal.App.5th at 1092, stand apart from the crowd with respect to the appropriate tests to be applied in those circumstances. As such, it is those two very recent decisions which break from the well-established practice of applying *both* the Special Relationship and *Rowland* factors tests to analyze the

existence of a duty of care, not the other way around. Indeed, as those two decisions improperly prioritize the Special Relationship test over the *Rowland* factors test, they diverge substantially from most other decisions which duly consider *both* tests, whether or not a special relationship duty is established first.

In this case, the Court of Appeal simply refused to consider the *Rowland* factors test after concluding (incorrectly, as Petitioners have previously explained) that no special relationship existed between them and USOC. As Petitioners have further detailed in their Opening Brief how consideration of the *Rowland* factors should similarly lead to the establishment of a duty of care owed to them by USOC, they will not repeat that analysis here for the sake of brevity. (See Petitioners' Opening Brief on the Merits at pp. 37-51.) Suffice it to say that the Court of Appeal's refusal to apply the *Rowland* factors test in this particular case unfairly robbed Petitioners of a well-established analytical tool which would have produced a different outcome and allowed their claims to proceed against USOC past the pleadings stage. Accordingly, this Court should either now apply the *Rowland* factors test to USOC, or reverse and direct the Court of Appeal to do so on remand.

B. USAT Owes a Duty to Petitioners Under Both the Special Relationship and *Rowland* Factors Tests.

As Petitioners previously explained in their Opening Brief, the Court of Appeal applied the Special Relationship test to USAT, correctly concluding that Petitioners had properly pled that USAT owed a special relationship to protect them from the years of sexual abuse they suffered at the hands of USAT's certified coach, Gitelman. (*Brown, supra,* 40 Cal.App.5th at 1094-1095.) In doing so, the Court of Appeal concluded that relationship existed because, among other things, "USAT was in a unique position to protect youth athletes against the risk of sexual abuse by their coaches." (*Ibid*.)

The Court of Appeal then applied the *Rowland* factors test to USAT to determine whether the special relationship duty it previously found under the Restatement test needed to be limited or altogether eliminated. (*Id.* at 1095-1101.) Even utilizing the *Rowland* factors test in that subsidiary manner (instead of as an independent, alternative tool to analyze that duty question), the Court of Appeal examined each element of that multi-factor test and ultimately concluded that "the *Rowland* factors support recognition of USAT's duty to use reasonable care to protect taekwondo youth athletes from foreseeable sexual abuse by their

coaches." (*Ibid*.) In sum, after applying both the Restatement's Special Relationship test and the *Rowland* factors test, the Court of Appeal correctly determined that Petitioners claims could proceed against USAT. (*Ibid*.)

This Court's own docket will confirm that USAT never challenged that decision by the Court of Appeal by filing a petition or cross-petition with this Court. Instead, while previously taking no steps on its own to refute the Court of Appeal's adverse findings of duty, USAT now takes advantage of Petitioners' request for this Court to review the Court of Appeal's decision as to USOC only. In doing so, USAT presents a heavily rhetorical and largely academic discussion about the Special Relationship and *Rowland* factors tests.

That discussion is *rhetorical* in that USAT not only incorrectly espouses the use of the *Rowland* factors test as a mere subsidiary test to the Special Relationship test, but it also repeatedly mischaracterizes that approach as "this Court's framework." This Court has not taken that position previously, but instead (as demonstrated in *Nally, supra,* 47 Cal.3d at 293) has applied *both* tests as independent tools for analyzing

duty, and has also repeatedly approved of the decisions of other courts that have done the same.

That discussion by USAT is further *academic* in that it will not lead to a different outcome for USAT at this stage of the litigation. This Court can affirm the Court of Appeal's finding of a duty owed by USAT to Petitioners on *either* the Special Relationship test or the *Rowland* factors test, or *both,* as did the Court of Appeal. But even indulging in USAT's incorrect conclusion that it can only be liable under the *Rowland* factors test if a special relationship with Petitioners is first established, its attack on the Court of Appeal's special relationship finding is nevertheless unavailing.

First, as was the sin of the Court of Appeal's special relationship analysis concerning USOC, USAT's special relationship arguments before this Court now focus almost exclusively on the relationship it enjoyed with Gitelman, and not with Petitioners. But as this Court detailed in its *Regents* opinion, relationships that have been recognized as "special" share a few common features, including "an aspect of dependency in which one party relies to some degree on the other for protection." (*Regents, supra,* 4 Cal.5th at 620-621 [internal quotes and

citations omitted].) That feature is based upon the Restatement's concomitant observation that for several decades a special relationship duty recognizes "the duty to aid or protect in any relation of dependence or of mutual dependence." (*Ibid.,* citing Rest.2d Torts, § 314A, com. b, p. 119.) A further corollary of that dependence element in a special relationship is control. (*Regents, supra,* 4 Cal.5th at 621.) As *Regents* further recognized, "[a] typical setting for the recognition of a special relationship is where the plaintiff is particularly vulnerable and dependent upon the defendant who, correspondingly, has some control over the plaintiff's welfare." (*Ibid*. [internal quotes and citations omitted].)

Within that legal framework, it should surprise no one that the Petitioners – young teenage girls involved in an authoritarian and hierarchical sport in which they refer to their coaches as "Master," are expected to regularly bow to them, and are consistently involved in close physical contact with those coaches – are particularly vulnerable to sexual exploitation. As Petitioners have aptly pled, USAT was acutely aware of that culture of supplication and the close physical nature of taekwondo, and recognized that coaches it certifies could use easily use

that authority and culture to sexually exploit the young athletes in their charge. (1 AA 41-44.) In addition to that cultural issue, Petitioners also alleged additional conditions and circumstances (coaches travelling alone with underage athletes in hotel and dorm rooms far from home) which further extend both the Petitioners' vulnerability and the authority USAT imparts on certified coaches like Gitelman to control (and potentially manipulate) Petitioners' location and behavior. (*Ibid.*) That vulnerability, coupled with the control USAT exercises over Petitioners and their relationship with their coaches, strongly supports the Court of Appeal's conclusion that Petitioners have adequately pled a special relationship duty with USAT. (*Brown, supra,* 40 Cal.App.5th at 1094-1095.)

Similarly, even turning to USAT's argument that it did not exercise sufficient control over Gitelman to support a finding of a special relationship, that argument also is inconsistent with the Court of Appeal's analysis and the similar analysis of other courts reviewing that same issue. Specifically, the Court of Appeal found that to compete at the Olympic games, taekwondo athletes must be members of USAT and train under USAT-registered coaches, like Gitelman. As such, USAT had

control over Gitelman's conduct through its policies and procedures as the national governing body of taekwondo "responsible for the conduct and administration of taekwondo in the United States." Further, USAT formulated extensive rules, implemented policies and procedures, and enforced its code of ethics for taekwondo in the United States. (*Brown, supra,* 40 Cal.App.5th at 1094.)

Further, USAT adopted codes of conduct and ethics that complied with the requirements of the Safe Sport program mandated by USOC. USAT's code of conduct prohibited sexual relationships between coaches and athletes, and among other things, provision of alcohol to youth athletes, inappropriate touching between a coach and an athlete, and nonconsensual physical contact. USAT can, and did, enforce its policies and procedures by temporarily suspending Gitelman pending its Ethics Committee hearing, conducting a hearing in October 2013 on Brown's sexual abuse allegations against Gitelman, and terminated Gitelman's USAT membership in September 2015. (*Brown, supra,* 40 Cal.App.5th at 1094.)

Consequently, as was the situation in *Juarez, Doe 1, Conti,* and *Youth Soccer*, such a special relationship duty flowing from USAT to Petitioners is properly predicated upon circumstances where vulnerable minor plaintiffs are placed in programs over which institutional defendants maintain operational authority and control, and through which adult perpetrators are provided separated access to those minor victims. As the Court of Appeal correctly concluded, Petitioners raised sufficient allegations to satisfy those same *vulnerability* and *control* elements in this case. (1 AA 40-44.) Read as a whole, those allegations sufficiently demonstrate USAT's operational control over the sport of taekwondo in the United States, and the steps it has allegedly taken on its own to protect minor athletes from inappropriate sexual behavior by their coaches, all in obvious recognition of its overarching power and obligation to do so.

Finally, USAT suggests that having control to certify, sanction, and ultimately suspend coaches like Gitelman is not enough "control" to justify a special relationship duty because it can only sanction coaches like Gitelman after allegations of sexual abuse are raised. This argument is nonsensical. USAT certifies coaches like Gitelman in the first instance,

and requires aspiring Olympic athletes like Petitioners to work with those certified coaches. USAT not only promulgates the broad terms and conditions of the athlete-coach relationship, it establishes detailed standards which regulate that relationship on a granular level, policies and procedures it requires its certified coaches to both acknowledge and follow. *How* and *when* USAT ultimately decided to enforce those policies and procedures in this particular case does not demonstrate a lack of power to do so, or an absence of sufficient control over Gitelman. Instead, whether USAT sufficiently exercised that control, given the circumstances alleged by the Petitioners, goes to the question of *breach*, which was not before the trial court at the pleadings stage, and is not before this Court now.

To be sure, in making that argument, USAT advances a self-serving conception of duty similar to that embraced by USOC, where the contours of that duty are defined not by the power both retain to regulate the coach-athlete relationship, but by the woefully limited amount of that power they have decided to exercise, all to Petitioners detriment. But as it is for USOC so shall it be for USAT: It is the power and authority both retain which should define the boundaries of the duties they owe to minor

Olympic athletes like Petitioners, not the limited authority they ultimately have decided to exercise for their perceived self-preservation. If this were not so, both USOC and USAT would be encouraged *not* to exercise any meaningful control they both clearly retained to protect minor Olympic athletes solely out of the self-serving impulse to minimize their own legal liability. But protecting from legal liability defendants who retain the power to control vulnerable minors and those that might do them harm is not what the special relationship was devised to accomplish. Quite to the contrary, as this Court aptly noted in *Regents,* that level of dependence and control only support the establishment of a special relationship duty. (*Regents, supra,* 4 Cal.5th at 620-621.) Whether USAT reasonably exercised the power and control it retained is an issue for another day, and likely one only a jury can decide. Accordingly, this Court should affirm the Court of Appeal's finding of a special relationship duty flowing from USAT to Petitioners.

III.

CONCLUSION

The Court of Appeal's decision, misapplying the Special Relationship test to USOC and then subsequently refusing to consider the *Rowland* factors test, runs contrary to a long line of established cases which correctly apply *both* tests to determine the existence of duty in similar circumstances. This Court should reverse the Court of Appeal's decision as to USOC, finding that both tests establish a duty flowing from USOC to Petitioners.

On the other hand, the Court of Appeal correctly determined that USAT owes a duty to Petitioners through application of both the Special Relationship and *Rowland* factors tests. USAT never challenged that decision by the Court of Appeal, which should be affirmed now by this Court.

Respectfully submitted,

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Pursuant to the California Rule of Court, Rule 8.204(c), I certify that the foregoing brief is proportionally spaced, has a typeface of 14 points, is double-line spaced, and based upon the word count feature contained in the word processing program used to produce that brief (Microsoft Word 2015), contains 5,206 words.

DATED: Aug. 19, 2020

Jon R. Williams

BROWN, et al. v. USA TAEKWONDO, et al.
Supreme Court of the State of California
CA Supreme Court Case No.: S259216
Court of Appeal Case No.: B280550
Los Angeles County Superior Court Case No.: BC599321

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

8/19/2020

Date

/s/Chenin Andreoli

Signature

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