SERVICE ON DEPT. OF SOCIAL SERVICES AND ATTORNEY GENERAL REQUIRED BY CAL. RULES OF COURT, RULE 8.29

F067460

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JOSEPH C. HUDSON et al.,
Plaintiffs and Appellants,

v.

COUNTY OF FRESNO,
Defendant and Appellant.

APPEAL FROM FRESNO COUNTY SUPERIOR COURT
M. BRUCE SMITH, JUDGE • CASE NO. 09 CECG 03295 MBS

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF FRESNO; [PROPOSED] ORDER

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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

JOSEPH C. HUDSON et al.,
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v.

COUNTY OF FRESNO,
Defendant and Appellant.

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF FRESNO

Under California Rules of Court, rule 8.200(c), the Association of Southern California Defense Counsel requests permission to file the attached amicus curiae brief in support of defendant and appellant County of Fresno.[1]

[1] No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than amicus, its members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.200(c)(3).)

The Association is a preeminent regional organization of lawyers who specialize in defending civil actions. It is comprised of approximately 1,000 leading attorneys in California. The Association is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. The Association is also actively engaged in assisting courts by appearing as amicus curiae.

The Association wishes to appear as amicus curiae in this matter because its members have increasingly seen the use of a controversial and improper approach to litigation that is described by its supporters as the "Reptile Theory." Under the Reptile Theory, as exemplified by the conduct of plaintiffs' attorneys in this case, the plaintiffs' attorneys present argument appealing to the jurors' views of their own safety and the safety of the community rather than addressing the merits of the plaintiffs' claims.

Counsel for amicus have reviewed the briefs on the merits filed in this case and believe this court will benefit from additional briefing regarding the dangers of permitting Reptile Theory argument that, in violation of California law, encourages jurors to decide cases based on their own self-interest.

Although amicus curiae briefs are due 14 days after the last appellant's reply brief is filed or could have been filed, the presiding justice may allow later filing for good cause. (Cal. Rules of Court, rule 8.200(c)(1).) As set forth in the attached declaration of Steven S. Fleischman, good cause exists for the late filing of this application because the Association only recently learned of the need for amicus curiae briefing in this matter. The Association first

learned of this matter on October 14, when it was contacted about the possibility of submitting an amicus curiae brief. Although amicus curiae briefing was due on October 3, oral argument has not been scheduled. As a result, the filing of the attached amicus curiae brief should not delay the disposition of the matter and could assist the court in deciding the case.

Accordingly, the Association requests that this court accept and file the attached amicus curiae brief.

November 3, 2014

HORVITZ & LEVY LLP
LISA PERROCHET
ROBERT H. WRIGHT
STEVEN S. FLEISCHMAN

By: 
Robert H. Wright

Attorneys for Amicus Curiae
ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

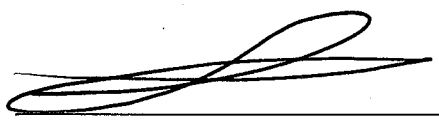
DECLARATION OF STEVEN S. FLEISCHMAN

I, Steven S. Fleischman, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California, and an attorney with Horvitz & Levy LLP, counsel for Association of Southern California Defense Counsel (ASCDC).

2. I am the Chair of the Amicus Committee of ASCDC. The Amicus Committee did not learn of this matter until October 14, 2014, when it was first contacted by Don Willenburg of the Association of Defense Counsel of Northern California and Nevada about the possibility of submitting an amicus curiae brief in support of defendant and appellant County of Fresno. Within two days, I obtained permission from the other members of the Amicus Committee and ASCDC's Executive Committee, to begin preparing the amicus curiae brief.

I declare under penalty of perjury under California law that the foregoing is true and correct and that this declaration was executed on November 3, 2014, at Encino, California.



Steven S. Fleischman

AMICUS CURIAE BRIEF

INTRODUCTION

Cases should be decided on their merits rather than based on pleas to the sympathies of jurors. The law grants judges broad authority to protect the judicial process from prejudicial influences. In recognition of that authority, this court should take the opportunity provided by this appeal to comment on, and approve judges' efforts to forestall, use of a pernicious tactic in the trial courts that is designed to unfairly skew jurors' deliberations. Specifically, some attorneys are misusing social and neurological science to design arguments that unduly appeal to jurors' concerns about their own safety and the safety of the community, rather than evidence regarding the plaintiff. This approach to jury argument has been characterized as the "Reptile Theory." The Reptile Theory violates established California precedent that prohibits argumentative appeals to the jurors' self-interest. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 796 (*Cassim*) ["An attorney's appeal in closing argument to the jurors' self-interest is improper"].) Indeed, this style of argument is merely another version of the prohibited Golden Rule argument. It should be stopped.

This case should have been presented to the jury as one about whether the County of Fresno is responsible for the tragic death of a child who was beaten to death by his mother's boyfriend. But plaintiffs' counsel used the Reptile Theory to reframe the question. For example, counsel argued: "I don't think I sleep very good at

night knowing that we have children out there in this community, and that regulations and mandatory duties aren't being followed." (RT 4279.) "We can't have that as a community. We cannot. We have to have *our children* protected . . . ." (RT 4251, emphasis added.) By urging the jurors to focus on "our children," and arguing the merits of community safety rather than the merits of claims about the particular death in this case, plaintiffs' attorneys obtained a multi-million dollar verdict tainted by the self-interest of the jurors. A published appellate decision ordering a new trial would go a long way toward curbing this sort of unfair and inflammatory conduct.

LEGAL ARGUMENT

I. THE EXPANDING USE OF THE REPTILE THEORY IS UNDERMINING TRIALS IN CALIFORNIA.

A. The Reptile Theory is an improper appeal to jurors' concerns about their own safety and the safety of the community.

The Reptile Theory has often been traced to social and neurological science ideas espoused by neuroscientist Paul MacLean. In the 1960s, Dr. MacLean theorized that the human brain evolved in stages. First came the reptilian complex, associated with the survival instinct. Next came the paleomammalian complex, associated with emotion and empathy.

The final stage was the neommammalian complex, associated with logic, reason, creativity, and language. Although the theory briefly became popular and was even embraced by some psychiatrists, it has been rejected by most neuroscientists in this century. Nonetheless, it continues to be used by those seeking to simplify reasons for human behavior. (See Howard & Dymott, *A Field Guide to Southern California Snakes: Identifying and Catching Plaintiffs' Reptile Theory in the Wild* (2013) Verdict, Vol. 3, p. 11 (hereafter *A Field Guide to Southern California Snakes)*; Broda-Bahm, *Taming the Reptile: A Defendant's Response to the Plaintiff's Revolution* (2013) The Jury Expert, Vol. 25, Issue 5, pp. 1-2.)

Relying on MacLean's theory about the reptile brain, plaintiffs' attorney Don Keenan and jury consultant David Ball published a book, Reptile: The 2009 Manual of the Plaintiff's Revolution (hereafter Reptile Manual). They advocated appealing to the jurors' "reptile brain"—in other words, basic survival instinct. The idea is that, once triggered, the jurors' "reptile brains" will take over their higher-order thinking and compel them to reach a result that best protects the safety of their community.

The authors of the Reptile Manual explain that plaintiffs' counsel should couch the defendant's conduct in terms of the perceived threat to the community's safety. Thus, every case should be approached using an "umbrella rule" focusing on community safety: "A driver [or physician, company, policeman, lawyer, accounting firm, etc.] is not allowed to needlessly endanger the public [or patients]." (Ball & Keenan, Reptile Manual (2009) p. 55, boldface omitted, bracketed language in original.)

The Reptile Manual argues that plaintiffs' counsel should use this "umbrella rule" to trump the standard of care that would otherwise govern the defendant's conduct. (Reptile Manual, *supra*, at p. 62.) The professional "must select the safest way. If she selects the second-safest, she's not prudent because she's allowing unnecessary danger." (*Id.* at p. 63.) Regardless of the *legal* standard of choosing reasonably among acceptable alternatives, the professional must adopt the "safest available choice." (*Ibid.*)

As the authors of the Reptile Manual explain:

> The Reptile is not fooled by defense standard-of-care claims. Jurors are, but not Reptiles. When there are two or more ways to achieve exactly the same result, the Reptile allows—demands!—only one level of care: the safest. And the Reptile is legally right. The second-safest available choice, *no matter how many "experts" say it's okay, always violates the legal standard of care.*

(Reptile Manual, *supra*, at p. 62, emphasis in original.)

By focusing on community safety, the Reptile Theory seeks to influence jury verdicts by appealing to the self-interest of jurors. "*Justice* is . . . an *excuse*—a *feel-good rationale*—for people to protect themselves and their families." (Reptile Manual, *supra*, at p. 44, emphases added.) The Reptile Theory avoids the merits of the plaintiff's claim by appealing to the jurors' personal interest in their *own* safety and that of their community, with the plaintiff's

claims being merely a placeholder for deep-seated, even subconscious, fears that jurors harbor about themselves and their families: "Show the Reptile that a good verdict for you facilitates her survival." (*Id.* at p. 45.)

The authors of the manual urge that the key is to "[b]roaden" the case and "go beyond your specific kind of defendant." (Reptile Manual, *supra*, at p. 56, boldface omitted.) Rather than focus on whether the defendant's conduct actually caused injury to the plaintiff, the Reptile Theory asks whether the defendant's conduct "represents a *community* danger." (*Id.* at p. 31, emphasis added.) To move the focus away from the actual plaintiff, the Reptile Theory asks not how the defendant harmed that plaintiff, but instead how much harm the defendant could have caused some other plaintiff: "The valid measure is the *maximum* harm the act *could* have caused." (*Id.* at p. 33.) The actual facts of the case are secondary: "How much harm could it cause *in other kinds of situations*." (*Id.* at p. 34, emphasis added, boldface omitted.)

Commentators have noted that, in a case involving an automobile accident on a freeway, the Reptile Theory encourages the plaintiffs' attorneys to imagine that the threat from the accident extended to the jurors' own homes:

> The Reptile takes the car that caused the accident, has the driver take an off ramp into the juror's community, and only stop the car after it has threatened a few local

schools and the community's retirement home.

(*A Field Guide to Southern California Snakes, supra,* at p. 12.)

B. The Reptile Theory is expanding.

The Reptile Theory is appearing with increasing frequency in California cases. Keenan and Ball's Web site claims that, through their publications, seminars, and workshops, "the Reptile is revolutionizing the way the trial attorneys approach and win their cases." (Keenan & Ball, *Reptile* <http://www.reptilekeenanball.com> [as of Oct. 29, 2014].) The authors claim that their theory is responsible for "over $6 Billion in verdicts and settlements . . . since its introduction in 2009." (*Ibid.*)

Their campaign to get the message out is working. For example, in a personal injury case tried in Orange County Superior Court, the plaintiff's attorney repeatedly argued to the jury that the issue was not that of negligence in causing harm to the plaintiff before the court, but instead community safety. The argument included comments like, "This case is about community safety. This part of the case is really the most important part." (*Von Normann v. Newport Channel, Inn*, Orange County Superior Court, Case No. 30-2010-00423312, July 10, 2012, 5 RT 859.)[2] "Now, the decision about the safety of this community . . . , it's up to you." (*Id.* at p. 875.) The jury awarded the plaintiff $38 million.

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[2] For the court's convenience, a copy of the transcript pages is included as attachment A to this brief.

Similarly, in a case alleging that a school district negligently supervised a teacher who sexually abused the plaintiff, the plaintiff's attorney told the jury that the central "purpose of the courts" is not dispute resolution or justice, but is "public safety." (*Doe v. Los Angeles Unified School District*, Los Angeles Superior Court, Case No. BC 424823, December 13, 2012, 6 RT 1042.)[3] He criticized a defense witness for her inability to agree with his question: "Isn't it L.A.U.S.D.'s number 1 priority to keep the children safe from being sexually molested?" (*Id.* at p. 1048.) Having characterized schools not as institutions of learning, but as being first and foremost guardians against predators of children, he asked the jury "to stand up and say, enough. This has got to stop, not in our community . . . ." (*Id.* at p. 1065.) The jury awarded the plaintiff $6.9 million in damages against the school district.

[3] For the court's convenience, a copy of the transcript pages is included as attachment B to this brief.

II. PLAINTIFFS' USE OF THE REPTILE THEORY HERE VIOLATED ESTABLISHED LIMITS ON JURY ARGUMENTS.

A. The Reptile Theory violates the bar against appeals to the self-interest of jurors, and is the new Golden Rule argument.

"An attorney's appeal in closing argument to the jurors' self-interest is *improper* . . . ." (*Cassim, supra,* 33 Cal.4th at p. 796, emphasis added; accord, *Du Jardin v. City of Oxnard* (1995) 38 Cal.App.4th 174, 179 (*Du Jardin*); *People ex rel. Dept. of Public Works v. Graziadio* (1964) 231 Cal.App.2d 525, 533-534 (*Graziadio*); see also *People v. Pitts* (1990) 223 Cal.App.3d 606, 696 [it is improper to urge the jurors "to view the case from a personal point of view"].)

Such arguments constitute misconduct because they "tend to undermine the jury's impartiality" (*Cassim, supra,* 33 Cal.4th at p. 796) and violate "the fundamental concept of an objective trial by an impartial jury" (*Graziadio, supra,* 231 Cal.App.2d at p. 534).

At the most fundamental level, such arguments violate the defendant's constitutional rights. Litigants have a constitutional right to a trial of their claims before an impartial jury. (*People v. Cissna* (2010) 182 Cal.App.4th 1105, 1115 ["A defendant has a constitutional right to a trial by an impartial jury"].) For this right to have meaning, juries must decide cases based on the facts and law—not based on appeals to self-interest.

A Golden Rule argument is one such improper appeal to juror self-interest. It is improper for counsel to ask the jurors to put themselves in the shoes of a party, because doing so invites the jurors to become partisan advocates for the party rather than objective triers of fact. A "golden rule" argument is one that " 'tends to denigrate the jurors' oath to well and truly try the issue and render a true verdict according to the evidence' " and " 'in effect asks each juror to become a personal partisan advocate for the injured party, rather than an unbiased and unprejudiced weigher of the evidence.' " (*Loth v. Truck-A-Way Corp.* (1998) 60 Cal.App.4th 757, 765; see also *Beagle v. Vasold* (1966) 65 Cal.2d 166, 182, fn. 11; *Cassim, supra,* 33 Cal.4th at pp. 797-798; *Neumann v. Bishop* (1976) 59 Cal.App.3d 451, 484-485.)

The Reptile Theory is a new "golden rule" argument, as it seeks to appeal to the jurors' self-interest about the best interests of the community rather than the jurors' impartial judgments predicated on the evidence. Thus, the Reptile Theory asks the jury to assess for the community "the safest available choice." (Reptile Manual, *supra,* at p. 63.) As the Reptile Manual explains: "That's all the Reptile demands from anyone. And she really demands it, once you show her that the violation can hurt her . . . ." (*Ibid.*)

The courts have rejected numerous variations of arguments that, like the Reptile Theory, appeal to the jurors' self-interest. As one other example, in a case against a city, it is misconduct for the city's attorney to argue that a verdict in favor of the plaintiff will require elimination of public services. (*Du Jardin, supra,* 38 Cal.App.4th at p. 179.) Whether or not such argument would be

true is beside the point. Such argument "is a transparent attempt to appeal to jurors' emotions [and] is clearly misconduct." (*Id.* at p. 180.)

For the same reasons, argument based on the Reptile Theory constitutes misconduct. As the authors of the manual explain, the whole point of the theory is to manipulate the jurors' reptilian brains in order to make arguments that appeal to the jurors' self-interest. "So in trial, your goal is to get the juror's brain . . . into survival mode." (Reptile Manual, *supra*, at p. 18, boldface omitted.) "Show the Reptile that a good verdict for you *facilitates her survival.*" (*Id.* at p. 45, emphasis added.)

A juror focused on potential harm to herself and her community is not an impartial juror. Because the Reptile Theory converts impartial jurors to partisan advocates, it violates established limits on jury arguments.

B. The Reptile Theory improperly injects a punitive element based on culpability untethered to the plaintiff.

It is improper for plaintiff's counsel to argue that a jury is obligated to "send a message" with its verdict, because such an argument is an improper "invitation to award punitive damages." (*Collins v. Union Pacific Railroad Co.* (2012) 207 Cal.App.4th 867, 883; see *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298, 305 (*Nishihama*) [" 'send a message' . . . would be improper"].)

Such arguments tend to "deflect the jury from their task, which [is] to render a verdict based solely on the evidence admitted at trial." (*Nishihama, supra*, 93 Cal.App.4th at p. 305.) "Send a message" arguments "divert[ ] the jury's attention from its duty to decide the case based on the facts and the law instead of emotion" (*Caudle v. District of Columbia* (D.C. Cir. 2013) 707 F.3d 354, 361) and "impinge upon the jury's duty to make an individualized determination" (*Sinisterra v. U.S.* (8th Cir. 2010) 600 F.3d 900, 910).

By focusing the jury on harm to the community, arguments based on the Reptile Theory improperly seek to "send a message" to the defendant based on purported culpability that is untethered to the alleged harm to the plaintiff. Even without uttering the phrase, "send a message," counsel who rely on the Reptile Theory urge the jury to effect deterrence of future harm through their compensatory damages awards. Courts in other jurisdictions have repeatedly rejected such attempts to impose punitive concepts in negligence cases. (See, e.g., *Pleasance v. City of Chicago* (2009) 396 Ill.App.3d 821 [920 N.E.2d 572, 578] [it is "not the jury's duty . . . to send a message to the community"]; *Scott v. Crestar Financial Corp.* (D.C. 2007) 928 A.2d 680, 685-687, 688 [improper to argue that jury is " 'the conscience of the community' " which must " 'get through to' " the defendant with its verdict]; *Kloster Cruise Ltd. v. Grubbs* (Fla.Dist.Ct.App. 2000) 762 So.2d 552, 554-555 [noting that an argument was a "clearly improper" " 'send a message' argument[ ]" where it urged the jury to tell the defendant " 'by your verdict in this case to do something' "].)

C. Plaintiffs' counsel improperly used a Reptile argument to obtain a jury verdict based on emotion and juror self-interest.

Here, as the County's opening brief explains, plaintiffs' attorneys followed the same playbook, focusing the jury on the safety of the "community" and of "our children." (AOB 45, quoting RT 4251.) This is right out of the manual: "The Reptile prefers us for two reasons: First the Reptile is about community (and thus her own) safety . . . . [¶] Second, the courtroom is a safety arena." (Reptile Manual, *supra*, at p. 27.)

As explained in the opening brief, the plaintiffs' attorneys also improperly argued that the jury should "send a message" to the County. (AOB 45-46.) Plaintiffs' counsel told the jury: "Do not let [Child Protective Services] walk out of here thinking that they did a good job in this case. They didn't. . . . And they need to be accountable." (AOB 45, quoting RT 4279.)

Just as it would have been highly improper for the County's attorneys to appeal to the jurors' fear of diminished government services and higher taxes should they return a verdict for the plaintiffs, the plaintiffs' attorneys acted improperly by appealing to the jurors' fear for the safety of their own children and seeking to send a message to the County. (RT 4251.) These arguments were a transparent attempt to appeal to emotion and self-interest.

In their respondents' brief, plaintiffs contend that they complied with the prohibition against Golden Rule arguments because their arguments to the jury supposedly concerned "the

issues of *liability*, not damages." (RB 73.) But it is improper to appeal to the self-interest of the jurors on any issue, whether that of liability *or* damages. (*Cassim*, *supra*, 33 Cal.4th at p. 796.)

Moreover, the improper arguments clearly went to both issues. Under the Reptile Theory, the "valid measure [of damages] is the *maximum* harm the act *could* have caused." (Reptile Manual, *supra*, at p. 33.) As the authors of the manual emphasize: "There are no small cases. Only small lawyers." (*Id.* at p. 225, emphasis omitted.) As even the authors of the manual would have to concede, the purpose of the Reptile Theory is to increase damages awards such as the $8.5 million award here.

CONCLUSION

For the foregoing reasons, in addition to those set forth by defendant in the opening brief, amicus curiae respectfully urges that the judgment be reversed for a new trial in a published decision rejecting improper arguments based on the Reptile Theory.

November 3, 2014

HORVITZ & LEVY LLP
LISA PERROCHET
ROBERT H. WRIGHT
STEVEN S. FLEISCHMAN

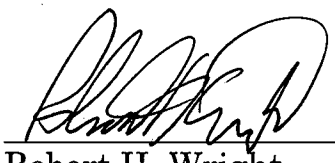
By: _____
Robert H. Wright

Attorneys for Amicus Curiae
ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

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

The text of this brief consists of 3,019 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: November 3, 2014



Robert H. Wright

F067460

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JOSEPH C. HUDSON et al.,
Plaintiffs and Appellants,

v.

COUNTY OF FRESNO,
Defendant and Appellant.

APPEAL FROM FRESNO COUNTY SUPERIOR COURT
M. BRUCE SMITH, JUDGE • CASE NO. 09 CECG 03295 MBS

[PROPOSED] ORDER GRANTING LEAVE TO FILE AMICUS CURIAE BRIEF

IT IS HEREBY ORDERED that the application for leave to file an amicus curiae brief by Association of Southern California Defense Counsel is granted. Any answer to the amicus curiae brief may be served and filed by any party within __ days from the date of this order.

Dated: _____

_____
PRESIDING JUSTICE

A

G047679
COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION III

JAMES R. VON NORMANN, AN INDIVIDUAL,

PLAINTIFF,

VS.

NEWPORT CHANNEL INN, NEWPORT CHANNEL INN, INC., ET AL,

DEFENDANTS.

NO. 30-2010-00423312

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY
HONORABLE CHARLES MARGINES, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
JULY 10, 12, 13, 2012

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STEPHEN B. KLINE, CSR 8164, RPR
OFFICIAL COURT REPORTER
PRIMARY REPORTER

VOLUME V OF VI
PAGES 845 - 1030

IF THE ANSWER IS NO TO QUESTION NUMBER ONE, THEY WALK OUT OF HERE BUSINESS AS USUAL. AND THOSE RAILINGS WILL BE THE SAME WAY THEY ARE UNTIL ANOTHER PERSON FALLS.

YOU ANSWER NO TO QUESTION NUMBER TWO, THE SAME THING.

THIS CASE IS ABOUT COMMUNITY SAFETY. THIS PART OF THE CASE IS REALLY THE MOST IMPORTANT PART. YOU NOTICE THAT NOT A SINGLE WITNESS BY THE DEFENSE, NOT A SINGLE WITNESS, TALKED ABOUT THOSE RAILINGS OR THEIR MISDEMEANOR VIOLATIONS OF THE LAW ON THAT UNSAFE PREMISES.

CAN YOU BRING THIS UP FOR ME?

I'LL JUST WALK BY. AND THIS IS 83-12. YOU'VE SEEN THIS PHOTOGRAPH. YOU SEE? YOU'LL HAVE THIS IN THE JURY ROOM. LOOK AT HOW THAT RAILING IS, THE BLACK METAL RAILING. THAT BLACK METAL RAILING IS 42 INCHES. AND WHEN THEY PUT THAT RAILING IN, THEY KNEW THAT IT HAD TO BE THAT WAY TO COMPLY WITH THE LAW. AND IT WOULD PROTECT PEOPLE THAT ARE STEPPING DOWN, THAT ARE STEPPING DOWN ONTO THE STEP TO GO DOWN THE STAIRS. BUT WHEN PEOPLE STEP OUT OF THEIR ROOMS, THEY ALSO HAVE TO STEP DOWN. FOUR AND A HALF INCHES IS THE MEASUREMENT. FOUR AND A HALF INCHES, THAT'S -- AND THEN YOU HAVE THAT LITTLE -- IT'S SHORTER THAN THIS HERE. YOU HAVE THAT GAP, THAT TWO INCH GAP DOWN AT THE BOTTOM THAT'S -- THE WAY IT'S SET UP IS JUST AN ACCIDENT WAITING TO HAPPEN.

THERE'S A -- THEY KEEP TALKING ABOUT BLOOD SPATTER. THERE WASN'T -- THAT'S MISLEADING AND IT'S UNTRUE. BLOOD

MR. ROWLEY: THANK YOU, YOUR HONOR.

JUST AS ENTITLED TO A SAFE PLACE AS A SOBER MAN, AND INDEED TWICE AS NEEDY. INDEED, TWICE AS NEEDY FOR THAT SAFE ROAD. INDEED, TWICE AS NEEDY TO HAVE A SAFE BALCONY.

JIM VON NORMANN WASN'T VIOLATING THE LAW. HE WASN'T TAKING CARE OF HIS BODY THE WAY THAT HE SHOULD. HE WAS PARTYING. HE TOLD YOU HE WAS CELEBRATING THAT WEEKEND BECAUSE THEY HAD DONE A GREAT JOB WITH THEIR MARKETING TEAM. SO THE LEASE EXPIRED. HE'S SPENDING 10 DAYS, A COUPLE WEEKS, HERE IN LIMBO BEFORE HE GOES DOWN TO SAN DIEGO. AND HE WAS DRINKING MORE THAN HE SHOULD OF. BUT HE WAS STILL ENTITLED TO A SAFE BALCONY. AND IF THERE WAS A SAFE BALCONY, THEN HE WOULD HAVE BUMPED INTO IT, WOULD HAVE GONE BACK TO HIS ROOM, PASSED OUT, GONE TO SLEEP. HE WAS IN HIS BOXER SHORTS.

NOW, THE DECISION ABOUT THE SAFETY OF THIS COMMUNITY AND WHETHER OR NOT THEY GET AWAY WITH VIOLATING THE LAW AND LETTING SOMEBODY -- SOMEONE GETTING HURT ON THEIR PROPERTY AND GET TO GO ON AS BUSINESS AS USUAL, IT'S UP TO YOU.

I ASK THAT YOU GO BACK AND, YOU KNOW, WORK HARD AND HOPEFULLY ANSWER THOSE TWO QUESTIONS: NEGLIGENCE, YES; MORE THAN A REMOTE OR TRIVIAL FACTOR IN CONTRIBUTING TO THE HARM, YES. PERCENTAGE OF FAULT; 5 TO 15 PERCENT, OR 85 PERCENT AGAINST THE DEFENDANT.

AND THEN I HOPE, I REALLY HOPE, THAT I GET A CHANCE TO TALK TO YOU AGAIN ON THURSDAY MORNING WHEN WE'LL BE DOING,

REPORTER'S CERTIFICATE

I, STEPHEN B. KLINE, CSR 8164, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING REPORTER'S TRANSCRIPT IS A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES OF THE TESTIMONY AND PROCEEDINGS IN THE CASE ENTITLED JAMES R. VON NORMANN, AN INDIVIDUAL, PLAINTIFF, VERSUS NEWPORT CHANNEL INN, NEWPORT CHANNEL INN, INC., ET AL, DEFENDANTS; CASE NUMBER 30-2010-00423312.

STEPHEN B. KLINE, CSR 8164
OFFICIAL COURT REPORTER

DATED: JANUARY 15, 2012

B

SUPERIOR COURT THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DEPARTMENT 71, HON. SUZANNE G. BRUGUERA, JUDGE

WALTER "MATT" DOE, A MINOR BY AND THROUGH HIS GUARDIAN AD LITEM, WALTER DOE, PLAINTIFF, VS. LOS ANGELES UNIFIED SCHOOL DISTRICT, FORREST STOBBE, DOES 1-50, INCLUSIVE, DEFENDANTS.	NO. BC 424823

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, DECEMBER 13, 2012

FRIDAY, DECEMBER 14, 2012

TUESDAY, DECEMBER 18, 2012

THURSDAY, FEBRUARY 28, 2013

Certified Copy

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CYNTHIA A. PURCELL, CSR #12150,
OFFICIAL COURT REPORTER PRO TEMPORE

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KATHLEEN SMITH-MYLER #12500

REASONABLY COMPENSATE MATT FOR WHAT HE'S BEEN THROUGH. THEN YOU'RE GOING TO HAVE TO FIGURE OUT PERCENTAGES OF WHO'S AT FAULT, BECAUSE BOTH OF THESE PEOPLE BEAR FAULT IN THIS CASE, MR. STOBBE AND L.A.U.S.D. SO BASICALLY THAT'S YOUR JOB IN A NUTSHELL.

YOU HAVE ANOTHER JOB, THOUGH. YOU 12 PEOPLE ARE GOING TO BE THE VOICE OF THE COMMUNITY. YOU'RE GOING TO SPEAK FOR LOS ANGELES COUNTY AND YOU'RE GOING TO TELL US WHETHER THE L.A.U.S.D. IS A MODEL FOR THE COUNTY FOR KEEPING OUR BOYS AND GIRLS SAFE FROM SEXUAL PREDATORS OR YOU'RE GOING TO TELL US THE SYSTEM IS BROKEN, L.A.U.S.D., YOU CAN DO BETTER AND WE EXPECT BETTER WHEN IT COMES TO THE SAFETY OF OUR CHILDREN.

YOU AS A JURY ARE A VERY, VERY POWERFUL GROUP, SO POWERFUL THAT, IN FACT, ONLY FEW COUNTRIES IN THE WORLD EVEN ALLOW JURIES TO EXIST. AND THIS COURTHOUSE WAS BUILT FOR THE PURPOSE OF PUBLIC SAFETY. THAT'S THE PURPOSE OF THE COURTS, AND IT'S OPEN TO THE PUBLIC. AS YOU CAN SEE, THERE'S BEEN VARIOUS PEOPLE IN AND OUT BECAUSE EVERYTHING THAT HAPPENS IN THIS COURTROOM EFFECTS THE PUBLIC AND EFFECTS PUBLIC SAFETY.

SO YOU GUYS ARE READY TO GET TO WORK. I'M GOING TO GIVE YOU FACTS TO HELP YOU, HELP YOU DO YOUR JOB ON THE VERDICT FORM. MATT DOE, AGE 10, THAT'S WHAT WE'RE HERE ABOUT. LADIES AND GENTLEMEN, YOU HEARD L.A.U.S.D. IN THEIR OPENING STATEMENT SAY, HOW COULD WE HAVE KNOWN? HOW COULD WE HAVE KNOWN STOBBE WAS A DANGER TO THE CHILDREN AT QUEEN ANNE? LET ME TELL YOU

THAT.

AT THE SAME TIME SHE KNOWS THAT THERE'S PRIVATE LUNCH PARTIES GOING ON BETWEEN STOBBE AND MATT. NOW, IT'S HER JOB TO MAKE SURE HER TEACHERS ARE FOLLOWING DISTRICT POLICIES AND RULES. AND WHEN SHE CATCHES STOBBE HAVING THESE PRIVATE LUNCH PARTIES, SHE KNOWS IT'S A BIG VIOLATION. IT'S A SAFETY ISSUE. HER JOB IS TO KEEP THE KIDS SAFE, SO SHE JUST SAYS, 'STOBBE DON'T HAVE THE LUNCH PARTIES ANYMORE. YOU KNOW IT'S AGAINST SCHOOL RULES.' DID THEY STOP? NO. YOU KNOW MRS. HALL KNEW OF THEM AT SOME POINT, BUT DIDN'T STOP THEM. THE TEACHER, LUKE, NEXT DOOR, SHE KNEW THEY WERE GOING ON. SHE SAW MATT AND STOBBE IN THERE AT LUNCH.

ROB SAMPLES, HE WAS ONE OF THE PERSONS IN THE CHAIN OF COMMAND ABOVE PRINCIPAL HALL. ROB SAMPLES SAYS, 'YEAH, YOU KNOW WHAT? WHEN SHE CALLED ME ABOUT THE JESSICA R. INCIDENT, SHE DIDN'T USE THE WORD BUTTOCKS. I DIDN'T KNOW. I THOUGHT IT WAS A HEAD-AND-SHOULDERS TOUCH. I DIDN'T KNOW ANYTHING ABOUT THE BUTTOCKS.

LAINEY ROGERS -- REMEMBER MS. ROGERS? SHE CAME HERE, AND I ASKED HER A BASIC QUESTION, REALLY BASIC QUESTION, 'ISN'T IT L.A.U.S.D.'S NUMBER 1 PRIORITY TO KEEP THE CHILDREN SAFE FROM BEING SEXUALLY MOLESTED?' SHE WOULDN'T ANSWER THE QUESTION. SHE SAID IT'S OUR JOB TO KEEP THEM SAFE, AND SHE SAID IT THREE TIMES. SHE COULDN'T ANSWER A BASIC QUESTION. SHE WOULDN'T ANSWER IT UNTIL THE JUDGE REQUIRED HER TO

WHO, WHEN SHE GETS ALLEGATIONS OF A LITTLE TEN-YEAR-OLD'S BUTTOCKS BEING TOUCHED BY A TEACHER, SHE TAKES THEM SERIOUSLY AND FULLY AND ACCURATELY REPORTS THAT INFORMATION TO THE L.A.P.D. I'M GREEDY FOR A SCHOOL DISTRICT TO ACCEPT RESPONSIBILITY, TO ACCEPT RESPONSIBILITY FOR WHAT HAPPENED HERE AND SAY, YOU KNOW WHAT? WE CAN DO BETTER.

I'M GREEDY FOR THE JURY TO PROTECT A TEN-YEAR-OLD LITTLE BOY AND I'M GREEDY FOR A JURY TO STAND UP AND SAY, ENOUGH. THIS HAS GOT TO STOP, NOT IN OUR COMMUNITY, NOT HERE IN L.A. COUNTY. THIS IS ENOUGH. MAYBE YOU'RE GREEDY FOR THAT TOO.

I WANT YOU TO IMAGINE FOR A MOMENT STOBBE'S CLASSROOM AT QUEEN ANNE. THERE ARE ABOUT 25 LITTLE BOYS AND GIRLS IN THAT CLASSROOM. I WANT YOU TO IMAGINE EACH ONE OF THOSE 25 STUDENTS TURNS INTO A BUNDLE OF ONE MILLION DOLLARS, A STACK OF MONEY, ONE MILLION DOLLARS IN THIS CLASSROOM. I WANT YOU TO ASK YOURSELF, WOULD THE L.A.U.S.D. HIRE STOBBE TO GUARD THAT MONEY? WOULD PRINCIPAL HALL, WHEN SHE SAW STOBBE TAKING ONE OF THOSE BUNDLES OF MILLION DOLLARS OUT TO HIS CAR, WOULD SHE STOP HIM, OR WOULD SHE HAVE LET HIM GO?

WHEN SHE GETS A CALL ABOUT STOBBE'S UP IN THE CLASSROOM KIND OF PLAYING -- KIND OF DOING WEIRD THINGS WITH THAT MONEY, DO YOU THINK SHE'D HAVE HER SECRETARY CALL UP TO SEE WHAT WAS GOING ON, OR DO YOU THINK MAYBE SHE WOULD GO UP AND FIND OUT WHAT'S GOING ON?

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

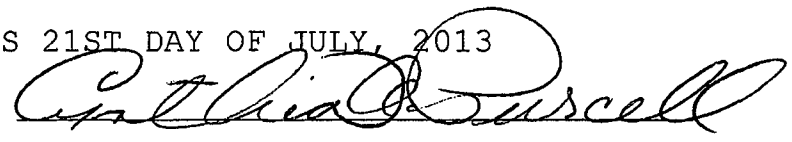
WALTER "MATT" DOE, A MINOR BY AND THROUGH HIS GUARDIAN AD LITEM, WALTER DOE, PLAINTIFF, VS. LOS ANGELES UNIFIED SCHOOL DISTRICT, FORREST STOBBE, DOES 1-50, INCLUSIVE, DEFENDANTS.	NO. BC 424823

REPORTER'S CERTIFICATE

I, CYNTHIA A. PURCELL, CSR NO. 12150, COURT REPORTER, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING PAGES, 1-49, 50-90, 93-142, 143-259, 260-362, 363-412, 413-516, 517-639 640-770, 771-862, 863-985, 986-1021, 1022-1105, 1106-1110, 1111-1125

COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON NOVEMBER 16, 2012; NOVEMBER 26, 2012; NOVEMBER 27, 2012; NOVEMBER 29, 2012; DECEMBER 3, 2012; DECEMBER 4, 2012; DECEMBER 5, 2012; DECEMBER 6, 2012; DECEMBER 7, 2012; DECEMBER 10, 2012; DECEMBER 11, 2012; DECEMBER 12, 2102; DECEMBER 13, 2012; DECEMBER 14, 2012; DECEMBER 18, 2012.

DATED THIS 21ST DAY OF JULY, 2013



CYNTHIA A. PURCELL, COURT REPORTER

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On November 3, 2014, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF DEFENDANT AND APPELLANT COUNTY OF FRESNO; [PROPOSED] ORDER** on the interested parties in this action as follows:

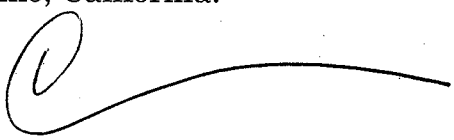
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

SEE ATTACHED LIST

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

Executed on November 3, 2014, at Encino, California.



Connie Christopher

SERVICE LIST
Hudson et al. v. The County of Fresno
Case Number F067460

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Honorable M. Bruce Smith Fresno County Superior Court B.F. Sisk Courthouse 1130 O Street Fresno, CA 93721	Trial Judge Case No.: 09CECG03295

Fifth District Court of Appeal
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