Case No. S213066

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

B.H., A MINOR, BY AND THROUGH
HIS GUARDIAN AD LITEM, L.H.,
Plaintiff and Appellant,

v.

COUNTY OF SAN BERNARDINO, CITY OF YUCAIPA, K. SWANSON, JEFF BOHNER, LOUIS KELLY SHARPLES II,
Defendants and Respondents.

On Appeal from a Decision of the Court of Appeal
Fourth Appellate District, Division Two, Case No. E054516

San Bernardino County Superior Court Case No. CIVDS 913403
The Honorable Donald R. Alvarez

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS COUNTY OF SAN BERNARDINO, ET AL.

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The California State Association of Counties ("CSAC") and the League of California Cities (the "League") seek leave to file the attached amicus brief in support of Defendants and Respondents, County of San Bernardino, et al.

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League is an association of 472 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

This case presents important issues related to both direct and vicarious public entity liability. Specifically, where a county employee is required to exercise discretion and judgment in implementing a statute, can

a public entity be either directly liable or vicariously liable for the decisions made as a result of that discretion? Both the trial court and the Court of Appeal concluded that the discretion and judgment required in determining whether a report received or a situation under investigation amounts to "known or suspected child abuse or neglect" precludes liability for a decision not to cross-report to a child protective services agency.

CSAC and the League agree with that conclusion. The Government Claims Act clearly limits liability where the exercise of discretion is required. The policy supporting this approach is critical to members of CSAC and the League. It prevents courts from second-guessing decisions made every day across the State by public employees using their judgment and training, which are often required to be made quickly and under difficult or dangerous circumstances. It further prevents the public from serving as the insurer against any variety of harms, no matter how tragic. Requiring law enforcement employees to be responsible to make a discretionary determination about child abuse, and for the public agency to be the financial guarantor if a jury second-guesses that determination some years later with the benefit of hindsight, contravenes the language and intent of the Government Claims Act, and should be rejected.

Amici have reviewed the briefing of the parties, and do not repeat those arguments here. Rather, the proposed amicus brief offers additional legal arguments on direct public entity liability, and also provide this Court

with analysis on why a case relied upon heavily by Plaintiffs should be reversed to the extent it runs counter to the plain requirements of the Government Claims Act.

For the foregoing reasons, CSAC and the League respectfully request that this Court accept the accompanying amicus curiae brief.

Dated:

Respectfully submitted,

By: _____
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INTRODUCTION

The facts alleged in this case are tragic. The parents of a young child made allegations of abuse against each other over a period of time, placing county law enforcement and child protective services in the unenviable position of deciding whether the situation required intervention by either the criminal or juvenile dependency courts. Ultimately, no judicial intervention was made, and a child was severely injured, with his young life is forever altered.[1]

While the alleged facts are compelling and heartbreaking, California's system of public entity liability protects against using hindsight to judge the discretionary actions of public entities or officers. Further, direct liability requires a mandatory duty, affirmatively imposed, with no normative or qualitative elements. Simply put, no matter how difficult the outcome, California's public entities are not the insurer against all misfortune and tragedy. Rather, without clear and specific statutory liability, our Legislature has determined that public entities have immunity from such claims.

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[1] As noted in Respondent's Answer Brief, Plaintiff's father was arrested and charged with criminal child abuse, but he was acquitted of all criminal charges.

Against that backdrop, this case raises two questions about the impact of the Child Abuse and Neglect Reporting Act (CANRA) (Pen. Code, §§ 11164-11174.3) on public entity liability:

(1) Whether the Sheriff's Department owed a duty to Plaintiff to cross-report to child welfare services the initial 9-1-1 call made by Ms. Kinney under Penal Code section 11166, subdivision (k), such that the County is directly liable under Government Code section 815.6 for the Sheriff's Department's failure to cross-report.[2]

(2) Whether Officer Swanson (the responding officer), after her investigation into Ms. Kinney's report of abuse, owed Plaintiff a duty to cross-report to child welfare services under Penal Code section 11166, subdivision (a), such that the officer is directly liable under Government Code section 815.6, and the County is therefore vicariously liable under Government Code section 815.2.

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[2] The Court of Appeal opinion states Appellant/Plaintiff's claims are: (1) whether there are triable issues of material fact as to Officer Swanson's duty to cross-report, and (2) whether the trial court erred in finding Officer Swanson and the County were immune from liability. (Slip Op., p. 2.) Whether claims related to the County's direct liability under Penal Code section 11166, subdivision (k) were properly raised by the Plaintiff/Appellant below is in dispute. Amici do not concede that issue, and support Respondents' arguments on that point. Nevertheless, because Plaintiff/Appellant's briefs in this Court spend considerable time on this issue, Amici wish to address the arguments and provide this Court with another perspective on public entity direct liability under Government Code section 815.6.

The California State Association of Counties ("CSAC") and the League of California Cities (the "League") believe the answer to both of these questions must be no, based both on the language of CANRA, and on the governing case law on how to properly apply the liability and immunity statutes to public entities. When read in the context of the Government Claims Act, the CANRA statutes have not created mandatory duties for which Officer Swanson or the County of San Bernardino can be held liable. CSAC and the League therefore urge this Court to affirm the Court of Appeal's decision.

ARGUMENT

I. PUBLIC ENTITY DIRECT LIABILITY MUST BE ROOTED IN CLEAR STATUTORY OBLIGATIONS.

A. The Government Claims Act Requires an "Explicit and Forceful" Mandatory Duty Without Any Use of Discretion or Qualitative Judgment in Order to Find a Public Entity Directly Liable.

Common law or judicially declared forms of liability ended for public entities in 1963 with the passage of the California Government Claims Act (Gov. Code, § 810 et seq.), which provides that public entities cannot be held liable for injuries unless a statute provides for liability. (*Harshbarger v. City of Colton* (1988) 197 Cal.App.3d 1335, 1339.) The relevant provisions begin with section 815, subdivision (a), which states

that public entities are not liable for injuries "[e]xcept as otherwise provided by statute."

The effect of the enactment of section 815, subdivision (a), was more than just to suggest that government liability is statutory. It "abolished all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the federal or state Constitution." (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1457 (internal quotes omitted).) "Thus, in California, all government tort liability must be based on statute. In the absence of a constitutional requirement, public entities may be liable only if a statute . . . is found declaring them to be liable." (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932 (internal quotes, citations, and footnotes omitted).) "In short, sovereign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute." (*Zuniga v. Housing Authority* (1995) 41 Cal.App.4th 82, 92 (internal citations and quotes omitted).)

The resulting rule of law is that when a public entity is alleged to be directly liable for taking or failing to take some action, a statute must provide for liability. Based on this principle, this Court held in *Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, that in order to determine whether a cause of action can be brought against a public entity, the court "must first determine whether any statute imposes *direct* liability

on the public entity." (*Id.* at p. 1179 (emphasis in original).) Thus, a clear distinction is drawn between liability of a public entity based on its own conduct, and liability based on the conduct of a public employee. A public employee is generally liable for an injury caused by an act or omission to the same degree as a private individual (Gov. Code, § 820, subd. (a)), but a public entity is not liable for injury unless provided by statute. (Gov. Code, § 815; *de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 247.)

To construe a statute as imposing a mandatory duty on a public entity, "the mandatory nature of the duty must be phrased in explicit and forceful language." (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 689.) To be mandatory, "the enactment [must] be obligatory, rather than merely discretionary or permissive, in its directions to the public entity . . . ." (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498.) This determination cannot be made merely by consideration of the intent of the legislative enactment, since "legislative objectives are 'not "standards" by which the actions of defendants may be judged' under Gov. Code, § 815.6." (*Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 909-910, citing *In re Groundwater Cases, supra,* 154 Cal.App.4th at pp. 683, 692.)

Further, "inclusion of the term 'shall' in an enactment 'does not necessarily create a mandatory duty; there may be other factors [that] indicate that apparent obligatory language was not intended to foreclose a

governmental entity's or officer's exercise of discretion.'" (*San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 429, citing *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 898-899.) "Therefore, an enactment's use of mandatory language such as 'shall' is not dispositive. An enactment creates a mandatory duty 'only where the . . . commanded act [does] not lend itself to a normative or qualitative debate over whether it was adequately fulfilled.'" (*County of Los Angeles v. Superior Court* (2012) 209 Cal.App.4th 543, 546, citing *de Villers v. County of San Diego*, *supra*, 156 Cal.App.4th at p. 260.)

B. CANRA Does Not Create a Specific Mandatory Duty to Cross-Report All Abuse Reports Received by Law Enforcement in a Manner That Creates Direct Liability Under the Government Claims Act.

Plaintiff alleges that Penal Code section 11166, subdivision (k) creates a mandatory obligation on law enforcement agencies to cross-report to child protective services every report it receives that mentions child abuse or neglect, and that failure to execute that mandated duty results in liability under Government Code section 815.6.

Section 11166, subdivision (k) states in relevant part:

> A law enforcement agency shall report to the county welfare or probation department every *known or suspected* instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for a child's welfare to adequately protect the minor from

> abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.

(Emphasis added.)

As explained above, for this language to impose liability under Government Code section 815.6, this Court must conclude, with the understanding that government liability is the exception rather than the rule, that the above language is mandatory without any discretion, or any "normative or qualitative debate" about how it can be implemented. (*de Villers v. County of San Diego*, *supra*, 156 Cal.App.4th at p. 260.) The existence of the term "shall" is not dispositive in this inquiry. (*Ibid.*) Rather, the Court must read the language to determine whether any exercise of discretion is required.

The language in Penal Code section 11166, subdivision (k), demonstrates the need for such discretion in implementation. A law enforcement agency can not "know" or "suspect" that what has been reported to it is child abuse without using judgment analyzing the information it has received. Law enforcement personnel receiving a report may need to consider any number of factors to determine whether the information they receive rises to the level of "known or suspected" child abuse. Perhaps child abuse can be suspected based only on the information received in a 9-1-1 call, and a cross-report would be made. Perhaps the information received in a 9-1-1 call is vague or so contradictory that the

person receiving the report needs to further investigate before concluding that the report actually involves "known or suspected" abuse. Certainly not every accusation reported, no matter how trivial, can be said to trigger suspicion of "known or suspected" abuse. And to the extent judgment and discretion must be exercised to conclude whether the report being made amounts to "known or suspected" child abuse, the public entity simply cannot be liable under Government Code section 815.6 for failure to cross-report.

The discretion not to cross-report where the initial report does not trigger suspicion "known or suspected" abuse is important in the overall well-being of children. Only about one-third of reports of abuse made each year are substantiated by child protective services. (Lukens, *Current Issues in Public Policy: The Impact of Mandatory Reporting Requirements on the Child Welfare System* (2007) 5 Rutgers J. L. & Pub. Policy 177, 215.) "Any reporting obligations based on the suspicions – even reasonable ones – of citizens, only some of whom have any expertise in identifying child maltreatment, almost by definition 'causes a wide net to be cast and inevitably results in a high rate of cases that will not be substantiated.'" (*Id.* at pp. 215-216, citing Levine et al., *The Impact of Mandated Reporting of the Therapeutic Process: Picking Up the Pieces* 15 (1995).) There is a greater chance today than ever that children removed from their homes will

never be reunited with their families. (*Id.* at p. 197.) "Erroneous removals, therefore, can be very damaging for the child." (*Ibid.*)

Plaintiff attempts to evade the discretionary aspects of Penal Code section 11166, subdivision (k) by arguing that the receipt of any report making any allegation of child abuse must be cross-reported without further inquiry. But such a reading would effectively eliminate the "known or suspected" language from the statute. Child abuse can only be "known or suspected" by the law enforcement personnel receiving the report if, in exercising their discretion, they determine that the information they received rises to that level. The case law makes clear that if the statutory enactment lends itself to an interpretation that requires an exercise of discretion, it cannot form the basis of direct public entity liability under Government Code section 815.6. The Court of Appeal therefore correctly concluded that the County of San Bernardino cannot be held liable for failing to immediately cross-report the 9-1-1 call it received from Ms. Kinney. Its decision should be affirmed.

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II. THE DISCRETION REQUIRED UNDER PENAL CODE SECTION 11166(a) PRECLUDES A FINDING OF A MANDATORY DUTY TO CROSS-REPORT. TO THE EXTENT *ALEJO v. CITY OF ALAHAMBRA* CONCLUDES OTHERWISE, IT IS IN ERROR AND SHOULD BE OVERULED.

As a separate cause of liability, Plaintiff alleges that Officer Swanson owed Plaintiff a duty to cross-report to child welfare services under Penal Code section 11166, subdivision (a), after her investigation into Ms. Kinney's report of abuse. Therefore, Plaintiff asserts that Officer Swanson is directly liable under Government Code section 815.6, and the County is vicariously liable under Government Code section 815.2.

Plaintiff's argument misapplies the relevant liability and immunity statutes, which make clear that discretionary acts cannot be the basis of a mandatory duty, and that the exercise of discretion is immune from liability. The Court of Appeal was correct to note that the contrary conclusion reached in *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, is at odds with accepted notions of public entity liability. (Slip Op., p. 9.) This Court should make clear that a mandatory duty does not exist where a public employee must exercise discretion and judgment in carrying out the statutory language.

A. The Government Claims Act Does Not Permit Liability For Discretionary Acts, Even if Discretion is Abused.

The Government Claims Act provides clear guidance to the courts in evaluating claims of liability for an employee's act or omission. As relevant to this case, the provisions state:

- Except as otherwise provided by statute, a public entity is not liable for an injury, even if it arises out of an act or omission of a public employee (Gov. Code, § 815, subd. (a).);
- A public entity can be liable if it is under a mandatory duty imposed to prevent the risk of a particular kind of injury (Gov. Code, § 815.6);
- Or, a public entity can be vicariously liable for the act or omission of its employees, if the act or omission could give rise to a cause of action against the employee (Gov. Code, § 815.2, subd. (b));
- But vicarious liability is not available if the employee is immune from liability for his or her actions (Gov. Code, §§ 815, subd. (b), 815.2, subd. (b));
- And a public employee is immune from liability if his or her act or omission is the result of the exercise of discretion, even if the exercise of that discretion was abused (Gov. Code, § 820.2).

Thus, when a plaintiff alleges liability based on an employee's act or omission, the court must decide: (1) whether the act or omission gives rise to a cause of action; and if so (2) whether the employee is nevertheless immune.

B. Plaintiff's Employee and Vicarious Liability Claims Fail Under the Government Claims Act.

Plaintiff asserts that the County is vicariously liable for Officer Swanson's actions because Penal Code section 11166, subdivision (a) imposes on Officer Swanson a mandatory duty to investigate, and a mandatory duty to cross-report when an objectively reasonable person in the same situation would suspect child abuse. Specifically, Penal Code section 11166, subdivision (a) reads in relevant part:

> [A] mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

Whether Officer Swanson conducted an investigation is not at issue in this case, and Plaintiff concedes that Officer Swanson was required to use discretion is determining whether she reasonably suspected that Plaintiff had been the victim of child abuse. Plaintiff's argument is that Officer Swanson erred in using her discretion, and that if she properly applied discretion, she would have had a mandatory duty to cross-report. Thus, Plaintiff asserts, she is liable for failing to perform a mandatory duty, and the County is therefore vicariously liable.

The error with this analysis is apparent—the very nature of a discretionary act is that it calls for the exercise of judgment and expertise. And as outlined in Section I of this argument, the existence of discretion

within a statute means there can be no mandatory act for purposes of public entity liability. (*See de Villers v. County of San Diego, supra,* 156 Cal.App.4th at p. 256; *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456; *Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 937; *Nunn v. State* (1984) 35 Cal.3d 616, 625.) At most, the statute provides the next steps to be taken once discretionary judgment has lead a mandatory reporter to the conclusion that child abuse is known or suspected. This is not nearly sufficient under the Government Claims Act to establish liability for failure to perform a mandatory duty.

Even if Plaintiff could establish potential liability under Penal Code section 11166, subdivision (a), the court must then determine whether any immunities apply. (*Esparza v. County of Los Angeles* (2014) 224 Cal.App.4th 452, 461 ["The rule is that the governmental immunity provided by statute will override a liability created by a statute imposing general liability for tortious conduct."].) Here, where Plaintiff concedes that a law enforcement officer must exercise discretion to determine whether suspected abuse is present, Government Code section 820.2 clearly provides immunity for injuries that result from the exercise of discretion, "whether or not such discretion be abused." (*Ortega v. Sacramento County Dept of Health and Human Services* (2008) 161 Cal.App.4th 713,733 ["the collection *and evaluation* of information is an integral part of 'the exercise of discretion' immunized by Section 820.2." (emphasis added)].) "This

immunity applies even to 'lousy' decisions in which the worker abuses his or her discretion . . . ." (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1381.)

Whether immunity is provided under Government Code section 820.2 requires a judicial determination of whether the action in question is ministerial because it amounts only to an obedience of orders, or discretionary because it requires personal deliberation, decision and judgment. The latter category of actions is entitled to immunity. (*Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 749.) The purpose behind this immunity is to prevent second-guessing of a public employee's application of discretion, which may, in hindsight, be seen to have been in error. (*Ronald S. v. County of San Diego* (1993) 16 Cal.App.4th 887,897; *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1463.)

This case offers an example of why the discretionary immunity exists. Officer Swanson was assigned to respond to Ms. Kinney's call at 11:00 p.m. The officer determined that the parents had been engaged in an ongoing custody dispute, with allegations of physical abuse from both sides. Mother was not home, and Ms. Kinney requested documentation of the Officer's visit, but did not request medical attention for Plaintiff or any arrests. Some bruising was noted, which may have occurred during a fall. Officer Swanson was called upon in that moment to decide whether she was witnessing the next phase of a custody dispute, or whether she

suspected abuse. She determined, based on her experience and the information that she learned and observed during her investigation, that the abuse allegations were being made to influence an ongoing custody dispute and that cross-reporting was therefore not required. While in hindsight that a decision to cross-report that night may have been appropriate, it cannot be known whether cross-reporting would have resulted in an intervention preventing Plaintiff's injuries. It is unknown to us now, and it was unknown to Officer Swanson at that moment, just as it is unknowable to any law enforcement officer or social worker responding to such a call. That is precisely why their discretionary actions are immune from liability. To find that liability attaches if ultimately the officer erroneously applied his or her discretion, or even applied discretion in a "lousy" or "abusive" way, flies in the face of the Government Claims Act.

In support of the argument that Officer Swanson is liable under Penal Code section 11166, subdivision (a), despite the discretion required in the statute and discretionary immunity, Plaintiff relies on *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180. Indeed, *Alejo* holds that Penal Code section 11166, subdivision (a) does create a mandatory duty to investigate and cross report where an objectively reasonable person would suspect child abuse. (*Id.* at pp. 1186-1187.) The *Alejo* court goes on to conclude that a plaintiff is entitled to prove by expert testimony that a reasonably prudent social worker would have responded in a way different

from defendant, which would have prevented plaintiff's injuries. (*Id.* at pp. 1190-1191.)

First, it is important to note that the *Alejo* court did not address Government Code section 820.2's discretionary immunity in the context of cross-reporting. The only reference in the opinion to section 820.2 relates to the duty to investigate, which is not at issue in this case. (*Alejo v. City of Alhambra, supra,* 75 Cal.App.4th at pp. 1192-1193.) To find *Alejo* dispositive on the issue of whether discretionary immunity applies to a decision not to cross-report is therefore inappropriate.

More importantly, the Court of Appeal in this case below correctly noted that *Alejo* "is at odds with the accepted notion that where a statute calls for the exercise of judgment, expertise, and discretion, it does not create a mandatory duty within the meaning of Government Code section 815.6." (Slip Op., at p. 9.) The conclusion that a statute which requires the exercise of discretion (1) results in a mandatory duty, and (2) is not subject to discretionary immunity, is in error, as made plain from the case law cited throughout this brief. Requiring law enforcement employees to be responsible to make a judgment about child abuse, and for the public entity to be the financial guarantor if a jury calls that decision into question some years later with the benefit of hindsight, is exactly counter to the language and intent of the Government Claims Act, and should be rejected. This Court should so rule, and clarify that courts and juries will not second guess

the decisions of law enforcement and social worker personnel made in the field using their discretionary judgment about whether child abuse is suspected and cross-reports should therefore be made.[3]

CONCLUSION

Contrary to the theory advanced by Plaintiff, defendants cannot be found liable for the tragic injuries Plaintiff sustained. Direct public entity liability is not available under Government Code section 815.6 for failure to cross-report merely upon receipt of Ms. Kinney's 9-1-1 call. Penal Code section 11166, subdivision (k) simply does not create a mandatory duty, since discretion is required in determining which calls give rise to a suspicion of child abuse. For the same reason, Officer Swanson cannot be liable under Government Code section 815.6 for failure to cross-report after exercising her discretion in determining whether she was presented with suspicion of child abuse per Penal Code section 11166, subdivision (a).

Even if Plaintiff could state a cause of action against Officer Swanson under Penal Code section 11166, subdivision (a), Officer Swanson would be entitled to the discretionary immunity afforded by

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[3] This Court has also granted review of another case that raises doubt about the conclusion in *Alejo* that plaintiffs may use expert testimony to prove that a reasonably prudent social worker would have responded in a different manner under the circumstances. *State Dept of State Hospitals* (2013) 220 Cal.App.4th 1503, *petition for review granted* (Feb. 11, 2014)(S215132).

Government Code section 820.2. Since Officer Swanson is either not directly liable, or she is immune from liability, the County of San Bernardino cannot be vicariously liable under Government Code section 815.2. To the extent *Alejo v. City of Alhambra, supra,* compels a contrary result, this Court should overrule those portions of that opinion.

For these reasons, CSAC and the League urge this Court to affirm the opinion below.

Dated: _____ Respectfully Submitted,

Jennifer B. Henning, SBN 193915

Attorney for Amicus Curiae
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and League of California Cities

CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 3822 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ___ day of April, 2014 in Sacramento, California.

Respectfully submitted,

By: _____
JENNIFER B. HENNING
Attorney for Amicus Curiae

Proof of Service by Mail

B.H. v. County of San Bernardino, et al.
Case No. S213066

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS AND RESPONDENTS COUNTY OF SAN BERNARDINO ET AL; PROPOSED AMICUS CURIAE BRIEF BY THE CALIFORNIA STATE ASSOCIATION OF COUNTIES AND LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF DEFENDANTS AND RESPONDENTS COUNTY OF SAN BERNARDINO ET AL** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
B. H. : Plaintiff and Appellant	Andrew N. Chang Esner Chang Boyer 234 East Colorado Blvd, Suite 750 Pasadena, CA 91101 Christopher James Keane The Keane Law Firm 548 Market Street, Suite 23851 San Francisco, CA 94104
County of San Bernardino, et al.: Defendants and Respondents	Norman J. Watkins Lynberg & Watkins 1100 Town & Country Road, Suite 1450 Orange, CA 92868

Court of Appeal	Clerk of the Court Fourth Appellate District, Div. Two 3389 Twelfth Street Riverside, CA 92501
Trial Court	Honorable Donald R. Alvarez Superior Court of California County of San Bernardino 303 West Third Street San Bernardino, CA 92415

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that 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 prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on _____, at Sacramento, California.

_____

MARY PENNEY