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September 11, 2026

VIA TRUEFILING

Clerk of the Court
CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIV. 2
3389 12th Street
Riverside, CA 92501

Re: *John Doe v. County of San Bernardino*
San Bernardino County Superior Court, Case No. CIVSB2131751
Fourth Appellate District, Div. 2, Case No. E085516
Respondent's Letter Application for 30 Minutes of Oral Argument and for Permission to File Supplemental Brief

Dear Presiding Justice and Associate Justices:

Pursuant to California Rules of Court, rule 8.256(c) and rule 8.200(a)(4), and this Court's Miscellaneous Order 22-6 ("Order 22-6"), Plaintiff and Respondent John Doe requests 30 minutes for oral argument and permission to file a short supplemental letter brief, explaining why the Court's September 4, 2026 tentative opinion reversing the $27.5 million judgment compensating Plaintiff for the years of sexual abuse he suffered and directing entry of judgment for the County, is mistaken.

First, this court's Miscellaneous Order 22-6 provides that additional time is warranted for good cause, when the issues counsel continues to contest after reviewing the tentative opinion "are more numerous or complex, or both, than in most orally argued cases." That standard is satisfied here. Rule 8.256(c)(2) otherwise provides 30 minutes per side unless the Court provides otherwise by local rule or order; Plaintiff thus seeks the ordinary statewide allocation because this appeal presents the unusual complexity contemplated by this Court's good-cause exception.

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The tentative opinion is erroneous mainly in the following two respects: (1) the tentative fails to address dozens of portions of the Reporter's Transcript supporting the jury's verdict on causation, which was approved by the trial court, and (2) the tentative's conclusion that there was no causation as a matter of law contravenes numerous decisions of the Supreme Court and Court of Appeal, including this Court's decisions, governing when reasonable inferences of causation are warranted and expressly negating the need for the plaintiff/respondent to refute all possible causation counter facts offered by the defendant/appellant. These two category of errors require a discussion of both significant aspects of the record and a substantial body of case law making these issues more "numerous or complex, or both, than in most orally argued cases." This is especially true in view of the fact that the tentative would reverse the jury's verdict and direct entry of judgment for the County rather than order a new trial, thereby permanently preventing Plaintiff of any recovery for his unquestionably severe injuries.

Plaintiff also respectfully requests permission to file a narrowly focused supplemental brief. Plaintiff recognizes that the Court's September 4 notice states that supplemental briefing will not be accepted because counsel may raise issues concerning the tentative at oral argument. Plaintiff likewise recognizes this Court's general practice, stated in Miscellaneous Order 22-6, encourages counsel to reserve responses to tentative opinions for oral argument, including applications for permission to file supplemental briefing.

Plaintiff nevertheless respectfully asks the Court to exercise its discretion to permit such briefing in this particular case. Rule 8.200(a)(4) expressly provides that an additional brief may be filed with permission of the Presiding Justice. The Advisory Committee Comment to rule 8.254 likewise confirms that the new-authority procedure "does not preclude a party from asking the presiding justice for permission to file supplemental briefing under rule 8.200(a)(4)." And Miscellaneous Order 22-6 expressly contemplates "applications for permission to file supplemental briefing."

Increasing the time for oral argument and allowing supplemental briefing would materially assist the Court because the tentative has crystallized specific grounds for rejecting the jury's causation finding that could not have been addressed with comparable precision before the Court disclosed its analysis, particularly the tentative's conclusion that the record contains evidentiary gaps concerning what protective measures likely would have followed CPS intervention and how removal from Cox's home would have affected the subsequent sexual abuse. Because causation was only one of multiple independent issues presented in Appellant's principal briefs, Plaintiff's principal brief necessarily addressed it as part of a much broader appeal. A short supplemental brief in addition to increasing the time for oral argument would permit Plaintiff to address the

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tentative's now-dispositive causation rationale with the focused legal and record treatment it warrants.

The need for focused supplemental briefing is particularly acute and helpful to the Court because the tentative opinion's causation analysis rests on a materially incomplete account of the trial evidence. The chronology was central to Plaintiff's causation proof. Plaintiff and Cox both testified that there was no sexual activity before Plaintiff moved into Cox's home, despite approximately a year and a half of prior interaction; Cox further testified that he had not even considered sexual contact before the move and that he had suspected neglect before any sexual activity occurred. (1AA:579-580, 589-590; 8RT:1884-1885; 4RA:1304). Thus, it was not the proximity of Cox and Plaintiff's homes that were a causative factor because no abuse happened despite their proximity for 1.5 years, but rather the isolation and dependence of the child created once Cox was able to move Plaintiff into his home, that allowed the abuse to begin. (10RT:2437-2443.) Thus, as to Cox's own reporting violation, Plaintiff submitted evidence that he never would have even been allowed to move into Cox's house, and a jury could find, therefore, that a timely report would have brought CPS intervention before Plaintiff ever moved into the environment in which the abuse began. (9RT:2107-2167; 10RT:2456-2467.) As to the later reporting violations, the CPS evidence was that Plaintiff more likely than not would have been removed from Cox's home within no more than ten days, thereby preventing continuation of the living arrangement in which the serial abuse was occurring. (10RT 2436-2464.)

Once Plaintiff moved into Cox's home, the abuse began and escalated to daily - sometimes multiple times daily - assaults occurring predominantly as part of the ordinary privacy and access created by that living arrangement: when Plaintiff awoke, when Cox returned at lunch, and after dinner. Plaintiff described himself as dependent on Cox for housing and support, feeling "trapped," as though the sexual activity was "paying rent." (8RT:1953-1960.) The trial evidence identified only two isolated incidents of abuse away from Cox's home, in contrast to the approximately 1,000 acts Plaintiff described, which is less than .002%. (8RT:1953-1955.) One incident was on an overnight trip to Hawaii to see Cox's family, and the other one was an overnight camping trip. Even as to these statistically insignificant instances of abuse occurring outside of Cox's home, there was no evidence that the camping trip or the Hawaii vacation would have been authorized by CPS or the juvenile dependency court, once they assumed jurisdiction over the minor Plaintiff's safety and placement. (8RT:1886:7, 1904:16-17.) Cox's own testimony likewise supported the importance of secrecy and the home environment: he knew the sexual conduct was illegal and unacceptable to the Sheriff's Department, trusted Plaintiff

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not to get him in trouble while Plaintiff was living with him and did not engage in sexual activity with Plaintiff at County facilities, in County vehicles, or while on duty. (1AA:584.)

The expert and percipient testimony also addressed what CPS intervention would have changed. Dr. Jenny testified, on a more-likely-than-not standard, that moving Plaintiff into Cox's home was significant because it created the conditions that facilitate sexual exploitation: "isolation," "access," "dependency," "no supervision," and Cox's "unfettered access" to Plaintiff. She separately testified that the lack of supervision was significant because Plaintiff was isolated, lacked someone with whom to communicate, and had no outside support. And when asked about the mandated-report counterfactual, Dr. Jenny testified that if a competent home investigation had found Cox's home unsuitable, removal from that home "would have prevented the child from being abused." (9RT:2118, 2122-2126, 2128-38, 2140-2154, 2158, 2160, 2163-2167; 10RT:2427-2430, 2433-2464; 1AA:579-580, 589-590.) Plaintiff testified that if CPS had interviewed him, he would have welcomed the contact, told the truth about what was occurring with Cox, and "for sure" wanted an option to live somewhere else. (8RT:1960.) Stolar-Peterson testified that CPS questioning would have explored Plaintiff's relationship with Cox and revealed grooming indicators, and that CPS supervision would have supplied a safe placement, social-worker monitoring, juvenile-court oversight, and minor's counsel. (9RT:2140-2160.)

Those portions of the record, among many others, bear directly on the evidentiary gaps the tentative identifies as dispositive. They permitted the jury to infer not merely a change of address, but the removal of the isolation, dependency, secrecy, unfettered access, and absence of protective adults that the evidence identified as the mechanism enabling Cox's abuse. A short supplemental brief would allow Plaintiff to place those portions of the Reporter’s Transcript before the Court in a focused manner and address whether the tentative's factual premise can be reconciled with the evidence actually presented to the jury.

Second, supplemental briefing is warranted to address the legal standard governing that evidence. Against the foregoing record, the tentative emphasizes that some relationship or unsupervised contact with Cox might still have continued after removal. But substantial evidence review asks whether the jury's causal inference was reasonably supported by the evidence, not whether Plaintiff can negate every conceivable alternative course of events. A competing possibility identified by the Court cannot displace the inference the jury actually drew from the chronology, Plaintiff's testimony,

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Cox's testimony, and the expert evidence: that timely mandated reporting would, more likely than not, either have prevented Plaintiff from moving into Cox's home at all or removed him from that environment promptly and thereby prevented or materially reduced the ensuing abuse. Focused briefing would permit Plaintiff to address that question under the controlling Supreme Court, appellate, and in particular this Court's own authorities governing substantial evidence review, reasonable inference, and counterfactual causation. (See, e.g., *Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 121-2; *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205-6; *Viner v. Sweet* (2003) 30 Cal.4th 1232, 1242-4; *Landeros v. Flood* (1976) 17 Cal.3d 399, 410-3; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 775; *In re G.C.* (2020) 48 Cal.App.5th 257, 265-7 [Miller, J.; conc. opn. of Ramirez, P.J.]

Plaintiff identifies these factual and legal matters as only some examples, to demonstrate the utility of focused supplemental briefing, not to substitute this application for the supplemental brief itself. The tentative identifies the absence of evidence concerning particular causal links as dispositive, while many specific portions of the Reporter's Transcript address those links directly. A concise written submission would permit the parties and the Court to address those record passages, together with the numerous controlling authorities, with the precision that intensive record and substantial evidence review warrants.

Plaintiff therefore proposes a supplemental letter brief of no more than 10 pages, confined to correcting the misstatements and omissions of critical facts and errors in law in the tentative opinion. The two requests are complementary and consistent with the Court's tentative opinion procedure. Additional oral argument time would permit counsel to respond fully to the tentative and to the Court's questions, as Miscellaneous Order 22-6 contemplates. A focused supplemental brief would permit precise presentation of the record passages and authorities implicated by the tentative opinion, allowing oral argument to concentrate on the questions of greatest concern to the panel rather than on recitation of transcript citations and authorities.

Plaintiff appreciates the Court's assurance in Miscellaneous Order 22-6 that the Court is not unalterably bound by a tentative opinion and is willing to amend or discard a tentative if counsel persuades the Court that it is incorrect. Plaintiff makes these requests in that spirit and for the purpose of assisting the Court in its consideration of the issues identified in the tentative.

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Accordingly, Plaintiff respectfully requests that the Court (1) permit Plaintiff 30 minutes for oral argument; and (2) permit Plaintiff to file a supplemental letter brief not exceeding 10 pages, or such shorter limit as the Court directs, limited to the causation, substantial evidence, and record issues identified above, on a schedule set by the Court.

Sincerely,

THE KEANE LAW FIRM, P.C.

ESNER, CHANG, BOYER & MURPHY



Andrew N. Chang of
ESNER, CHANG, BOYER & MURPHY

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 S. Lake Avenue, Suite 408, Pasadena, CA 91106.

On the date set forth below, I served the foregoing document(s) described as follows: **LETTER TO COURT**, on the interested parties in this action by placing ___ the original/ X a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC SERVICE VIA TRUEFILING Based on a court order, I caused the above-entitled document(s) to be served through TrueFiling at https://www.truefiling.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the TrueFiling Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

☒ STATE I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 11, 2026 at Honolulu, Hawaii.

s/ Kelsey Wong
Kelsey Wong

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