

E085516

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO**

JOHN DOE,
Plaintiff and Respondent,

V.

COUNTY OF SAN BERNARDINO,
Defendant and Appellant.

CASE NO. CIVSB2131751
HON. JEFFREY ERICKSON, TRIAL JUDGE
SAN BERNARDINO COUNTY SUPERIOR COURT

RESPONDENT'S BRIEF

THE KEANE LAW FIRM, P.C.
Christopher J. Keane, SBN 194848
548 Market Street #23851
San Francisco, California 94104
Telephone: (415) 742-5412
Email: ckeane@keanelaw.com

ESNER, CHANG, BOYER & MURPHY
Andrew N. Chang, SBN 84544
600 S. Lake Avenue, Suite 408
Pasadena, California 91106
Telephone: (626) 535-9860
Email: achang@ecbm.law

ATTORNEYS FOR PLAINTIFF AND RESPONDENT

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION TWO	COURT OF APPEAL CASE NUMBER: E085516
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 194848 NAME: Christopher J. Keane FIRM NAME: The Keane Law Firm, P.C. STREET ADDRESS: 548 Market Street #23851 CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: (415) 742-5412 FAX NO.: E-MAIL ADDRESS: ckeane@keanelaw.com ATTORNEY FOR (name): Plaintiff and Respondent John Doe	SUPERIOR COURT CASE NUMBER: CIVSB2131751
APPELLANT/ COUNTY OF SAN BERNARDINO PETITIONER: RESPONDENT/ JOHN DOE REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Plaintiff and Respondent John Doe
2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: July 17, 2025

Christopher J. Keane
 (TYPE OR PRINT NAME)


 (SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	2
TABLE OF AUTHORITIES.....	6
INTRODUCTION	11
STATEMENT OF FACTS.....	17
PROCEDURAL HISTORY	21
A. The Operative Second Amended Complaint	21
B. The County Did Not File A Demurrer Or Answer To The SAC...	22
C. Trial Proceedings	22
STANDARDS OF REVIEW	25
A. Breach And Causation.....	25
B. Jury Instructions	26
ARGUMENT	26
I. THE COUNTY FAILED TO ANSWER THE SAC AND THUS FORFEITED ITS DEFENSES IN THIS ACTION.....	26
II. SUBSTANTIAL EVIDENCE OF BREACH OF MANDATORY DUTY TO REPORT CHILD NEGLECT SUPPORTS THE JURY’S VERDICT.....	28
A. The County Conflates Duty With Breach. Further, It Is Immaterial To Either Duty Or Breach Whether A Child Has Actually Been Neglected Or Abused At The Time The Report Is To Be Made. ..	28
B. Plaintiff Introduced Substantial Evidence That Mandated Reporters Spear, Leach And Moon Breached Their Duty To Report.	30
1. Deputy Spear.....	31
2. Deputy Leach	33
3. Welfare Fraud Investigator Moon.....	35
C. Substantial Evidence Of Causation.....	37
1. Plaintiff submitted substantial evidence that failure to report pursuant to PC§11166 was a substantial factor in Plaintiff suffering harm.	37
2. The substantial evidence supporting the jury finding that CPS would have intervened to protect Plaintiff if it had received a report from a mandated reporter.....	42

3.	Absent CPS intervention, it was foreseeable that the neglected Plaintiff would remain at risk for harm, including sexual abuse...	43
III.	THERE WAS NO ERROR IN REFUSING TO GIVE THE COUNTY’S PROPOSED SPECIAL INSTRUCTIONS, AND THERE WAS NO PREJUDICE EITHER.....	46
A.	It Was Proper To Not Use The County’s Proposed, Defective Instructions.....	46
1.	Proposed instruction: Fifth Amendment.....	46
a.	Instruction on the Fifth Amendment was not necessary or proper as requested, because Plaintiff’s SAC expressly limited the allegation of breach of duty to report to before Cox committed a crime. The Fifth Amendment only applies after a crime has been committed.	46
b.	<i>Kassey S.</i> is inapplicable to the allegations in this case. It was not alleged that Deputy Cox owed a duty to report his own crimes.	47
c.	Even assuming arguendo the County was entitled to an instruction, it failed to propose a proper instruction which accurately stated the law on Fifth Amendment.	48
(1)	Plaintiff objected to the proposed instruction because it was an incomplete and misleading misstatement of law.....	48
(2)	The Court correctly denied the proposed instruction because it was an overbroad, “blanket” statement.....	49
(3)	Neither the Court nor the Plaintiff were required to correct the defective proposed instruction for the County.	49
(4)	There was no evidence about Cox’s reasonable belief he would incriminate himself by reporting neglect of the Plaintiff’s mother, and, as a matter of law, the neglect report would neither have required Cox to incriminate himself, nor would it have even been seen by law enforcement or the district attorney, and so Cox never would have been prosecuted for anything related to a neglect report.	50
(5)	Neglect reports do not require a reporter to provide any incriminating information.	51
(6)	General neglect reports, as a matter of law, only get reported to CPS, not to law enforcement, pursuant to §11166(j). Therefore, there is no chance that any neglect report Cox made concerning Plaintiff’s mother would ever incriminate him.....	51

2.	Proposed instruction: No Duty to Investigate.....	52
3.	Proposed instruction: No Unrelated Caregiver.....	52
B.	Refusal To Provide The County’s Proposed Special Instructions Caused No Prejudice.....	55
1.	This was not a close verdict on the issue of breach, which is the only issue related to the properly rejected proposed instructions. The instructions did not concern causation or apportionment.....	55
2.	The County Mischaracterizes The Record.....	58
a.	No argument was made about Cox not having a Fifth Amendment privilege after Cox committed a crime.	58
b.	Plaintiff did not request damages for sexual abuse which occurred after age 18.	59
c.	The County continues to miscite the general neglect statute which was in effect at the time of the occurrences alleged in the SAC.	60
d.	The County mischaracterizes Plaintiff’s amended discovery response.	60
	CONCLUSION	62
	CERTIFICATE OF WORD COUNT	63

TABLE OF AUTHORITIES

Cases

<i>Agarwal v. Johnson</i> (1979) 25 Cal.3d 932.....	50, 55
<i>Alejo v City of Alhambra</i> (1999) 75 Cal.App.4th 1180	<i>passim</i>
<i>B.H. v. County of San Bernardino</i> (2015) 62 Cal.4th 168	<i>passim</i>
<i>Century Surety Co. v Polisso</i> (2006) 139 Cal.App.4th 922	49
<i>Connally v General Construction Co.</i> (1926) 269 U.S. 385	54, 55
<i>Doe v. Roman Catholic Archbishop of Los Angeles</i> (2021) 70 Cal.App.5th 657	38
<i>Fierro v. Internat. Harvester Co.</i> (1982) 127 Cal.App.3d 862.....	48
<i>Freeland v. Jewel Tea Co.</i> (1953) 118 Cal.App.2d 764.....	52, 57
<i>Galvez v Frields</i> (2001) 88 Cal.App.4th 1410	30
<i>Garbell v Conejo Hardwoods, Inc.</i> (2011) 193 Cal.App. 4th 1563	25
<i>Garcia v Clovis Unified School District</i> (2009) 627 F.Supp.2d 1187.....	38
<i>Harb v. City of Bakersfield</i> (2015) 233 Cal.App.4th 606	26
<i>Hernandez v Jensen</i> (2021) 61 Cal.App.5th 1056	25
<i>Hilyar v. Union Ice Co.</i> (1955) 45 Cal.2d 30.....	52, 57
<i>Holman v County of Butte</i> (2025) 111 Cal.App.5th 177	38
<i>Hutton v Fidelity Nat’l Title Co.</i> (2013) 213 Cal.App.4th 486	46
<i>In re Duncan</i> (1987) 189 Cal.App.3d 1348.....	11

<i>In re E.E.</i>	
(2020) 49 Cal.App 5th 195	53
<i>In re Marriage of Freeman</i>	
(1996) 45 Cal.App.4th 1437	61
<i>In re R.T.</i>	
(2017) 3 Cal.5th 622	53
<i>Jacobs v Coldwell Banker Residential Brokerage Co.</i>	
(2017) 14 Cal.App.5th 438	47
<i>Jo Redland Tr., U.A.D. 4-6-05 v. CIT Bank, N.A.</i>	
(2023) 92 Cal. App. 5th 142	27
<i>Johnson v Raytheon Co., Inc.</i>	
(2019) 33 Cal.App.5th 617	47
<i>Jones & Matson v. Hall</i>	
(2007) 155 Cal.App.4th 1596	17
<i>Jones v. Maynard</i>	
(1956) 141 Cal.App.2d 643.....	52, 57
<i>Kassey S. v City of Turlock</i>	
(2013) 212 Cal.App.4th 1276	21, 22, 47, 54
<i>Krikorian v. Barry</i>	
(1987) 196 Cal.App.3d 1211.....	11
<i>Laabs v City of Victorville</i>	
(2008) 163 Cal.App.4th 1242	46
<i>Landeros v Flood</i>	
(1976) 17 Cal.3d 405.....	<i>passim</i>
<i>Leung v. Verdugo Hills Hosp.</i>	
(2012) 55 Cal.4th 291	17
<i>Major v Western Home Inc. Co.</i>	
(2009) 169 Cal.App. 4th 1197	49
<i>Marchetti v. United States</i>	
(1968) 390 U.S. 39	48
<i>Marriage of Davenport</i>	
(2011) 194 CA4th 1507	17
<i>Menchaca v. Helms Bakeries, Inc.</i>	
(1968) 68 Cal.2d 535.....	52, 57
<i>Minton v Cavaney</i>	
(1961) 56 Cal.2d 576.....	27

<i>New York v. Ferber</i> (1982) 458 U.S. 747	11
<i>Nieto v Blue Shield of Calif. Life and Health</i> (2010) 181 Cal.App.4th 60	46
<i>People v Gardeley</i> (1996) 14 Cal.4th 605	52, 57
<i>People v. Davis</i> (2005) 126 Cal.App.4th 1416	29
<i>Pobor v Western Pac. R.R.</i> (1961) 55 Cal.2d 314.....	50
<i>Pulver v. Avco Fin'l Services</i> (1986) 182 Cal.App.3d 622.....	26
<i>Roe v Hesperia Unified School District</i> (2022) 85 Cal.App.5th 13	<i>passim</i>
<i>Rosa S. v. Superior Ct.</i> (2002) 100 Cal. App. 4th 1181	53
<i>Rush v. Lagomarsino</i> (1925) 196 Cal. 308.....	52, 57
<i>Scott v County of Los Angeles</i> (1994) 27 Cal.App.4th 12	42
<i>Shaw v. Pacific Greyhound Lines</i> (1958) 50 Cal.2d 153.....	49, 50
<i>Spielbauer v County of Santa Clara</i> (2009) 45 Cal.4th 704	49
<i>State Dept. of State Hospitals v Superior Court</i> (2015) 61 Cal.4th 339	38
<i>U.S. v. Apfelbaum</i> (1980) 445 U.S. 115.....	48
<i>U.S. v. Thomas</i> (9th Cir. 2010) 612 F.3d 1107.....	48
<i>United States v. Freed</i> (1971) 401 U.S. 601	47, 48
<i>Wainwright v Superior Court</i> (2000) 84 Cal.App.4th 262	55
<i>Weiss v. Baba</i> (1963) 218 Cal.App.2d 45.....	52, 57

Statutes

Code of Civil Procedure section 430.10(e)	27
Code of Civil Procedure section 430.80(a)	27
Penal Code section 266b	50
Penal Code section 266j	50
Penal Code section 271	50
Penal Code section 271a.....	50
Penal Code section 273a.....	50
Penal Code section 273f.....	50
Penal Code section 288	50
Penal Code section 11160	37
Penal Code section 11161	37
Penal Code section 11164	11, 20
Penal Code section 11165.2	52
Penal Code section 11165.7	29
Penal Code section 11166	<i>passim</i>
Penal Code section 11166(a).....	28, 34, 54
Penal Code section 11166(b).....	51
Penal Code section 11166(h).....	33, 34, 52
Penal Code section 11166(i).....	34
Penal Code section 11166(j).....	51
Penal Code section 11166.5	24, 56
Welfare and Institutions Code section 300.....	29, 30, 53
Welfare and Institutions Code section 16501(f).....	42

Other Authorities

CACI 406.....	57
---------------	----

Rules

California Rules of Court, rule 8.204	26
California Rules of Court, rule 8.204(a)(1)(C).....	26
California Rules of Court, rule 8.204(e).....	26

Regulations

California Department of Social Services, regulation 31-110.442

Constitutional Provisions

California Constitution, article VI, section 1027

California Constitution, article VI, section 1326

INTRODUCTION

As a society, in California and throughout these United States, we have deemed “[t]he prevention of sexual exploitation and abuse of children [to be] a government objective of surpassing importance.” (*In re Duncan* (1987) 189 Cal.App.3d 1348, 1359, citing *New York v. Ferber* (1982) 458 U.S. 747, 757.) The Child Abuse and Neglect Reporting Act (CANRA) (Penal Code §11164 et seq.) was expressly enacted to “protect children from abuse and neglect.” (§11164.) To that end, CANRA’s primary focus was to rectify the problem of inadequate child abuse reporting. (§11164 et seq.; *Krikorian v. Barry* (1987) 196 Cal.App.3d 1211, 1217) CANRA was drafted by the Attorney General’s office and enacted in 1980 “to overhaul an earlier reporting scheme, with the goal of ‘increasing the likelihood that child abuse victims would be identified’. . . and ‘insure that children will receive the collective judgment of all agencies and persons regarding the course to be taken to protect the child's interest.’ ” (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 182-3 (*B.H.*)) The Attorney General (Michael Gates) who worked to enact CANRA nearly fifty years ago, testified presciently about why child abuse reporting was critical to the safety of our children:

“...it is imperative that third parties report, and it is imperative that they report completely and not just subjectively or let their own philosophy interfere with their legal duties....If a policeman or social worker makes that decision by themselves, they do not have the expertise that is required by all of these agencies collectively to make that decision...If in fact the decision to intervene or not intervene or to proceed formally or informally is going to be made it is made by all parties that are responsible and not just one person. Whether it’s a peace officer or a social

worker or a doctor or anybody else. Nobody has the right to make that kind of judgment.”

(*B.H.*, at 183, citing in part Assem. Com. on Criminal Justice, transcript of hearing, “Child Abuse Reporting” (Nov. 21, 1978), and other parts of the testimony at pp. 4, 6-7, 11, 26 (Transcript of Assembly Public Hearing).)

Despite the clear requirements of CANRA requiring that law enforcement, and all mandated reporters in California, share incidents of child neglect with CPS, the choices and failure of multiple law enforcement mandated reporters to not report child neglect led to admitted, horrific sexual abuse of a vulnerable child more than 1000 times over a period of three (3) years.

Deputy Sheriff Jeremie Cox chose to withhold reporting child neglect to child protective services (CPS) because of his personal belief that the child would be better off living with him than with CPS supervision in foster care:

“Q: Did you ever suspect that Bradley Pierce was being neglected or abused by his mother while you were employed as a deputy sheriff?”

A: Yes.

Q Did you ever consider -- well, did you ever report your suspicions about Bradley Pierce-- or excuse me. The neglect by Bradley Pierce’s mother, did you ever consider reporting that to the Social Services?

A Yes.

Q: Did you report it?

A: I did not.

Q: Why not?

A: I didn't -- I've seen plenty of statistics, and I just didn't want him to be one of those statistics. As far as a kid going to foster, and going from foster home to foster home, I didn't want to see that happen.

Q: Did you think he would be worse off if Social Services got involved?

A: Yes, absolutely.

* * *

Q: Did you ever conceal your suspicions about Bradly Pierce's neglect by his mother from other county employees?

A: If that means reporting to Child and Family Services, then I guess I would say yes.

* * *

Q: Did you believe that Bradly Pierce would be better off living with you than in a facility designated by Social Services?

A: I did.

Q: Is the fact that -- well, is one of the reasons why you didn't report the neglect by Bradly Pierce's mother, is one of the reasons why because you thought he would be better off living with you?

A: Yes.

(1AA:576,580-582,587,589-590;4RA:1304.) Deputy Cox wrote:

“Before Bradly Pierce moved in with me, I learned of his family situation as it related to his mother’s drug abuse with controlled substances, methamphetamine, to be more precise. When Bradly moved in with me, I tended to all his living needs, financial needs, and educational requirements without any outside monetary assistance....

*** * ***

As a deputy sheriff with the San Bernardino County Sheriff’s Department and knowing Bradly and his family situation, I felt it was in the best interest for his livelihood and well-being that he reside with me while he did as to not create another foreseeable statistic during such a time in his life when his situation would certainly have worsened.”

(4RA:1304)

Deputy Cox did not keep this neglected child, or the fact that the child was neglected by his mother, hidden from the world like Jaycee Dugard. To the contrary, he completely immersed the child in the law enforcement community, bringing him to the sheriff’s department, riding in patrol cars, and letting everyone know he had moved the child into his home because the child was neglected by his drug-abusing mother and that he had to take him into his home to keep him safe. His colleagues admitted that they knew Cox moved the child into his home because he was **neglected** by and **unsafe** with his mother, but still failed to report the neglect to CPS:

“Q. I am going to ask you some questions. I am just giving you some background there. Now, he [Cox] testified that Bradley was

living with him because Bradley's mother was neglecting him.
He told you that; true?

A. That would be true.”

(5RA:1388)

* * *

Q. You told us earlier in your testimony... that Jeremie Cox told you that he took Bradly into his house to make him safe; correct?

A. Yes.

Q. All right. Meaning he was unsafe wherever he was before; correct?

A. Not necessarily, no.

Q. Why would he need to bring him into his house to make him safe if he wasn't unsafe where he was coming from?

A. You're right. If somebody is placing somebody to safe [sic], that means he's being moved from someplace that's unsafe. I'm sorry.”

(15RT:3951)

Perhaps the most stupefying failure to report to CPS was by the County's welfare fraud unit investigator. **Amazingly, the neglected child reported his own neglect directly to the welfare fraud department – and yet its mandated reporter still failed to tell CPS!** The child reported that his mother was using drugs, leaving him unsupervised for long periods of time, taking welfare money that was supposed to be used for feeding and housing her own child but not doing it - ongoing - for years,

causing him to be “hungry,” run away from home, and move into the home of an unrelated, unapproved, unlicensed, unsupervised adult single man with no children, resulting in the prosecution, conviction and even imprisonment of the drug-addled, neglectful welfare fraud of a mother – and yet the welfare investigator failed to report the mother’s neglect of her child. The reason? Her astounding personal belief and complete misunderstanding of CANRA that she did not need to report anything which has already happened.... when “reporting,” by definition, means telling CPS something that has already happened.

While there is no doubt that Attorney General Gates, who testified in 1978 about the critical need for law enforcement officers, and all mandated reporters, to report to CPS, and to not let their personal philosophies interfere with reporting neglect to CPS so that CPS could protect children from harm, would be saddened to hear what the mandated reporters did and failed to do in this case, there is also no doubt but that he would at the same time be heartened by the clear and thorough understanding, and application of CANRA by the trial judge and jury in this case, as a continuing body of work on top of the fifty years of persuasive and controlling CANRA precedent handed down by the Supreme Court and other appellate courts which support the trial court’s rulings and jury’s findings in this case. (*Landeros v Flood* (1976) 17 Cal.3d 405, 413-414 (*Landeros*); *Alejo v City of Alhambra* (1999) 75 Cal.App.4th 1180, 1187-1192 (*Alejo*); *B.H. v County of San Bernardino* (2015) 62 Cal.4th 168, 186 (*B.H.*); and *Roe v Hesperia Unified School District* (2022) 85 Cal.App.5th 13, 32 (*Hesperia*)). The court’s rulings, and the jury’s verdict, were correct, reasoned, thorough, and based on substantial evidence.

The law is clear. All reasonably suspected neglect must be reported, and when it comes to protecting vulnerable children, no one is above the law – and that includes mandated reporters in law enforcement.

STATEMENT OF FACTS

In this appeal primarily challenging the sufficiency of evidence supporting a judgment on a jury verdict, the record is viewed in the light most favorable to respondent, and all evidentiary conflicts and reasonable inferences therefrom are indulged in support of the judgment. (*Leung v. Verdugo Hills Hosp.* (2012) 55 Cal.4th 291, 308.) The County’s statement of facts in its opening brief disregards these fundamental rules. (*Jones & Matson v. Hall* (2007) 155 Cal.App.4th 1596, 1607 [“An appellant has the duty to summarize the facts fairly in light of the judgment, and such duty grows with the complexity of the record”; *Marriage of Davenport* (2011) 194 CA4th 1507, 1531, 125 CR3d 292, 311-312 (citing text)—appellant’s “argumentative presentation” of the facts disregards “fundamental rules of appellate review”].) The County’s brief presents the record below as if it, not Plaintiff, prevailed at trial.

Plaintiff will set forth the evidence and reasonable inferences therefrom in the light most favorable to the jury’s verdict in the following statement of facts and in numerous places in the Argument section of this brief, to show that there is indeed substantial – if not overwhelming -- evidence to support (a) the court’s well-reasoned ruling that County and its employees had a mandatory, statutory duty to report child neglect (1RA:66-88,89-108,109-353;2RA:356-382,383-565;3RA:566-838;4RA:839-1170,1171-1183,1184-1187;5RA:1477-1503;6RA:1504-1595,1596-1614,1615-2625;7RA:2626-3524), and (b) the jury’s careful findings in Plaintiff’s favor on the County and its employees’ breach of their duties, proximate causation, and damages. (5RA:1471-1476.)

The jury found that four employees of the County of San Bernardino – three deputy sheriffs (Cox, Spear and Leach) and a welfare fraud investigator (Moon) – breached their mandatory duty under the Child

Abuse and Neglect Reporting Act (“CANRA”) to report the neglect of 14 year-old Plaintiff by his mother. The jury also found that the four employees’ failure to report Plaintiff’s neglect was a substantial factor in causing Plaintiff to be sexually abused by Deputy Cox more than 1000 times over a period of several years. Had the County employees reported that Plaintiff’s mother was neglecting Plaintiff by failing to provide him food, leaving him alone and unsupervised for extended periods, and exposing Plaintiff to the dangers of her methamphetamine use, child protective services (“CPS”) would have intervened to protect Plaintiff from future harm by finding him a safe living situation, supervised by CPS, and that Plaintiff would not have been allowed to live as an isolated, dependent, runaway with Cox, who was neither related to nor a family friend of Plaintiff, nor a licensed foster parent. Overwhelming evidence at trial supports the jury’s verdict in every respect, as set forth in this Statement of Facts below and also in the Argument sections dealing with breach of duty and causation.

Deputy Cox admitted that he knew the child was being neglected by his mother, but he did not report the neglect because he did not want Plaintiff to be “one of those statistics,” going from foster home to foster home. (1AA:580,587.) Cox knew that Plaintiff was neglected. (1AA:577,581.) Cox admitted he “concealed” the neglect of Plaintiff from CPS. (1AA:582.) He thought the neglect by the mother was so significant that Plaintiff would be better off living with him than his mother or CPS. (1AA:587,589,591,602.) Cox chose to provide all food, housing and financial support to Plaintiff. (4RA:1304.)

Deputy Spear learned of Plaintiff’s mother’s lack of safety, supervision or care from Deputy Cox, who had great stature in the department. (1AA:576-577,580,582,587-589,591,602;4RA:1304; 15RT:3934-3935.) Deputy Cox told Spear that Cox needed to move

Plaintiff into his home because he was “looking out for his welfare,” given the mother’s use of narcotics and neglect of Plaintiff. (8RT:1823-1828.)

Deputy Leach admitted he knew Plaintiff was living with Cox because Plaintiff’s mother “was neglecting him.” (5RA:1386-1392,1395,1400-1401,1405-1406;8RT:1910-1911,1921-1923,1925-1926,1929.) Leach assumed (albeit mistakenly) that the neglect by the mother had already been reported because Cox and Spear knew about it. (5RA:1390-1391,1395,1400-1401,1405-1406.)

Heather Moon, a County welfare fraud investigator (although she had previously been a deputy sheriff), was also a mandated reporter. (12RT:3020,3023,3027.) The County’s welfare fraud department became involved with Plaintiff when he reported his mother to the County for welfare fraud, because he was so upset that she was taking welfare money intended for him, and was not housing or feeding him. (8RT:1931-1941.) Moon knew from the County’s welfare records that Plaintiff was not being housed, supervised or fed by his mother. (4RA:1295-1299;12RT:3016.) Moon also knew that Plaintiff was living with Deputy Cox, who Moon knew from her time at the department, (4RA:1295-1299;12RT:3023.) Moon also knew that Cox was providing food, housing, supplies and supervision to Plaintiff (4RA:1295-1299), knew that Plaintiff’s mother did not house, feed, or give him supplies or money (4RA:1295-1299); and knew that Plaintiff got into a fight about his mother’s drugs, ran away, and ending up living with Cox. (4RA:1295-1299) Cox explained to Moon that there was no guardianship, and that Cox provided everything to Plaintiff with no assistance from the mother. (4RA:1295-1299;12RT:3043.)

Moon remained part of the County’s prosecution team which turned the child’s initial report that his mother wasn’t feeding or housing him, into a successful prosecution, trial, and conviction of the mother, and sending her to prison, proving beyond a reasonable doubt that not only had the

mother not fed or housed her child for three years, but had intentionally done that while defrauding the County. (12RT:3047-3048.) Plaintiff and Cox were both called as witnesses to testify at the welfare fraud trial against Plaintiff's mother. (12RT:3047-3048,3066.) Despite knowing and having proven beyond a reasonable doubt that Plaintiff's mother not only failed to feed or house her child for three years, but had intentionally and fraudulently done so, Moon did not make a call to report the neglect of the child to CPS. (*Ibid.*)

Plaintiff's welfare fraud expert, John Harkins, served as a policeman for six years and then as a welfare fraud investigator/supervisor for 30 years for Orange County. (9RT:2168-2169.) Harkins testified it was objectively reasonable for Moon to have entertained a suspicion that Plaintiff was a victim of child neglect, and Moon should have reported the neglect based upon those circumstances: namely, that Plaintiff's mother was neglecting him by not feeding, housing or supervising him for years, that the child reported being "hungry," and also that the mother exposed him to dangerous narcotics which the child found. (9RT:2168-2178.)

Moon admitted she had never read PC§11166 (12RT:3027-3028), and she believed she did not need to report neglect or abuse which had occurred in the past. (12RT:3028-3029.)

Cox first sexually abused Plaintiff after Plaintiff had permanently moved into his house in August 2014 (1AA:579-580,589-590;8RT:1884-1885) which was after the two times Cox owed and breached his duty to report.

For the next several years, Deputy Cox sexually abused Plaintiff over a thousand times. (8RT:1957.) Plaintiff felt compelled to keep engaging in sex with Deputy Cox because he did not want to return to his mother and he did not want Deputy Cox to kill him or himself, and no one from CPS was ever informed about his neglect such that CPS would have

had the notice of the circumstances and the opportunity to have intervened to move him to a legal, safe living situation. (8RT:1956-1960.)

Expert witnesses in law enforcement, welfare fraud, child protective services and child abuse testified that the County's employees violated CANRA on numerous occasions by failing to report the neglect of the child by his mother, and that if the neglect had been reported, CPS would have investigated and intervened, and that because there was no CPS intervention, that it was foreseeable as a neglected runaway child with inadequate oversight that he would be subject to multiple forms of harm, including but not limited to sexual abuse. (8RT:1808-1875;9RT:2118-2167; 10RT:2427-2467; see also Argument Section II.C. detailing the substantial evidence supporting the jury's finding that the County employees' breach of their mandatory duty to report Plaintiff's mother's neglect was a substantial factor in causing Plaintiff's damages.)

PROCEDURAL HISTORY

A. The Operative Second Amended Complaint

Plaintiff's First Amended Complaint ("FAC") alleged various mandated reporters, including Cox, violated Penal Code §11166 by failing to report the neglect of Plaintiff by his mother. (1AA:31-47)¹ The County filed a Motion to Strike, alleging Cox did not have to report his abuse of Plaintiff, claiming it would require him to forfeit his constitutional right against self-incrimination [Fifth Amendment], citing *Kassey S. v City of Turlock* (2013) 212 Cal.App.4th 1276. (1RA:10-21) Plaintiff opposed, arguing that his allegations were limited to failure of the reporters to report the reasonably suspected neglect of the Plaintiff by his mother, not sexual

¹ All statutory references are to the Penal Code unless otherwise specified.

abuse of Plaintiff by Cox; and, with respect to Cox's duty to report, that the duty and breach occurred before the sexual abuse occurred. (1RA:22-43,44-49) Thus, unlike *Kassey S*, the Fifth Amendment was inapplicable because it only applies to "past" not "future" crimes not yet committed. (*Id.*) The County replied (1RA:50-56), and the Court granted the motion only in part, "with leave to amend the complaint" for Plaintiff to make clear that the Fifth Amendment wouldn't be implicated by strictly alleging that Cox's duty and breach were only before Cox had committed any crime. (1RA:57-61)

Plaintiff filed his Second Amended Complaint (SAC), expressly and strictly limiting the allegations (duty/ breach) about Cox to the time before he committed any crime. (1AA:48-65.) The SAC also alleged other reporters breached the duty to report the neglect by Plaintiff's mother, which along with Cox's breach of duty to report, was a substantial factor in causing harm to Plaintiff. (1AA:48-65)

B. The County Did Not File A Demurrer Or Answer To The SAC.

The County was served with the SAC (1RA:62-64), and never filed a demurrer or answer thereto. (1RA:65;2AA:968)

C. Trial Proceedings

The trial was presided over by Hon. Jeffrey Erickson. Plaintiff called witnesses, including several experts on issues relevant to this appeal.

Plaintiff's two expert witnesses on breach of duty to report neglect were Rachael Nowak-Frost ("Frost"), a former Riverside County deputy sheriff, who testified about breach by the County's deputy sheriffs [*i.e.*

Cox, Spear, and Leach – as well as four other deputies who the jury ultimately did not find breached a duty (*i.e.* Severson, Ziemer, Brown and Brandt), (8RT:1808-1875) and John Harkins, former Orange County Welfare Fraud Investigator, who testified about breach by the County’s welfare fraud investigator (*i.e.* Moon). (9RT:2168-2188,2192-2202.)

Plaintiff called three causation experts: Nicol Stolar-Peterson, Psy.D, (“Stolar”) (9RT:2107-2167) and Francesca LeRue, MSW, MPA, ACSW (10RT:2456-2467), both social work/child protective services (CPS) experts, and Carole Jenny, M.D., a preeminent child abuse pediatrician. (10RT:2427-2455.)

Plaintiff called various percipient witnesses either live or by deposition, including employees of the County-- including deputy sheriffs Jeremie Cox (1AA:522-608), Scott Leach (5RA:1380-1470), and Stephen Spear (11RT:2821-2825;15RT:3926-3953) (all three by deposition), and welfare fraud investigator, Heather Moon (12RT:3016-3076), live at trial.

Plaintiff testified live at trial. (8RT:1876-1966.)

The County called various expert and percipient witnesses, including its own social work/CPS expert, Debby Jeter (13RT:3311-3363), and the County also called Deputy Spear live. (15RT:3926-3953.)

Plaintiff’s experts on breach testified that circumstances existed which made it objectively reasonable for the eight County mandated reporters to entertain a suspicion that Plaintiff was a victim of neglect by his mother, triggering their duty to report pursuant to PC§11166, which duty was breached. (8RT:1808-1875;9RT:2168-2188,2192-2202.)

Plaintiff’s CPS experts testified that CPS would have responded to mandated reports from law enforcement in a manner which, more likely than not, would have protected Plaintiff from future harm by finding him a safe living situation, supervised by CPS, and that Plaintiff would not have been allowed to live as an isolated, dependent, runaway with Cox, who was

neither related to nor a family friend of Plaintiff, nor a licensed foster parent. (9RT:2107-2167;10RT:2456-2467.) Dr. Jenny testified that allowing Plaintiff to live as an isolated, unsupervised, dependent, at-risk runaway child with Cox was a substantial factor in Cox being able to serially sexually abuse Plaintiff. (10RT:2427-2455.)

The jury was properly instructed on the applicable law, including being provided the actual statute which was alleged to have been breached (PC§11166). (5RA:1315-1379;4RA:1188-1270) The County submitted several proposed special instructions; only three of which are subject of this appeal, and were rejected by the Court. (1AA:91,93-94,96.) The ones which were rejected concerned duty, not causation or apportionment.

The jury deliberated, and asked no questions other than to hear testimony, and to hear Plaintiff's closing argument that was related to the claim for violation of PC§11166.5. (17RT:4561-4563)

The jury did not find for Plaintiff on all allegations, finding that the County did not violate PC§11166.5 and that four of the eight County mandated reporters did not breach a duty to report. (5RA:1471-1476; 1AA:619-625.)

The jury found that four County mandated reporters breached their duty to report: Cox (12-0), Spear/Leach/Moon (11-1), and that their breaches of duty were a substantial factor in causing Plaintiff harm. (18RT:4816-4825.)

The jury awarded damages, and judgment was entered. (5RA:1471-1476;1AA:619-625) Judgment was entered in Plaintiff's actual name, Bradly Pierce, as the Court ordered that the pseudonym "John Doe" be changed to his actual name.² (12RT:3081) The amount awarded is not an

² The County filed its appeal using the pseudonym, so the opposition brief was filed using the pseudonym; however, the judgment is and should remain in the Plaintiff's actual name.

issue on appeal, as the County did not file a motion for new trial (2AA:946), and the County’s opening brief does not make an argument that the amount of the jury’s award was excessive.

STANDARDS OF REVIEW

The County asserts that there is no substantial evidence supporting the jury’s findings of the elements of breach and causation and that therefore as a matter of law, the jury’s verdict and resulting judgment against it cannot be affirmed. Plaintiff disagrees with the County’s asserted Standards of Review for the elements of breach and causation.

A. Breach And Causation

The elements of breach and causation are ordinarily a question of fact. (*Hernandez v Jensen* (2021) 61 Cal.App.5th 1056, 1064 [“Where findings of fact are challenged on appeal, [courts of appeal] are bound by the ‘elementary, but often overlooked principle of law, that ... the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below.” (*Garbell v Conejo Hardwoods, Inc.* (2011) 193 Cal.App. 4th 1563, 1569.)

With respect to both breach and causation, particularly in the context of the statutory duty to report child abuse and neglect, nearly fifty years of persuasive, controlling precedent holds that failure to report child neglect or abuse is actionable, and that both breach and causation are questions of fact. (*Landeros, supra*, at 413-414; *Alejo, supra*, at 1187-1192; *B.H., supra*, at 186); and *Hesperia, supra*, at 32.)

B. Jury Instructions

Whether a jury instruction is correct or erroneous is a question of law. (*Harb v. City of Bakersfield* (2015) 233 Cal.App.4th 606, 617.) If an instructional error occurred, the appellant also must establish the error was prejudicial. (*Id.*; Cal. Const., art. VI, § 13 [miscarriage of justice].) An instructional error is only prejudicial if there is a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached. (*Id.*, at 617.)

ARGUMENT

I. THE COUNTY FAILED TO ANSWER THE SAC AND THUS FORFEITED ITS DEFENSES IN THIS ACTION.

The County failed to file its answer to the SAC. (1RA:65;2AA:968, 943-976.) Although it placed a copy of an answer in its appendix (1AA:66-73), that answer was not filed in the superior court (2AA:943-976) and is, therefore, not properly part of the superior court record in this case, and must be stricken from the appellant's opening brief and appendix. (CRC 8.204(a)(1)(C); 8.204(e) [brief that fails to comply with the CRC 8.204 content and form requirements (e.g., referral to matters outside the record) is subject to being stricken; (*Pulver v. Avco Fin'l Services* (1986) 182 Cal.App.3d 622, 632 ["As a general rule, documents not before the trial court cannot be included as part of the record on appeal and thus must be disregarded as beyond the scope of appellate review;" court also disregarded statements in briefs based on matters improperly included in record].)]

The legal effect of not filing an answer is well-settled. Other than as to lack of subject matter jurisdiction, or that the SAC does not state facts sufficient to constitute a cause of action, the County has waived all objections and affirmative defenses. (C.C.P. §430.80(a); *Minton v Cavaney* (1961) 56 Cal.2d 576, 581.)

Lack of subject matter jurisdiction is inapplicable because superior courts are courts of general jurisdiction with power to decide cases in equity and “in all other causes”. (*Jo Redland Tr., U.A.D. 4-6-05 v. CIT Bank, N.A.* (2023) 92 Cal. App. 5th 142, 165–66; Cal. Const., art. VI, § 10.)

Failure to state a claim [CCP 430.10(e)] is inapplicable because the SAC alleges facts sufficient to constitute a cause of action which has been recognized since *Landeros, supra*; namely, that a mandated reporter who fails to report known or reasonably suspected child abuse or neglect may be liable for damages if that failure to report is a substantial factor in causing harm to the child. (*Landeros, supra*, at 413-414; *Alejo, supra*, at 1187-1192; *B.H., supra*, at 186); and *Hesperia, supra*, at 32.) Further, Plaintiff limited the alleged duty and breach by Cox in the SAC to time periods before Cox committed any crime, and, therefore, even assuming *arguendo* there was a factual question as to when Cox committed a crime, there is no potential implication of the Fifth Amendment because it only applies to crimes committed in the past, and does not apply to crimes in the future.

The County’s asserted grounds for this appeal are limited to lack of substantial evidence as to causation and breach, and failure to provide the jury with its three defective proposed instructions, and given the failure to have filed an answer to the SAC, those issues are not preserved for appeal. They are forfeited, and the judgment must be affirmed.

II. SUBSTANTIAL EVIDENCE OF BREACH OF MANDATORY DUTY TO REPORT CHILD NEGLECT SUPPORTS THE JURY’S VERDICT

A. The County Conflates Duty With Breach. Further, It Is Immaterial To Either Duty Or Breach Whether A Child Has Actually Been Neglected Or Abused At The Time The Report Is To Be Made.

CANRA requires reporters to report “ ‘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.’ ” A mandated reporter has a ‘reasonable suspicion’ when ‘it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient.’ ” §11166, subd. (a)(1).)” (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 186.) Failure to make the required report gives rise to a claim of negligence per se when a breach of duty to report causes injury. (*Alejo v City of Alhambra* (1999) 75 Cal.App.4th 1180, 1188-1189, disapproved of on another ground in *B.H.*, at p. 188, fn.6.)

Mandated reporters’ duties are governed by an objective standard. (§11166, subd. (a); *B.H.*, *supra*, at 168. The duty arises “... on the basis of what a reasonable person would suspect based on those facts.” (*B.H.*, *supra*,

at 193, citing *People v. Davis* (2005) 126 Cal.App.4th 1416, 1426.) *B.H.* held:

“ [T]he **existence of such circumstances** triggers the mandatory **duty** to **report the circumstances** to a designated outside agency. It is the responsibility of the outside agency to investigate all reports of suspected abuse and to determine whether abuse occurred.”

Id., *supra* at 193, CANRA was designed to mandate “third parties reporting child abuse who come into contact with children and are able to observe “potential injuries and potential cases of abuse” to report. (*B.H.*, *supra*, at 194.) CANRA is not Welfare and Institutions Code (“WIC”) §300. The purpose of CANRA is not to wait until all the elements of a WIC §300 neglect case are provable or obvious before reporting.

It is well-settled in California that whether a mandated reporter breached the mandated duty to report is a question of fact. In addition to *B.H.*, *supra*, see:

- In *Landeros*, *supra*, the Supreme Court held plaintiff was entitled to prove by expert testimony that a reasonably prudent physician would have reported plaintiff’s injuries to the proper authorities. (*Id.*, at 410.)
- In *Alejo*, *supra*, the Court held “whether a reasonably prudent person receiving specific information from the child’s father would suspect child abuse and make a report was a question of fact to be determined at trial”. (*Id.* at 1189.)
- In *Roe v Hesperia Unified School District*, *supra*, the Court likewise held whether a duty to report was breached is a question of fact. (*Id.* at 32.)

The County conflates duty and breach. The **duty** of a mandated reporter to report is **set by statute** and is **exactly the same** whether the reporter is any one of the now forty-nine (49) (and growing) categories of mandated reporter PC§11165.7; namely, the duty is to report when the

reporter knows or reasonably suspects a child has been the victim of abuse or neglect. (*Landeros, supra* at 413-414; *Galvez v Frields* (2001) 88 Cal.App.4th 1410.)

Breach of duty, however, is a **fact question** because the “**circumstances**” which would make it objectively reasonable for a mandated reporter to entertain a suspicion can be different in every case, including that it may vary depending on the category of employment/ profession of a particular mandated reporter.

Further, what may have been objectively reasonable to report may ultimately turn out after CPS investigation to not be due to neglect, so while ultimately there may not have been sufficient evidence of neglect or abuse to meet a burden of proving a WIC§ 300 case in court, that ultimate conclusion by CPS or a dependency court does not in any manner excuse a breach of duty to have initially reported a preceding instance of known or reasonably suspected neglect or abuse. (*B.H., supra*, at 193.)

B. Plaintiff Introduced Substantial Evidence That Mandated Reporters Spear, Leach And Moon Breached Their Duty To Report.

The County did not assert in its opening brief that there was a lack of substantial evidence supporting the jury’s finding that it was objectively reasonable for Cox to entertain a suspicion that Plaintiff was a victim of neglect before Cox committed a crime, and that Cox breached the mandatory duty to report pursuant to PC§11166 because he failed to report, so Plaintiff does not include a separately entitled section of his brief (as he does for Spear, Leach and Moon) listing the substantial evidence in support of the breach of duty by Cox for that purpose (*i.e.* to demonstrate the breach of duty).

However, because the evidence introduced at trial included that, and what, Cox should have reported; the circumstances which Cox should have reported if he complied with his duty would have been provided to CPS; and those circumstances would have informed and guided CPS's response to protect Plaintiff, not only in response to report(s) from Cox, but also subsequent report(s) made by Spear, Leach and Moon -- those circumstances are instead referenced in the "causation" section of this brief.

1. Deputy Spear:

Stephen Spear was a deputy sheriff at the County's Sheriff Department, and a mandated reporter. Spear was informed by Cox that Cox had **moved the Plaintiff, an unrelated child, into his home** because Cox was "**looking out for his welfare**", and because the child was "**unsafe**" with his mother, who he learned had a questionable background and was a user of narcotics, and Cox had the child live with him to keep him "safe". (1AA:592-593,598,600;8RT:1907-1909,1926-1927;11RT:2821-2825;15RT:3946-3951.)

Spear knew that Cox was not Plaintiff's guardian or foster parent, and that the level of care and supervision which Cox was providing to Plaintiff was extensive enough that he asked Cox on multiple occasions: "*Why are you spending so much money on a kid that's not yours?*" (11RT 2824;1AA:604.) He admitted seeing the child in the sheriff's department on multiple occasions, and on one of the occasions, Plaintiff testified that Spear and Cox jointly made threats about his mother's methamphetamine use, with Cox opening his work locker, pointing to a baggie of what Cox referred to as Plaintiff's mom's "stuff" (*i.e.* the methamphetamine), and Spear then looked at the Plaintiff knowingly and said "Want me to go talk to her real quick?" (8RT:1926-1927.) Cox testified he believed that Spear

knew Plaintiff's mother was involved with methamphetamine, and that pretty much everyone he worked with knew the situation. (1AA:592-593.)

The substantial evidence upon which the jury could find it was objectively reasonable for Spear to report included the following:

First, Cox testified that he suspected neglect of the Plaintiff by his mother based on the lack of food, drug abuse of hers in the home which resulted in the child himself handling the drugs (and which ended up in the sheriff's department), and the mother leaving the child unsupervised – and Spear learned of the lack of safety, supervision or care from Cox, and the jury could have found that it was likewise reasonable for Spear to suspect this, as well, given Cox's stature in the department. (1AA:576-577,580,582,587,589,591,602;4RA:1304;15RT 3934-3935.)

Second, former Deputy Frost testified, as a deputy sheriff with 20 years of experience and training, that it was objectively reasonable for Spear to have entertained a suspicion because Spear knew Deputy Cox felt the child's welfare was in significant enough jeopardy that Cox needed to move him into his home because he was "looking out for his welfare", and because she had a questionable background, was a user of narcotics, and that Cox and Spear, both laughed in the presence of Plaintiff while Cox pointed to a baggie that Cox said was Plaintiff's mom's "stuff" (i.e. methamphetamine), and to which Spear commented "*Want me to go talk to your mom about that?*" (8RT:1823-1828)

Further the County's CPS expert, Jeter, admitted that Plaintiff's mother was not properly supervising the child, or making responsible decisions allowing her child to live with a stranger. ("No, of course, not.") (13RT:3341-3343;3350-3353.)

The County mischaracterizes former Deputy Frost's testimony concerning Spear's (and Leach's) duty to inquire whether Cox had yet reported the neglect as an "investigation," when what Frost was correctly

explaining was that PC§11166(h) permits a mandated reporter who jointly has knowledge with another mandated reporter that a child has been a victim of abuse or neglect, to collectively make an agreement with their co-worker that only one member of the team will make the report. (8RT:1825-1827,1834.). (See PC§11166(h)) Using the “team reporting procedure” in PC§11166(h) is not the “investigation” referred to in *Alejo, supra*. (*B.H. supra*, at 189.)

2. Deputy Leach:

Scott Leach was a deputy sheriff at the County’s Sheriff Department, and a mandated reporter. Leach **admitted he knew Plaintiff was living with Cox because Plaintiff’s mother “was neglecting him”**, and that neglect meant a child was not receiving proper care due the child including that the neglect could cause the child harm. (5RA:1386-1392,1395,1400-1401,1405-1406;8RT:1910-1911,1921-1923,1925-1926,1929;1AA:598.) He gained knowledge that Plaintiff’s mother “was neglecting him”, and that Plaintiff has difficulty with his mother, and that there was disagreement/conflict between Plaintiff and his mother, from Cox, a trustworthy veteran of law enforcement who Leach could reasonably expect would know what neglect was when he saw it; and, further, that Leach had no reason to disagree with Cox, and that this neglect, conflict and disagreement between parent and child was sufficiently concerning enough that a law enforcement officer would move a runaway child into his home despite the fact that Cox was not a foster parent, or approved by any Court to do so, or related to Plaintiff. (5RA:1386-1392,1395,1400-1401,1405-1406) Leach also knew that Cox was leaving the Plaintiff alone, unsupervised, in Cox’s house, when Leach and other deputies, would come to pick up Cox to go to target shooting for work, and Plaintiff would be left

behind alone in Cox's home, unsupervised, "waving" at the deputies as they pulled away in a patrol car. (5RA:1393,1395,1400;8RT:1925-1926.) Leach had never seen Plaintiff's mother, such that he could know she or anyone would be supervising the child when Cox left him behind for target shooting. (5RA:1386-1392,1395,1400-1401,1405-1406) All those facts are sufficient to allow the trier of fact to find that it was objectively reasonable for Leach to "entertain a suspicion" that Plaintiff had been a victim of neglect, and, once he learned that a child was being neglected, report. (5RA:1386-1392,1395,1400-1401,1405-1406.)

Leach assumed (albeit mistakenly, tragically) that the neglect by the mother had already been reported because Cox and Spear knew about it. (5RA:1390-91,1395,1400-1401,1405-1406.) Again, however, PC§11166 makes clear that absent an agreement between mandated reporters pursuant to PC§11166(h), the obligation to report neglect is individual, and the report must be made immediately upon learning of the neglect. (PC§11166(a), (h) & (i).) Leach confirmed that Cox never misled him that he was a foster parent, or approved by anyone, or had reported neglect on his behalf pursuant to PC§11166(h). (5RA:1391-1392.)

Again, that same testimony and evidence which caused Cox to suspect neglect, and which neglect he then shared with Leach, is evidence upon which the jury could have found that it was likewise objectively reasonable for Leach to have "entertained a suspicion" that Plaintiff was a victim of neglect. (1AA:576-577,580,582,587,589,591,602;4RA:1304.)

Also, former Deputy Frost testified it was objectively reasonable for Leach to have entertained a suspicion that Plaintiff had been a victim of neglect, and report, based on those facts. (8RT:1828-1834.)

3. Welfare Fraud Investigator Moon:

Heather Moon, previously a sheriff, was a County welfare fraud investigator when involved in this case, and she was a mandated reporter. Plaintiff, while a minor, turned in his own mother to the County's welfare unit because she received welfare but did not feed, house or supervise him for three years. Evidence that the child was not being housed, supervised or fed by his mother was in the County's own welfare records (4RA:1295-1299;12RT:3016-3050), including that Plaintiff was living with Cox, who she knew was a deputy sheriff from her time at the department, (4RA:1295-1299;12RT 3023), and that Cox was providing food, housing, supplies and supervision of the minor. (4RA:1295-1299.) Further, Moon interviewed Plaintiff and learned his mother did not house, feed, or give him supplies or money, (4RA:1295-1299.) Plaintiff told Moon he got into a fight with his mother about her drugs, and Plaintiff ran away, ending up with Cox. (4RA:1295-1299.) Moon interviewed Cox, who confirmed that Plaintiff came "more and more" often after a vandalism incident telling Cox he was "hungry," with "no food at his house," that Plaintiff found his mother's drugs, and Plaintiff eventually slept on Cox's couch until it turned into living there full-time. (4RA:1295-1299.) Cox explained there was no guardianship, and he provided everything with no assistance from the mother. (4RA:1295-1299;12RT:3043-3045.)

The County didn't call an expert to defend/address Moon's failure to report.

Plaintiff's mother was successfully convicted of welfare fraud, and Moon knew the charges (*i.e.* the mother was taking welfare money but was not housing or feeding her child for years) had to be proven "beyond a reasonable doubt" (12RT:3047-3048), a higher standard than for her to report pursuant to PC§11166.

Plaintiff's welfare fraud expert, John Harkins, served as a policeman for six years, and then as a welfare fraud investigator/supervisor for thirty years for Orange County. (9RT:2168-2169) Harkins testified it was objectively reasonable for Moon to have entertained a suspicion that Plaintiff was a victim of child neglect, and should have reported the neglect based upon those circumstances: namely, that Plaintiff's mother was neglecting him by not feeding, housing or supervising him for years, that the child reported being "hungry", and also that the mother exposed him to dangerous narcotics which the child found. (9RT:2168-2178.)

Moon doesn't know if she ever even read PC§11166 (12RT:3027-3028), and she believed she did not need to report neglect or abuse which had occurred in the past. (12RT:3028-3029.)

In addition to Harkins, the jury had Cox's and Frost's testimony that it was objectively reasonable for Cox, Spear and Leach to entertain a suspicion that Plaintiff was a victim of neglect, as a further basis to find that it was objectively reasonable for Moon to entertain the suspicion. (8RT:1813-1834) Although Cox and Frost were law enforcement officers, just like Moon had previously been, as was Harkins, there's nothing in the record differentiating the education and training of a welfare fraud investigator from a law enforcement officer.

There was substantial evidence that Moon knew the child had exposure to handling dangerous narcotics, had been hungry, not been provided food or shelter, and was not being supervised by his mother, but instead by an unrelated man who was not a foster parent. (4RA:1295-1299; 12RT:3016-3050,3047-3048;9RT:2168-2178;8RT:1813-1834.)

C. Substantial Evidence Of Causation

1. Plaintiff submitted substantial evidence that failure to report pursuant to PC§11166 was a substantial factor in Plaintiff suffering harm.

The County ignores decades of binding authority directly on point; namely, that failure to report reasonably suspected abuse or neglect has been repeatedly recognized as a substantial factor and actionable by children in civil cases who suffer harm due to the failure to report. (*Landeros v Flood* (1976) 17 Cal.3d 405, 413-414 (*Landeros*); *Alejo v City of Alhambra* (1999) 75 Cal.App.4th 1180, 1187-1192 (*Alejo*); *B.H. v County of San Bernardino* (2015) 62 Cal.4th 168, 186 (*B.H.*); and *Roe v Hesperia Unified School District* (2022) 85 Cal.App.5th 13, 32 (*Hesperia*).)

In *Landeros, supra*, the Supreme Court held that failure to report suspected abuse or neglect under PC§11160 and PC§11161 (the predecessor to PC§11166), can be a proximate cause of subsequent abuse or neglect, and is a question of fact. (*Id.*, at 412.)

In *Alejo, supra*, the Court, citing *Landeros, supra*, held that failure of a mandated reporter to report pursuant to §11166 is actionable, that prevention of future harm to abused and neglected children was the entire purpose of CANRA, that causation is a question of fact, that compliance with reporting requirements was a “substantial factor” in preventing child abuse, and that failing to report enhances chances of repeated and severe abuse, and that whether or not CPS would intervene and protect a child after receiving a mandated report...:

“...is NOT a matter of speculation but a question of fact to be determined at trial through expert testimony.”

(*Alejo, supra*, at 1191-1192.)

The Supreme Court, in *B.H., supra*, a seminal child abuse reporting case against this very same County’s sheriff department, unanimously held that a child can allege a cause of action for failure to report in violation of §11166 resulting in subsequent harm to the child, citing the holding in *Landeros and Alejo. (B.H., supra, 62 Cal.4th at p. 188.)* The Supreme Court in *B.H., supra*, expressly recognized and approved *Alejo’s* holding on causation. (*Id.* at 188-189.)

This Court in *Roe v Hesperia Unified School District* (2022) 85 Cal.App. 5th 13, 32, held that a violation of §11166 by a mandated reporter is actionable for subsequent harm of a child; as have other Courts of Appeal (see, e.g., *Holman v County of Butte* (2025) 111 Cal.App.5th 177) and federal courts. (see, e.g., *Garcia v Clovis Unified School District* (2009) 627 F.Supp.2d 1187, 1205.)

The County ignores this controlling precedent, incorrectly citing a portion of the inapposite *State Dept. of State Hospitals v Superior Court* (2015) 61 Cal.4th 339, while ignoring the part which states “We do **NOT** hold that intervention of any discretionary decision between a breach of mandatory duty and subsequent injury will always foreclose a finding of proximate cause” (*Id.*, at 356), and that a cause of action would **NOT** necessarily “be barred simply because subsequent discretionary decisions would have been required” to prevent a future event.” (*Id.*)

Further, it is well-settled that inadequate oversight of individuals entrusted with children has generally been viewed as sufficiently likely to result in the sexual abuse of children. (*See Doe v. Roman Catholic Archbishop of Los Angeles* (2021) 70 Cal.App.5th 657, 664-665, 676.)

Plaintiff introduced substantial evidence that the reporters’ failures to report were a substantial factor in causing Plaintiff harm. The “circumstances” which should have been reported by them, and which would have been used by CPS to inform its response, would include those

circumstances in the sections of this brief detailing the breach of duty by Spear, Leach, and Moon, and the circumstances that should have been reported by Deputy Cox. The County makes no claim in this appeal that there was not substantial evidence that Deputy Cox failed to report, so there is not a separate section in this brief detailing the substantial evidence that Cox should have reported, and it bears noting in this section on causation that CPS would have had the information from him which would have caused and guided CPS' response and intervention to protect Plaintiff. This included that Cox would have reported the Plaintiff's mother was neglecting him by failing to provide him food (8RT:1813-1821), failed to supervise him, left him unsupervised for extended periods, and exposed him to handling her methamphetamine, which Plaintiff then hand-delivered to Cox; and, further that the child ran away after a big argument about the drugs, about using her money for drugs instead of on food and things that Plaintiff needed (8RT 1818-1819.) Cox testified as to the facts which caused him to know or reasonably suspect that Plaintiff's mother had neglected him including lack of food, lack of supervision by leaving him, and exposing Plaintiff to methamphetamine through her own drug usage and receipt of the same by U.S. mail, all of which would have been made known to CPS in a §11166 report, and would have prompted the probable CPS response and intervention to which Stolar and LeRue testified. (1AA:576-577,580-582,587,589,590-591,593,596-598,600,602,603; 4RA:1304.)

Cox considered reporting this neglect to CPS, but did not report it because Cox had seen plenty of statistics and he didn't want Plaintiff to be one of those statistics, going from foster home to foster home. (1AA:580,587.) He observed or learned through Plaintiff's own statements, and things Plaintiff had brought to Cox's house (i.e. methamphetamine) that Plaintiff was neglected by not having much food, the mother leaving,

and drug abuse in the house. (1AA:577,581.) He admitted he “concealed” the neglect of Plaintiff from CPS. (1AA:582.) He took methamphetamine from Plaintiff, into the Sheriff’s department to test, with a department test kit. (1AA:591,602.) He thought the neglect by the mother was so significant that Plaintiff would be better off living with him than his mother or CPS. (1AA:587,589.) He knew all of the above, concealed it, and instead chose to provide all food, housing and financial support to the child. (4RA:1304)

The only crime Cox, or Plaintiff, ever testified to was Cox sexually abusing Plaintiff. Both Cox and Plaintiff testified that Cox first sexually abused Plaintiff after Plaintiff had permanently moved into his house. (1AA:579-580,589-590;8RT:1884-1885.) which was after the two times at which Plaintiff alleged Cox owed and breached the duty. The first time it was alleged that Cox owed and breached a duty to report was the moment Cox obtained positive test results for methamphetamine while Cox was inside his office in the Sheriff’s Department using Sheriff’s Department testing equipment on the substance provided to Cox by the Plaintiff, with the breach of this duty to report such circumstances to CPS testified to by former Deputy Frost. (8RT:1813-1823.) The second time was when Cox received a call at the Sheriff’s Department Cox from Plaintiff’s mother that Plaintiff had run away, and Cox then went and located him while in his Sheriff’s uniform riding in a Sheriff’s vehicle, and upon locating Plaintiff was informed by him that he found in the mail the mother’s methamphetamine, which he then gave to Cox, and told him he was tired of living with her, and that she would not be there for Plaintiff and would vanish, again, with the breach of this duty to report such circumstances to CPS testified to by former Deputy Frost. (8RT:1818-1819.)

Stolar and LeRue (social work/child protective services) and Jenny (child abuse pediatrics) testified that based on all of the aforementioned

facts which constituted circumstances making it objectively reasonable for Cox, Spear, Leach, and Moon to have “entertained a suspicion” that Plaintiff was a victim of neglect, CPS would have responded to the report(s) in a way which, more likely than not, would have prevented Plaintiff’s subsequent harm. (9RT:2118,2122-2126,2128-38,2140-2154, 2158,2160,2163-2167; 10RT:2427-2430,2433-2464;1AA:579-580,589-590.)

Plaintiff’s testimony sets forth a tragic story of a neglected child, who without the supervision and protection of CPS to counteract the neglect of his convicted welfare fraud, drug using mother, ran away, became dependent, isolated, and serially sexually abused by a powerful adult, who used his house, food, position of authority, threats to kill Plaintiff or himself, and with guns/explosives to carry out the threats pervasive in Cox’s home, to take advantage of the neglected child who no one was looking out for – because no one reported the neglect. (8RT:1876-1966;4RA:1300-1303.) Plaintiff testified he felt trapped, and would have welcomed help from CPS, but received none. (8RT:1953-1960.)

Plaintiff’s highly accomplished CPS experts have worked with various CPS agencies (Stolar: Riverside, LeRue: Los Angeles and Santa Clara), in various positions including front line investigators, as well as leadership. (9RT:2108-2111;10RT:2456-2459.). Their opinions are considered trustworthy even by the County, which has retained them as experts on previous cases in which the County has been a party. (9RT:2111;10RT:2467.) Both were familiar with CPS response to mandated reports, and probable outcomes of CPS investigation(s), including intervention, placement and protection of neglected children. (9RT:2107-2167;10RT:2456-2467.)

2. The substantial evidence supporting the jury finding that CPS would have intervened to protect Plaintiff if it had received a report from a mandated reporter.

It was more likely than not that a report from law enforcement would have been investigated, as it is required by DSS Regulation 31-110.4. (9RT:2122-2123,2137-2138,2140.) DSS regulations are considered an “enactment” and are mandatory to follow. (*Scott v County of Los Angeles* (1994) 27 Cal.App.4th 12.) It was probable CPS would have opened a neglect case for Plaintiff and determined a safety plan specifying with whom Plaintiff could safely live, and that Plaintiff would have been made a ward of the Court, and would have been provided protection through juvenile court, his own attorney, CPS workers and social workers checking on him. (9RT:2118,2151-2152,2158-2160.)

To determine placement of a neglected child, CPS follows DSS Regulations which indicate a preference that children be placed with 1) Related Family, or 2) Non-Related Extended Family Member (NREFM), as the preferred places where children are placed. (9RT:2123-2124.) If neither Related Family or NREFM are available, then 3) a licensed foster parent. (9RT:2124-2125;2151.) Deputy Cox was not in any of those categories: not related, not a family friend who could qualify as NREFM, and not a licensed foster parent. (9RT:2124-2126,2128-2130,2137,2160.) If Cox reported, Plaintiff would have been placed in another safe, supervised home, but **NOT** with Cox. (9RT:2130,2137,2160.) The probable CPS response to a report made by Deputy Spear or Leach (after Plaintiff moved in with Cox) is that CPS would have appeared at Cox’s house within 10 days from the date the report was made (*See* WIC 16501(f), investigated the living situation of Plaintiff with Cox and learned that Cox had taken a

special interest in helping and housing the runaway, neglected child, and provided him with special treats, access to open weapons, and that CPS would have found not only that Cox was neither related nor a friend of the family, but was just providing unlicensed foster care, while exposing the child to danger with firearms at that point – and, most significantly, Plaintiff would have been removed immediately from Cox’s home. (9RT:2152-2154, 2158-2160,2163-2167,2163-2167.) The trial court found that Stolar’s expert testimony had more than sufficient foundation, was not speculative, and was based on her extensive experience, review of documents and testimony, and was stated on a basis of “more likely than not”. (9RT:2131-2137,2151-2154.)

LeRue testified that it was her opinion that the facts sufficient to trigger Moon’s duty to report Plaintiff’s neglect (*i.e.* his mother was providing no necessities, no clothing, no food, was hungry, no shelter, Plaintiff ran away, Plaintiff found his mother’s drugs and got into an argument with her about that, that Plaintiff had been living with Cox to whom he was unrelated and with whom there was no guardianship for 3 years (10RT:2462-2463)), if reported to CPS by Moon, would have more likely than not resulted in CPS accepting the case as a neglect case, rather than screening it out. (10RT:2463.) In turn, CPS more likely than not would have removed Plaintiff from Cox’s unlicensed home within 10 days of the report had Moon made one. (10RT:2436-2464.)

3. Absent CPS intervention, it was foreseeable that the neglected Plaintiff would remain at risk for harm, including sexual abuse.

Children, like Plaintiff, who run away from home, feel they do not have somewhere to go, or feel they need to leave, and do not have stability

regarding shelter or care, and are more at risk to be taken in, and taken advantage of by predators out in the world if they are on their own, and are more likely to be taken in by or accepting of attention, time, and focus from predators like Cox. (9RT:2153-2154.)

Carole Jenny, M.D., perhaps the preeminent child abuse pediatrician in the world, testified about the increased risk of sexual abuse that Plaintiff was susceptible to by Cox as long as the child remained a neglected, unsupervised, runaway child allowed to live unsupervised with Cox. (10RT:2427-2430,2433-2435.) He was at increased risk of harm, such as but not limited to physical and sexual exploitation. (10RT:2435-2436.) Plaintiff, like most runaway teenagers, had an immature, still-developing ego, and needed but was not receiving supervision, parental support, or people watching out for him to prevent harm. (10RT:2435-2437.) Plaintiff became at increased risk for sexual abuse after moving in with Cox, because he was then isolated, and Cox had unsupervised access to him, leaving him vulnerable to be controlled by and dependent on Cox, an authority figure with guns. (10RT:2437-2438.) The neglected, dependent Plaintiff remained at risk for sexual abuse while living with Cox, consistent with Sexual Abuse Survivor Syndrome. (10RT:2439-2443.)

Plaintiff's own testimony also provided substantial evidence that he was an immature child in dangerous dependent situation with no supervision or oversight, and who needed, and would have welcomed, CPS intervention and protection because he could not figure out on his own how to get help himself. (8RT:1956-1961.)

According to the testimony of Plaintiff and Cox, there was no sexual abuse of the child until after he moved into Cox's home, despite the fact that Cox knew the child for 1 ½ years before he had the child move in. It is telling, and consistent with the testimony of Stolar, LeRue and Jenny, it was only after Cox was able to isolate the child in his home and make the

child dependent on him for everything that the sexual abuse began.
(1AA:579-580,589-590;8RT:1884-1885.)

As held by *Alejo, supra*, it is **not speculative** that in response to a §11166 report CPS will intervene to protect a child from future harm. The express purpose of reporting under CANRA is to prevent future harm to children. (*B.H., supra*, at 183.) As testified to by Plaintiff's experts, the regulations and procedures of CPS, and the facts of this case, made it more likely than not CPS would have intervened to protect Plaintiff, instead of allowing or leaving him to live with an unrelated adult who was in essence operating an unlicensed, unapproved, unsupervised home for runaway boys.

Also, while it was ultimately one of the several mandated reporters that failed to report who ultimately sexually abused the neglected Plaintiff, the identity of the sexual assailant doesn't change the legal analysis of causation or breach at all. The neglected, runaway Plaintiff could have just as easily been taken in by a person other than Cox, and been manipulated, isolated and had the same sexual abuse occur in the absence of CPS being notified. This case is not about who sexually abused the Plaintiff, but rather who failed to report the neglect of the parent, which would have provided supervision and safety to protect Plaintiff from abuse by people who take advantage of neglected, runaway children – not just abuse from Cox.

A civil action for harm caused by the failure of a mandated reporter to report is actionable, and failure to report is a recognized substantial factor in causing harm to neglected and abused children. *Landeros, Alejo, B.H., and Hesperia*, are persuasive and controlling authority on this subject.

III. THERE WAS NO ERROR IN REFUSING TO GIVE THE COUNTY’S PROPOSED SPECIAL INSTRUCTIONS, AND THERE WAS NO PREJUDICE EITHER.

A. It Was Proper To Not Use The County’s Proposed, Defective Instructions.

1. Proposed instruction: Fifth Amendment

- a. Instruction on the Fifth Amendment was not necessary or proper as requested, because Plaintiff’s SAC expressly limited the allegation of breach of duty to report to before Cox committed a crime. The Fifth Amendment only applies after a crime has been committed.**

One of the functions of pleadings is to **limit** the issues and narrow the proofs in a case. Plaintiff’s SAC did that intentionally and in response to Judge Pacheco’s ruling allowing amendment of the FAC, to make it clear that the only duty and breach alleged for Cox was **before** Cox committed any crime. (1RA:57-61;1AA:48-65.)

The pleadings serve as the “outer measure of materiality” in a case, and determine the “scope of relevant issues” (*Laabs v City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v Blue Shield of Calif. Life and Health* (2010) 181 Cal.App.4th 60, 74; *Hutton v Fidelity Nat’l Title Co.* (2013) 213 Cal.App.4th 486, 493 [for example, on summary judgment defendant need only “negate plaintiff’s theories of liability *as alleged in the complaint*; that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings”]; *Johnson v Raytheon*

Co., Inc. (2019) 33 Cal.App.5th 617, 636., *Jacobs v Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 443-444.)

Plaintiff's SAC alleged Cox only owed (and breached) a duty to report before Cox committed any crime. (1AA:48-65.) The Fifth Amendment, and the holding in *Kassey S.*, are only applicable when someone has already committed a crime in the past, and, therefore, both are inapplicable on their face to the duty pled in this case. The constitutional privilege against self-incrimination relates to past acts, not to future acts that may or may not be committed. (*United States v. Freed* (1971) 401 U.S. 601, 606-607, 91 S.Ct. 1112, 28 L.Ed.2d 356.)

The jury did not need an instruction on the Fifth Amendment because it was not implicated by the allegations in the SAC. As the trial court correctly stated when denying the proposed instruction, "when" Cox committed a crime was simply a question of fact." (15RT:4027-4030) The County instead needed to focus on proving Plaintiff did not meet his burden of proof, by proving that Cox committed a crime before Cox breached a duty to report. It was that simple. Plaintiff literally could not have proceeded (and did not) on a theory that Cox owed and/or breached a duty after Cox committed a crime, because it was not pled.

b. *Kassey S.* is inapplicable to the allegations in this case.

It was not alleged that Deputy Cox owed a duty to report his own crimes.

Kassey S. only stands for the fact that a mandated reporter does not need to report his own sexual abuse of a child. There is no allegation in the SAC that Cox needed to report his sexual abuse of Plaintiff.

- c. Even assuming arguendo the County was entitled to an instruction, it failed to propose a proper instruction which accurately stated the law on Fifth Amendment.**

(1) Plaintiff objected to the proposed instruction because it was an incomplete and misleading misstatement of law.

The County's claim in its brief that "*No one disputed the instruction was a correct statement of law.*" is wholly untrue. Plaintiff had filed an objection, which the Court acknowledged reading. (15RT:4027;4RA:1271-1294) Plaintiff objected that it did not accurately state the law and overemphasized selective issues or evidence. (*United States v. Freed* (1971) 401 U.S. 601, 606-607, 91 S.Ct. 1112, 28 L.Ed.2d 356.; *Marchetti v. United States* (1968) 390 U.S. 39, 53, 88 S.Ct. 697, 19 L.Ed.2d 889; *Fierro v. Internat. Harvester Co.* (1982) 127 Cal.App.3d 862, 869; *U.S. v. Apfelbaum* (1980) 445 U.S. 115, 129-131, 100 S.Ct. 948, 63 L.Ed.2d 250; *U.S. v. Thomas* (9th Cir. 2010) 612 F.3d 1107, 1128.) Also, it was unnecessary because of the limited duty alleged in the SAC, and also because CANRA is a time-sensitive reporting system with mandated time frames and, structurally, there is no intervening time to even commit a crime (*i.e.* duty to report is owed/breached immediately). (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 182-185, 191.) The County's instruction contained no qualifying language to inform the jury that the mandated reporter's belief would have to be based on "*substantial and real, as opposed to merely trifling or imaginary, hazards of incrimination*" *United States v. Freed, supra; Marchetti, supra*, and glaringly failed to incorporate any objective qualifying language, which was even more obvious by virtue of the *Spielbauer v County of Santa Clara* (2009) 45

Cal.4th 704 citation highlighting the following quote on the instruction itself: [e.g. the Fifth Amendment “also privileges a person not to answer official questions....where he... **reasonably believes** the answers might incriminate him.. in a criminal case.””]. The proposed instruction was devoid of any objective limitation that Cox needed to **reasonably believe** reporting the mother’s neglect would incriminate him: [*“Mandated reporters do not have a duty to make a report about child abuse or neglect when doing so **may** cause them to be charged with a crime.”*](1AA:93)

(2) The Court correctly denied the proposed instruction because it was an overbroad, “blanket” statement.

A trial court may reject an incorrect or misleading jury instruction in a civil case. (*Shaw v. Pacific Greyhound Lines* (1958) 50 Cal.2d 153, 158.) The Court, in denying this proposed instruction, stated: “Number one, I think that’s a **blanket statement**, because there is a time when that would be true and a time when it wouldn’t be true.” (15RT:4027-4030.) A proposed special jury instruction must contain a correct statement of the law, or may be rejected. (*Century Surety Co. v Polisso* (2006) 139 Cal.App.4th 922, 961; *Major v Western Home Inc. Co.* (2009) 169 Cal.App. 4th 1197, 1217.)

(3) Neither the Court nor the Plaintiff were required to correct the defective proposed instruction for the County.

The Court afforded counsel for both parties ample opportunity to be heard and to file trial documents with flexible time limits, including

proposed instructions, throughout the trial. With this particular proposed instruction, the Court even suggested what was wrong with it (*i.e.* too broad, “blanket statement”, because it was “not always true”), and allowed both counsel for the County to be heard, and yet the County still chose not to modify the proposed instruction to comport with the Court’s suggestion to correct it, or in accord with the *Spielbauer, supra*, holding which it even cited on the instruction, not including “**reasonable belief**”.

Neither the court nor the Plaintiff were required to rewrite the incorrect and misleading, overbroad, “blanket” jury instruction for the County. (*Shaw v. Pacific Greyhound Lines* (1958) 50 Cal.2d 153, 158; *Pobor v Western Pac. R.R.* (1961) 55 Cal.2d 314 (*Pobor*); *Agarwal v. Johnson* (1979) 25 Cal.3d 932, 949 (*Agarwal*).)

(4) There was no evidence about Cox’s reasonable belief he would incriminate himself by reporting neglect of the Plaintiff’s mother, and, as a matter of law, the neglect report would neither have required Cox to incriminate himself, nor would it have even been seen by law enforcement or the district attorney, and so Cox never would have been prosecuted for anything related to a neglect report.

There was no evidence about Cox’s belief, reasonable or otherwise, lay or expert, that he would be charged for or incriminate himself in relation to any crime, including but not limited to §§266b, 266j, 271, 271a, 273f, and 273a, or 288.

(5) Neglect reports do not require a reporter to provide any incriminating information.

§11166 requires an attempt to make an initial neglect report immediately by phone, but *if* the phone call cannot be completed, then a reporter can still comply with the statute by only sending the written SS 8572 form to CPS. §11166(b) This form lists what information is required to be given by a reporter, and none of the questions on the form are potentially incriminating.(4RA:1305)

(6) General neglect reports, as a matter of law, only get reported to CPS, not to law enforcement, pursuant to §11166(j). Therefore, there is no chance that any neglect report Cox made concerning Plaintiff's mother would ever incriminate him.

A report of general neglect about Plaintiff's mother, if made, would not get cross-reported to law enforcement. §11166(j). Therefore, it is neither a substantial nor real threat that Cox or anyone (*i.e.* **even the neglectful mother who is the subject of the neglect report**) will be subject to criminal prosecution, or incriminated by, anything on a general neglect report or SS 8572 form. The point of reporting cases of general neglect only to CPS is to get the parent and children CPS intervention and help, and to thereby protect the child from future harm, not to put anyone in jail. The County offered no evidence at trial how making a general neglect report which never even gets cross-reported to law enforcement somehow ends up with Cox incriminating himself.

2. Proposed instruction: No Duty to Investigate.

Again, as explained before, §11166(h) authorizes a reporter to inquire of another reporter whether they want to agree that only one of them will be the designated team member selected by “mutual agreement” to report on behalf of both of the “team.” That’s not the “investigation” discussed in *B.H.*, *supra*, citing *Alejo*, *supra*. (8RT:1825-1827,1834.)

Plaintiff proposed instructing on and providing to the jury the actual statute [§11166, including §11166(h),]. The Court agreed, and provided the actual language of §11166 to the jury. It is not error for a trial court to instruct on and provide the jury with the actual statutory provisions on the issue. (5RA:1315-1379); 4RA:1188-1270.)

3. Proposed instruction: No Unrelated Caregiver

The Court properly instructed the jury on this issue again by providing the actual statute with respect to the language at issue (§11165.2) (5RA:1315-1379;4RA:1188-1270;12RT 3112-3114.) (*People v Gardeley* (1996) 14 Cal.4th 605, 621, 59 Cal. Rptr.2d 356 [“the words of the statute themselves ... ‘generally provide the most reliable indicator of legislative intent’ ”]; *Menchaca v. Helms Bakeries, Inc.* (1968) 68 Cal.2d 535, 541-542: [“The authorities clearly indicate the propriety of an instruction in the words of the statute if substantial evidence supports its rendition. (*Rush v. Lagomarsino* (1925) 196 Cal. 308, 320, 237 P. 1066; *Weiss v. Baba* (1963) 218 Cal.App.2d 45, 51—52, 32 Cal.Rptr. 137; *Jones v. Maynard* (1956) 141 Cal.App.2d 643, 649, 297 P.2d 461; *Freeland v. Jewel Tea Co.* (1953) 118 Cal.App.2d 764, 769, 258 P.2d 1032; see also *Hilyar v. Union Ice Co.* (1955) 45 Cal.2d 30, 37, 286 P.2d 21”].)

The County's proposed instruction was erroneously based on assorted juvenile dependency opinions, which are often reviews of fact and credibility issues, and which are the province of the trial court in the dependency action, rather than statements of law. (Cal. Welf. & Inst. Code § 300; *In re E.E.* (2020), 49 Cal.App 5th 195,; *In re R.T.* (2017) 3 Cal.5th 622, 624.)

The County string-cites six cases from which it purportedly drew its proposed special instruction (“*A parent’s decision to leave a child in the care of a reliable unrelated caregiver is not a sufficient basis to suspect a child is at risk of neglect.*”) (AOB, p. 52) (1AA:97.) First, that proposed instruction is not a statement of law found in any of those six cases. Second, none of the cases concern §11166, so the instruction was not appropriate to instruct the jury to decide the case which it was actually trying, which was not whether a juvenile dependency court would have ultimately held Plaintiff’s mother neglected the Plaintiff after months of CPS investigation and juvenile dependency proceedings, but whether there existed knowledge or reasonable suspicion upon which one of the mandated reporters employed by the County of San Bernardino (Cox, Leach, Spear, and Moon) could have “*entertained a suspicion*” that Plaintiff had been a victim of neglect, thus triggering the mandatory duty to report. Third, the County’s proposed instruction was not even a correct statement of dependency law, as published cases exist which contradict the proposed special instruction. (*See Rosa S. v. Superior Ct.* (2002) 100 Cal. App. 4th 1181, 1184–85 (2002) [holding a mother using drugs, leaving drug paraphernalia in the house with the child, disappearing, not communicating for extended periods of time, and **leaving her child in the care of others (even reliable, related grandparents), can be a basis for neglect jurisdiction**].)

The trial court was correct to simply instruct the jury with the

accurate statutory law, rather than the proposed incorrect special instruction. Also, the proposed instruction overemphasized selective issues that the County wished to highlight (*i.e.* unrelated caregivers – as opposed to lack of food, or supervision, or allowing the Plaintiff to handle methamphetamine).

Finally, and most glaringly, this proposed instruction is a **grossly incorrect and misleading statement of law** concerning what actually constitutes the proper trigger for reporting under §11166(a): “*A parent’s decision to leave a child in the care of a reliable unrelated caregiver is not a sufficient basis to suspect a child is **at risk of neglect**.*” The term “**at risk of neglect**” is not found in §11166. Mandated reporters are neither risk managers, nor oddsmakers on whether a child is “**at risk of neglect**”. They have been compelled to report to CPS what they have learned and observed in the past – not to assess if a particular child is “**at risk of neglect**” in the future.

§11166 is a **criminal statute** requiring a reporter to report things they have already learned and seen **in the past**. (4RA:1305) The statute does not permit prosecution of a reporter for failing to report that a child was “**at risk of neglect**”, as it neither contains nor defines that term, let alone define by what standard a reporter would know when to report that a child is “**at risk of neglect**”. It would be unconstitutional for a statute to deprive someone of liberty without due process by failing to include or define what is being prohibited. Prosecution for failing to report that a child is “**at risk of neglect**” under §11166 would violate the Due Process Clause of the Fifth (5th) and Fourteenth (14th) Amendments to the United States Constitution, because it does not state within in the statute that any such conduct is required. (*Connally v General Construction Co.*, 269 U.S. 385, 391 (1926).) A Court cannot construe a penal statute to be interpreted in a manner that makes it unconstitutional. (*Kassey S.*, *supra*, citing

Wainwright v Superior Court (2000) 84 Cal.App.4th 262, 267.) “Men of common intelligence would have to guess” what was meant by the term “**at risk of neglect**”, since that term is neither proscribed nor defined in §11166, making it unconstitutional. (*Connally, supra*, at 391.)

The proposed special instruction (*i.e* “**at risk of neglect**”) did not accurately reflect §11166. Further, neither the trial court nor Plaintiff were required to correct it for the County. (*Agarwal, supra*, at 949.)

B. Refusal To Provide The County’s Proposed Special Instructions Caused No Prejudice.

- 1. This was not a close verdict on the issue of breach, which is the only issue related to the properly rejected proposed instructions. The instructions did not concern causation or apportionment.**

The verdict was the way it was because the County saw fit to guilt Cox into giving testimony in his deposition, ironically after he had taken the Fifth Amendment several hundred times in response to questions from Plaintiff. (1AA:556,560-562,568-574.) After being shamed by the County that he was impairing its defense, Cox stopped invoking the Fifth Amendment to ostensibly help his former employer, and began answering its questions. The only problem for the County is that the answers Cox gave were anything but helpful to the County. To the contrary, Cox clearly laid out the entire case for Plaintiff to the jury through the County’s own questions (1AA:576-589.) At the County’s request, Cox admitted: 1) he suspected neglect, 2) he considered reporting to CPS, and 3) he did not report, but actually “concealed” the neglect from CPS. That is a textbook “failure to report” case, laid out very neatly by the County. What was the

jury supposed to do with that testimony of Cox other than find for Plaintiff? There's no chance, let alone anything approaching a "probability", that a reasonable jury would have found otherwise after that testimony.

This was not a close verdict. The vote that Cox breached his duty to report was 12-0, and the vote for the other reporters who breached was 11-1 for Moon, Leach, and Spear.

The common thread with Moon/Leach/Spear is that each admitted they learned the child was neglected by his mother from Cox, who was lauded by the County as someone to believe, an articulate, trusted deputy sheriff of 25 years to whom everyone looked up. (15RT:3952;4RA:1304;15RT:3934-3935.) Why wouldn't the jury expect Cox's colleagues to believe him when he told them the child was neglected by his mother, and that Cox had to provide all supervision, housing and food because the child was "unsafe" and "neglected" by his drug abusing mother? To illustrate the huge impact of Cox's testimony even further, the four deputies who the jury excused from reporting (Ziemer, Brandt, Brown and Severson) allegedly learned about Plaintiff's neglect from Plaintiff, not Cox. (8RT: 1918,1920,1923.)

The properly rejected instructions had nothing to do with causation or apportionment, **only duty**, and the County cannot logically connect that its duty instructions would change "close" votes on causation or apportionment.

Further, the jury had no questions on duty. It only requested to hear Plaintiff's closing again on violation of §11166.5, which request was denied, and on which claim the jury ultimately found for the County. violation of PC§11166.5. (17RT:4561-4563)

The jury did not find for Plaintiff on all allegations, finding that the County did not violate PC§11166.5, and that four mandated reporters did not breach a duty to report. (5RA:1471-1476;1AA:619-625.)

The resulting apportionment of responsibility had nothing to do with jury instructions. The jury apportioned (3x) as much responsibility to Moon (15%) than to Spear/ Leach (5% each). Moon likely was apportioned more because she testified she does not report abuse/neglect which occurs in the past despite the fact that §11166 does not state that, and by definition, everything which gets reported has already occurred, or most likely, because the County failed to call an expert witness to defend Moon's failure to report (when it did so to defend the deputies' alleged failure), a clear signal to the jury that even the County knew Moon's failure to report was indefensible.

Apportionment of responsibility is perhaps the most unique of jury functions, with no suggested formula and instead only a basic instruction (CACI 406) The County's instructions were not related to apportionment, and 406 instructs that is only to decide apportionment if it has already found breach and substantial factor.

The jury received accurate statutory law on mandated reporting from the Court, having been given the actual code sections. (5RA:1315-1379; 4RA:1188-1270.) (*People v Gardeley* (1996) 14 Cal.4th 605, 621; *Menchaca v. Helms Bakeries, Inc.* (1968) 68 Cal.2d 535, 541-542; *Rush v. Lagomarsino* (1925) 196 Cal. 308, 320; *Weiss v. Baba* (1963) 218 Cal.App.2d 45, 51—52; *Jones v. Maynard* (1956) 141 Cal.App.2d 643, 649; *Freeland v. Jewel Tea Co.* (1953) 118 Cal.App.2d 764, 769, 258 P.2d 1032; see also *Hilyar v. Union Ice Co.* (1955) 45 Cal.2d 30, 37.) There can be no confusion much less error if the jury was read the actual law, as opposed to the County's incorrect proposed "blanket" instructions.

It is clear from the verdict that the jury understood the dichotomy between Cox's two areas of alleged responsibility in this case [(1) as mandated reporter, and 2) later, as a child abuser] because it apportioned responsibility to Cox in both capacities: mandated reporter (50%), and non-

mandated reporter (10%). If there was any confusion, it would have first been reflected in the jury not assigning Cox any apportionment of fault individually, in his capacity as non-mandated reporter, or sending a note about any confusion.

2. The County Mischaracterizes The Record.

a. No argument was made about Cox not having a Fifth Amendment privilege after Cox committed a crime.

Plaintiff's counsel did **not** argue in closing that Deputy Cox did not have a Fifth Amendment privilege after he had committed a crime, and the County cannot point to even one objection it made at trial that any such misstatement of law occurred. (17RT:4541-4543.) It **was** argued that it was **not true** that a crime was committed before the breach of duty to report. (16RT:4292-4299.) Plaintiff's counsel argued the County's only defense was to prove that Cox had committed a crime before the admitted breach of duty. ("So the only defense to that is for them to try to get you to believe: "Oh, Bradley had sex with him before, before the methamphetamine incident." So Cox didn't have to report himself cause he might have got in trouble cause he had already been abusing the kid.") *Id.* Counsel then pivoted his argument in the very next sentence to turn the jury's attention to the County's specious argument that Cox had sexually abused Plaintiff at the Humbug campground in 2013 by saying "It's not true. Not true, all right?", in reference to sex at Humbug, not the Fifth Amendment, and then continuing for several pages to lay out the evidence supporting "no sex in Humbug", but rather the first sex occurred at Cox's home. (*Ibid.*)

Plaintiff's counsel differentiated for the jury Cox's individual responsibility for the sexual assaults which occurred after the alleged

breach of duty to report, asking for 50% as a mandated reporter and 10% as an individual for the sexual assaults, using clear words “Jeremie Cox, **AFTER he was a criminal, and AFTER he started the sexual assaults,**” and that Cox couldn’t report after the assaults started (“**So the thousands of times he did that stuff, HE CAN’T REPORT IT,**”), and that it was “very important” to separate the two types of responsibility for Cox. (16RT:4341.)

b. Plaintiff did not request damages for sexual abuse which occurred after age 18.

The County injected this subject (*i.e.* sex involving Cox and Plaintiff after Plaintiff turned 18) with its offensive statement in opening argument that a child who had been sexually abused for years by a grown man suddenly consented to sex with him once he celebrated his 18th birthday, even using a flashing, animated birthday cake GIF to sear it into the jury’s memory. (7RT:1578-1579.) This was a thinly-veiled “dog whistle” to any jurors who may have held religious or homophobic beliefs that the Plaintiff was gay, to get the jury to dislike him. Plaintiff’s counsel simply cross-examined the County’s own expert to get her to admit that the County’s statement was untrue, to try to undo what the County had first done. That was not error, and if anything, the Plaintiff’s reply to the County’s opening was invited by the County. Further, the County never objected to Plaintiff’s counsel’s response to its statement, nor did it move for a new trial, so any objection was waived. (16RT:4325-4326,4328-4329,4343-4344;17RT:4536 – 4537.)

c. The County continues to miscite the general neglect statute which was in effect at the time of the occurrences alleged in the SAC.

The County's AOB misstates the appropriate law for general neglect (§11165.2) in effect between 2014-2017. (AOB, pp. 52, 55) The amended version miscited by the County, both at trial and here again on appeal, first became effective in 2022. There was **no** requirement that "the child is at substantial risk of suffering serious physical harm or illness" in effect from 2014-2017, which was recognized by the Court in taking judicial notice of the version of 11165.2 in effect from 2014-2017 (4RA:1188-1294;12RT 3112-3114.)

d. The County mischaracterizes Plaintiff's amended discovery response.

Plaintiff replied to Request for Admissions (RFA) served at the beginning of the case, subject to the objections. (2RA:354; 2AA 870.) During the litigation, the County produced investigative documents which made it clear that the Plaintiff's original reply to RFA #23, needed to be amended to be accurate. The County **stipulated** to allow Plaintiff to amend the RFA and withdraw it, and an Order was entered permitting the withdrawal of the RFA and serve an amended reply. (2RA:354) When the County tried to read the original replies to the RFA's to the jury, Plaintiff again renewed his original objections to RFA 23 (15RT:4005-4006), and when the Court was ruling on objections, Plaintiff reminded the Court that it had ordered the admission to RFA 23 withdrawn, and the Court remembered and refused to let the County even read it to the jury. (15RT:4009.)

After going through all the objections, the Court listed the Request for Admissions which were allowed to be read to the jury, and when the Court mistakenly included #23 in that list, Plaintiff brought that to the Court's attention, and the Court again recognized it as withdrawn and not admitted. (15RT:4013-4014.) Further, when the County's counsel argued that some of the County's exhibits had not been properly admitted into evidence, the court invited counsel to state which ones the County argued were not properly admitted into evidence, and RFA #23 was not included. (15RT:4014-4016.)

The County cannot now argue that Plaintiff was bound by his earlier admission as a matter of law when it **stipulated** to allow Plaintiff to amend the reply to RFA 23, and it was ordered withdrawn. (*In re Marriage of Freeman* (1996) 45 Cal.App.4th 1437, 1451-1452 [stipulation to issue waives it on appeal].) At most, it was only a single discovery reply which the Court ordered withdrawn, which Plaintiff corrected with a denial once provided with full discovery, and which matched his testimony at deposition and trial.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed in full.

Dated: July 17, 2025

THE KEANE LAW FIRM, P.C.

**ESNER, CHANG, BOYER &
MURPHY**

By: _____



Christopher J. Keane

Attorneys for Plaintiff and Respondent

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

The text of this brief consists of 13,957 words as counted by the word processing program used to generate the brief.



Christopher J. Keane

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: **RESPONDENT'S BRIEF; RESPONDENT'S APPENDIX [VOLUMES 7 OF 7] UNDER SEPARATE COVER**, 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 July 17, 2025 at Honolulu, Hawaii.

s/ Kelsey Wong
Kelsey Wong

SERVICE LIST

John Doe v. County of San Bernardino
(E085516 | CIVSB2131751)

Nadia A. Sarkis, Esq.
MILLER BARONDESS, LLP
2121 Avenue of the Stars, Suite 2600
Los Angeles, CA 90067
Telephone: (310) 552-4400
Email: nsarkis@millerbarondess.com

***Attorneys for Defendant
and Appellant***
County of San Bernardino

Christie B. Swiss, Esq.
Chandler A. Parker, Esq.
Kristin T. Busch, Esq.
COLLINS + COLLINS, LLP
2011 Palomar Airport Road, Suite 207
Carlsbad, CA 92011
Telephone: (760) 274-2110
Email: cparker@ccllp.law
kbusch@ccllp.com

***Attorneys for Defendant
and Appellant***
County of San Bernardino

Christopher J. Keane, Esq.
THE KEANE LAW FIRM, P.C.
548 Market Street #23851
San Francisco, California 94104
Telephone: (415) 742-5412
Email: ckeane@keanelaw.com

***Attorneys for Plaintiff and
Respondent***
John Doe

Hon. Jeffrey Erickson
SAN BERNARDINO COUNTY SUPERIOR COURT
Civil Division, Dept. S14
247 West Third Street
San Bernardino, CA 92415

***(Unbound Brief Only Via
Mail Only)***

SUPREME COURT OF CALIFORNIA
350 McAllister Street
San Francisco, CA 94102-4797

(Electronically Served)