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STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

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N O T I C E

Dear Counsel:

You are invited to participate in oral argument, and you will be notified approximately 30 days in advance of the date and time of oral argument. Enclosed is the tentative opinion of the panel hearing the case to help you focus your argument.

The following procedures and policies apply to oral argument:

(1) Since the tentative opinion focuses oral argument, no more than 15 minutes of oral argument will be allowed for each side, except for good cause. (Cal. Rules of Court, rule 8.256(c); Ct. App., Fourth Dist., Div. Two, Misc. Order 22-6.)

(2) Counsel should respond to the tentative opinion and avoid unreasonable repetition of arguments raised in counsel's briefs.

(3) No supplemental briefing will be accepted because counsel may raise those issues during oral argument. However, counsel should refrain from raising new issues not briefed. (*People v. Pena* (2004) 32 Cal.4th 389, 403.)

(4) No continuances will be permitted except for good cause shown.

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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.	E085516 (Super.Ct.No. CIVSB2131751) TENTATIVE OPINION

APPEAL from the Superior Court of San Bernardino County. Jeffrey Erickson, Judge. Reversed with directions.

Collins & Collins, Christie B. Swiss, Chandler A. Parker, Kristine T. Busch; Miller Barondess and Nadia A. Sarkis for Defendant and Appellant.

Keane Law, Christopher J. Keane; Esner, Chang, Boyer & Murphy and Andrew N. Chang for Plaintiff and Respondent.

I. INTRODUCTION

As a child, plaintiff and respondent John Doe lived with his surrogate grandparents.{RT 1877-1878} Plaintiff's mother (Mother) would sometimes stay with them but would also leave plaintiff in the care of his surrogate grandparents for significant periods of time.{RT 1879-1880} While living with his surrogate grandparents, plaintiff befriended Jeremie Cox, who was a neighbor working for the County of San Bernardino's Sheriff's Department as a bailiff.{RT 1881-1882} Cox would invite plaintiff to his home to play video games, watch television, and spend time together.{*Ibid.*} In August 2014, plaintiff moved into Cox's home with Mother's permission.{RT 1884} When plaintiff was 21 years of age, he reported that Cox had subjected him to repeated acts of sexual abuse.{AA 398; RT 1961} Cox was criminally charged with committing numerous sexual offenses involving plaintiff, and Cox pled no contest to at least 10 such offenses.{AA 187-211, 213-215}

In 2021, plaintiff filed a civil suit against the County of San Bernardino (the County) as well as other named defendants.{AA 14} As against the County, plaintiff alleged that county employees, including Cox, failed to report Mother for suspected neglect as required under the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq. (CANRA)) and alleged the failure to file such a report was a substantial factor in causing the subsequent sexual abuse perpetrated by Cox.{AA 58-62} The case was tried before a jury, resulting in a judgment in favor of plaintiff against the County in excess of $27 million.{AA 619-625}

The County appeals, arguing (1) there was insufficient evidence to support the jury's verdict on the element of proximate causation;{AOB 39-49} (2) there was insufficient evidence to support a finding that specific county employees breached a duty of care;{AOB 50-54} and (3) the trial court erred by refusing several of the County's requested jury instructions.{AOB 58-66} Upon review of the trial record, we agree with the County on the first issue. Because this conclusion requires reversal of the judgment, it is unnecessary for us to reach the remaining issues raised by the parties in this appeal.

II. BACKGROUND

A. *Operative Complaint*

At the time of trial, the operative pleading was the Second Amended Complaint (SAC).[1]{AA 48} According to the SAC, the County employed multiple individuals considered mandated reporters under CANRA, including individuals who worked in the San Bernardino County Sheriff's Department, as well as a social worker.{AA 48, 50-52} The SAC alleges that the identified employees of the County breached a mandatory duty under CANRA when they failed to file a report of suspected child neglect.{AA 53-54}

Specifically, the SAC alleges that the identified employees of the County reasonably should have known of the following facts that triggered a mandatory duty to report Mother for child neglect: (1) Mother had abandoned plaintiff by leaving him in

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[1] The record shows that plaintiff filed prior pleadings naming additional defendants in this action.{AA 14, 31} However, the named defendants other than the County were dismissed at the pleading stage,{AA 969-970} and the factual allegations of the complaint were narrowed as the result of pleading challenges brought by the County.{RA 57-59}

the care of an unrelated adult;{AA 58} (2) Mother had neglected plaintiff by failing to provide him with any financial support for food, clothing, or shelter and instead permitted other adults such as Cox to make those provisions;{AA 59} (3) Mother had abandoned plaintiff by leaving him in the care of others for unspecified periods of time to engage in suspected drug use;{AA 59} (4) Mother had neglected plaintiff by failing to make proper arrangements for his education;{AA 59} (5) Mother had neglected plaintiff by failing to provide adequate supervision or permission for plaintiff to visit sheriff's facilities or ride in sheriff's vehicles;{AA 60} (6) Mother had neglected plaintiff by permitting him to work for sheriff's deputies without proper compensation;{AA 60} and (7) Mother had neglected plaintiff by permitting him to travel across state lines on vacations with Cox, an unrelated adult.{AA 60} The SAC alleges that the failure of County employees to report Mother for suspected child neglect was a substantial factor in causing plaintiff to be subject to sexual abuse perpetrated by Cox.{AA 61-63}

B. *Relevant Evidence at Trial*[2]

1. Plaintiff's Testimony

Plaintiff testified that he lived with his grandparents[3] for most of his childhood until 2014.{RT 1877} His grandparents would provide him with food, clothing, school supplies, and other necessities of life.{RT 1878} Mother would sometimes live with them but would also frequently leave plaintiff in the care of his grandparents for weeks or months at a time.{RT 1880}

Sometime in 2012, plaintiff met Cox, who lived about a block away from plaintiff's grandparents.{RT 1880-1881, 1882-1883} During this first encounter, Cox caught plaintiff vandalizing an abandoned property and told plaintiff that he would issue a citation if plaintiff did not take steps to fix the vandalism.{RT 1881} Following this

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[2] Because we resolve this appeal based upon the County's argument that there was insufficient evidence to support the element of proximate cause, we summarize only the evidence relevant to this disposition. Thus, our summary will omit the witness and expert testimony directed only to the issue of the existence and breach of a mandatory duty by the County. Further, under the applicable substantial evidence standard of review, "we accept all evidence that supports the judgment" and "disregard contrary evidence." (*Cradduck v. Hilton Domestic Operating Co., Inc.* (2025) 112 Cal.App.5th 284, 299; *Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1065 [We "must accept the evidence most favorable to the plaintiff as true and disregard conflicting evidence."].) Thus, we omit the County's competing expert testimony on the issue of causation from our summary, as expert opinion unfavorable to plaintiff on the issue is disregarded under our standard of review, and plaintiff does not assert on appeal that any testimony from these experts provides evidence in support of his claim.{RB 39-45}

[3] Plaintiff testified that Beverly and Richard Kreider "took me in when I was little"; were "like my grandparents, but they're not blood related"; and "were never guardians or nothing like that."{RT 1877} However, multiple witnesses at trial including plaintiff referred to the Kreiders merely as plaintiff's grandparents. Thus, for clarity and consistency, we will also refer to the Kreiders as plaintiff's grandparents in this opinion, despite the lack of actual blood relation.

incident, Cox began inviting plaintiff to his home to play video games.{RT 1882} Plaintiff and Cox developed a friendship in which plaintiff would visit Cox's home to play video games or watch television;{RT 1886} go on camping trips and hike with Cox;{RT 1885} accompany Cox to visit Cox's family members;{RT 1885} and go shooting with Cox.{RT 1887} Cox would arrange for plaintiff and plaintiff's friends to participate in ride-alongs in sheriff's deputy patrol vehicles.{RT 1887-1889} And, on one occasion, Cox obtained permission from Mother for plaintiff to house-sit for Cox.{RT 1887-1888}

Sometime in April 2014, plaintiff discovered an envelope addressed to Mother in his grandparent's mailbox.{RT 1893} The envelope contained a card addressed to Mother with a "little baggie of some sort of substance that [plaintiff] assumed was drugs."{RT 1894} Plaintiff became upset and turned the substance over to Cox, who told plaintiff the substance appeared to be methamphetamine.{RT 1883, 1893, 1894-1895} The following day, Cox told plaintiff that the substance had tested positive for methamphetamine and that some of Cox's friends at work had found out about it.{RT 1895}

Plaintiff confronted Mother about the drugs and ran away from his grandparents' home.{RT 1895-1896} Plaintiff went to Cox's backyard.{*Ibid.*} When Cox returned home, he told plaintiff that Mother had contacted him and asked him to find plaintiff.{RT 1897} Cox permitted plaintiff to spend the night at his home as a "healing period" to give time for plaintiff and Mother to reconcile.{RT 1898} After that initial night, there was a transition period in which plaintiff would split his time between his grandparents'

home and Cox's home.{RT 1899} Eventually, in August 2014, plaintiff began living "full-time" at Cox's home.{*Ibid.*}

Sometime after he began living "full-time" in Cox's home, plaintiff and Cox engaged in a sexual act.{RT 1902} Plaintiff repeatedly testified that there was never any sexual activity with Cox prior to moving into Cox's home.{RT 1884, 1885, 1898}[4] In response to this first incident, plaintiff left Cox's home and returned to live with his grandparents for a couple of days.{RT 1902} However, plaintiff went back to living in Cox's home after Cox apologized and promised it would never happen again.{*Ibid.*} Despite Cox's promise, plaintiff estimated that he was sexually abused over a thousand times while living with Cox.{RT 1957} Plaintiff also testified that Cox sexually abused him while on a trip to Hawaii during this period of time.{RT 1904}

Except for a six-month period in 2016, plaintiff lived in Cox's home until sometime in 2020.{RT 1906} While living with Cox, plaintiff interacted with multiple

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[4] The opening brief asserts that there was conflicting evidence regarding when Cox's sexual abuse of plaintiff began.{AOB 17-18} However, our review of the record does not disclose that any such evidence was ever presented to the jury at trial. The County cites repeatedly to plaintiff's responses to written discovery, which was marked as exhibit 92 at trial.{AA 746} However, the trial record does not indicate that these discovery responses were ever admitted into evidence.{AA 114-138} Further, exhibit 92 was referenced only on a single occasion during witness testimony, and the portion of the exhibit published to the jury did not include the specific responses upon which the County now relies to assert the existence of conflicting evidence.{RT 3427} The County also briefly cites to the testimony of a law enforcement officer who testified that plaintiff reported being sexually abused during four camping trips.{AOB 18} However, the testimony referenced only the fact that plaintiff reported being abused during camping trips and the interview notes actually published to the jury did not provide a date for those trips, stating only that they occurred when plaintiff "was between the ages of 14 [years old] and 17 [years old]."{RT 3424-3425; AA 741}

other employees working with the San Bernardino County Sheriff's Department.{RT 1907-1930} These interactions included riding along in sheriff patrol vehicles, attending community events, attending social outings, doing chores together, and visiting the courthouse where Cox worked.{*Ibid.*} Plaintiff did not disclose any sexual abuse to any of these individuals but did tell them that he was living with Cox due to Mother's neglect.{*Ibid.*}

At some point in 2017, plaintiff reported Mother for welfare fraud.{RT 1931} In response, a social worker came to Cox's home to interview plaintiff.{RT 1932-1933} Plaintiff disclosed to the social worker that he lived with Cox, that Cox financially provided for him, and that he would visit Mother and his grandparents a "couple times a week to keep in contact."{RT 1933-1935} Mother was charged with welfare fraud, plaintiff testified against her at trial, Mother was convicted, and Mother was sentenced to prison as a result.{RT 1941}

Plaintiff confirmed that he never disclosed the sexual abuse to anyone other than anonymous online friends.{RT 1956} He did not disclose the abuse because he was afraid that Cox would kill himself; was afraid Cox might kill him; and because he did not think anyone working at the Sheriff's Department would believe him.{RT 1956} Plaintiff testified that he would have welcomed someone from child protective services coming to speak with him during this time and asserted that he would have disclosed the sexual abuse if an investigator had asked him about it.{RT 1960} He eventually reported Cox's sexual abuse sometime after he moved out of Cox's home.{RT 1960-1961}

2. Cox's Testimony

Excerpts from Cox's videotaped deposition were played for the jury in lieu of live testimony.{RT 1591} Cox admitted that he was sentenced to state prison based upon pleading no contest to multiple charges that he committed sexual criminal offenses.{AA 575-576} Cox admitted that he suspected plaintiff was neglected by Mother but does not recall ever telling his suspicions to another employee of the County.{AA 577, 589} Cox considered reporting Mother for neglect but decided not to do so based upon his belief that the foster system was broken and plaintiff would be worse off if social services became involved.{AA 580} He was aware that plaintiff lived with his grandparents and that plaintiff's grandparents provided plaintiff with food and other necessities.{AA 578} He did not suspect plaintiff's grandparents were neglecting him and believed that the grandparents felt a responsibility to care for plaintiff.{AA 601, 605}

Cox denied having any sexual contact with plaintiff until after the time plaintiff moved into Cox's home.{AA 579} Cox testified that he learned of Mother's suspected drug abuse prior to the time he had any sexual contact with plaintiff.{AA 581} Cox never disclosed to any employee of the County that he had a sexual relationship with plaintiff.{AA 581, 588}

According to Cox, he had obtained Mother's consent for plaintiff to live in his home,{AA 583} and Cox always kept mother informed of decisions related to plaintiff.{AA 606-607} He told other employees of the County that plaintiff was living with him to avoid "a bad home life"{AA 585} and always kept mother informed of decisions related to plaintiff.{AA 606-607}

3. Nicol Stolar-Peterson

Nicol Stolar-Peterson testified that she has a master's degree in social work as well as a doctorate in psychology,{RT 2107} worked for more than 10 years for Riverside County as a child protective services investigator and forensic interviewer,{RT 2108} has been involved in over 1000 child abuse investigations,{RT 2109} and has trained hundreds of other social workers.{RT 2110}

Stolar-Peterson explained that after a report of child abuse is made, a social worker or specialist will utilize a "structured decision-making tool" to determine what information should be requested from the reporting party, as well as to determine what type of response is required.{RT 2112-2113} The tool typically helps determine whether a claim is screened out, cross-reported to other agencies, or whether an urgent response is needed.{RT 2113} For claims that are not screened out, the report is reviewed by a supervisor who will research any relevant social services history and then assign the matter to an appropriate unit or social worker for case handling.{RT 2116} The social worker will then attempt to conduct an interview with the identified child away from any potential perpetrators of abuse as well as interview the reporting party and other relevant persons.{RT 2116-2117} After these initial interviews, the social worker may choose to continue investigating, work with the parents to develop a safety plan, or take the child into protective custody.{RT 2118} If taken into protective custody, the child will be placed with relatives, nonrelated extended family members (NREFM), or an approved foster home.{RT 2118-2119}

Stolar-Peterson testified that if Cox had reported neglect by Mother, the case would likely have progressed through the initial screening, would have been accepted for investigation, and a social worker would have responded within 10 days.{RT 2121-2122, 2141} She explained that this was likely because the structured decision-making tool automatically requires acceptance of reports made by law enforcement officers and usually flags them as urgent.{*Ibid.*} Stolar-Peterson opined that it was likely a social worker would have asked questions about the relationship with Cox if plaintiff were living in Cox's home.{RT 2142} She also believed that social workers would have recognized Cox's behavior as indicative of grooming and would have asked questions to prove the potential of sexual abuse.{RT 2147, 2149}

Stolar-Peterson explained that the reasonable and probable outcome of any child protective services intervention would have involved the development of a safety plan with the input of the juvenile court.{RT 2151} In her opinion, the safety plan likely would have involved removal of plaintiff from Cox's home and placement with plaintiff's grandparents, the grandparents' adult daughter, or another foster care home.{RT 2152} She opined that, within a reasonable degree of probability, Cox's home would have been determined inappropriate for placement.{RT 2125, 2127, 2137} And she explained this would primarily be due to the presence of weapons in the home.{RT 2142-2143, 2144-2145} She did not address whether any safety plan would have addressed the risk of sexual abuse or prevented plaintiff from continuing to interact with Cox unsupervised.

On cross-examination, Stolar-Peterson admitted that removal of a child is not within the authority of a social worker alone but required intervention by the court in the juvenile dependency system based upon the evidence presented to a judge.{RT 2157} She conceded that her opinion that plaintiff would have been removed was based solely on the information provided to her, but that it is difficult to discern what Mother might have said in any interview or what might have been discovered had an investigation actually been conducted.{RT 2161-2162} She also admitted that, as a general matter, a parent's homelessness, poverty, or responsible delegation of the care of a child to another adult is not grounds for removal or a finding of neglect.{RT 2158} Finally, Stolar-Peterson admitted that, even if plaintiff had been removed from Cox's home, a relationship between plaintiff and Cox could have continued.{RT 2161}

4. Francesca LeRue

Francesca LeRue testified that she has master's degrees in social work and public administration, as well as more than 30 years of experience working with child protective services.{RT 2457} LeRue opined that if Cox had made a report of child neglect to the child abuse hotline, the matter likely would have been accepted as a "neglect case."{RT 2463} Upon acceptance of the case, a social worker would have conducted an interview of plaintiff, Mother, and Cox.{RT 2463} Based upon her training and experience, she believes the outcome of any investigation would have resulted in removal of plaintiff from Cox's home and that such removal would have occurred within 10 days of any report.{RT 2464} She did not offer an opinion about what might have happened if a report had been made prior to plaintiff's moving into Cox's home, and she did not offer

an opinion about what protective measures a hypothetical safety plan might have included other than precluding plaintiff from living full time in Cox's home.

5. Carole Jenny

Carole Jenny testified that she is a medical doctor and is board certified in pediatrics with a specialty in child abuse pediatrics.{RT 2427-2478} Jenny explained that, in general, children who run away from home are at heightened risk of exploitation, physical problems, sexual exploitation, sexually transmitted diseases, health risks, behavioral problems, violence, criminal exploitation, and mental health problems.{RT 2434} She also opined that children who are from fractured families, lack supportive parents, lack adult supervision, are isolated, or have low self-esteem are at heightened risk of sexual exploitation.{RT 2435}

She believed plaintiff's isolation, access to, and dependency on Cox likely played a role in Cox's sexual abuse.{RT 2436} She explained that sexual abuse involving children is "almost always" perpetrated by someone the child knows, such as a respected member of the community or someone within the family.{RT 2437} As examples, she listed "teachers, coaches," "[p]eople who are working in children's charities, boy scout leaders, religious advisors, priests, ministers."{RT 2437-2438} The important factor is "people who have access to kids on a regular basis and who, perhaps, would not be supervised when they're around children."{RT 2438}

Jenny also opined that plaintiff's nondisclosure in this case was consistent with the behaviors commonly associated with child sexual abuse accommodation syndrome.{RT 2439} She did not believe someone in plaintiff's position had the ability to consent to

sexual activity given plaintiff's age, developmental level, and unbalanced relationship with Cox.{RT 2440} She also opined that plaintiff's mental conditioning deprived him of the ability to consent, even after he turned 18.{RT 2440-2441} In Jenny's view, absent a trusted figure in plaintiff's life, plaintiff was unlikely to disclose the abuse and would not have the ability to extract himself from the relationship with Cox.{RT 2441-2442}

On cross-examination, Jenny expressed the opinion that removal of plaintiff from Cox's home would have prevented the sexual abuse, but she did not explain how she reached this conclusion.{RT 2445-2448} Instead, when pressed on the matter, Jenny disclaimed any expertise on California mandated reporting procedures, the process for home placements, or the provision of social services.{*Ibid.*} She agreed that Cox's behavior prior to any alleged sexual abuse would fall within the definition of grooming behaviors.{RT 2449} Finally, Jenny admitted that it is very common for sexual abuse involving minors to go undetected and very common for sexual abuse victims to delay or never disclose incidents of abuse.{RT 2451}

C. *Verdict, Posttrial Motions, and Judgment*

The trial court denied the County's motion for nonsuit.{AA 139-140, 265} Prior to submission of the cause to the jury, the County requested several instructions to (1) clarify that the scope of any duty to file a mandated report under CANRA would not include the duty to file a report after the Fifth Amendment right to self-incrimination attached;{RT 4027-4030} (2) clarify that the scope of any mandatory duty to report under CANRA does not include a mandatory duty to investigate and discover additional

facts;{RT 4031-4034} and (3) clarify that, as a matter of law, delegation of the care of a minor to another adult does not constitute neglect.{*Ibid.*} The trial court declined to give each of these requested instructions.[5]

The jury returned a verdict in favor of plaintiff and against the County.{AA 619-624} Specifically, the jury concluded that (1) Cox and three other employees of the County breached their mandatory duty to report suspected neglect under CANRA; (2) the failure of each of these individuals to report Mother's neglect was a substantial factor in causing plaintiff harm; and (3) plaintiff suffered $33 million in damages.[6]{*Ibid.*} The trial court denied motions for judgment notwithstanding the verdict and for a new trial.{AA 721-723} Judgment was entered against the County,[7] and the County appeals.{AA 619-625, 724}

III. DISCUSSION

On appeal, the County contends (1) there was insufficient evidence to support the jury's verdict on the element of proximate causation;{AOB 39-49} (2) there was insufficient evidence to support a finding that specific county employees breached a duty

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[5] The County also filed a motion for directed verdict,{AA 267-269} but the record does not indicate the trial court ruled on the motion.

[6] When apportioning fault, the jury apportioned 50% of the fault to Cox in his capacity as a mandated reporter, but only 15% of the fault to Cox in his personal capacity for actually committing the sexual assaults.{AA 624}

[7] Despite naming multiple individuals and requesting an apportionment of fault, the judgment actually entered and the subject of this appeal names only the County as the judgment debtor.{AA 625}

of care;{AOB 50-54} and (3) the trial court erred by refusing several of the County's requested jury instructions.{AOB 58-66} As we explain, we agree with the County on the first issue and reverse the judgment on this basis. As a result, it is unnecessary for us to reach the remaining issues raised in this appeal.

A. *General Legal Principles and Standard of Review*

The tort liability of public entities and employees is generally governed by the Government Claims Act. (*Holman v. County of Butte* (2025) 111 Cal.App.5th 177, 192 (*Holman*); Gov. Code, § 810 et seq.) The statutory scheme establishes a general rule that public entities are immune from tort liability except as provided by statute. (Gov. Code, § 815, subd. (a).) However, one such statutory exception is found in Government Code section 815.6, which provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity established that it exercised reasonable diligence to discharge the duty." (Gov. Code, § 815.6; *Holman*, at p. 192.)

"As our Supreme Court has explained, Government Code section 815.6 has three discrete requirements that must be met to impose public entity liability: (1) an enactment must impose a mandatory duty; (2) the enactment must be meant to protect against the kind of injury suffered by the plaintiff; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered." (*Holman*, *supra*, 111 Cal.App.5th at p. 192; *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 179 (*County of San Bernardino*).)

The first two elements are not at issue in this appeal. "CANRA sets forth several

different reporting requirements once child abuse or neglect is suspected." (*County of San Bernardino*, *supra*, 62 Cal.4th at p. 178; Pen. Code, § 11166 et seq.) Under this statutory scheme, "[c]ertain types of professionals known as 'mandated reports' [citation] 'shall' report to law enforcement agencies or county welfare departments any known or suspected instance of child abuse or neglect." (*County of San Bernardino*, at p. 178.) And for purposes of this appeal, the parties do not dispute CANRA's applicability or the existence of a mandatory duty to report. Instead, the County challenges the sufficiency of the evidence presented at trial to establish the third element and, specifically, the requirement of proximate cause.

"Proximate cause is often said to focus on two things: the 'cause in fact' of the injury and 'policy considerations.' " (*Ortiz v. Daimler Truck North America LLC* (2025) 112 Cal.App.5th 608, 619 (*Ortiz*); *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 352 (*State Hospitals*) [The element of proximate cause itself "has two aspects."].) "A cause in fact is a necessary antecedent of an event.... Where concurrent independent causes contribute to an injury, courts apply a substantial factor test for determining cause in fact." (*Fisher v. Fisher* (2026) 118 Cal.App.5th 899, 914.) "The second aspect of proximate cause 'focuses on public policy considerations.' " (*State Hospitals*, at p. 353; *Fisher*, at p. 914.) This second aspect is concerned " ' " 'not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.' " ' " (*State Hospitals*, at p. 353; *Ortiz*, at p. 620.)

The question of whether a defendant's act or omission " ' "was a cause in fact of

plaintiff's damage … is a factual question for the jury to resolve." ' " (*Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, 1596.) However, "the scope of liability element of proximate cause presents an issue of law subject to de novo review because it is primarily concerned with public policy." (*Fisher*, *supra*, 118 Cal.App.5th at p. 915; *Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 153-154; *Jacoves v. United Merchandising Corp.* (1992) 9 Cal.App.4th 88, 111.) Even then, the scope of liability question must be decided based upon actual evidence presented in the case because "[p]roximate cause rules apply in individual cases [citation] and 'take into account the particular context in which any act or injury occurred.' " (*Novak v. Continental Tire North America* (2018) 22 Cal.App.5th 189, 196 (*Novak*).)

" 'When a party contends insufficient evidence supports a jury verdict, we apply the substantial evidence standard of review.' " (*McDoniel v. Kavry Management, LLC* (2025) 114 Cal.App.5th 949, 965.) " 'We must "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor." ' [Citation.] ' "[N]either conflicts in the evidence nor ' "the testimony which is subject to justifiable suspicion … justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." ' " ' " (*Ibid.*)

B. *Application*

1. Public Policy Does Not Preclude a Finding of Proximate Causation

Initially, we address the County's argument that "[p]roximate cause is absent as a

matter of law where the effective prevention of harm depends upon subsequent, discretionary acts."{AOB 41-43} In making this argument, the County relies exclusively on statutory and case authority instead of any reference to specific evidence in this case. Thus, as we understand it, this argument is directed at the second aspect of proximate cause: that public policy should limit the liability of the County in this case.[8] On this point, we agree with plaintiff that the failure to file a mandatory report under CANRA can be a substantial factor in causing subsequent harm, despite the fact that such a report necessarily triggers subsequent discretionary acts. In our view, the fact that subsequent discretionary acts may be necessary to protect from the harm alleged is not a sufficient public policy ground to preclude a finding of proximate cause.

By definition, a mandated report under CANRA will always be followed by subsequent discretionary acts. Penal Code "[s]ection 11166 requires only that mandated reporters *report* suspected child abuse or neglect. [Citation.] Once a report is made, it is the responsibility of various child protective agencies to investigate the report." (*Holman, supra*, 111 Cal.App.5th at p. 183.) And "the decisions of child welfare agency

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[8] We also note that the County's argument appears to conflate the issue of duty with the public policy aspect of proximate causation. In asserting entitlement to judgment as a matter of law on this basis, the County relies exclusively on statutory and case authority without reference to any of the evidence or the facts specific to this case. While "[t]he concepts of duty and proximate cause are each expressions of public policy and courts have taken varying approaches in using one or the other concept to limit liability," "[o]ur California Supreme Court has held that ' "[n]o-duty rules are appropriate only when a court can promulgate relatively clear, categorical, bright-line rules of law applicable to a general class of cases." ' " (*Novak*, *supra*, 22 Cal.App.5th at p. 196.) This differentiates a duty analysis from that of proximate cause, which focuses on whether public policy should preclude liability based upon the specific facts applicable to individual cases. (*Ibid.*)

employees—regarding determinations of child abuse, the potential risk to a child, placement of a child, removal of a child, and other resultant actions—are subjective *discretionary* ones that are incidental to the employees' investigations." (*County of San Bernardino*, *supra*, 62 Cal.4th at pp. 191-192.) Despite this statutory scheme, the California Supreme Court has unambiguously concluded that the failure to file a report mandated under CANRA can be considered a substantial factor in causing subsequent harm. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 413-414; see *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1189, overruled in part by *County of San Bernardino*, *supra*, 62 Cal.4th at p. 188.) We are bound by the decision of the California Supreme Court (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455) and, as such, decline to hold that the mere presence of discretionary decisions in a chain of causation constitutes a sufficient public policy reason to limit liability.

The County's reliance on *State Hospitals*, *supra*, 61 Cal.4th 339 is unpersuasive. In that case, our Supreme Court affirmed the sustaining of a demurrer for failure to allege facts to establish proximate cause. (*Id.* at p. 356.) However, in doing so, it explicitly explained: "We do not hold that the intervention of *any* discretionary decision between breach of a mandatory duty and a subsequent injury will always foreclose a finding of proximate cause. Nor do we hold that proximate cause can never be established.... [A] cause of action would not necessarily be barred simply because subsequent discretionary decisions would have been required to prevent the [harm suffered]." (*Ibid.*) Thus, in affirming the sustaining of the demurrer, our Supreme Court relied solely on the insufficiency of the specific factual allegations in the context of the case before it and did

not set forth the blanket rule urged by the County here. Contrary to the County's assertion, *State Hospitals* does not stand for the proposition that the existence of intervening discretionary acts negates proximate cause as a matter of law.

The other authorities cited by the County are equally unpersuasive.{AOB 42-43} Each of these cases involved an analysis of the specific duties and the specific processes involving intervening discretionary acts before concluding that the facts did not support a finding of proximate causation. (*State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 860; *Fleming v. State of California* (1995) 34 Cal.App.4th 1378, 1384; *Whitcombe v. County of Yolo* (1977) 73 Cal.App.3d 698, 708; *MacDonald v. California* (1991) 230 Cal.App.3d 319, 332-333.) More importantly, all of these cases predate our Supreme Court's guidance in *State Hospitals*, in which it clearly expressed the view that the existence of an intervening discretionary act is not itself a basis to conclude the absence of proximate causation as a matter of law.

Thus, we disagree with the County's contention that merely establishing the existence of intervening discretionary acts constitutes sufficient public policy grounds to conclude that a defendant should not be liable for an injury. The County has not met its burden to show that proximate cause is absent because public policy reasons should limit liability in this case and we decline to reverse on this basis.

2. Plaintiff's Evidence Was Insufficient To Establish Cause In Fact

While we have concluded that the existence of intervening discretionary acts is not itself grounds to negate the existence of proximate cause, that does not end our inquiry. At trial, plaintiff still bears the burden of proof to establish each element of his claim.

(Evid. Code, § 500.) Thus, it was incumbent upon plaintiff to produce actual evidence upon which a jury could rely to support the first aspect of proximate cause—that the failure to file a mandated CANRA report of Mother's neglect was a substantial factor in causing plaintiff's subsequent harm. (See *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 780 (*Saelzler*) ["No matter how inexcusable a defendant's act or omission might appear, the plaintiff must nonetheless show the act or omission caused, or substantially contributed to, her injury."].) And, upon review of the trial testimony relevant to causation, we conclude that the evidence presented by plaintiff was simply insufficient to support the jury's finding on this issue.

a. The expert testimony presented at trial did not provide a sufficient basis for the jury to find causation.

Generally, to prove cause in fact, " '[the] plaintiff must show some substantial link or nexus between omission and injury.' " (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1104.) The difficulty in this case is that the alleged omission by the County is the failure to report Mother for neglect, which has no clear or obvious link to the sexual abuse perpetrated by Cox. Plaintiff does not allege that any CANRA report should have identified Cox or any allegation of sexual abuse. Thus, there is no clear link between the omission and the injury. Instead, plaintiff relies on a theory that requires establishing multiple links in a chain of causation. And while "[d]irect proof of each link in a chain of causation is not required" (*City of Modesto v. Dow Chemical Co.* (2018) 19 Cal.App.5th 130, 153), there must be evidence upon which a jury could draw reasonable inferences in plaintiff's favor without mere speculation or conjecture (*ibid.*).

With respect to Cox, plaintiff's theory was expressly limited to the failure to report Mother's neglect prior to any act of sexual abuse.{AA 54-56} Thus, to establish some causal nexus, plaintiff at the very least needed to show that (1) a report would likely have triggered an investigation by the relevant child welfare agency, (2) any investigation would likely have triggered further intervention by social workers, and (3) any safety plan developed by social workers would likely have deterred or prevented future acts of sexual abuse by Cox. While the allegations against other employees of the County are not limited in time, as to these employees plaintiff still needed to establish that (1) a report of Mother's neglect would likely have triggered an investigation, (2) any investigation would likely have created a suspicion of sexual abuse by Cox, (3) social workers would likely have substantiated such suspicions upon further investigation, and (4) any subsequent safety plan developed by social workers would likely have deterred or prevented future sexual abuse by Cox.

Additionally, plaintiff was required to establish his theory of causation through expert testimony. It is true that "[o]rdinarily, a plaintiff may establish proximate cause without the testimony of an expert by providing evidence that indicates the defendant's conduct was a substantial factor in producing plaintiff's damages." (*Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1336.) However, " '[w]here the complexity of [a] causation issue is beyond common experience, expert testimony is required to [prove] causation.' " (*Kaney v. Custance* (2022) 74 Cal.App.5th 201, 217; *Onglyza Product Cases* (2023) 90 Cal.App.5th 776, 791-792.) In our view, the manner in which a social worker investigates, identifies risks, and develops a proposed safety

plan in response to a report of child neglect is clearly beyond the common experience. Similarly, the manner in which decisions are made in the dependency system, including the grounds for removal from parental custody, factors weighed in placement decisions, and factors considered in approval of any proposed safety plan are beyond the common experience. Thus, to the extent that any link in plaintiff's hypothetical chain of causation required the jury to determine what would likely have occurred upon intervention by a social worker, plaintiff was required to present expert testimony to establish these facts.

In this case, plaintiff produced expert opinion testimony that (1) a report of Mother's neglect would have been accepted for further investigation; (2) such investigation would have resulted in further intervention by social workers; and (3) the intervention would have precluded plaintiff from living in Cox's home on a permanent basis.{RT 2121-2122, 2141, 2152, 2463-2464} However, none of plaintiff's experts expressed any opinion regarding what would likely have happened after that point in the hypothetical chain of causation. Stolar-Peterson opined simply that a safety plan would have been developed with the input of the juvenile court.{RT 2151} Neither Stolar-Peterson nor LeRue explained what protective measures might have been included in a subsequent safety plan. Nor did they explain how such a safety plan could have prevented against sexual abuse by Cox. Absent any expert testimony on what protective measures would likely have been included in a safety plan or how those hypothetical measures could have deterred or prevented Cox from committing acts of sexual abuse, the jury was left merely to speculate regarding crucial links in the necessary chain of causation.

We acknowledge that during cross-examination, plaintiff's pediatric expert made a brief statement that removal of plaintiff from Cox's home would have prevented the sexual assault.{RT 2445-2448} However, Jenny later disclaimed any expertise on what might have happened as part of any intervention by social workers.[9]{*Ibid*} And "when an expert bases his or her conclusion on factors that are 'speculative, remote or conjectural,' or on 'assumptions … not supported by the record,' the expert's opinion 'cannot rise to the dignity of substantial evidence' and a judgment based solely on that opinion 'must be reversed for lack of substantial evidence.' " (*Wise v. DLA Piper LLP (US)* (2013) 220 Cal.App.4th 1180, 1191-1192; *Johnson & Johnson Talcum Powder Cases* (2019) 37 Cal.App.5th 292, 314.)

Thus, even disregarding any competing opinions by the County's experts, the only reasonable conclusion a jury could reach by fully crediting the testimony of plaintiff's experts is that plaintiff would have been prevented from living in Cox's home. But this conclusion is far removed from the conclusion that Cox's sexual assaults would have been deterred or prevented. Plaintiff's own testimony established that his friendship with Cox began more than a year prior to moving into Cox's home; this friendship frequently involved spending time with Cox unsupervised; and that Cox perpetrated acts of sexual

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[9] Specifically, Jenny admitted that she was "not an expert on the mandated reporting laws of California";{RT 2445} "I'm not an expert in California foster home assessments";{RT 2446} and "I really am not an expert on social services in California."{RT 2448}

abuse even outside of Cox's home.[10]{RT 1880-1888; 1904-1906} Further, at least one of plaintiff's experts admitted that, even if plaintiff had been removed from Cox's home, plaintiff's relationship with Cox could have continued.{RT 2161} In light of this evidence, the expert testimony that plaintiff would have been prevented from living full-time in Cox's home was simply not sufficient to permit the jury to further conclude that sexual abuse would have been prevented.

Because there was no expert testimony to explain how a safety plan might have been developed had social workers intervened or what protective measures that safety plan would likely have included, the jury was left to simply speculate that the intervention of a social worker could have uncovered information that could have triggered the inclusion of some unidentified safety measures that could have deterred or prevented future sexual assault by Cox—a third person unrelated to any initial investigation that would have been triggered by a report of Mother's neglect. And where a jury is left to merely speculate on possibilities, there is insufficient evidence to support a finding that the County's omissions were a cause in fact of plaintiff's harm.

b. Plaintiff's Authorities Are Unpersuasive

Plaintiff argues that "decades of binding authority directly on point" stand for the proposition that the failure to report suspected abuse or neglect is itself a substantial factor in bringing about future harm.{RB 37-38} We are unpersuaded. The cases cited

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[10] In addition, the jury heard the testimony of a sheriff's deputy who interviewed plaintiff as part of his investigation of Cox.{RT 3414, 3418} The deputy confirmed that plaintiff reported being sexually abused by Cox on more than one occasion in locations other than Cox's home.{RT 3425}

by plaintiff involve the sufficiency of allegations to state a cause of action (see *Landeros*, *supra*, 17 Cal.3d at 405 [appeal from sustaining of demurrer]; *Alejo*, *supra*, 75 Cal.App.4th 1183 [same]; *Roe v. Hesperia Unified School Dist.*(2022) 85 Cal.App.5th 13, 18 [same]; *Garcia v. Clovis Unified Sch. Dist.* (2009) 627 F.Supp.2d 1187 [addressing sufficiency of allegations on motion to dismiss]) or address elements of a claim other than proximate causation (see *County of San Bernardino*, *supra*, 62 Cal.4th 168 [addressing sufficiency of evidence to show existence of a duty]; *Holman*, *supra*, 111 Cal.App.5th at p. 182 [same]). Thus, none of these authorities provides any guidance on the question actually presented in this case; that is, whether the evidence presented at trial was sufficient to establish causation.

Instead, of all the cases cited by the parties in their briefs, *Doe v. L.A. County Dep't. of Children & Family Servs.* (2019) 37 Cal.App.5th 675 (*Doe*) appears the most relevant to the issue before us. *Doe* involved a dependent teenager who was sexually abused by two adult relatives of the caregiver with whom she had been placed. (*Id.* at p. 679.) The plaintiff did not voluntarily disclose the abuse at the time it occurred (*id.* at pp. 679-680) but later sued the County of Los Angeles on the theory that social workers failed to fulfill a mandatory statutory duty to conduct a specific number of visits during her first month of placement and to meet with her on a monthly basis (*id.* at p. 680). The Court of Appeal affirmed the grant of a nonsuit, concluding that even if a jury were to find that social workers failed to perform their mandatory duties, such evidence "was insufficient to permit a jury to find the breach of these duties was a proximate cause of [plaintiff's] injuries." (*Id.* at p. 687.)

In reaching its conclusion, the Court of Appeal in *Doe* explained that even if a social worker had complied with the statutory duties at issue, the evidence showed only that a social worker " 'could have discovered' " the first abuser's relationship with the plaintiff; a social worker "could have intervened"; such intervention "could have" involved steps to discourage any further interaction with the abuser; and intervention "could have" discouraged the second abuser from making advances towards the plaintiff. (*Doe*, *supra*, 37 Cal.App.5th at p. 688.) Given such facts, it would be "pure speculation to conclude the sexual abuse would not have occurred." (*Ibid.*) Moreover, the same type of reasoning has been applied in other contexts to hold that evidence of causation is insufficient to submit the question to a jury. (See *Stokes v. Forty Niners Stadium Management Co., LLC* (2024) 107 Cal.App.5th 1199, 1229 [causation theories relying on a string of circumstances that "would have" happened or harm that could only result "if" a string of specific circumstances occur constitute "conjecture and speculation, not substantial evidence"]; *Rinehart v. Boys & Girls Club of Chula Vista* (2005) 133 Cal.App.4th 419, 435-436; *Saelzler*, *supra*, 25 Cal.4th at pp. 772-781.)

We find *Doe* persuasive and applicable in this case. The fact that plaintiff can posit a series of hypothetical circumstances that could link defendant's failure to file a CANRA report to the sexual assaults by Cox is not substantial evidence to support a finding of cause in fact. Instead, plaintiff was required to introduce evidence upon which a jury could rely to infer that it was more likely than not that each link in the proposed chain of causation actually occurred. And where the expert testimony presented leaves considerable gaps such that a jury is left with no basis to conclude that specific links in

the chain of causation actually occurred, plaintiff has not met his burden at trial.

3. The Insufficiency of Evidence Requires Reversal

Where the evidence produced at trial is insufficient to support a finding of causation, reversal of the judgment in plaintiff's favor is required. (*Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 702-703; *Viner v. Sweet* (2004) 117 Cal.App.4th 1218, 1226-1227.) Additionally, " '[w]hen a judgment for the plaintiff is reversed for insufficiency of the evidence the appellate court is, in effect, advising the trial court that a nonsuit, directed verdict or [judgment notwithstanding the verdict] should have been entered.' ... 'When the plaintiff has had a full and fair opportunity to present the case, and the evidence is insufficient as a matter of law to support plaintiff's cause of action, a judgment for defendant is required and no new trial is ordinarily allowed.' " (*Kaushansky v. Stonecroft Attorneys, APC* (2025) 109 Cal.App.5th 788, 804, citing *McCoy v. Hearst Corp.* (1991) 227 Cal.App.3d 1657, 1660-1661.) In such a case, " 'a reversal with directions to enter judgment for the defendant is proper.' " (*Kaushansky*, at p. 804; *Kelly v. Haag* (2006) 145 Cal.App.4th 910, 919.)

Thus, because we conclude that the evidence presented by plaintiff at trial was insufficient to support an essential element of his cause of action against the County, reversal of the judgment is required. Further, because plaintiff has not claimed he was deprived of the ability to present the expert testimony necessary to support his theory of causation in this case, there are no grounds to order the matter retried upon remand. Instead, remand with directions to enter judgment in favor of the County is appropriate. Given this conclusion, it is unnecessary for us to address the County's alternative

argument that the evidence was insufficient to support the jury's finding of breach as to specific employees of the County or its alternative argument that the trial court erred by refusing to give some of the County's requested jury instructions.

C. *Plaintiff's Claim Regarding the County's Failure to File an Answer*

Finally, we briefly address plaintiff's contention that the County has forfeited its right to challenge the judgment by failing to file an answer to the SAC.[11]{RB 26-27} Even assuming that plaintiff has not waived this claim on appeal,[12] the record does not show that plaintiff ever requested entry of default against the County. It is the entry of default that "cuts off the defendant's right to file pleadings and motions" in a case (*Bailey v. Citibank, N.A.* (2021) 66 Cal.App.5th 335, 346-347), and "it is … well established by the case law that where a pleading is belatedly filed, but at a time when a default has not yet been taken, the plaintiff has, in effect, granted the defendant additional time within which to plead and he is not strictly in default" (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141; *Baird v. Smith* (1932) 216 Cal. 408, 409). Thus, absent a

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[11] The record shows that the County filed an answer to the SAC and served it on all parties.{AA 73, 968} However, the filing was rejected by the clerk on the basis that there was no SAC on file.{AA 968} That decision by the clerk appears to be a clerical error as the register of actions clearly shows that the answer was filed after the filing of the SAC.{*Ibid.*} Nevertheless, none of the parties appears to have taken any action in the trial court to correct this error.

[12] Generally, it is "too late to urge that the allegations of [the complaint] stand admitted" on appeal where "[t]he parties … proceeded to trial and judgment without objection being made in the trial court as to the failure to file a written answer." (*Webster v. Webster* (1932) 216 Cal. 485, 492; *Madison v. Octave Oil Co.* (1908) 154 Cal. 768, 770-771 [A party waives the default of an opposing party by voluntarily proceeding to trial on the very issues raised in the pleading.]; *Brown v. Pacific Tel. & Tel. Co.* (1980) 105 Cal.App.3d 482, 486 [citing the same].)

request for entry of default, the County is not technically in default or barred from participation in the litigation.

More importantly, even if plaintiff had requested entry of default, " '[t]he fact that defendant defaulted in the trial court does not bar its right to appeal the judgment entered.' " (*Misic v. Segars* (1995) 37 Cal.App.4th 1149, 1153; *City Bank of San Diego v. Ramage* (1968) 266 Cal.App.2d 570, 582.) And "[o]n appeal, defendant may challenge the sufficiency of the evidence offered to support the default judgment." (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 288 (*Kim*).)[13] Our conclusion that plaintiff's evidence was insufficient to show a causal connection between the County's failure to file a report under CANRA and the damages alleged by plaintiff would be equally applicable to any review from a default judgment.[14] Thus, contrary to plaintiff's contention on appeal, the fact that the County's answer does not appear to have

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[13] "Although some cases have recited a 'general rule that sufficiency of the evidence [tendered in a default proceeding] cannot be reviewed on an appeal from a default judgment' [citation], that rule applies only 'as to matters for which no proof is required by virtue of the admission by default of the allegations of the complaint.' " (*Kim*, *supra*, 201 Cal.App.4th at p. 288.) And at the time of any default prove up hearing, the "[p]laintiff's burden [is] to establish a prima facie showing that he was damaged by [the defendant's] actions." (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 364-365; *Kim*, at p. 288 [" 'Plaintiffs in a default judgment proceeding must prove they are entitled to the damages claimed.' "].)

[14] We also observe that even if we were to consider the County in default despite plaintiff's failure to request entry of default, the record in this case does not show that plaintiff ever filed a statement of damages as required by statute to pursue judgment against a defaulting defendant. (Code Civ. Proc., §§ 580, subd. (b), 425.11.) This would constitute an alternative ground for reversal of the judgment, as a plaintiff is not permitted to obtain judgment against a defaulting defendant absent service of the statutorily required notice. (*Sass v. Cohen* (2020) 10 Cal.5th 861, 870; *Schwab v. Rondel Homes* (1991) 53 Cal.3d 428, 430.)

been formally filed is not grounds to affirm the judgment.

IV. DISPOSITION

The judgment is reversed. Upon remand, the trial court is directed to vacate the judgment and enter a new judgment in favor of the County. The County is awarded its costs on appeal.

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