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8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION  
10 UNLIMITED CIVIL JURISDICTION

11 M.R.,	)	Case No. 37-2021-00013819-CU-PO-NC
12	)	
13 Plaintiff,	)	<b>CHILD USA’S AMICUS BRIEF IN</b>
14	)	<b>SUPPORT OF PLAINTIFF’S</b>
15 v.	)	<b>OPPOSITION TO DEFENDANT’S</b>
16	)	<b>DEMURRER</b>
17 ESCONDIDO UNION SCHOOL DISTRICT,	)	Date: 10/8/2021
18 et al,	)	Time: 1:30 p.m.
19	)	Dept. N-29
20	)	Judge: Hon. Robert P. Dahlquist
21	)	
22	)	
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14 *Doe v. Crooks* (S.C. 2005) 364 S.C. 349 ..... 21

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22 *Gallo v. Superior Court* (1988) 200 Cal.App.3d 1375 [246 Cal.Rptr. 587] ..... 9

23 *Ginsberg v. New York* (1968) 390 U.S. 629 ..... 13

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3	Angelakis, I., Gillespie, E.L., Panagioti, M., <i>Childhood maltreatment and adult suicidality: a</i> <i>comprehensive systematic review with meta-analysis</i> (2019) PSYCHOLOGICAL MEDICINE 1-22 .....	14
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5	Felitti, et al., <i>Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading</i> <i>Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study</i> (1998) 14(4) AM. J.	
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8	Gail Hornot, <i>Childhood Trauma Exposure &amp; Toxic Stress: What the PNP Needs to Know</i> (2015) J.	
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13	<i>Making the Case: Why Prevention Matters</i> , PREVENTCHILDABUSE.ORG.....	15
14	N. Pereda, et. al. (2009) <i>The prevalence of child sexual abuse in community and student samples: A</i> <i>meta-analysis</i> , 29 CLINICAL PSYCH. REV. 328.....	11
15	N. Spröber et al., <i>Child sexual abuse in religiously affiliated and secular institutions</i> (2014) 14 BMC PUB. HEALTH 282.....	12
16	R. Anda, et al., <i>The Enduring Effects of Abuse and Related Adverse Experiences in Childhood</i> (Nov. 2005) 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174 .....	12
17	Rebecca Campbell, Ph.D., <i>The Neurobiology of Sexual Assault: Explaining Effects on the Brain</i> (2012) NAT’L INST. OF JUSTICE.....	12
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19	S.R. Dube et al., <i>Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide</i> <i>Throughout the Life Span: Findings from the Adverse Childhood Experiences Study</i> (Dec. 2001)	
20	286 JAMA 24.....	11
21	Sachs-Ericsson, et al., <i>A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role</i> <i>of Psychiatric Disorders and Current Life Stress</i> (2009) 10(2) J. TRAUMA & DISSOCIATION 170... 12	
22	Snyder, H. N., <i>Sexual assault of young children as reported to law enforcement: Victim, incident, and</i> <i>offender characteristics</i> . U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2002).....	11
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1 **I. STATEMENT OF INTEREST OF *AMICUS CURIAE***

2 *Amicus curiae*, CHILD USA, is a national, non-profit think tank working to end child  
3 abuse and neglect in the United States. CHILD USA pairs the best social science research  
4 with the most sophisticated legal analysis to determine the most effective public policies to  
5 end child abuse and neglect. CHILD USA produces evidence-based solutions and  
6 information needed by policymakers, organizations, media, and society as a whole to increase  
7 child protection and the common good.

8 CHILD USA is the leading organization in the United States to track and study child  
9 sex abuse statutes of limitations (“SOLs”) including The Sean P. McIlmail SOL Reform  
10 Institute. CHILD USA’s Founder, Marci A. Hamilton, is the foremost constitutional law  
11 scholar on revival laws, and has advised Congress, state governors, legislatures, and courts on  
12 the constitutionality of revival window laws for child sex abuse throughout the United States.

13 CHILD USA is uniquely positioned to provide this Court with current research and  
14 analysis regarding the constitutionality of California’s revival law for child sex abuse claims,  
15 the compelling interest in revival of expired civil SOLs, impacts of revival laws on public  
16 safety, and the science of delayed disclosure by victims of their abuse.

17 CHILD USA’s interests in this case are directly correlated with its mission to increase  
18 child protection from sex abuse and eliminate barriers to justice for child sex abuse victims  
19 who have been harmed by individuals and institutions. Therefore, CHILD USA is an  
20 appropriate party to be made an *amicus curiae* in this matter pursuant to Cal. Rules of Court,  
21 Rule 8.882.

22 **II. INTRODUCTION**

23 CHILD USA respectfully submits this brief as *amicus curiae*. Defendant challenges the  
24 constitutionality of California Code of Civil Procedure § 340.1 and Government Code § 905 as  
25 a violation of Defendant’s Due Process and Contract Clause Rights as applied.

26 This case does not implicate Defendant’s Due Process rights because they do not have  
27 a constitutionally protected, vested right to immunity from civil claims. Even if they did have  
28 a vested right, California’s compelling interests in protecting children and preventing future  
abuse far outweigh any right Defendant could assert. Moreover, legislative deference should  
be given to the revival provisions of Code of Civil Procedure § 340.1 and Government Code §

1 905 under California law, and in recognition of California’s history of expanding access to  
2 courts for victims of child sexual abuse.

3 Defendant does not have a vested right under the Contract Clause; even if they did, they  
4 fail to point to any terms of any agreements that have been impaired as a result of the revival  
5 provisions of Code of Civil Procedure § 340.1 and Government Code § 905. Even if Defendant  
6 had a legitimate vested right under the Contracts Clause that they had properly cited,  
7 California’s interests in “safeguarding” its children and victims far outweighs any interest of  
8 the Defendant.

9 California is one of 33 jurisdictions in the United States that has passed laws to revive  
10 expired claims of child sexual abuse. Although many defendants have challenged those laws,  
11 no other state has invalidated a revival window based on an as applied challenge after weighing  
12 the states’ interests against those of a defendant. (See infra section II.) Therefore, CHILD USA  
13 respectfully requests that this Court uphold the revival provisions in Code of Civil Procedure §  
14 340.1 and Government Code § 905 as applied to Defendant in this case.

### 15 **III. ARGUMENT**

16 The revival provisions in Code of Civil Procedure § 340.1 and Government Code § 905  
17 are constitutional as applied to Defendant in this case.

#### 18 **I. REVIVAL OF PLAINTIFF’S CLAIM FOR CHILD SEXUAL 19 ASSAULT IS CONSTITUTIONAL AS APPLIED TO 20 DEFENDANT IN THIS CASE**

21 Defendant has no vested right to immunity from civil claims under either the Due  
22 Process Clause or the Contracts Clause. If they did, California’s interest protecting its  
23 children from sexual abuse and providing avenues of justice for its victims far outweighs any  
24 rights the Defendant has in avoiding suit in this case.

##### 25 **a. Revival of Plaintiff’s Claim for Child Sexual Assault Comports with 26 the Defendant’s Due Process Rights**

27 The revival provisions in Code of Civil Procedure § 340.1 and Government Code §  
28 905 are an outgrowth of California’s history of expanding access to justice for victims, in  
29 recognition of the prevalence of child sexual abuse and victims’ delayed disclosure.

30 Defendant does not have a vested right to avoid suit in this case. Even if it did, California’s

1 stated interest in reviving expired claims as a way to provide victims with access to justice  
2 and prevent future abuse justify any infringement of those supposed rights.

3 **i. Defendant’s Due Process Challenge Fails Because It Does Not Have a**  
4 **Constitutionally Protected Property Right to Immunity from Plaintiff’s**  
5 **Claim**

6 The United States and California Constitutions permit revival of previously time-  
7 barred claims and revival windows for child sex abuse and have been consistently and  
8 explicitly upheld as constitutional in California. (See *Liebig v. Superior Ct.* (Ct. App. 1989)  
9 209 Cal. App. 3d 828, 830, 257 Cal. Rptr. 574, 574 (“we hold that the Legislature has the  
10 power to expressly revive time-barred civil common-law causes of action”).) Defendant does  
11 not dispute that Assembly Bill 218’s amendments to Code of Civil Procedure § 340.1 and  
12 Government Code § 905’s opening of a revival window for survivors of child sex abuse is  
13 facially constitutional; instead it claims the law as applied to it is an unconstitutional  
14 impairment of its alleged vested property right—the right to immunity from civil liability for  
its own tortious conduct—without due process of law.

15 Defendant seeks to persuade this Court to ignore clear California precedent and create  
16 a new right for child sexual abuse enablers to avoid justice. In particular, Defendant argues it  
17 holds a constitutionally protected property right to immunity from suit for pre-2009 sexual  
18 assaults, because it relied on that immunity for fiscal planning purposes. (See generally  
19 *Memorandum of Points and Authorities in Support of Defendant EUSD’s Demurrer to the*  
20 *First Amended Complaint*, 10-13.) Defendant’s claim is meritless, because well-settled  
21 United States and California Supreme Court jurisprudence holds that in civil cases the “right  
22 of repose is not a constitutionally protected right.” (*Deutsch v. Masonic Homes of California,*  
23 *Inc.* (2008) 164 Cal. App. 4th 748, 760–61, 80 Cal. Rptr. 3d 368, 378–79 (holding 1-year  
24 revival window for child sex abuse did not violate due process as applied to appellant) (citing  
25 *Hellinger v. Farmers Grp., Inc.* (2001) 91 Cal. App. 4th 1049, 1061, 111 Cal. Rptr. 2d 268,  
26 278, as modified on denial of reh’g (Sept. 24, 2001)).) ““A potential defendant has no vested  
27 right in the sense of repose conferred by his knowledge a lawsuit against him appears to be  
28 barred.”” (*Liebig v. Superior Ct.* 209 Cal. App. 3d at 830 (quoting *Gallo v. Superior Court*  
(1988) 200 Cal.App.3d 1375 [246 Cal.Rptr. 587]) (citing *Chase Securities Corp. v.*  
*Donaldson* (1945) 325 U.S. 304).) Defendant’s Due Process challenge to Section 340.1 as



1 applied to it fails here as a matter of law because there is no constitutionally protected liberty  
2 or property interest that it has been deprived of.

3 Even if Defendant’s claim to immunity were constitutionally protected that immunity  
4 would not be absolute; even a vested right “yields to important state interests, without any  
5 violation of due process.” (*20th Century Ins. Co. v. Superior Ct.* (2001) 90 Cal. App. 4th  
6 1247, 1273, 109 Cal. Rptr. 2d 611, 632.) The Legislature has the power “to interfere with  
7 vested property rights whenever reasonably necessary to the protection of the health, safety,  
8 morals, and general well being of the people.” (*In re Marriage of Bouquet* (1976) 16 Cal. 3d  
9 583, 592, 546 P.2d 1371.) If a vested property right was at issue, the relevant constitutional  
10 question would be whether the revival window “reasonably could be believed to be  
11 sufficiently necessary to the public welfare as to justify the impairment.” (*Id.* (quoting  
12 *Addison v. Addison* (1965) 62 Cal. 2d 558, 566, 399 P.2d 897 (quotations omitted).) The full  
13 list of factors to consider would be: “[1] the significance of the state interest served by the  
14 law, [2] the importance of the retroactive application of the law to the effectuation of that  
15 interest, [3] the extent of reliance upon the former law, [4] the legitimacy of that reliance, [5]  
16 the extent of actions taken on the basis of that reliance, and [6] the extent to which the  
17 retroactive application of the new law would disrupt those actions.”<sup>1</sup> (*Id.*) The balance  
18 would weigh heavily in favor of the constitutionality of AB 218 given the state’s compelling  
19 interest in protecting current California children from sex assault, exposing hidden predators,  
20 and giving survivors, like Plaintiff, who were sexually assaulted in California long overdue  
21 access to justice.

22 **ii. AB 218’s Revival of Child Sex Abuse Claims Serves the Compelling  
23 Government Interest in Preventing Abuse and Providing Access to Justice  
24 for Survivors**

25 Child sexual abuse is a public health epidemic affecting 1 in 5 girls, and 1 in 13 boys  
26  
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1 Notably, Defendant omitted the first two *In Re Marriage of Bouquet* factors from its list and analysis. (Pg. 11)

1 in this nation.<sup>2</sup> Historically, 90% of child victims never go to the authorities.<sup>3</sup> Of the small  
2 fraction of child sexual abuse cases reported to law enforcement, arrests are only made in  
3 29% of them.<sup>4</sup> This means that most child sexual predators are never arrested, let alone  
4 convicted. They continue to move through society with unfettered access to children.

5 There is an extensive body of scientific evidence establishing that childhood sexual  
6 abuse victims are traumatized in a way that is distinguishable from victims of other crimes.  
7 As explained by the Center for Disease Control (“CDC”), Adverse Childhood Experiences  
8 (“ACEs”) “have a tremendous impact on future violence victimization and perpetration, and  
9 lifelong health and opportunity.”<sup>5</sup> The ACE Study is one of the largest investigations of the  
10 effects of childhood abuse, and definitively shows a strong correlation between ACEs and  
11 negative effects across the lifespan, including, disrupted neurodevelopment; impaired social,  
12 emotional, and cognitive development; psychiatric and physical disease; and disability.<sup>6</sup>

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13 2 G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic*  
14 *review by maltreatment type and gender* (2018) 18(1164) BMC PUBLIC HEALTH (finding a 20.4% prevalence rate  
15 of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual*  
16 *Abuse: Meta-Analysis of Prevalence Around the World* (2011) 16(2) CHILD MALTREATMENT 79 (finding a 20.1%  
17 prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al. (2009) *The prevalence of*  
18 *child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334  
19 (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls  
20 respectively).

21 3 U.S. Dep’t Health & Human Services, *The Adverse Childhood Experiences (ACEs) Study* (1997) CENTERS FOR  
22 DISEASE CONTROL & PREVENTION, available at  
23 <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/> (hereinafter “ACE Study; see also, U.S.  
24 Dep’t of Health & Human Services Administration for Children & Families, Administration on Children, Youth  
25 & Families, and Children’s Bureau, *Child Maltreatment 2017*, available at  
26 <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.

27 4 Snyder, H. N., *Sexual assault of young children as reported to law enforcement: Victim, incident, and offender*  
28 *characteristics*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2002),  
available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/saycrle.pdf>

29 5 ACE Study; see also Felitti, et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the*  
30 *Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study* (1998) 14(4) AM. J. PREV.  
31 MED. 245; S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide*  
32 *Throughout the Life Span: Findings from the Adverse Childhood Experiences Study* (Dec. 2001) 286 JAMA 24,  
33 30,89 (explaining that childhood trauma can lead to negative health outcomes).

34 6 See, e.g., Felitti, at 245-58; R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in*  
35 *Childhood* (Nov. 2005) 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (“Numerous studies have  
36 established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative  
37 health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders”); M.  
38 Merricka., et al., *Unpacking the impact of adverse childhood experiences on adult mental health* (July 2017) 69  
CHILD ABUSE & NEGLECT 10; see also Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain-*  
Related Problems: *The Role of Psychiatric Disorders and Current Life Stress* (2009) 10(2) J. TRAUMA &  
DISSOCIATION 170, 171 (explaining that adult survivors are thirty percent more likely to develop serious medical  
conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al.,  
*Concomitance between childhood sexual and physical abuse and substance use problems: A review* (2002) 22  
CLINICAL PSYCHOL. REV. 27 (finding that adult survivors of child sexual abuse are nearly three times as likely to

1 The ways in which victims of child sexual abuse are harmed makes it difficult or  
2 impossible for them to process and cope with the abuse, or to self-report it. Victims often  
3 need decades to do so.<sup>7</sup> In fact, the best science has found that the average age of disclosure  
4 in a majority of cases involving childhood sex abuse is 52.<sup>8</sup> The decades before disclosure  
5 give perpetrators and institutions latitude to suppress the truth to the detriment of children,  
6 parents, and the public.

7 The research has proven that the overwhelming majority of victims cannot bring their  
8 claims within the short timeframe allotted by most SOLs and government claims deadlines,  
9 and that mere knowledge of an abusive act does not give a victim the means to bring their  
10 claim.<sup>9</sup> Revival laws such as AB 218 recognize that society for too long did not acknowledge  
11 the plight of those sexually abused as children and unfairly extinguished their rights long  
12 before they had the ability to report or seek justice for their abuse. Revival laws are the only  
13 way to restore justice to adult victims of child sex abuse and give them the opportunity to file  
14 civil lawsuits if they so choose. However, these laws are not solely about justice for victims;  
15 they also serve the compelling state interests behind AB 218.

16 The revival window is a necessary legislative response to the public's need to learn  
17 who are the hidden child predators in the state and the needs of victims to be validated by the  
18 state. Reviving expired claims serves California's compelling interests in: (1) identifying  
19 hidden child predators and the institutions that endanger children to the public, therefore  
20 shielding other children from future abuse; (2) shifting the cost of abuse from victims and  
21 taxpayers to those who caused the abuse; and (3) educating the public about the prevalence of  
22 child sex abuse and patterns institutions follow that put children at risk.

23 The State's compelling interest in protecting California youth from sex abuse is well-  
24 established in legislative enactments and judicial rulings.<sup>10</sup> When the California Legislature

25 \_\_\_\_\_  
26 report substance abuse problems than their non-survivor peers).

27 7 Rebecca Campbell, Ph.D., *The Neurobiology of Sexual Assault: Explaining Effects on the Brain* (2012) NAT'L  
28 INST. OF JUSTICE, available at  
29 <https://upc.utah.gov/materials/2014Materials/2014SexualAssault/TonicImmobilityWebinar.pdf>; *R.L. v. Voytac*  
30 (N.J. 2009) 971 A.2d 1074; BESSEL A. VAN DER KOLK M.D., ET AL., *TRAUMATIC STRESS: THE EFFECTS OF*  
31 *OVERWHELMING EXPERIENCE ON MIND, BODY, AND SOCIETY* (2006).

32 8 N. Spröber et al., *Child sexual abuse in religiously affiliated and secular institutions* (2014) 14 BMC PUB.  
33 HEALTH 282, 282.

34 9 *Id.*

35 10 *Ashcroft v. Free Speech Coal* (2002) 535 U.S. 234, 263 (O'Connor, J., concurring) ("The Court has long

1 unanimously passed AB 218, it was motivated to do so “to help prevent future assaults”. AB  
2 218, Assembly Floor Analysis, September 14, 2019 (pg. 2). Children are at heightened risk  
3 when the public and parents are left uninformed that adults and certain institutions they  
4 entrust their children to have sexually assaulted children before and covered up abuse. By  
5 allowing older claims to proceed through the justice system, the State empowers victims to  
6 identify California’s hidden child predators and institutions that endanger children to the  
7 public so they can be held accountable. Accountability is especially important for the safety  
8 of children, because serial predators have many child victims and often abuse into their  
9 elderly years. Without empowering victims to make institutions accountable, the children  
10 these institutions serve remain at risk today. The Legislature sent a strong message to  
11 institutions when it included the treble damages provision in AB 218 that the days of  
12 sweeping sexual abuse under the rug are over.

12 The California Legislature was also interested in giving survivors access to justice and  
13 passed AB 218 “[i]n an effort to allow more victims of childhood sexual assault to be  
14 compensated for their injuries.” (AB 218 Assembly Floor Analysis, September 14, 2019 (pg.  
15 2).) The costs of sex abuse are staggering, and victims are often forced to shoulder life-long  
16 costs of the abuse.<sup>11</sup> Often taxpayers unjustly carry the burden of this enormous lifetime  
17 expense with the victims. By enacting the revival window, the Legislature acted to shift the  
18 cost of abuse from the victims to those responsible for their abuse. The Legislature approved  
19 AB 218’s revival provisions only after weighing the financial ramifications on potential  
20 defendants. “The flip side of the burden of the cost of these claims on schools, churches, and

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21 recognized that the Government has a compelling interest in protecting our Nation’s children.”); *Maryland v. Craig*  
22 (1990) 497 U.S. 836, 837 (compelling interest in protecting minor victims of sex crimes from further trauma”);  
23 *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 607 (It is clear that a state’s interest in “safeguarding  
24 the physical and psychological well-being of a minor” is “compelling.”); *New York v. Ferber* (1982) 458 U.S. 747,  
25 756-57 (“First. It is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical  
26 and psychological well-being of a minor’ is compelling.”) (quoting *Globe Newspaper Co.*, 457 U.S. at 607);  
27 *Ginsberg v. New York* (1968) 390 U.S. 629, 640 (“The well-being of children is of course a subject within the  
28 State’s constitutional power to regulate”).

11 The average lifetime cost of child maltreatment (physical, sexual, emotions, psychological abuse, and neglect)  
is \$830,928.00 per victim. The toxic stress and trauma associated with childhood sexual abuse are even higher for  
those victims than for those who experience other forms of child maltreatment. See M. Merricka, et. al.,  
*Unpacking the impact of adverse childhood experiences on adult mental health* (2017) CHILD ABUSE NEGLECT;  
Angelakis, I., Gillespie, E.L., Panagioti, M., *Childhood maltreatment and adult suicidality: a comprehensive  
systematic review with meta-analysis* (2019) PSYCHOLOGICAL MEDICINE 1-22; Gail Hornot, *Childhood Trauma  
Exposure & Toxic Stress: What the PNP Needs to Know* (2015) J. PEDIATRIC HEALTHCARE; Perryman Group,  
*Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment* (2014).



1 athletic programs that protected sexual abusers of children is the lifetime damage done to  
2 those children.” (AB 218 Assembly Judiciary Analysis, March 8, 2019 (pg. 11).)

3 California also has a compelling interest in educating the public about matters of  
4 public safety, especially the danger of child sex abuse. When predators and institutions are  
5 exposed, the public learns about the insidious ways child molesters operate to sexually abuse  
6 children and the institutional mechanisms that enabled their abuse. By shedding light on the  
7 prevalence and harm from child sex abuse, parents and others are better able to identify  
8 abusers and responsible institutions and, therefore, prevent further abuse. This knowledge  
9 helps to educate families to be aware of the signs of grooming and abusive behavior and  
10 create more social awareness to help keep kids safe. It also encourages institutions to  
11 implement accountability and safety practices and the legal system to develop policies to  
12 protect victims more effectively. Broader prevention of abuse is undoubtedly an important  
13 public policy and has outstanding long-term impact for the children and families of  
14 California.<sup>12</sup>

15 The legitimate legislative purposes of AB 218 are to increase public safety and remedy  
16 the injustice inflicted on so many survivors of sex abuse by unfairly short SOLs and claim  
17 presentment deadlines. The Legislature recognized that courthouse doors were unfairly  
18 blocked for victims of sex abuse, and the rational remedy the Legislature chose was to unlock  
19 them and push open the doors to truth and justice. The Legislature recognized that the State  
20 has an interest in discovering hidden child predators in California to keep children safe from  
21 future abuse. Retroactive revival of civil sex abuse claims is not only a rational means of  
22 identifying hidden child predators in California and remedying the longstanding injustice of  
23 short SOLs; it is the only means. Even if these enactments were subject to rational basis  
24 review or a higher standard of scrutiny, it would be impossible to identify more compelling  
25 interests that are more narrowly tailored than the interests protected by AB 218.

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28 <sup>12</sup> See generally, *Making the Case: Why Prevention Matters*, PREVENTCHILDAUSE.ORG (last visited Sept. 16, 2021), available at <https://preventchildabuse.org/resource/why-prevention-matters/>; *Preventing Adverse Childhood Experiences*, CDC.GOV (last visited Sept. 16, 2021), available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>.



1           iii.    **Defendant’s Reliance on Prior Law is Immaterial to the Constitutionality of**  
2                    **AB 218 and is Irrational Given the Legislature’s Repeated Amendments**  
3                    **Expanding Child Sex Abuse Victims’ Access to Justice**

4           Defendant’s reliance on its belief that it permanently escaped liability for Plaintiff’s  
5           sexual assault is not sufficient to upend AB 218 as applied to Defendant. The overwhelming  
6           and compelling public interests in the retroactive application of AB 218 to revive child sex  
7           abuse claims previously barred by government claims presentment requirements far outweigh  
8           Defendant’s manufactured right to rely on immunity supposedly granted by prior law. A  
9           defendant who enabled horrific crimes of child sex abuse should not be able to circumvent an  
10          otherwise constitutional revival law by arguing that it is unfair for it to have to compensate a  
11          victim it created.

12          Further, Defendant’s reliance on the fiscal decisions it made pursuant to the prior  
13          law’s claim presentment deadline is unreasonable given the Legislature’s repeated expansion  
14          over the last four decades of the rights of child sex abuse survivors to sue those responsible  
15          for the injuries they suffered. (See Code of Civil Procedure, section 340.1; *Shirk v. Vista*  
16          *Unified School Dist.* (2007) 42 Cal.4th 201, 207–208, 64 Cal.Rptr.3d 210, 164 P.3d 630  
17          (overview of Section 340.1’s legislative history since its 1986 enactment and its subsequent  
18          amendments).) Notably, AB 218 was not the first revival law for child sex abuse that the  
19          California Legislature passed. It revived some claims in 1994, opened a 1-year window in  
20          2003, and proposed several revival bills in the intervening years before successfully passing  
21          AB 218 in 2019. (See Code of Civil Procedure, section 340.1; AB 218 Senate Floor  
22          Analyses, Sept. 3, 2019.) All the while, the Legislature has expressed again and again its goal  
23          to “expand the ability of victims of childhood abuse to sue those responsible for the injuries  
24          they sustained as a result of that abuse,” including responsible entities. (*Doe v. City of Los*  
25          *Angeles* (2007) 42 Cal. 4th 531, 545, 169 P.3d 559, 562.) The Legislature did not make any  
26          commitments to Defendant that the Plaintiff would forever be barred from pursuing his claims  
27          for child sex abuse if he didn’t come forward during the first window. Nor could lawmakers  
28          bar subsequent Legislative members from enacting AB 218. This is merely wishful thinking  
                on Defendant’s part.

                Similarly, the California judiciary made no such assurances to Defendant that pre-  
2009 abuse-related claims that lapsed under § 911.2’s claim presentment deadline would

1 forever be barred. The California Supreme Court held in *Shirk* that the 2003 amendment to §  
2 340.1 opening a 1-year revival window for previously expired child sex abuse claims  
3 precluded claims against government entities that did not comply with § 911.2's claim  
4 presentation deadline. (42 Cal.4th at 212–214, 64 Cal.Rptr.3d 210, 164 P.3d 630 (“Had the  
5 Legislature intended to also revive in subdivision (c) the claim presentation deadline under the  
6 government claims statute, it could have easily said so. It did not.”).) The Court did not hold  
7 that claims against government entities that were not timely presented were forever barred,  
8 only that the 2003 amendment to § 340.1 was not sufficiently clear enough to revive these  
9 claims in 2003. (Id.)

10 Any detrimental reliance that Defendant faces under AB 218 is not deleterious,  
11 especially because Plaintiff still has the initial burden of proof to establish a claim. AB 218  
12 Assembly Judiciary Analysis, March 8, 2019 (pg. 11). Further, Defendant's reliance on  
13 avoiding liability for its own tortious conduct is far outweighed by the public safety interests  
14 and the victims' need for delayed, but necessary justice.

15 **iv. Legislative Judgment in Enacting AB 218 Should Be Accorded Deference**

16 As states face important public policy issues such as the ongoing child sexual abuse  
17 epidemic, judicial deference to legislative judgment as to civil, procedural retroactivity is now  
18 the norm.<sup>13</sup> California law is “clear that it is the Legislature, not the courts, which is the  
19 proper forum for resolving the competing policy interests involved in the decision to revive a  
20 time-barred claim.” (*20th Century Ins. Co. v. Superior Ct.* (2001) 90 Cal. App. 4th at 1263–  
21 64. See also *Quarry v. Doe I* (2012) 53 Cal. 4th 945, 955, 272 P.3d 977, 981–82 (“The  
22 Legislature is charged with balancing the interests of injured persons and third party  
23 defendants.”).)

24 Before enacting AB 218, the Legislature gave due consideration to the benefits to  
25 child sex abuse victims and society as a whole and the potential financial exposure of local  
26 entities and school districts like Defendant. The Legislature examined the opposition to AB

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27 <sup>13</sup> See *Cosgriffe v Cosgriffe* (Mont. 1993) 864 P.2d 776, 779 (quoting *K.E. v. Hoffman* (Minn. Ct. App. 1990)  
28 452 N.W.2d 509, 513-14) (“[W]e are not in a position to judge the wisdom of the legislature. . .”); *Doe v.*  
*Hartford Roman Catholic Diocesan Corp.* (Conn. 2015) 317 Conn. 357, 406 (judiciary is prohibited from  
“substitut[ing] our personal notions of good public policy for those of [the legislature]”); *Sheehan v. Oblates of*  
*St. Francis de Sales* (Del. 2011) 15 A.3d 1247, 1258-60 (“[W]e do not sit as an überlegislature legislature to  
eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of  
an otherwise valid law.”).

1 218 voiced by California insurance companies and school districts concerned about their  
2 exposure to liability to older claims, the evidentiary challenges to defending suits, and the  
3 potential diversion of funds from education to litigation. (AB 218 Senate Floor Analyses,  
4 Sept. 3, 2019 and Assembly Floor Analysis, Sept 14, 2019.) The Legislature analyzed the  
5 fiscal impact of reviving liability noting there are “[u]nknown, potentially-major out-year  
6 costs to local entities and school districts” liable for damages that “could lead to cost  
7 pressures to the state to stabilize a local jurisdiction or district” and “potentially-significant  
8 costs related to procuring liability insurance.” (AB 218 Senate Appropriations Analysis, Aug.  
9 30, 2019.) Clearly, the Legislature already took into account the potential impact on  
Defendant when it unanimously passed AB 218.

10 This Court should follow the precedent of *Coats v. New Haven Unified Sch. Dist.*  
11 (2020) 46 Cal. App. 5th 415, 422, 259 Cal. Rptr. 3d 784, 787–88 and *Doe v. El Dorado Union*  
12 *High Sch. Dist.* (Cal. Ct. App. June 23, 2021) No. C089531, 2021 WL 2562127, at \*4. The  
13 Legislature’s purposeful judgment to enact the revival provisions to give California child sex  
14 abuse victims the opportunity to hold those responsible for their abuse—even public  
15 entities—accountable and help eradicate child sex abuse in California, should be given  
deference, and upheld by this Court.

16 a. **Revival of Plaintiff’s Claim for Child Sexual Assault Comports with**  
17 **Defendant’s Contract Clause Rights**

18 Defendant argues the Legislature’s revival of claims violates the Contract Clauses of  
19 the United States and California Constitutions, because it allegedly interferes with their  
20 reliance on prior law to determine liability for risk sharing pooling agreements they entered  
21 into. First, this challenge fails because Defendant does not have a vested property right in a  
22 claim presentment deadline. Second, even if it did, Defendant does not point to any particular  
23 terms that are substantially impaired. Lastly, the California Legislature has the power to  
24 impair obligations in contracts “to safeguard the vital interests of its people”, which was  
25 established in great detail above in section I.A(ii), and was the Legislature’s intent in passing  
26 AB 218. (*20th Century Ins. Co. v. Superior Ct.* (2001) 90 Cal. App. 4th 1247, 1268–72, 109  
27 Cal. Rptr. 2d 611, 628–31 (holding revival law for Northridge earthquake victims did not  
unconstitutionally impair insurance contracts) (quotation omitted).)

1           **II. JUDICIAL RULINGS IN NUMEROUS OTHER STATES REVIVING**  
2           **CHILD SEX ABUSE CLAIMS SUPPORT THE CONSTITUTIONALITY**  
3           **OF AB 218**

4           Legislatures across the country have followed California’s lead and enacted civil  
5           revival laws for survivors of child sex abuse to remedy the long-standing injustice of blocking  
6           their claims with unreasonably short statutes of limitations and claim presentment deadlines.

7           <sup>14</sup> California is on a growing list of at least 33 jurisdictions which have enacted various laws  
8           to revive previously expired child sex abuse claims.<sup>15</sup> The overwhelming majority of these  
9           jurisdictions have successfully revived previously time-barred child sex abuse claims with a  
10          window, discovery rule or extended age limit. Although many defendants have challenged  
11          these laws, no other state has invalidated a revival window based on an as applied challenge  
12          after weighing the states’ interests against those of a defendant.

13          Modern revival laws do not distinguish between private and public institutions when  
14          determining that claims are revived against entities involved in child sex abuse. In California  
15          and Hawaii, after judicial determinations that the revival language was not explicit enough to  
16          overcome sovereign immunity, their legislatures reconvened and passed subsequent  
17          legislation explicitly reviving claims against state entities. (HAW. REV. STAT. § 657-1.8. *Roe*  
18          *v. Ram* (D. Haw. Aug. 29, 2014) No. 14-00027, 2014 WL 4276647.) In 2018 former  
19          California governor Jerry Brown vetoed a window bill for child sex abuse survivors that did

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20          <sup>14</sup> See *Revival Laws for Child Sex Abuse Since 2002*, CHILDUSA.ORG, (last visited Sept. 14, 2021), available at  
21          <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>; *2021 SOL Tracker, Nat’l Overview of SOLs for*  
22          *Child Sex Abuse*, CHILDUSA.ORG (last visited Sept. 14, 2021), available at <https://www.childusa.org/2021sol>.

23          <sup>15</sup> See ARIZ: ARIZONA STAT. ANN. § 12–514 (2019), H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019); ARK:  
24          ARK. CODE ANN. § 16-56-130 (1993); S.B. 676, 93<sup>rd</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ark. 2021); CAL: CAL. CIV. PROC. CODE  
25          § 340.1 (2003, 2019); CONN: CONN. GEN. STAT. § 52-577d (2002); DEL: DEL. CODE ANN. TIT. 10, § 8145 (2007);  
26          DEL. CODE ANN. TIT. 10, § 8145 (2007); DC: D.C. CODE § 12-301 (2019); FLA: FLA. STAT. § 95.11 (1992), GA:  
27          GA. CODE ANN. § 9-3-33.1 (2015); HAW: HAW. REV. STAT. § 657–1.8 (2012, 2014, 2018); IDAHO: IDAHO CODE  
28          § 6–1704 (ID); ILL: 735 ILL. COMP. STAT. 5/13–202.2 (2006); IOWA: IOWA CODE § 614.8A (1991); KAN: KAN.  
STAT. ANN. § 60–523 (1992); KY: HB 472, 2021 Leg. Reg. Sess. (Ky., 2021); LA: H.B. 492, La. Sess. Law Serv.  
Act 322 (La. 2021); MAINE: H.P. 605-L.D. 837, Me. Legis. Serv. Ch. 176 (Me., 2021); MASS: MASS. GEN. LAWS  
ANN. CH. 260 § 4C (2014); MICH: MICH. COMP. LAWS ANN. § 600.5851b (2018); MISS: MO. REV. STAT. §  
537.046 (1989); MINN: MINN. STAT. ANN. § 541.073 (1989), 2013 Minn. Sess. Law Serv. Ch. 89 (H.F. 681);  
MONT: MONT. CODE ANN. § 27–2–216 (1989, 2019), NJ: N.J. STAT. ANN. § 2A:14-2B (2019), S. 477 2019 Gen.  
Assemb., Reg. Sess. (N.J. 2019); NY: N.Y. C.P.L.R. § 214-g (2019); NC: N.C. GEN. STAT. ANN. § 1-52 (2019), S  
199, 2019 Leg., Reg. Sess. (N.C. 2019); NV: SB 203, 81<sup>st</sup> Leg. Reg. Sess. (Nv. 2021); OR: OR. REV. STAT. ANN.  
12.117 (2010); RI: tit. 9 R.I. GEN. LAWS ANN. § 9-1-51 (1996, 2019); SC: S.C. CODE ANN. § 15-3-555 (2001),  
SD: S.D. CODIFIED LAWS § 26–10–25 (1991); UTAH: UTAH CODE ANN. § 78B-2-308 (2016); VT: V.T. STAT.  
ANN. tit. 12, § 522 (2019); VA: V.A. CODE ANN. § 8.01-249 (1991); V.A. CONST. ART. 4, § 14 (1995); WV: W.  
VA. CODE ANN. § 55-2-15 (2020); WYO: WYO. STAT. ANN. § 1–3–105(b)(ii) (1993); GUAM: 7 G. COMP. ANN.  
§ 11301.1 (2016).



1 not include revival against public entities, in part, because it did “not fully address the  
2 inequity between state defendants and others”. (AB 218 Assembly Judiciary Comm.  
3 Analysis, March 8, 2019.) It is the seemingly unfair distinction between victims of private  
4 and public institutions that Defendant is advocating for that inspired the broad revival AB 218  
5 authorizes.

6 Revival laws for child sex abuse claims have been explicitly upheld as constitutional  
7 in California and 11 other states—Connecticut, Delaware, Georgia, Hawaii, Kansas,  
8 Massachusetts, Minnesota, Montana, Oregon, South Dakota, and Virginia.<sup>16</sup> In the District of  
9 Columbia, Guam and another 9 states—Arizona, Arkansas, Kentucky, Louisiana, Maine,  
10 Michigan, Nevada, Vermont, and West Virginia—constitutional challenges have not been  
11 mounted against the revival laws for child sex abuse.<sup>17</sup> In California, New Jersey, and New  
12 York, revival windows have thus far withstood constitutional attack but some rulings that the  
13 windows did not violate defendants’ constitutional rights are on appeal.<sup>18</sup> Rhode Island’s  
14 recent revival law and Iowa’s discovery rule were challenged, but the court did not rule on  
15 constitutionality.<sup>19</sup>

16 Revival laws were held to be unconstitutional in 8 states—Arkansas, Florida, Illinois,  
17 Missouri, Rhode Island, South Carolina, Utah, and Virginia.<sup>20</sup> However, Virginia  
18 subsequently amended its constitution for the purpose of allowing revival of child sex abuse

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18 16 See *Deutsch v. Masonic Homes of Cal., Inc.* 164 Cal.App.4th at 752, 759; See *Hartford Roman Catholic*  
19 *Diocesan Corp.*, 317 Conn. at 406 (age limit); *Sheehan*, 15 A.3d at 1258-60; *Harvey v. Merchan* (Ga. June 21,  
20 2021) No. S21A0143, 2021 WL 2518868; *Roe v. Ram* (D. Haw. Aug. 29, 2014) No. CIV. 14-00027 LEK-RL,  
21 2014 WL 4276647, at \*9; *Shirley v. Reif* (1996) 260 Kan. 514, 526, 920 P.2d 405, 413; *Sliney v. Previde*, 41 N.E.3d  
22 732, 737, 739; *Hoffman*, 452 N.W.2d at 513-14; *Cosgriffe*, 864 P.2d at 779; *Doe v. Silverman* (2017) 287 Or. App.  
23 247, 253, 401 P.3d 793, 797, review denied, (2018) 362 Or. 389, 411 P.3d 382; *DeLonga v. Diocese of Sioux Falls*  
24 (D.S.D. Feb. 26, 2004) 329 F. Supp. 2d 1092, 1104; *Kopalchick v. Cath. Diocese of Richmond* (Va. 2007) 274 Va.  
25 332, 337, 645 S.E.2d 439.

26 17 See *infra* n. 15.

27 18 *Coats v. New Haven Unified Sch. Dist.* 46 Cal. App. 5th at 427; *T.M. v. Order of St. Benedict of New Jersey,*  
28 *Inc.* (Law Division, Morris County) MRS-L-399-17; *W.F. v. Roman Catholic Diocese of Paterson, et al* (D. N.J.  
June 7, 2021) 2021 U.S. Dist. LEXIS 111062; *Torrey v. Portville Cent. Sch.* (N.Y. Sup. Ct. 2020) 66 Misc. 3d  
1225(A); *S.T. v. Diocese of Rockville Centre* (Sup. Ct. Nassau Cty. May 18, 2020) Index No. 099997/2019, Hon.  
Steven M. Jaeger; *Giuffre v. Dershowitz* (S.D.N.Y. Apr. 8, 2020) No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at  
\*2.

19 *Edwardo v. Gelineau* (R.I. Super October 16, 2020) 2020 WL 6260865, \*1; *Frideres v. Schiltz* (Iowa 1995)  
540 N.W.2d 261, 268.

20 *Miller v. Subiaco Acad.* (W.D. Ark. 2005) 386 F. Supp. 2d 1025, 1028; *Wiley v. Roof* (Fla. 1994) 641 So. 2d  
66, 68–69; *Doe A. v. Diocese of Dallas* (Ill. 2009) 234 Ill. 2d 393, 411–12, 917 N.E.2d 475, 486; *Doe v. Roman*  
21 *Catholic Diocese of Jefferson City* (Mo. 1993) 862 S.W.2d 338, 341; *Kelly v. Marcantonio* (R.I. 1996) 678 A.2d  
22 873, 883; *Doe v. Crooks* (S.C. 2005) 364 S.C. 349, 351–52; *Mitchell v. Roberts* (Utah 2020) 469 P.3d 901, 913-  
23 14; *Starnes v. Cayouette* (1992) 419 S.E.2d 669, 674–75.



1 claims.<sup>21</sup> All of these cases involved prima facie challenges to revival laws and are unlike  
2 Defendant's present as applied challenge. In these states, the courts were constrained by state  
3 law precedent which required them to invalidate the revival laws as per se violations of  
4 defendants' constitutional rights in a statutes of limitations defense.<sup>22</sup> Notably, the Utah  
5 Supreme Court stated that it appreciated the "moral impulse" and the legislature's "substantial  
6 policy justifications" for helping alleviate the lifetime suffering of child sex abuse victims, but  
7 expressed frustration that the Utah Constitution did not permit it to carry out the intent of the  
8 legislature.<sup>23</sup> Unlike in these minority states, this Court is not constrained by the California  
9 Constitution or binding caselaw to invalidate California's revival provisions.

10 Every appellate court that has considered the rationality of its state legislatures'  
11 revival of child sex abuse claims pursuant to its state due process clause has determined the  
12 remedial statute was reasonable, according to *amicus curiae's* research. (*Hartford Roman*  
13 *Catholic Diocesan Corp.* 119 A.3d at 496 (rejecting due process challenge because revival  
14 law "is a rational response by the legislature to the exceptional circumstances and potential  
15 for injustice faced by adults who fell victim to sexual abuse as a child" and the "revival of  
16 child sexual abuse victims' previously time barred claims serves a legitimate public interest  
17 and accomplishes that purpose in a reasonable way"); *Sliney* 41 N.E.3d at 741 (rejecting due  
18 process challenge because the revival statute was reasonable and "tied directly to the  
19 compelling legislative purpose" of giving access to justice for child sex abuse survivors who  
20 do not process their injuries well into adulthood); *Cosgriffe* 864 P.2d at 779–80 (rejecting due  
21 process challenge because the discovery statute "has a reasonable relation to the legitimate  
22 purpose of the State"); *Hoffman* 452 N.W.2d at 514 (rejecting due process challenge because  
23 "the statute has a reasonable relation to the state's legitimate purpose of affording sexual  
24 abuse victims a remedy".))

25  
26 21 See VA Const. art. 4, § 14 (1995); *Kopalchick*, 645 S.E.2d at 439.

27 22 See *supra*, n.15.

28 23 *Mitchell* 469 P.3d, at 913-14 ("The problems presented in a case like this one are heart-wrenching. We have enormous sympathy for victims of child sex abuse. But our oath is to support, obey, and defend the constitution. And we find the constitution to dictate a clear answer to the question presented. The legislature lacks the power to retroactively vitiate a ripened statute of limitations defense under the Utah Constitution.").

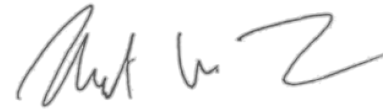
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**IV. CONCLUSION**

The United States and California Constitutions permit revival of previously time-barred civil claims, and so AB 218’s revival provisions for victims of child sexual abuse is constitutional. As is the case in a majority of states, the Defendant does not have a constitutionally protected right to immunity from lapsed claims. This Court accordingly should uphold the revival provisions as constitutional as applied to Defendant and defer to the California Legislature’s sound policy decision to provide access to justice for survivors and protect California’s children from sex abuse.

Dated: September 27, 2021

**CHILD USA**



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