

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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HUMPHREY V. FORRESTER,

*Petitioner,*

v.

BENJAMIN STEPANOFF, PSY. D, et al.

*Respondents,*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE CALIFORNIA COURT OF APPEALS

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PETITION FOR A WRIT OF CERTIORARI

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**QUESTION PRESENTED**

Whether a psychologist can claim “professional negligence” for his unauthorized disclosure of psychotherapy notes to his patient’s employer, given that the psychologist and patient both signed a legally binding, separate and special agreement that expressly states that the named psychologist will maintain and secure the named patient’s privacy and confidentiality.

**PARTIES TO THE PROCEEDING**

Humphrey V. Forrester is the Petitioner- Appellant-  
Plaintiff.

Benjamin Stepanoff, Psy. D. and Advances in Mental  
Health and Addictions Treatment Center, Inc. are  
the Respondents-Appellees-Defendants.

## RELATED PROCEEDINGS

- *Humphrey V. Forrester v. Advances in Mental Health and Addictions Treatment Center, Inc., et al.*, No. S289252, Supreme Court of California. Petition for review denied April 23, 2025. (Appendix (App.) E)
- *Humphrey V. Forrester v. Advances in Mental Health and Addictions Treatment Center, Inc., et al.*, No. B331145, California Court of Appeals, Division One. Opinion. Judgment entered January 2, 2025. (App. A) Rehearing denied January 23, 2025. (App. B)
- *Humphrey V. Forrester v. Advances in Mental Health and Addictions Treatment Center, and Benjamin Stepanoff, Psy. D.*, No. B331145, California Court of Appeals, Division One. Oral Argument, November 18, 2024.
- *Humphrey V. Forrester v. Advances in Mental Health and Addictions Treatment Center, and Benjamin Stepanoff, Psy. D.*, No. 20STCV12615, District Court, Los Angeles County, California. (Plaintiff's Request for Judgment March 1, 2023.) (App. G) Judgment entered March 29, 2023. (App. K)
- *Humphrey Forrester v. Benjamin Stepanoff, et al.*, No. 20STCV12615, District Court, Los Angeles County, California. Tentative Decision Order, August 23, 2021. No Judgment entered. (App. J)

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## PETITION FOR WRIT OF CERTIORARI

Humphrey V. Forrester respectfully petitions the United States Supreme Court ('this Court') for a writ of certiorari to review the judgment of the California Court of Appeals.

### OPINION BELOW

The decision by the California Court of Appeals in its Opinion denying Forrester's direct appeal is reported as *Humphrey V. Forrester v. Advances in Mental Health and Addictions Treatment Center, Inc., et al.* The Opinion is dated January 2, 2025. (App. A, 1a-24a) Forrester timely filed a Petition for Rehearing, but it was denied on January 21, 2025. (App. B)

### JURISDICTION

Forrester's petition for review to the California Supreme Court was denied on April 23, 2025. (App. E) Forrester invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the California Supreme Court's judgment.

### PROVISIONS INVOLVED

United States Constitution, Amendment XIV  
California Constitution, Sections 1, 7(a), and 9

Note:

Under the Rules of the United States Supreme Court, Rule 29.4(c), the following are to be cited:

1. '28 U.S.C. § 2403(b), Intervention by United States or a State; Constitutional Question, may apply and shall be served on the Attorney General of that State (California).'
2. 'Pursuant to 28 U.S.C. § 2403(b), the district court (Superior Court of California, Los Angeles County), the Appellate Court (California Court of Appeals, Second Appellate District), or the California Supreme Court did not certify to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question.'

## STATEMENT OF THE CASE

### A. The Underlying Facts

This petition arises from respondents, Advances in Mental Health and Addictions Treatment Center, Inc., (AABMH), and Benjamin Stepanoff, a California-licensed psychologist, who faxed (App. H, 47a-51a) his psychotherapy notes without consent to his patient's, Humphrey V. Forrester's, employer, Airborne Systems, located in Santa Ana, Orange County, California. 'Airborne' later fired Forrester 'at-will' under false pretext (App. O, 86a-88a) soon after Forrester returned to work

from medical leave of absence.

Both Forrester and Stepanoff had signed a legally binding, separate and special written agreement titled 'Consent and Agreement for Psychological Testing and Evaluation' (or 'CAPTE') (App. I, 59a-61a). The CAPTE expressly states that named psychologist Stepanoff - who attests that he "discussed the issues..." in the CAPTE with Forrester – would maintain Forrester's privacy and confidentiality.

**1. Introduction – Interaction between Forrester and Stepanoff; Forrester's disability, return to work and termination.**

On Thursday, March 31, 2016, Forrester sought mental health treatment for work-related stress (cumulative racial harassment, physical assault, false accusations, work sabotage, and overall toxic work environment in his 2 ½ year tenure at Airborne) from psychologist Stepanoff, who works out of AABMH's facility.

Without any introduction, Stepanoff's first words to Forrester were, "So how old are you?" Forrester replied "54", to which Stepanoff responded, "That's old." Forrester was taken aback as to Stepanoff's unexpected crudeness coming from a psychologist. Anyway, Forrester discussed his distressing issues at work in great detail with Stepanoff, who later gave Forrester a 2-hour written psychological test, which Forrester completed and returned to Stepanoff.

At the end of the session, Stepanoff decided to place Forrester on a 30-day disability leave of absence, beginning that same day.

The next day Forrester received a letter from Airborne to notify him that they received a fax from Stepanoff placing Forrester on Family Leave of Absence (FMLA). Forrester was unaware of FMLA since he and Stepanoff had discussed Workers' Compensation Insurance for Forrester's work-related problems. Forrester called defendants Stepanoff and AABMH for clarification but was unable to reach them. Forrester then called Airborne for him to review the fax at Airborne on the next business day.

On Monday, April 4, 2016, Forrester met with Airborne's human resources (HR) representative (Terri Portillo), who handed him the 4-page fax (App. H). Forrester was shocked to see that the fax disclosed to his employer, without Forrester's consent, that Forrester had 'work problems' and 'social environment problems' as his stressors. Additionally, under 'Diagnoses', Stepanoff had written 'GAD' (for generalized anxiety disorder), 'MO' (for mood disorder), and 'Sleep D/O' (for sleep disorder). The 'Significant Mental Status Issues' box was checked. Further, on the same page, under 'Provider's Comments', Stepanoff had written the words, 'paranoid ideation' and 'anxiety', with each showing an arrow pointing upwards. (App. H, 50a)

The next day, Forrester, in a highly emotional

state, went to AABMH for his scheduled appointment with Stepanoff. Upon seeing Stepanoff, Forrester shouted to him, asking Stepanoff why he had disclosed confidential information to Forrester's employer without Forrester's consent. After Stepanoff led Forrester to his office, Stepanoff simply replied, "Hey, everybody makes mistakes." Stepanoff did not even appear surprised but was instead callous and indifferent without any remorse, which was notably even more disturbing to Forrester.

After Stepanoff told Forrester that it was an AABMH staff member who had sent the fax, Forrester told him that the entire staff needs training. Stepanoff had Forrester follow him to the front office, where Stepanoff spoke to only one of at least three assistants in the area and simply told her not to send patients' personal health information to their employers. After the assistant said "Okay", Stepanoff turned to Forrester and said, "There." Forrester left the facility feeling sickened and disgusted.

Forrester was having such great difficulty coping with the trauma of having his work problems divulged to his employer that he took the risk of seeking different mental help. He found psychiatrist, Dr. Janet Conney, who works as sole practitioner in a quiet office in the city of Garden Grove, California. Dr. Conney began treating Forrester on May 10, 2016, six weeks after the illegal fax was sent. Dr. Conney suggested to Forrester for him continue seeing Stepanoff until

she comfortably weans Forrester away from Stepanoff; thus, both Stepanoff and Dr. Conney treated Forrester concurrently for a short overlapping period.

On the same day (May 10<sup>th</sup>), Amber Stalvey at Liberty Mutual Insurance sent a letter to defendant Stepanoff requesting office treatment documentation for Forrester to process his disability benefits. (App. I, 67a-68a) Defendants' intentionally delayed providing the required documentation to Liberty even after Stalvey had 3-way telecon with Amanda, AABMH's office assistant, and Forrester. Amanda promised to expedite Stalvey's request but did not. Defendants' delay caused Forrester to receive only 40% of his weekly disability benefit from Liberty (through no fault of Liberty). Defendants' intentional infliction of emotional distress (IIED) upon Forrester finally prompted Forrester to file a letter of complaint under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on June 7, 2016. (Appellant's Appendix (AA) 31-32 Exhibit 003), in Appellant's Opening Brief (AOB).)

Due to Forrester's highly distressed state, Stepanoff extended Forrester's disability two more times, for a total of 90 days medical leave of absence, the maximum allowed under the Family Medical Leave of Absence Act of 1993 (FMLA) with disability benefits.

Forrester ended his horrific psychotherapy-patient relationship with Stepanoff and AABMH

on June 13, 2016. Forrester returned to work at Airborne under the care of Dr. Conney on June 29, 2016.

Upon his return to work, Forrester found that Airborne had already hired another full-time quality engineer (Tom Reese) to replace him. Within three days after Forrester's return, Airborne deleted both Forrester's cell phone and most of his computer files, with Airborne claiming "accidental during updates". Further, Airborne failed to accommodate Forrester's simple requests (made at least 3 different occasions) to move from his primary work station to an existing alternate workstation in the main Airborne facility one mile away. However, less than 3 months after Forrester returned to work, Airborne fired him 'at-will' under pretext (App. O).<sup>(1)</sup>

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(1) One week prior to terminating Forrester, Airborne fake-interrogated Forrester, who is Black, regarding his off-work, off-duty conduct at a restaurant with a former female intern, Carissa O'Dowd Gramm, who is White, and whom Airborne claimed had filed a complaint but without stating what the complaint was or whether it was against Forrester. Forrester sued Airborne for wrongful termination, et al. (Case# 30-2018-01006085-CU-WT-CJC, filed on July 18, 2018), as Airborne's reason for Forrester's termination changed 4 times, from 'at will' to 'harassment' to 'interfering with an investigation when told not to do so', and finally to 'inappropriate conduct in the workplace'. Airborne did not produce any testimony, affidavit, or documented complaint from Gramm, as Airborne's entire case was based on blatant pretextual hearsay from Airborne and their attorneys. District court granted summary judgment to Airborne.

## B. Procedural History

**1. District court proceedings with two separate judges. Court grants tentative decision to defendants without judgment. Plaintiff requests judgment. District Court eventually enters final judgment for Defendants.**

Due to respondents' unlawful and unauthorized disclosure of Stepanoff's psychotherapist notes (via fax) to Forrester's employer, Forrester filed an original complaint (OC) on March 31, 2020, with cause of action for breach of contract (Doctor-Patient Confidentiality) (AA 4). Note: Forrester submitted his filing papers on March 31, 2020, which the Superior Court received same day but filed the papers next day, on April 1, 2020. (App. J, 69a-71a)

The first district court judge, Judge Anthony Mohr, sustained defendants' demurrer to the OC due to no evidence of a contract. Judge Mohr provided a written judicial analysis of his reason (AA 36-37), with leave to amend.

Forrester then filed a first amended complaint (FAC), but prior to the hearing on the demurrer to the FAC, Forrester located the CAPTE within his files at home. Forrester emailed defendants' attorney, Jessica Neighbor, on December 8, 2020, stating that he had found the CAPTE, or 'contract', but she did not respond.

At beginning of the hearing on the demurrer to the FAC on February 17, 2021, Forrester notified Judge Mohr of the located CAPTE/contract and requested the court for leave to amend the FAC in order to incorporate the CAPTE/contract into the next second amendment and not to waste the court's time at that hearing. Judge Mohr immediately obliged and sustained the demurrer to FAC with leave to amend, without discussion. [Superior Court Clerk's Transcript (CT) 18]

Defendant's demurrer to the FAC based their defense on alleged professional negligence under California Code of Civil Procedure (CCP) § 340.5, which Judge Mohr rejected. [CT-19.] This marked the last ruling in the case by Judge Mohr, as the case was re-assigned to Judge Maurice A. Leiter, later that same day, February 17, 2021.

Forrester filed the operative second amended complaint (SAC) (AA 80), for violating the legally binding separate and special agreement (CAPTE/contract as a result of defendants' unauthorized disclosure of psychologist's Stepanoff's psychotherapist notes about Forrester to Forrester's employer. The signed CAPTE/contract expressly states that the named psychologist Stepanoff will maintain and secure patient's Forrester's privacy and confidentiality, in which defendants failed to uphold.

Forrester also filed a Case Management Statement (CMS) (AA 139) that included a

specific request to address the SAC containing the CAPTE/contract (AA 106,107 and AA 111,112). At the Case Management Conference (CMC) held telephonically on June 18, 2021, Judge Leiter advanced the hearing on demurrer to SAC from October 1, 2021, to August 23, 2021, and did not entertain any other issue [CT 23].

Forrester had expressed his desire to the new Judge Leiter to inform the court of the newly found material evidence CAPTE/contract within the SAC. Judge Leiter said that he would address the issue at the next CMC or hearing on the demurrer to the SAC. However, there was no 'next' CMC held because Judge Leiter sustained the demurrer to SAC without leave to amend at hearing held on August 23, 2021, and adopted the tentative ruling as the Order of the court. (App. K) [CT 24].

Forrester disagreed with Judge Leiter's finding of "failure to allege a contract" and pointed to the CAPTE/contract in the SAC and asked the judge for an explanation. Judge Leiter simply said, "That's my ruling." Forrester followed up with a request for a statement of decision, but Judge Leiter said, "That's my decision."

Forrester then filed a written Request for Statement of Decision (AA 166), and same day the court rejected the request ("not required") (AA 182). Forrester then filed a notice of intent to move for a new trial (AA 183), but the court also rejected the motion. (AA 189).

Forrester filed a (first) notice of appeal, Case No. B323350, with the Second Appellate District. On January 11, 2023, the administrative presiding judge dismissed the appeal for lack of jurisdiction due to the trial court's failure to furnish a judgment. (App. F.) Plaintiff then filed a request with the district court for judgment (App. G), and on March 29, 2023, Judge Leiter issued final judgment for defendants. (App. L)

**2. Court of Appeal proceedings with oral arguments. Court of Appeal affirms judgment for Defendants**

Plaintiff/Appellant Forrester filed the operative (second) notice of appeal, Case No. B331145, on May 25, 2023. [CT 40]

A. 1. Forrester alleges that the Court of Appeal barely addressed appellant Forrester's merits of the case regarding the unauthorized disclosure of psychotherapy notes that led to violation of a legally binding agreement (CAPTE), which ultimately led to Forrester's claims for breach of contract and intentional infliction of emotional distress (IIED); rather, the court focused on statute of limitations (SoL"). There were absolutely no inquiries or discussions from the court about the deleterious and severity of the effects (the long-lasting effects) upon Forrester that the illegal disclosure has caused him because of Respondents' IIED.

2. During oral argument, the very first

question the court presented to Appellant Forrester was “Didn’t the [district] court sustain the demurrer on the basis of the SoL, isn’t that right”. Forrester responded, “No.” Refer to the court’s oral argument recording at the 7:45-8:03 minute audio/visual timeline. The court’s other focus on SoL and dates is recorded at the 25:43 for Appellant and at the 27:35 - 33:25 mark (a total of 6 minutes) for Respondent’s attorney, Nick Gedo; approximately 60% of Gedo’s allotted time to speak (10 minutes) was dedicated to SoL and dates.

From the preceding, it appeared to Forrester that the court was heavily biased towards concentrating on SoL, which is the ‘back end’ of defendant’s claim of professional negligence under CCP § 340.5, rather than first discussing the substance of defendants’ negligence claim.

B. The Court issued two separate requests for supplemental briefs (SB) to the parties - one before and one after oral arguments – to specifically address SoL for each of the two causes of action.

1. SB (App. D) - Whether IIED barred by 2-year SoL)

Forrester provided reasons on 11/1/24 as to why the two-year statute of limitations for IIED should not be applicable in this case, arguing that equitable tolling should apply to this case. Equitable tolling should apply in his case since despite exercising reasonable care and diligence,

Forrester's severe ED is a result of circumstances beyond his control, as the circumstances preventing timely filing for IIED were uniquely extraordinary, as seen below:

from the onset (March 31, 2016) of Forrester's ED disability due to Stepanoff's intentionally faxing psychotherapy notes to Forrester's employer (Airborne) – to Forrester's subsequent distrust virtually everyone - to defendants' malicious delay in providing Liberty Insurance Forrester's treatment plan, which caused Forrester's disability benefits to be reduced by 60% via defendants IIED - to Airborne firing Forrester under pretext and who is unable to work since - to Forrester's lawyer dropping claim (demand letter) against Airborne after ten (10) months for no known reason - to Forrester consulting with dozens of lawyers to suing Airborne pro se, (2018 - 2022) - and to suing Stepanoff pro se on March 31, 2020, to constant outside harassment and filing numerous evidentiary police reports, through to the present time.

Forrester's severe ED had not been reasonably discoverable within the original statute of limitations period. (Defendants were not prejudiced.)

Additionally, because Forrester's severe emotional distress (ED) is so substantial and long lasting - he still suffers from severe ED and still on

disability for more than 8 years and was being treated all that time by Dr. Conney (*Id.*) before she retired in October 2024 - Forrester could not have reasonably discovered the severity of his ED earlier.

Further, California Civil Jury Instructions (CACI) 1604, IIED: Severe Emotional Distress defined: Emotional Distress (ED) includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame. "Severe Emotional Distress' is not mild or brief; it must be so substantial or long-lasting that no reasonable person in a civilized society should be expected to bear it." (AA 93: 13-28)

2. SB (App. C) - Whether Breach of Contract applicable to SoL for California's Confidentiality of Medical Information Act (CMIA).

Forrester responded on 12/13/24 with a short answer "No", that the breach of contract claim is not barred by the SoL applicable to CMIA; then provided a host of reasons such as:

- CMIA does not offer an express agreement or promise to do something like the CAPTE or "contract" does,
- Forrester did not sign any CMIA-codified document
- Similar to HIPAA and other Notices that spell out rights afforded to Forrester that are not contracts - District Court Judge Mohr sustained demurrer to Forrester's two prior

complaints on that argument - CMIA also falls in that category.

CMIA is not applicable, as Forrester disqualified the CMIA at least 5 different times in his response letter on 12/13/24.

While Stepanoff violated numerous laws, statutes, and regulations, Forrester filed the breach of contract lawsuit because of Stepanoff's failure to fulfill his obligation of the legally binding, special and separate agreement, the CAPTE/contract that Stepanoff entered in with Forrester. Both parties did not enter in a contract under CMIA. Stepanoff breached the contract by disclosing without authorization psychotherapy notes to Forrester's employer, Airborne.

## **REASONS FOR GRANTING CERTIORARI**

### **I. The Court of Appeal's decision is inconsistent with this Court's landmark decision in *Jaffee v Redmond* 518 U.S. 1 (1996)**

**A. *Jaffee* established psychotherapist privilege.** *"All agree that a psychotherapist privilege covers confidential communications made to licensed psychiatrists and psychologists."* (*Jaffee, at 1931*) The lower courts' rulings that allowed the disclosure directly undermines the psychotherapist-patient privilege recognized in *Jaffee*. This includes the core principle that patients have a reasonable expectation of

confidentiality, which is essential to effective treatment.

**B. *Jaffee* emphasized confidentiality in that it was based on the public interest in promoting mental health** and the understanding that confidentiality is essential for successful psychotherapy. *“The psychotherapist privilege serves the public interest by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.”* (*Jaffee*, at 1929)

**C. After this Court’s decision in *Jaffee*, the psychotherapist-patient privilege ensures patients can openly share deeply personal thoughts, feelings, and experiences necessary for effective mental health treatment without fear those communications will be later exposed in litigation.** *“Like the spousal and attorney-client privileges, the psychotherapist -patient privilege is “rooted in the imperative need for confidence and trust.”* (*Jaffee*, at 1928.) This Court further stated, *“If the privilege was rejected, confidential conversations between psychotherapists and their patients would surely be chilled...”*. (*Jaffee*, at 1930)

**D. This Court rejected a case-by-case balancing approach in *Jaffee*.** It emphasized that “an uncertain privilege, or one which purports

to be certain but results in widely varying applications by the courts, is little better than no privilege at all." (*Jaffee, at 1932*)

**II. The Court of Appeal improperly stated the statute CCP § 340.5, Professional Negligence, having two important Provisions.**

CCP § 340.5, Professional Negligence, does not apply in the instant case. First, there is conflict between the district court and the Court of Appeal. The district court twice rejected CCP § 340.5 by both Judge Mohr and Judge Leiter, whereas the Court of Appeal states that Forrester's claim for breach of contract "is barred by" (App. A, 15a), "subject to" (App. A, 17a), "or set forth in" (App. A, 19a), the statute of limitations set forth in 340.5. The Court of Appeal noted, however, that they 'disagree' with Forrester's argument that respondents' wrongdoing did not constitute professional negligence. (App. A, 16a)

Second, Opinion (App. A, 17a) states: "As part of placing Forrester on leave, Respondents needed to communicate with Forrester's employer, which they did by sending the fax." [*See Opinion's Footnote 11, shown on page 19 below*] (App. A, 17a) This is simply wrong as it implies that a doctor can send any type of information on his report to a patient's employer without consideration to boundaries of the information, so long as the doctor makes the employer aware of the patient's leave of absence. That is so far from the truth and conflicts

with federal laws, state laws and everything pertaining to patient privacy protection and confidentiality laws.)

As shown in Opinion (App. A, 16a), CCP § 340.5 has two provisions for ‘rendering of professional services’:

1. The services are within the scope of services for which the provider is licensed, and
2. The services are not within any restriction imposed by the licensing agency or licensed hospital.

Respondents faxing psychotherapist notes to Forrester’s employer (a third party) without his consent is unauthorized disclosure of medical information, which is not within the scope of services for which the provider (Stepanoff) is licensed, and is restricted by the licensing agency, the California Board of Psychology (CBP). Similarly, a doctor divulging to his patient’s employer that the patient has a sexually transmitted disease is certainly not within the doctor’s scope of services for which he is license, despite the disclosure occurred in the doctor’s “rendering of professional services”.

If there were no provisions, then every health care provider could claim ‘professional negligence’ regardless of the provider’s intent to any injury/damage to the patient caused by the doctor. Also, without any provisions to scope, the doctor

could even override any enforceable binding agreement that the provider may have entered in with the patient, such as in the instant case.

Liberty Mutual Insurance (*Id.*) writes on their letter dated May 10, 2016, to Stepanoff (App. I, 67a-68a) regarding request for Forrester's office treatment notes, test results, etc. needed to process Forrester's disability benefits:

“...we understand your responsibilities under HIPAA as a health care provider, and our associated responsibility of ensuring this information is protected against deliberate or inadvertent misuse or disclosure.”

- Amber Stalvey, Disability Claims  
Case Manager

*[Continuing to Opinion Footnote 11, from page 17 above:*

‘(See *Titolo v. Cano* (2007) 157 Cal.App.4<sup>th</sup> 310, 318 [communications between physician and patients’ insurance companies within “provision of medical services” because such communications are “a necessary part of the provision of medical services to those patients”].)’ (App. A, 17a)

Forrester recognizes with *Titolo* above, that a doctor communicating with patients’ insurance companies is justified and permitted under the law, much like Liberty Mutual’s request. What is not permitted under the law is sending

confidential psychotherapy notes to a patient's employer without the patient's authorization, barring any legal exceptions (threat to health or safety of a person, danger to patient himself/herself, etc., which does not apply in the instant case.)

Additionally, Opinion (App. A, 16a) states, 'Forrester did not dispute...that his complaint was filed outside the deadlines set forth in section 340.5. Instead, he argued that Respondents' wrongdoing did not constitute professional negligence. We disagree.' The case record will show that Forrester has disputed the entire CCP § 340.5 as being inapplicable and therefore also disputed its SoL. (CCP § 340.5, with Defendants using the same general arguments, was also rejected twice in district court by two different judges.)

Finally, during the oral argument, the court of appeal did not discuss with respondent's attorney anything about 'a negligent act' to support 'professional negligence' under § 340.5. Respondents are required to prove § 340.5 because it was twice rejected by district court. Respondents have not done so and, in fact, not even admitted that they performed 'a negligible act' under CCP § 340.5. What Respondents have done throughout the instant case was to not recognize the CAPTE as a contract and argue that rendering of professional services - without mentioning any restrictions - falls within the 'scope of services' under CCP § 340.5(2). Forrester argues without hesitation that Respondents' argument is false

since each profession generally has some restrictions within their scope of service.

Respondents and lower courts attempt to nullify Forrester's breach of contract claim with the theory of 'professional negligence' under the improperly stated statute of CCP § 340.5 for the sole reason of utilizing the statute's 1 - 3-year statute of limitation (SoL), which expired at the time when the claim was filed. The SoL for breach of contract<sup>2</sup> is 4 years under CCP 337 (AA 99: 24-27), which is not expired as of the date that plaintiff Forrester first filed his papers on March 31, 2020.

The CAPTE is not a legal theory but a tangible, undisputable material evidence that represents a signed, legally binding contract between Forrester and Stepanoff.

**III. Lower courts decisions are not in compliance with the United States Constitution, federal laws, and the state's own Constitution and laws.**

The district court abuse its authority in not providing Forrester due process, such as a requested trial, which is in direct violation with the self-explanatory U.S. Constitution Amendment XIV. (App. M)

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2. CACI 303, Breach of Contract, Essential Factual Elements, is the controlling state instruction for breach of contract.

In addition, to violating this Court's landmark ruling in *Jaffee* and violating the terms in legally binding agreement (CAPTE/contract), the lower courts did not dissent to Respondents' unauthorized disclosure of psychotherapy notes Forrester's employer, which is a violation of several federal laws, as shown below:

1. HIPAA,
2. Federal Rule of Evidence, Rule 501, Privilege in General,
3. 45 CFR § 164.508(a)(2), Code of Federal Regulations: Standard, Authorizations for uses and disclosures

Similarly, the lower courts abused their authority in violation of the California Constitution (App. N): Section 1 - not applying the law to Forrester's inalienable rights of enjoying life and obtaining safety, happiness, and privacy; Section 7(a) - not applying the law to Forrester's due process of law and equal protection of the laws; and Section 9 - impairing the obligation of contracts. The lower courts also did not dissent to Respondents' unauthorized disclosure of psychotherapy notes and abused their power in not adhering to several California state rules and regulations, as shown below:

4. CMIA,
5. CCP 56.10 Disclosure of Medical Information by Providers,
6. Medical Injury Compensation Reform Act (MICRA)

Each rule above prohibits a health care provider from disclosing medical information - in the case of 45 CFR § 164.508(a)(2), psychotherapy notes - without proper authorization, with each having its own exceptions to the rule. None of the exceptions is applicable in the instant case.

Although the California courts have their own psychotherapist-patient privilege laws, the lower courts' failure to apply the correct legal standard of its own state rules and regulations that should have governed the case contradicts the fundamental principles of the federal privilege as established in *Jaffee*.

**IV. Lower courts' decisions are wrong and based on wrong premises to justify their conclusions.**

A. The district court failed to acknowledge the existence of a contract and consequently failed to acknowledge that a breach of contract occurred and sustains the demurrer to SAC without leave to amend. In the tentative ruling, district court states that 'Plaintiff does not allege which one of these forms is a contract nor which provision was breached.' (Defendants had also claimed earlier that the SAC is unclear, stating in their demurrer to SAC that they 'could not decipher which of the attached forms in the SAC was the contract.' (AA 121: 18-25)

On the other hand, the court of appeal acknowledges the existence of the CAPTE but fails

to admit it as being the contract.

With the above said, Plaintiff asserts that the SAC is sufficiently clear to be ‘reasonably inferred’, at the very least, to show that the CAPTE is a legally binding contract and that Stepanoff breached the CAPTE/contract, as a ‘reasonable’ person can observe from the following items:

1. SAC (App. I, 53a) states that “Defendants breached a contract between Plaintiff and themselves” (AA 81: 5,6) That seems to be clear.
2. SAC states Plaintiff located “the signed Agreement, which had set out terms of the contract dated March 31, 2016, EXHIBIT A (EXH. A-1 thru A-7) attached and sent it to Defendants.” (App. I, 56a) (AA 81: 9-11) That seems to be clear.
3. SAC states that the word ‘Agreement’ and ‘contract’ will be same for ‘CAPTE’, EXH. A-3 and A-4. (App. I, 53a) (AA 81: 11-13) That seems to be clear.
4. EXH. A-1 shows Forrester’s email (*Id.*) dated December 8, 2020, to defendant’s attorney Jessica Neighbors, notifying her of the contract located. EXH. A-1 states, in part, the following, “...find the existence of the signed contract, [CAPTE] by both me [Forrester] and...Stepanoff, on 3/31/16.” (App. I, 56a). That seems to be clear.

Throughout the entire case, the lower courts

and defendants circumvented EXH. A-1, which explicitly describes each of the forms attached to the SAC.

5. EXH. A-3 and EXH. A-4 show the 2-page CAPTE (App. I, 59a-60a) The CAPTE states that psychologist Stepanoff will maintain and secure Forrester's privacy and confidentiality in accord with American Psychological Association (APA) and other professional organizations. That seems to be clear.
6. Defendants faxed an unauthorized disclosure of Stepanoff's psychotherapy notes to patient's Forrester's employer, Airborne Systems, on March 31, 2016, same day as signed CAPTE. That seems to be clear.
7. Stepanoff violated the terms of the CAPTE after he faxed or allowed to be faxed unauthorized disclosure of psychotherapy notes about Forrester to Airborne without Forrester's authorization. That seems to be clear. (Each of Airborne's HR Personnel automatically receives a copy of every incoming fax to HR, including the illegal fax from defendants. (AOB 7)
8. Due to Defendants' unauthorized disclosure and violation of psychotherapist-patient privacy and confidentiality agreement CAPTE), Forrester filed the operative SAC, with first cause of action for breach of contract and a second cause of action for IIED. (*Id.*) That also seems to be clear.

Further, in the Opinion's prefatory "Discussion" (App. A, 14a-15a), the following statements are noted:

- i. "In our de novo review of an order sustaining a demurrer, we assume the truth of all facts properly pleaded . . . or reasonably inferred from the pleading...
- and
- ii. "[W]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context (App. A, 14a), and  
 "When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action..." (App. A, 14a-15a),
- and
- iii. "And in reviewing the operative complaint, "we look past the form of the pleading to its substance and ignore any erroneous or confusing labels [plaintiff] attached." (App. A, 15a)

Assuming all 3 statements above (i, ii, and iii) from the court of appeal are true and that Items 1-8 above dictated by petitioner Forrester are also true, then it can be inferred that Forrester has met his burden of proof in showing that Stepanoff breached the legally binding contract (CAPTE) when Stepanoff disclosed (directly or indirectly via fax) psychotherapy notes to Forrester's employer without consent; in doing so, Stepanoff failed to maintain Forrester's privacy and confidentiality. Forrester has suffered increasingly emotional

distress to the point of severe ED.

It is clear that the lower courts have failed to impart due fair justice to grant Forrester both his claims.

B. The Opinion shows several instances of mis-quotes and incomplete quotes that do not provide proper clarity, context or level of importance that vital to the case. Additionally, the lower courts sometimes use false premises with no nexus between its decision from the arguments and its consequent [wrong] conclusion. See below:

1. Opinion (App. A, 9a) is missing Forrester's obligation, or 'bargain for exchange', of the CAPTE: "I agree to help as much as I can by supplying full answers, making an honest effort, and working as best I can to make sure that the findings are accurate." (App. I, 61a)
2. (a) Opinion (App. A, 15a) states: "...Forrester appears to allege that Respondents breached the "Consent and Agreement for Psychological Testing and Evaluation" because they "failed to have Plaintiff's medical records kept confidential." Although Forrester styled his cause of action as a "breach of contract," the SAC alleges that Respondents did so by breaching guidelines set by their professional organizations and breaching the Confidentiality of Medical Information Act (Civil Code section 56 et seq.). As such we conclude that the cause of action is barred by the statute of limitations set forth in sections 340.5 and 338."

From its statements above, the court of appeal's premise is both misleading and false. First, the SAC never alleged that Respondents breached the contract by "breaching guidelines set by APA". The SAC alleges that Respondents breached the CAPTE/contract by failing to maintain Forrester's privacy and confidentiality in accord with the "rules and guidelines" set by the APA and the California Board of Psychology (CBP) by the unauthorized disclosure of psychotherapist notes to Forrester's employer. To the extent of reasonable interpretation, "rules" are mandatory whereas "guidelines" are recommendations. Stepanoff violated the APA's and CBP's rules, not their guidelines.

Second, the court also includes the false premise that the SAC alleges that Respondents breached the contract by "breaching the Confidentiality of Medical Information Act (CMIA)..." The SAC never alleged breach of the contract by "breaching the CMIA". In fact, Forrester's responsive letter to the clerk of the court of appeal states that CMIA is not applicable to the breach of the contract in the instant case. In the SAC, it references CMIA in its 'Conclusion' (AA 101: 9-13) as a law that Forrester alleges Respondents violated, codified under CCP 56.10 (AA 94: 1-15).

The SAC never faltered: the breach of contract was due to Respondent's unauthorized disclosure of medical records/psychotherapist notes under the CAPTE. (Refer to the SAC for the following

references to the unauthorized disclosure: AA81: 8-9, AA82: 26-27, AA83: 20-23, AA84: 6-14, AA87: 3, AA88: 1-3, 18-19.)

(b) The Opinion (App. A, 17a) quotes CBP's Section 4.04, Minimizing Intrusions on Privacy, in that psychologists include in their reports "only information germane" for the required communication and that psychologists discuss confidential information "...only with persons clearly concerned with such matters." Thus, to the extent that Forrester's claim is based on an action taken by Respondents as part of Forrester's treatment - which action Forrester alleges violated professional guidelines - we conclude it is subject to the statute of limitations set forth in section 340.5...".

The court did not argue the quotes relating to APA's and CBP's rules, other than calling them mere "guidelines set by their professional organizations" What does that mean? Further, the court mentions Forrester's claim [breach of contract] is based on "an action taken by Respondents." The court omitted to describe the "action". It is specifically Stepanoff's unauthorized disclosure of his psychotherapist notes without Forrester's consent. If this was included in the court's deductive reasoning, the court would have arrived at a different conclusion.

Thus, again, the court's false premises and decisions led to the wrong conclusion.

(c) Opinion (App. A, 18a) states, "To the extent that Forrester's breach of contract cause of action is based on Respondents alleged violations of the CMIA... must be brought within three years. (§ 338, subd. (a).)". We conclude that Forrester's "breach of contract" cause of action is subject to the deadlines set forth in sections 340.5...338 and is therefore time-barred."

For the same reasons given in 2(b) above, the court's conclusion is wrong; Section 340.5 and 338 do not apply in the instant case.

3. The Court of Appeal spent virtually no time discussing the CAPTE during oral argument to determine whether the CAPTE is indeed a contract and did not acknowledge the CAPTE as such. How then can the court (or other fact-finder authority) then nullify a 'breach' of contract without first determining whether a contract exists in the first place?

In summary, Defendants' unauthorized disclosure of psychotherapy notes directly violated the separate and special, signed legally binding agreement (CAPTE), which led to Forrester's cause of action for breach of contract. The unauthorized disclosure did not lead to professional negligence, as the lower courts failed to properly apply the correct rule of law in the instant case.

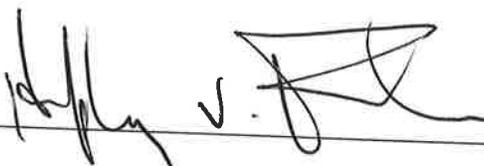
**CONCLUSION**

The petition for a writ of certiorari should be granted.

Originally filed: July 22, 2025

DATED this 12<sup>th</sup> day of February, 2026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Humphrey V. Forrester", written over a horizontal line.

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