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IN THE SUPREME COURT OF CALIFORNIA

LUIS SHALABI,
Plaintiff and Appellant,

v.

CITY OF FONTANA et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO
CASE NO. E069671

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF RESPONDENTS

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF RESPONDENTS

Under California Rules of Court, rule 8.520(f), the Association of Southern California Defense Counsel (ASCDC) requests permission to file the attached amicus curiae brief in support of defendants and respondents the City of Fontana, Vanessa Waggoner, and Jason Perniciaro (collectively, the City).[1]

[1] ASCDC certifies that no person or entity other than ASCDC and its counsel authored this proposed brief in whole or in part and that no person or entity other than ASCDC, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

ASCDC is a preeminent regional organization of lawyers who specialize in defending civil actions. ASCDC is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. ASCDC is also actively engaged in assisting courts by appearing as amicus curiae and has previously appeared before this Court in cases addressing statutory interpretation and statute of limitation issues. (See *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536; *Lee v. Hanley* (2015) 61 Cal.4th 1225.)

This Court has granted review on the following issue: Code of Civil Procedure section 12 provides: "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." In cases where the statute of limitations is tolled, is the first day after tolling ends included or excluded in calculating whether an action is timely filed? (See *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415 (*Ganahl*).)

ASCDC's members recognize the need for clearly established rules governing the timeliness of civil actions. ASCDC's members also recognize the importance of stability and predictability in the law.

Through this proposed amicus brief, ASCDC provides additional reasons to reaffirm the rule that the day of a plaintiff's 18th birthday should be included in the statute of limitations calculation. The potentially conflicting statutes implicated by the question presented should be harmonized to give each provision its full effect. The *Ganahl* rule does just that, whereas the rule

advocated by plaintiff Luis Shalabi would do the opposite. A deeper look at the purpose of Code of Civil Procedure section 12 and the rules in other states, which provides additional context not discussed in the parties' briefing, further supports the *Ganahl* rule.

Ganahl provides a clear, workable rule, and there is no good reason to abandon it. With this proposed amicus brief, ASCDC provides supplemental arguments supporting the *Ganahl* rule and rebutting the arguments against it advanced by Shalabi and the Court of Appeal below.

February 6, 2020

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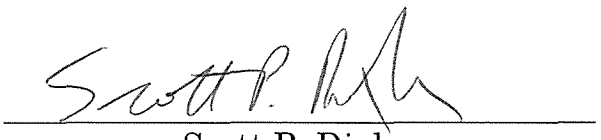
By: 
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AMICUS CURIAE BRIEF

INTRODUCTION

This case is about statutory interpretation. Code of Civil Procedure[2] section 12 cannot be read in isolation, but instead must be read in connection with other statutes defining a "minor" (Fam. Code, § 6500), a " '[y]ear' " (Gov. Code, § 6803), and a "day" (*Id.*, § 6806). The rule this Court established over 125 years ago in *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415 (*Ganahl*)—that the day after minority tolling ends (i.e., a plaintiff's 18th birthday) is included in the limitations period—is the only rule that respects all of these statutory definitions, thus harmonizing multiple code provisions. It also provides an easily administered, workable rule to guide courts and litigants. There is no reason for this Court to abandon it. We explain.

A plaintiff is no longer a minor at midnight on his or her 18th birthday. A plaintiff can therefore bring suit at any time on the day of his or her 18th birthday. There is no reason to exclude that day from the computation of the statute of limitations. Indeed, if a plaintiff's 18th birthday were excluded from the statute of limitations, a plaintiff would have 366 days to file suit, directly contravening the statutory definition of a year as 365 days. (See Gov. Code, § 6803.) Excluding a plaintiff's 18th birthday would sow discord in the law, rather than fostering certainty and uniformity.

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[2] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

The Court of Appeal held that including a plaintiff's 18th birthday in the limitations period would conflict with section 12. Not so. The purpose of section 12 is to avoid including *partial* days in the calculation of the statute of limitations. Section 12 thus gives a plaintiff the full measure of time to bring suit by excluding *fractional* days from the limitations calculus. Section 12, for example, applies to the *accrual* of a claim in order to avoid including a partial day in the limitations period. In the minority tolling context, however, the plaintiff has the *whole* of his or her 18th birthday to bring suit, making section 12 inapplicable. Plaintiff Luis Shalabi ignores the purpose of section 12 in his argument for excluding his 18th birthday in the statute of limitations calculus.

Finally, Shalabi offers no good reason for abandoning the *Ganahl* rule. All of the pertinent statutory provisions governing the question today were also in effect when *Ganahl* was decided, and there is no evidence suggesting that the *Ganahl* Court simply ignored an existing statute when it held that the day a plaintiff reaches majority is included in the limitations period. Section 12 is simply inapplicable in the specific context involved in *Ganahl*, which is the precise issue in this case as well.

This Court should reaffirm the *Ganahl* rule and hold that the day of a plaintiff's 18th birthday is included when determining whether an action is timely.

LEGAL ARGUMENT

I. The *Ganahl* rule harmonizes multiple, potentially conflicting statutory provisions, whereas Shalabi's proposed rule would do the opposite.

A. Potentially inconsistent statutes should be harmonized when possible in order to give effect to all their provisions.

This Court has repeatedly "emphasized the importance of harmonizing potentially inconsistent statutes." (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955.) " ' "A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions." ' " (*Ibid.*) " 'Thus, when " 'two codes are to be construed, they "must be regarded as blending into each other and forming a single statute." ' " ' " (*Ibid.*) In other words, "[w]hen construing the interaction of two potentially conflicting statutes, we strive to effectuate the purpose of each by harmonizing them, if possible, in a way that allows both to be given effect." (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986.)

The question presented here—whether the day after minority tolling expires is counted for statute of limitations purposes—implicates several statutory provisions. This Court should harmonize those provisions, reading them to complement each other rather than conflict with each other. As we explain, the *Ganahl* rule harmonizes all of the statutory provisions at issue

here. By contrast, Shalabi's proposed rule would thrust the statutes into inexorable conflict.

B. The *Ganahl* rule harmonizes the minority tolling provision with the statutory definitions of minority and a "year."

In *Ganahl*, this Court held that the date a plaintiff attains the age of majority is included in the limitations period. (*Ganahl*, *supra*, 2 Cal.Unrep. at p. 416.)[3] By law, the plaintiff in *Ganahl* "became of age the first minute of the eleventh day of April, 1876." (*Ibid*.) This Court reasoned that, in computing the applicable five-year limitations period, "we must include the eleventh day of April, 1876, because, as the plaintiff in question attained his majority the first minute of that day, he had the whole of the day in which to sue." (*Ibid*.) As we explain, that holding harmonized a variety of statutory provisions.

The first relevant statutory provision is section 352, subdivision (a): "If a person entitled to bring an action . . . is, at the time the cause of action accrued . . . under the age of majority . . . *the time of disability* is not part of the time limited for the commencement of the action." (Citation omitted, emphasis added.) Section 352 thus tolls the statute of limitations during a plaintiff's minority—although the minor's cause of action has accrued, the operation of the statute of limitations is suspended. (See

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[3] This Court has held, specifically with respect to *Ganahl*, that unpublished opinions from this Court have full precedential effect. (*In re Harris* (1993) 5 Cal.4th 813, 849, fn. 18 (*In re Harris*).)

Rubenstein v. Doe No. 1 (2017) 3 Cal.5th 903, 910-911 [distinguishing between delayed accrual and tolling]; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 496, p. 635 [same].) Because a plaintiff's 18th birthday is not part of the "time of disability"—which means that a plaintiff has standing to file suit on his or her own behalf on the plaintiff's 18th birthday—it should not be included under this statute.

Through this minority tolling provision, "the Legislature has enacted an express and clear tolling of the statute for the minor." (*Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 602, superceded by statute on another ground as stated in *Billups v. Tiernan* (1970) 11 Cal.App.3d 372, 376.) Minority tolling "effectuate[s] a deep and long recognized principle of the common law and of this state: children are to be protected during their minority from the destruction of their rights by the running of the statute of limitations." (*Ibid.*)

Of course, minority tolling ends when the plaintiff is no longer a minor. (See Code Civ. Proc., § 352, subd. (a) ["the time of the disability is not part of the time limited for the commencement of the action"].) That implicates another statute, Family Code section 6500, which provides that "[a] minor is an individual who is under 18 years of age."[4] The Legislature has specified the

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[4] Family Code 6500 was previously codified as Civil Code sections 25 and 26, which were cited in *Ganahl*. (*Ganahl*, *supra*, 2 Cal.Unrep. at p. 416.) The legislative history shows that the Legislature intended no substantive change when the statutes were moved to the Family Code. (Cal. Law Revision Com. com., 29G Pt.1 West's Ann. Fam. Code (2013 ed.) foll. § 6500, p. 3.)

duration of the period of minority down to the minute—"The period of minority is calculated from the first minute of the day on which the individual is born to the same minute of the corresponding day completing the period of minority." (Fam. Code, § 6500.) Thus, an individual is no longer a minor as of the first minute (i.e., midnight) of the day of his or her 18th birthday, regardless of the time of the day that particular individual was actually born. (*Ibid.*) This Court has applied this rule. (*In re Harris*, *supra*, 5 Cal.4th at pp. 844-845 ["the period of minority terminates on the first minute of one's 18th birthday"]).[5]

Taken together, these statutory provisions establish three rules: (1) the statute of limitations is tolled when the plaintiff is a minor, (2) the plaintiff's minority ends on the first minute of the plaintiff's 18th birthday, and (3) the tolling of the statute of limitations also ends on the first minute of the plaintiff's 18th birthday. Thus, by law, a plaintiff has the entirety of his or her 18th birthday (all 24 hours) to file a lawsuit. As we explain, that legal rule determines the outcome of the question presented in this case—because a plaintiff has the entire day of his or her 18th birthday to bring suit, there is no basis for excluding that day from the statute of limitations calculus.

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[5] At common law, an individual turned 18 on the day before his or her 18th birthday. (See *In re Harris*, *supra*, 5 Cal.4th at p. 844.) But California follows the " 'birthday' rule," under which an individual turns 18 on the first minute of his or her 18th birthday. (*Id.* at p. 850; Fam. Code, § 6500.)

Further, Government Code section 6803 defines a year as "a period of 365 days." Because a plaintiff can bring a lawsuit at any time on the day of his or her 18th birthday—regardless of his or her actual time of birth—excluding a plaintiff's birthday in the computation of the statute of limitations would deviate from this statutory definition and create a 366-day year for minority tolling. Doing so would directly contravene the Legislature's definition of a year. (See *Department of Corrections & Rehabilitation v. State Personnel Bd.* (2015) 238 Cal.App.4th 710, 721, fn. 5 ["since one year is defined as 365 days (see § 6803), excluding the first day arguably conflicts with the legislative mandate that the probationary period established by the Board not exceed 'one year' "].)

The *Ganahl* rule avoids such a conflict by synthesizing these statutes into a workable rule: a plaintiff's 18th birthday is counted in the computation of time for the commencement of an action, giving a plaintiff a full year (and no more) including that date to file his or her action. For a one-year statute of limitations, the plaintiff has until the day before his or her 19th birthday to file in order to avoid creating a 366-day year.

Shalabi, on the other hand, proffers a rule that would sow legal discord. Excluding a plaintiff's 18th birthday from the limitations calculus directly conflicts with the minority tolling statute, the definition of a minor, and the definition of a year. This Court should decline Shalabi's invitation to ignore these statutory provisions.

II. There is no tension between Code of Civil Procedure section 12 and the *Ganahl* rule.

A. The purpose of section 12 is to avoid including fractional days in the statute of limitations calculus.

"In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law." (*Goodman v. Lozana* (2010) 47 Cal.4th 1327, 1332.) This Court endeavors to give statutory language its plain meaning, but "'"the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose."'" (*Ibid.*)

Under section 12, "[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded."[6] This rule of computation is venerable—California adopted it in 1851, and many other jurisdictions follow it as well. (See *People v. Clayton* (1993) 18 Cal.App.4th 440, 443-444 (*Clayton*) [discussing historical background of computation rule].)

The method for computing time vexed courts for centuries. (See *Griffith v. Bogert* (1855) 59 U.S. 158, 162 [18 How. 158, 15 L.Ed 307] (*Griffith*) ["Whether the *terminus a quo* should be so included, it must be admitted, has been a vexed question for many

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[6] This rule is also codified in Civil Code section 10, Government Code section 6800, and Education Code section 9.

centuries, both among learned doctors of the civil law and the courts of England and this country. It has been termed by a writer on civil law (Tiraqueau) the *controversia controversissima*."].)

At common law, the first day was generally counted for statute of limitations purposes. (See *Griffith*, *supra*, 59 U.S. at p. 162; *Clayton*, *supra*, 18 Cal.App.4th at p. 443.) Over time, courts began to exclude the first day. "For more than two centuries, however, the cases were in conflict and there was no fixed rule." (*Clayton*, at p. 443.) British jurist Lord Mansfield explained " 'that the cases for two hundred years had only served to embarrass a point which a plain man of common sense and understanding would have no difficulty in construing.' " (*Griffith*, at p. 163; see *Clayton*, at p. 443.) California and other jurisdictions enacted statutes like section 12 to end this uncertainty.

The exclusion of the first day is not an arbitrary rule. To the contrary, it follows from another deep-seated precept—the law's refusal to recognize fractional days. At common law, the "general rule" was that the law "admits no fractions of a day." (*Griffith*, *supra*, 59 U.S. at p. 162.) This Court recognized the vitality of this rule within a few years of statehood, explaining that "a fraction of a day cannot be counted." (*Price v. Whitman* (1857) 8 Cal. 412, 417 (*Price*).) In California, this common law rule finds its statutory source in the definition of a day as "the period of time between any midnight and the midnight following." (Gov. Code, § 6806.) As at common law, fractional days are not included in the definition of a day.

Section 12's exclusion of the first day is inextricably linked to the law's refusal to recognize fractional days. As early as 1857, this Court recognized that "as a fraction of a day cannot be counted, by excluding the first and counting the last day, the full time will be in general allowed the Executive." (*Price*, *supra*, 8 Cal. at p. 417.) In other words, where a statute specifies a particular period of time to do something, including the first fractional day would result in an undercount because the law does not recognize fractional days. By contrast, excluding the first fractional day and including the last day affords the full measure of time.

Here too, application of section 12 to the *accrual* of claims makes sense. Accrual of a claim, such as a car accident, can occur at any time of day, and including the date of accrual would have the effect of including a fractional day in the limitations period. But a person *always* turns 18 at the stroke of midnight on his or her 18th birthday and has the full day to file an action. As such, there is no reason to apply section 12 here.

B. Courts in others states have recognized the link between ignoring fractional days and computing time for the statute of limitations.

Courts in other jurisdictions have also recognized the link between the rule ignoring fractional days, on the one hand, and the rule excluding the first day and including the last, on the other. In *Phelan v. Douglass* (N.Y. 1855) 11 How.Pr. 193, 195 (*Phelan*), the New York Court of Appeals discussed "the well-settled rule . . . [that] the day of the service is excluded in the computation of time."

The Court explained that "[t]he reason of this rule is very obvious—the law takes no notice of fractions of a day, except in certain cases where the hour itself becomes material—as the precise time when two judgments were docketed." (*Ibid.*) The Court reasoned that "the day so excluded in all these cases has been partially spent—it is, in part, actually gone when the event happens—and for that reason is also excluded, since, if counted, it would fail to give the party to be affected the *whole of that day*, but only a fractional part of it, and yet count it as a whole day." (*Id.* at pp. 195-196.) This Court followed *Phelan*'s reasoning in *Ganahl*. (See *Ganahl*, *supra*, 2 Cal.Unrep. at p. 416.)

Courts in Texas have followed the reasoning of *Phelan* and *Ganahl*. In *Kirkpatrick v. Hurst*, the Texas Supreme Court held that "the statute of limitations commences to run against a minor on the date he becomes twenty-one years of age since he can institute suit at any moment of that day." (*Kirkpatrick v. Hurst* (Tex. 1972) 484 S.W.2d 587, 588 (*Kirkpatrick*), superceded by statute on another ground as stated in *Danesh v. Houston Health Clubs, Inc.* (Tex.App. 1993) 859 S.W.2d 535, 536.) And in *Ross v. Morrow*, the Court reasoned, "On [the day he turned 21], April 16, 1881, his disability of minority was removed, and he could have instituted his suit at any moment of that day. The statute of limitation, therefore, commenced to run against him on that day. It follows from this that the 16th day of April, 1881, the day on which he attained his majority, must be included in the computation of time against him." (*Ross v. Morrow* (Tex. 1892) 19 S.W. 1090, 1091 (*Ross*).)

Courts in several other jurisdictions—Alabama, Kansas, New Hampshire, North Carolina, and Oklahoma—also agree that the statute of limitations begins to run on the day the plaintiff reaches majority, and a suit must be filed before the plaintiff reaches the next relevant birthday.[7]

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[7] See, e.g., *Elliott v. Navistar, Inc.* (Ala. 2010) 65 So.3d 379, 384 ("Section 6–2–8(a) clearly provides that a minor entitled to commence 'any of the actions enumerated in this chapter . . . shall have three years, or the period allowed by law for the commencement of an action if it be less than three years, after the termination of the disability to commence an action . . . .' This language is unambiguous; there is, accordingly, no room for judicial construction. [Citation.] The claims asserted by the plaintiffs against the bus companies were subject to a two-year statute of limitations [citation], and they were accordingly entitled to assert those claims *at any time before the injured parties turned 21* [when minority tolling ended on the 19th birthday]." (emphasis added)); *Bonin v. Vannaman* (Kan. 1996) 929 P.2d 754, 765 ("K.S.A. 60-515(a) tolls the statute of limitations for a minor's cause of action until 1 year after the minor turns 18. In this way, the minor can bring the lawsuit once the minor turns 18 (and before the minor turns 19) if the minor's 'next friend' has failed to bring the lawsuit during the plaintiff's minority."); *Desaulnier v. Manchester School Dist.* (N.H. 1995) 667 A.2d 1380, 1380 ("Desaulnier's action is based on an injury she allegedly suffered while cheerleading for Manchester's West High School on March 10, 1990. Desaulnier turned eighteen on March 31, 1991, and therefore had until March 30, 1993, to bring suit against the school district."); *Beall v. Beall* (N.C.Ct.App. 2003) 577 S.E.2d 356, 359-360 ("N.C.G.S. § 1-17(a) (2001) allows a person under a disability at the time the cause of action accrues to bring the action within the three years after removal of the disability but 'no time thereafter.' Because plaintiffs were under the disability of minority when their cause of action accrued, they were allowed to bring suit within the three years from the date of their eighteenth birthday. [Citation.] As plaintiff Bradley Beall was born 23

(continued...)

Six of the seven states discussed above have statutes or rules equivalent to section 12, yet these states have nonetheless held that suit must be brought before the next relevant birthday, just as this Court did in *Ganahl*.[8] As these out-of-state cases confirm,

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February 1977, the last date on which he could have filed his complaint in this action was 23 February 1998, the first business day following 22 February 1998, a Sunday."); *Hamilton By and Through Hamilton v. Vaden* (Okla. 1986) 721 P.2d 412, 416 ("Pursuant to 12 O.S. 1981 § 700, had a lawsuit never been commenced, a wrongful death action might have been brought on Nekia Hamilton's behalf *at any time prior to his nineteenth birthday*," fn. omitted, emphasis added).

[8] The following are the equivalent out-of-state statutes to section 12 that were in effect at the time the above mentioned cases were decided: Alabama Code section 1-1-4 (1975), Kansas Statutes Annotated section 60-206, subdivision (a) (1963), Oklahoma Statutes, title 12, section 2006 (1984), and Texas Rules of Civil Procedure, rule 4 (1940). The Texas rule was in effect when the 1972 *Kirkpatrick* case was decided, but not when the *Ross* case was decided. However, the Texas Supreme Court in *Ross* highlighted an equivalent rule to section 12 when it discussed the *Phelan* case. (See *Ross*, *supra*, 19 S.W. at p. 1091.) The equivalent New York statute, New York General Construction Law section 20, was enacted in 1909, after the *Phelan* case, however, the court in *Phelan* noted that New York followed a rule equivalent to California Code of Civil Procedure section 12. (*Phelan*, *supra*, 11 How.Pr. at p. 194 ["It has become a well-established rule in this state, that whenever an act is to be done in a certain number of days, months, or years, from the happening of any event, or the doing of any act, that, in the computation of time, the day on which the event happened, or the act was done, is to be excluded"].) Lastly, North Carolina does not appear to have an equivalent statute, but has adopted an equivalent rule through its case law. (See e.g., *Jenkins v. Griffin* (N.C. 1918) 95 S.E. 166, 167 ["applying the rule of excluding the first day and including the last"]; *Cook v. Moore* (1886) 95 N.C. 1, 3 ["the decided current of the authorities is, that the day of the accrual is to be excluded. So in the (continued...)

the *Ganahl* rule does not conflict with section 12, but instead creates a workable rule that harmonizes multiple statutory provisions without disserving the purpose of section 12.

C. To the extent cases in other jurisdictions apply a different rule, those cases are based on materially different statutory schemes or provide only scant reasoning.

Ten states appear to have squarely addressed the precise question posed in this case—whether the day after minority tolling ends is included in the limitations period. Of those ten states, seven agree with the *Ganahl* rule (as discussed above), while only three disagree with the *Ganahl* rule.[9] Like the Court of Appeal below, courts in Alaska, Maryland, and Minnesota have specifically held that the date of majority is excluded in the statute of limitations calculus. (See *Fields v. Fairbanks North Star Borough* (Alaska 1991) 818 P.2d 658, 661 (*Fields*); *Mason v. Board of Education* (Md. 2003) 826 A.2d 433, 438 (*Mason*); *Nelson v. Sandkamp* (Minn. 1948) 34 N.W.2d 640, 643 (*Nelson*).) This Court should not follow those cases.

In *Nelson*, the Minnesota Supreme Court noted that the plaintiff's minority ceased on the last moment before his 21st

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computation of time from an act done, the day on which the act is done will be excluded."].

[9] Some state courts have addressed this issue sub silentio without any analysis. (See, e.g., *Franklin v. Cernovich* (Ill.App.Ct. 1997) 679 N.E.2d 98, 102; *Angell v. Hallee* (Me. 2014) 92 A.3d 1154, 1157.)

birthday (at the time, the age of majority was 21 years old) and made clear that the plaintiff had the capacity to bring suit on the first moment of his 21st Birthday. (*Nelson*, *supra*, 34 N.W.2d at p. 643) The Court nonetheless excluded the day of the plaintiff's 21st birthday from the limitations period, reasoning that such an outcome would promote certainty and uniformity. (*Ibid.*) The Minnesota Supreme Court did not explain how allowing for a 366-day year provided certainty or uniformity. The Minnesota Supreme Court also did not explain why a rule aimed at excluding *fractional* days would apply to exclude a complete day—the day of the plaintiff's 21st birthday. *Nelson* provides little guidance to this Court.

In *Fields*, the Alaska Supreme Court held that the statute of limitations began to run the day after the plaintiff's 18th birthday. (*Fields*, *supra*, 818 P.2d at p. 661.) The Court reasoned that "attainment of the age of majority is analogous to other events that trigger running of time periods." (*Ibid.*) Not so. With all other events triggering the running of a time period, the plaintiff does not have the whole day to bring suit—he or she only has a fraction of a day to do so. Once a plaintiff attains the age of majority, however, he or she has the entire day to bring suit. The Alaska Supreme Court did not account for this dispositive difference. Because its reasoning is flawed, *Fields* also provides little useful guidance to this Court.

Finally, as noted by the City in its opening brief (OBOM 35), in *Mason*, the Court of Appeals of Maryland (the state's highest Court) held that the statute of limitations begins to run the day

after the plaintiff is no longer a minor (*Mason*, *supra*, 826 A.2d at p. 438). This holding follows from Maryland's statutory scheme. Unlike in California, Maryland's minority tolling statute specifically states that the date the disability is removed is *not* counted in the statute of limitations: a minor plaintiff "shall file his action within the lesser of three years or the applicable period of limitations *after the date the disability is removed*." (Md. Code Ann., Cts. & Jud. Proceedings, § 5-201, subd. (a), emphasis added.) California's minority tolling statute does not include such language, so *Mason* is inapposite.

III. There is no good reason to abandon the *Ganahl* rule, and there are good reasons to reaffirm it.

A. The *Ganahl* rule is clear, workable, and easily administered.

Shalabi repeatedly states his concern for certainty in the law. (ABOM 4-6, 10.) But Shalabi advocates for a rule that would sow discord in the law rather than providing certainty. Reaffirming the *Ganahl* rule, which requires plaintiffs to file suit the day before their relevant birthday, would create more certainty in the law than the rule Shalabi proposes.

The bench and bar have had decades of experience applying the *Ganahl* rule. At the time Shalabi filed this lawsuit, the American Law Reports advised that, "In those cases where the statute of limitations is suspended during a period of disability because of infancy and is continued after the period of disability, it has been held that the first day after the disability ceases is to be

included in the computation of the period of time limited by statute in which to bring the action after the disability ceases." (Annot., Inclusion or exclusion of first and last day for purposes of statute of limitations (1952) 20 A.L.R.2d 1249, § 4, citing *Ganahl*, *supra*, 2 Cal.Unrep. 415.) Likewise, a leading treatise explains that "The first day after a disability ends is *included* in calculating the limitations period. ([Code Civ. Proc.,] § 12 (¶ *5:112*)—'time in which any act provided by law is to be done is computed by *excluding the first day* . . .'—does not apply, and hence does not exclude the day following disability from calculation of the limitations period.)" (Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2019) ¶ 5:145a, p. 5-127 citing *Ganahl*, *supra*, 2 Cal.Unrep. 415, 416.) These secondary sources illustrate the workability of the *Ganahl* rule.

B. The reasons for abandoning *Ganahl* advanced by Shalabi and the Court of Appeal are unpersuasive.

Neither Shalabi nor the Court of Appeal below have identified any good reason for departing from *Ganahl*. There is no indication, for example, that the *Ganahl* rule is "unworkable." (*Bourhis v. Lord* (2013) 56 Cal.4th 320, 328.) To the contrary, *Ganahl* articulates a simple, bright-line rule that a plaintiff's 18th birthday is counted for statute of limitations purposes—"[t]he decision is simplicity itself to apply," which supports retaining it. (*Kimble v. Marvel Entertainment, LLC* (2015) 576 U.S. __ [135 S.Ct. 2401, 2411, 192 L.Ed.2d 463].)

In declining to follow *Ganahl*, the Court of Appeal below asserted that "*Ganahl* did not explain how the court could create an exception to section 12, which requires the first day be excluded when calculating time." (*Shalabi v. City of Fontana* (2019) 35 Cal.App.5th 639, 644, review granted Aug. 14, 2019, S256665.) But *Ganahl* did not purport to create any exception to section 12. Section 12 continues to apply, for example, to exclude the date of accrual of a claim. As discussed above, section 12 addresses the problem arising when the first day is a fractional day. And that problem is absent in the case of minority tolling—as *Ganahl* recognized, a prospective plaintiff has the entire day of his or her birthday to bring suit. There is simply no reason to apply section 12 in that circumstance. Indeed, doing so would create an unwritten exception to the rules that (1) individuals attain the age of majority on the first minute of their 18th birthday and (2) minority tolling ends when the prospective plaintiff is no longer a minor. Thus, the *Ganahl* rule (and not Shalabi's proposed rule) provides more certainty and uniformity in the law.

Shalabi's failure to identify any good reason for abandoning *Ganahl* should end the inquiry. But there are good reasons for adhering to *Ganahl*'s holding, beyond its correctness. First, as previously mentioned, *Ganahl* provides the only rule that harmonizes all of the statutory provisions described in Part I. Second, the Legislature remains free to alter the result in *Ganahl* whenever it sees fit. The Legislature's failure to alter the rule in over 125 years provides a powerful reason for this Court to decline Shalabi's invitation to do so. Finally, Shalabi "could have easily

avoided the decision's effect," which provides an additional reason for reaffirming it. (*Samara v. Matar* (2018) 5 Cal.5th 322, 337.) Had Shalabi filed this lawsuit only one day sooner, there is no dispute it would have been timely, and Shalabi has identified nothing that prevented him from doing so.

C. The cases on which Shalabi relies to challenge the *Ganahl* rule are inapposite.

As the City correctly observes (RBOM 7), two of Shalabi's cases—*West Shield* and *Cabrera*—are inapplicable because the plaintiff in those cases did not have the entire first day after tolling ended to bring suit. (See *West Shield Investigations & Security Consultants v. Superior Court* (2000) 82 Cal.App.4th 935, 950 [emancipation of the minor]; *Cabrera v. City of Huntington Park* (9th Cir. 1998) 159 F.3d 374, 378 [release from incarceration].) *Snyder v. Boy Scouts of America, Inc.* (1988) 205 Cal.App.3d 1318, 1323, superceded by statute on other grounds as stated in *Tietge v. Western Province of the Servites, Inc.* (1997) 55 Cal.App.4th 382, 385, is even further afield because the plaintiff in that case filed suit long after he turned 19—whether to count the day of the 18th birthday was not at issue.

Shalabi also relies on a trio of other cases—*Ley v. Dominguez* (1931) 212 Cal. 587, *Ziganto v. Taylor* (1961) 198 Cal.App.2d 603, and *Wixted v. Fletcher* (1961) 192 Cal.App.2d 706—but those authorities provide no support for his position. Shalabi cites *Ley* and *Wixted* to support the proposition that certainty in computing time is important. (ABOM 4-5). True enough. But *Ley, Wixted*,

and *Ziganto* do not address minority tolling, or tolling at all. And, as discussed above, the *Ganahl* rule promotes greater legal harmony and certainty than Shalabi's alternative.

* * *

Neither Shalabi nor the Court of Appeal below identify any good reason for abandoning the *Ganahl* rule. To the contrary, there are good reasons to follow it—the *Ganahl* rule is clear, workable, and fair. This Court should reaffirm the *Ganahl* rule that the first day of majority is counted for statute of limitations purposes.

CONCLUSION

For the foregoing reasons, this Court should reaffirm the rule that the day of a plaintiff's 18th birthday is included when determining whether an action is timely. This Court should therefore reverse the Court of Appeal's decision.

February 6, 2020

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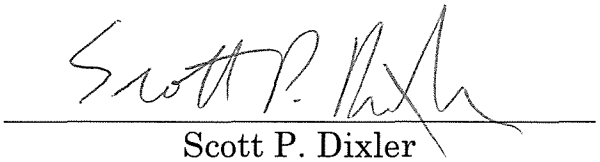
By: 
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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.520(c)(1)

The text of this petition consists of 5,862 words as counted by the Microsoft Word version 2016 word processing program used to generate the petition.

Dated: February 6, 2020

Scott P. Dixler

PROOF OF SERVICE

SHALABI v. CITY OF FONTANA et al.
Court of Appeal Case No. E069671
Supreme Court Case No. S256665

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On February 6, 2020, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF RESPONDENTS** on the interested parties in this action as follows:

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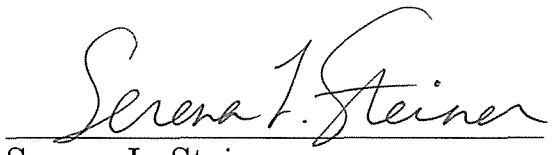
BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2020, at Burbank, California.



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Court of Appeal Case No. E069671
Supreme Court Case No. S256665

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